



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

WRIT PETITION NO.7433 OF 2022

PETITIONERS

(LR's of Ori. Defendant)

:- 1) Priti W/o Anil Bagde @ Priti D/o
Nathhuji Sahadeo Gondane,
Aged about 45 Years, Occ: Household, R/o
Devi's Heaven, Flat No.102, A-Wing
Aradhana Apartments, Shiv Rashik Nagar
Kathora Ring Road, Amravati – 444 604.

(LR's of Ori. Defendant)

2) Bharti W/o Giridhar Wasnik @ Bharti D/o
Nathhuji Sahadeo Gondane
Aged about 48 Years, Occ: Household,
R/o C – 77, Phase – III, Near Jasula Tower,
Jasula City, Dhanvantri Nagar, Jabalpur
(M.P) – 482003.

..VERSUS..

RESPONDENT

(Ori. Plaintiff)

:- Sangeeta W/o Prakash Waghmare,
Aged about 48 Years, Occ: Private
R/o Qtr. No.111, Empress Mill Colony
Bezonbagh, Nagpur.

Mr. A.P. Chaware, Advocate for Petitioners.

Mr. N.M. Kolhe, Advocate for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **10/11/2025**

ORAL JUDGMENT :

1. Heard.

2. The present petitioners have filed suit for eviction and possession against the respondent on the ground of arrears of rent and bonafide need. As regards the arrears of rent, it is undisputed that notices as contemplated under Section 15 of the Maharashtra Rent Control Act, 1999, was not issued and as such, suit on that ground was not maintainable. With respect to bonafide need, the case of petitioners is that she has the old lady residing with her daughter and that during the last years of her life, she wanted to reside independently in his residential house. The plaintiff did not enter the witness box. Her son in law deposed on her behalf. In the cross-examination, the son-in-law admitted that there were other three rooms in the building in which the suit property is located which could be used by the plaintiff for her residence. The learned trial Courts had partly allowed the suit accepting the case of bonafide need set up by the plaintiff. The learned First Appellate Court has reversed the findings and has dismissed the suit in its entirety.

3. As regards the findings recorded by the learned trial Court, it is held that because the defendants was not residing in the suit house for a period of around two to three years before the date of her cross-examination, the issue of bonafide need was answered

in favour of the plaintiff. However, the learned trial Court has not taken into consideration the fact that three rooms were available in the same building in which the suit property was located which could be utilized by the plaintiff for her residence. The said aspect was not properly dealt with by the learned trial Court. The learned First Appellate Court while reversing the findings recorded by the learned trial Court on bonafide need has elaborately dealt with the evidence, which the learned trial Court failed to do.

4. It will be pertinent to mention that while the appeal was pending, the plaintiff who was respondent in the appeal expired on 29.04.2021. However, the arguments in the appeal were concluded in the month of March, 2021 and thereafter, the judgment was delivered on 23.10.2020. Since the demise of the respondent was in between the date on which the argument was concluded and appeal was decided, the appeal did not abate.

5. In view of the aforesaid, in the considered opinion of this Court, the petitioners have failed to make out any case for interference. The judgment passed by the learned First Appellate Court is a well reasoned judgment, which does not warrant any interference.

6. However, it has come on record during the course of evidence of the defendant/tenant that she was not residing in the suit property for a period of around two to three years prior to the date of her cross-examination. This is also a ground for eviction under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999. However, the plaint was not amended in order to incorporate this ground. Consequently, the defendant did not have opportunity to offer any explanation or justification for non-user. Having regard to the aforesaid, in the considered opinion of this Court, it will be open for the petitioners to file a fresh suit for eviction on the aforesaid ground as well as other grounds.

7. Accordingly, writ petition is **dismissed**. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate