

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.615 OF 2022**

(Smt. Zohrabi wd/o Abdul Rashid Khan and others Vs. Bismillahbi wd/o Aleemndin  
(dead), thr. her legal heirs and others)

---

*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.*

*Court's or Judge's orders.*

---

Mr. Y. R. Sonkusare, Advocate for Petitioners.  
None for Respondents.

**CORAM: ROHIT B. DEO, J.**

**DATE: 9<sup>th</sup> FEBRUARY, 2022.**

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Petitioners and respondents 7 and 8 are defendants in Regular Civil Suit 336/2010 instituted by the plaintiffs – respondents 1 to 6 herein for ejectment, possession, arrears of rent and mesne profit.

3. The learned 2<sup>nd</sup> Additional Judge, Small Causes Court, Nagpur partly decreed the suit vide judgment dated 04.05.2016 and directed the defendants to deliver vacant and peaceful possession of the suit property to the plaintiffs, to pay the arrears of rent and further directed an inquiry under Order 20 Rule 12 (1)(c) of the Civil Procedure Code, 1908 (Code) into mesne profit.

4. The plaintiffs challenged the decree in Regular

Civil Appeal 560/2017, which the learned Ad-hoc District Judge-1, Nagpur dismissed vide judgment dated 16.09.2021.

5. The defendants are dissatisfied with the concurrent judgments and are invoking writ jurisdiction. The case of the plaintiffs in brief was that the suit property which is house 467 situated in Mouza Mominpura, Nagpur was owned by Shri Aleemuddin who died in 2004 leaving behind the plaintiffs as legal heirs. The suit property was initially let out by Shri Aleemuddin to Shri Abdul Rashid Khan Khudai Noor who died in the year 2008 leaving behind the defendants as legal heirs. According to the plaintiffs, the monthly rent was Rs.1500/- (Rupees One Thousand Five Hundred), which was not paid since 28.02.2007. The plaintiffs issued notice by registered post to the defendants claiming rent for the period 01.03.2007 to 31.05.2010, which was duly served on defendants 1, 3, 4 and 6 and which were not claimed by defendants 2 and 5. The notice did not evoke any response.

The plaintiffs further contended that the suit property was in dilapidated condition, that plaintiff 6 is of marriageable age and is in need of suitable accommodation, plaintiff 2 is residing with her husband and two sons aged 22 years and 20 years and 14 years old daughter, and plaintiff 2 is in need of sufficient accommodation. It is then contended that plaintiff 3 is residing along with three children aged 12, 10 and 5 and her husband, in a tiny room admeasuring 120 sq. ft. and plaintiff 4 is residing with her

five children in a small house admeasuring 100 sq. ft. Plaintiff 5 is residing in a room admeasuring 112 sq. ft. with her husband at Bhankheda, Nagpur.

6. The defendants 1, 3, 4 and 5 filed their written statement resisting the suit claim and defendants 2 and 6 were proceeded *ex-parte*. The contesting defendants broadly denied every averment in the suit plaint and called upon the plaintiff 2 establish that the suit property was owned by Shri Aleemuddin. The contesting defendants denied that Shri Aleemuddin let out the suit property to Abdul Rashid Khan Khudai Noor and further denied that the defendants are legal heirs of Abdul Rashid Khan Khudai Noor. The contesting defendants denied the quantum of rent and the *bona fide* need pleaded by the plaintiffs.

7. The learned trial Judge framed issues which are culled out in paragraph 10 of the judgment. The plaintiffs examined Mohd. Sajid Ansari – plaintiff 6 who adduced oral evidence and proved the documents. The defendants, including the defendants who filed the written statement, did not participate in the proceedings which constrained their counsel to file no instruction praecipe on 03.07.2014.

8. The learned trial Judge scrutinize the evidence on record in the context of the requirement of Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (Act) and held that the plaintiffs have established reasonable and *bona fide* need to occupy the tenanted premises. The learned trial Judge then looked into the aspect of

comparative hardship, and answered the issue in favour of the plaintiffs. The learned trial Judge accepted the contention of the plaintiffs that the defendants are in arrears of rent, partly, and restricted the relief to arrears for thirty-six months on the premise that the rest of the claim is barred by limitation.

9. The learned Appellate Judge re-appreciated the evidence on record and concurred with the findings recorded by the learned trial Judge.

10. The learned counsel for the defendants Mr. Sonkusare would argue that the notice dated 16.06.2010 is not in-conformity with the provisions of Section 15 of the Maharashtra Rent Control Act, 1999. Perusal of the memo of the petition does not throw light on the basis of such submission. In any event, since such a submission was not even canvassed or raised before the trial court or then in appeal, I decline to delve deeper.

11. Mr. Sonkusare would then argue that the defendants have been deprived of the opportunity of effective hearing. Again, perusal of the memo of appeal would reveal that such a ground is not raised in the memo of appeal. The learned trial Judge has observed that in view of the reluctance of the defendants to participate in the proceedings, their learned counsel was constrained to withdraw power after issuing a registered notice to the defendants, who despite the receipt of the said notice did not contact the counsel.

12. It is faintly urged that the appreciation of evidence is flawed. I do not agree. The evidence on record is appreciated and re-appreciated by the learned trial Judge and the learned Appellate Court reasonably and in writ jurisdiction I am not expected to again appreciate the evidence, particularly since no serious infirmity much less perversity in the appreciation of evidence or in the findings recorded, is demonstrable.

13. I do not see any error in the concurrent view that the plaintiffs have made out a case for decree of eviction and arrears of rent and no interference in writ jurisdiction is necessary.

14. The petition is dismissed with no order as to costs.

15. The registry shall forward a copy of this order to the learned trial Judge and/or executing court within the next fifteen days.

**JUDGE**

NSN