



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

WRIT PETITION NO. 7372 OF 2024

Prem S/o. Ashok Tahilramani,
Aged about Major, Occ: Business,
R/o. 146, Near Ahuja Niwas, Jaripatka,
Nagpur

....PETITIONER

....VERSUS....

Smt. Mayadevi Wd/o. Late Lalchand
Moryani,
Aged about 45 years, Occ: Landlady,
Moryani Bhawan, Dr. Ambedkar Road,
Panchpaoli, Nagpur

....RESPONDENT

Shri Anjan De, Advocate for petitioner.
Shri R.M.Sharma, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 23/04/2025

ORAL JUDGMENT

Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

2. The present petition is filed challenging the order dated 29/04/2024 passed by the learned District Judge-15, Nagpur in Reg. Civil Appeal No. 100136/2007.

3. It appears that the Writ Petition No. 2062 of 2018 was filed by the present petitioner against the judgment and decree dated 09/02/2018 passed by the learned District Judge-8, Nagpur in R.C.A. No. 136 of 2007, dismissing the appeal of the present petitioner and upholding the judgment and decree dated 31/01/2007 passed by learned Small Causes Court, Nagpur in Reg. Civil Suit No. 475 of 2002, decreeing the suit for possession against the petitioner. It was the case of the plaintiff that the suit block is of 300 sq.ft. and it was licensed to the defendant. The memorandum of leave and license agreement was executed and though the period for which the suit block was licensed was over, the petitioner failed to vacate it and since the suit block is required for bonafide need, the suit was filed under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (in short, "the Act of 1999").

4. From the provisions of the Maharashtra Rent Control Act, 1999, the 'licensee' as defined does not include the tenant and definition of 'tenant' does not include the

licensee. Thus, both the terms are distinct and different. In view thereof, this Court in Writ Petition No. 2062/2018, by order dated 31/01/2024, observed that the landlady is treating the petitioner as licensee, whereas the petitioner is disputing his status as licensee and claiming to be a tenant. There was no issue in this regard by the learned Trial Court as well as the learned Appellate Court and the learned Trial Court recorded the finding without framing this issue. It is further observed by this Court that whether the petitioner is a tenant or a licensee goes to the root of the matter and which would decide, whether the suit under Section 16 of the Act of 1999 is maintainable ? In view of this observation, this Court framed the issue and referred to the learned First Appellate Court to answer the following point on the basis of existing pleadings and evidence. The issue framed is as under:-

“(a) In light of the pleadings of the plaintiff that the defendant is a licensee, whether the learned trial Court is right in holding that the defendant is a tenant ? and if the answer is in negative, whether the suit under Section 16(1) (g) & (c) of the Act of 1999, is tenable against the defendant ?”

5. The learned First Appellate Court was directed to frame the above referred point for consideration and by recording its finding and answer to it, refer the matter back to this Court. The learned Appellate Court after referring the point, has framed two points as under:-

“1. Whether the learned trial Court is right in holding that the defendant is a tenant ?

2. Whether the suit under Section 16(1)(g) and (c) of the Act is tenable against the defendant ?”

6. In fact, the second point was not required to be answered in view of the point referred by this Court. It is specifically mentioned in the point referred to the learned First Appellate Court that, if the answer to the first point that whether the learned Trial Court is right in holding that the defendant is a tenant ? and if the answer is in the negative, then, there was necessity to answer second issue that is whether the suit under Section 16(1)(g) & (c) of the Act of 1999 is tenable against the defendant ? was to be answered. However, it appears that, in spite of the fact that, the point no. 1 is answered in affirmative. The learned District Judge went

to decide the second point also which is against the order passed by this Court. However, the Writ Petition No. 2062 of 2018 is pending in which this order is passed is of dated 31/01/2024. The finding recorded by the learned First Appellate Court i.e. learned District Judge-15, Nagpur against point no. 1 will be considered and finding against point no. 2 would not be considered by this Court for any of the decision on merit.

7. Accordingly, the judgment and order dated 29/04/2024 passed by the learned District Judge-15, Nagpur in R.C.A. No. 100136/2007 after referring the point to the extent of finding with regard to point no. 2, is hereby quashed and set aside. This Court would consider only finding with regard to point no. 1.

8. As such, the petition stands **disposed of**.

(Smt. M.S.Jawalkar, J.)