

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

WRIT PETITION (WP) NO.5639 OF 2018

- (1) Smt. Sunita w/o Shrishail Mali,
Aged about 51 years,
Occ. : Agriculturist, R/o Jatkar Bhavan,
Dhad Road, Buldhana, Tah. and
District – Buldhana.

.... Petitioner(s)

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- (1) Dhanraj Narayan Gavalkar,
Aged about 80 years,
Occ. : Business, R/o. Sanjay
Readymade Dressess, Dhad Road,
Buldhana, Tah. And District Buldhana.
- (2) Suman Dhanraj Gavalkar,
Aged about 75 years,
Occ. : Business, R/o. Sanjay
Readymade Dressess, Dhad Road,
Buldhana, Tah. And District Buldhana.

... Respondent(s)

Shri S.O. Ahmed, Advocate for the Petitioner/s
None for the respondents

**CORAM : ANIL S. KILOR, J.
DATED : 19.06.2023**

ORAL JUDGMENT :

1. Heard learned counsel for the petitioner. None for the respondents/tenant, though served.

2. **Rule.** Rule made returnable forthwith.

3. In the present matter, the petitioner/land lady filed a suit for eviction on the ground of bonafide need as well as on the ground of arrears of rent. The suit was decreed on both the grounds. As the decree of eviction was granted on the ground of arrears of rent in addition to the same, a direction to pay arrears of rent to the tune of Rs.18,000/- was also issued by the trial Court.

4. However, in the appeal preferred against the judgment and decree passed by the trial Court dated 30.04.2012, the learned lower Appellate Court, in Regular Civil Appeal (RCA) No.95 of 2012 vide judgment and decree dated 11.10.2017, maintained the decree of eviction on the ground of bonafide need, but set aside the decree of eviction on the ground of arrears of rent, consequently the direction to pay arrears of rent was also set aside.

5. The tenant carried a revision application before this Court, challenging the judgment and decree passed in RCA 95 of 2012 to the extent of eviction on the ground of bonafide need.

6. It is pertinent to note hear that the land lady has not raised any challenge to the quashing and setting aside of the decree of the trial Court for eviction on the ground of arrears of rent and the same has therefore, attained finality.

7. The present petition raises a grievance restricting to the quashing and setting aside of direction issued by the trial Court to the tenant to pay the arrears of rent and not to the denial of decree on the ground of arrears of rent.

8. Having considered the above referred facts that the decree of eviction on the ground of arrears of rent was based on the finding that the tenant was in arrears of rent and the moment the lower Appellate Court has held that the appellant was not in arrears of rent, the decree on the ground of arrears of rent was denied and at the same time, the direction issued by the trial Court to pay arrears of rent was also set aside. Thus, it is evident that the decree of eviction on the ground of arrears of rent is interrelated with the direction to pay arrears of rent.

9. In the circumstance on attaining finality of decision of denial of decree of eviction on the ground of arrears of rent with the finding that the tenant is not in arrears of rent, the present petition restricting to refusal of direction to pay arrears of rent, in my considered opinion is not maintainable. Accordingly, it is **dismissed.**

[ANIL S. KILOR, J.]