

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1695 OF 2022

(SURESH BALBIRSING SOOD (DEAD) THR. LRS & OTH..VS.. MEGHRAJ GOLCHA (HUF))

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

Court's or Judge's orders

Shri S.B.Mohta, Advocate for Petitioners.
Shri M.R.Joharapurkar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JULY 18, 2023.

1. Heard.
2. An unsuccessful tenant in an appeal against whom decree of eviction was passed by the trial Court has filed the present writ petition on the grounds namely :
 - a) The notice as regards arrears of rent is untenable;
 - b) The plaintiff is HUF and own many properties;
 - c) The Mesne Profit was only directed to be inquired from the date of filing of the suit instead from the date of decree.
3. As far as first ground is concerned, it has come on record that even during pendency of the suit, the petitioner failed to pay the rent and as such in light of the judgment of the Full Bench in the case of *Babulal..vs.. Suresh and Ors.*, reported in **2017(4) ADR 661** the suit can be maintainable subject to fulfillment of conditions stipulated under sub-section (1) and (3) of Section 15 of

the Maharashtra Rent Control Act, 1999. Thus, I am not inclined to interfere as regards the decree of eviction on the ground of arrears of rent.

4. As far as the second ground is concerned, the petitioner has not pointed out as to whether the plaintiff was juridically in possession of the premises owned by him for occupation so that the need which he pointed out in the suit could be fulfilled. In absence of any such pleading or evidence the only fact that the plaintiffs own many properties could not be taken into account for negating the bonafide need of the plaintiff for that premises, as held by the Hon'ble Supreme Court of India in the case of *P.B.Desai..vs..C.M.Patel*, reported in **AIR 1974 SC 1059**. Thus, in absence of any evidence to show that any premises owned by the plaintiff was or is vacant, the ground raised by the petitioner in this petition does not survive as regards Section 16(1)(g) of the Maharashtra Rent Control Act, 1999.

5. As far as third ground is concerned, I find substance in the submission of the learned counsel for the petitioner that the decree in respect of the mesne profit should be from the date of decree of eviction and not from the date of the suit. Accordingly, to the said extent, I am of the opinion that it needs to be modified. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned judgment and decree dated 25/11/2021 passed by District Judge-10 and Additional Sessions Judge, Nagpur in R.C.A. No.430 of 2019 is hereby confirmed, except clause (4) of the operative order.
- iii) Clause (4) of the operative order dated 25/11/2021 is modified as under:

“(4) An inquiry of future mesne profit as contemplated under Order 20 Rule 12(c) of C.P.C. be conducted for calculating mesne profit from the date of decree of eviction i.e. from 22/04/2019 till actual delivery of possession of the suit property to the plaintiff.”

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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