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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 110 OF 2017**

M/s. Ahmed Currim Corporation,
Thru. Mr Alim Sultan Ahmed Karim, Partner. ...Applicant
Vs.
Nasima Zulkernain Merchant,
Thru. Poa Mrs. Zulekernain Merchant. ...Respondent

**WITH
INTERIM APPLICATION NO. 2434 OF 2022**

Mr. Shreeganesh Khaire a/w. Ms. Gayatri Shenvi for the applicant.

Mr. Kunal Bhangе a/w. Mr. Akshay Pawar, Mr. Faiz Ali Khan for the respondent.

CORAM : GAURI GODSE, J.

DATE : 27th AUGUST 2026

ORDER :

1. This civil revision application is filed by the original defendant to challenge the eviction decree passed by the appellate bench of the Small Causes Court. The decree is passed on the ground of *bona fide* requirement of the landlady for her residential use. The suit was filed for eviction on the grounds of change in user, nuisance and annoyance created by the defendant, and alteration of a permanent

nature carried out without prior permission and *bona fide* requirement of the landlady.

2. The trial court had dismissed the suit. However, the appeal preferred by the landlady is partly allowed, and the decree is passed on the ground of *bona fide* requirement. The remaining grounds are disbelieved. Hence, the landlady has preferred a separate civil revision application. For the ground of *bona fide* requirement, the landlady pleaded that she required the suit premises for her *bona fide* use, as her present place of residence was not suitable. She led the evidence in support of her pleadings and contended that she is residing in rented premises on the third floor; she is 55 years of age and is suffering from chronic diabetes and finds it difficult to climb up and down the staircase. She has contended in her oral evidence that her family consists of four members; her son is 20 years of age and of marriageable age, and thus she required the suit premises for her residence. She contended that her son is also suffering as he has no separate place for his studies. She also contended that she had no other source of funds to purchase residential premises for her family. Hence, the

plaintiff supported her pleadings for want of the suit premises for a convenient residence for herself and her family members. With reference to the pleadings and supporting evidence regarding her requirement for residential premises, the plaintiff pleaded that the first floor premises, i.e. the suit premises, were suitable for her and her family members.

3. The defendant opposed the requirement on the ground that the other premises were available. As per the written statement filed by the defendant, it is pleaded that the plaintiff has adequate premises for her residence and does not require the suit premises. The appellate court has considered the evidence on record with reference to the *bona fide* requirement and held that, considering the requirement for herself and her family, she would be entitled to possession of the suit premises, which are situated on the first floor. With reference to the defendant's contentions that other premises were available, the first appellate court held that the court cannot dictate to the landlord to continue and occupy the premises that she was occupying. The landlady occupying the third-floor premises on rent was considered an important factor in accepting the ground of *bona fide*

requirement for her residence. The accommodation available with the landlady and her requirement of the suit premises on her medical grounds and for her son are accepted based on the evidence led by the plaintiff.

4. The defendant's evidence on the availability of adequate premises is also considered by the appellate court while accepting the landlady's contention that the suit premises are required by the landlady for her *bona fide* use of residence. While granting a decree for eviction on the ground of *bona fide* requirement, the appellate court has also considered the issue of hardship. It is held that the defendant has not pleaded that any attempts were made to search for any alternate accommodation and that the defendant was capable of obtaining any other suitable premises. Hence, the ground of hardship was accepted in favour of the landlady by considering the status of the defendant. The nature of the business carried out by the defendant, dealing with the business in gems and stones, exchange of foreign currency and frequent visits of the defendant to foreign countries was also considered as an important aspect to hold that no hardship would be caused to the defendant compared to the

hardship to the landlady, if the eviction decree on the ground of *bona fide* requirement was refused.

5. Learned counsel for the applicant (defendant) submits that during the pendency of the suit, the landlady has acquired sufficient premises which are let out to another tenant. He relied upon Civil Application No. 57 of 2017 filed for bringing on record the subsequent events regarding the premises acquired by the landlady during the pendency of the proceedings. Learned counsel for the plaintiff relied upon the relevant averments and supporting documents to contend that four separate commercial premises have been acquired in the same building by the landlady during the pendency of the proceedings. He submits that one residential flat, i.e. flat no.4 on the second floor of the same building admeasuring 750 Sq.Ft., which was occupied by the earlier tenant, was available for the landlady. However, instead of occupying and possessing the said flat on the second floor, she inducted a new tenant by creating a new tenancy by executing an agreement. He has relied upon the tenancy agreement dated 26th December 2007 annexed to the civil application.

6. He submits that the landlady suppressed the fact that No. 4 was available with her for her requirement of residence. Learned counsel for the applicant, therefore, submits that when the landlady suppressed the acquiring of the premises for her residence, the subsequent events need to be considered while determining the prayer for eviction on the ground of *bona fide* requirement.

7. To support his submissions, learned counsel for the applicant relied upon the following decisions:-

- I. ***Sitaram Narayan Shinde & Ors. Vs. Ibrabhim Ismail Rais and Ors.***¹
- II. ***Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff and Ors.***²
- III. ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta.***³
- IV. ***Vivek Trimbakrao Paturkar Vs. Sulochanabai.***⁴
- V. ***Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh and Anr.***⁵
- VI. ***Gulabbi Vs. Nalin Narsi Vohra and Ors.***⁶
- VII. ***Gaya Prasad Vs. Pradeep Srivastava***⁷

1 2005 (2) Bom.C.R. 427

2 Writ Petition No. 2933 of 1991

3 (1999) 6 SCC 222

4 CRA/91/2021 Dt. 04/03/2022.

5 2016 (4) ALL MR 174

6 1988 Bom RC 410

7 (2001) 2 SCC 604

8. Learned counsel for the applicant submits that it is a well-established legal principle that the landlord has to plead the available premises for the residence and the particulars regarding the insufficiency of the premises for claiming eviction on the ground of *bona fide* requirement. In the present case, except for a single sentence that the suit premises are required for her *bona fide* requirement, no particulars have been pleaded by the landlady. He relies on the decision of the Apex Court in ***Gulabbai*** to support his submissions that the court may consider subsequent events when determining the landlord's *bona fide* requirement. He submits that the Apex Court had set aside the decision of the High Court on the ground that the acquisition of the premises by the landlord during the pendency of the proceedings was an important aspect to be considered while determining the plea of *bona fide* requirement.

9. He submits that even in the present case, the subsequent events brought on record by the applicant clearly show that the landlady has sufficient premises for her requirements, and that the suit for eviction filed by the present plaintiff on the ground of *bona fide* requirement is not

genuine. He submits that even otherwise, in view of the well-settled legal principles, the subsequent events of acquiring the residential premises on the second floor need to be considered by this court for determining the ground of eviction on the ground of *bona fide* requirement of the landlady. Once her requirement is satisfied by acquiring another premises, the landlady would not be entitled to eviction on the ground of *bona fide* requirement in respect of the suit premises.

10. Learned counsel for the applicant referred to the decision of the Apex Court in ***Gaya Prasad*** and submits that it is held by the Apex Court that if the subsequent events wholly satisfy the requirement of the landlord, the eviction decree on the ground of personal *bona fide* requirement need not be confirmed. He, therefore, submits that in view of the acquisition of the premises by the landlady, the subsequent events would show that the landlady is not entitled to a decree of eviction on the ground of *bona fide* requirement. He, therefore, submits that the impugned judgment and decree would warrant interference by this Court.

11. Learned counsel for the respondents supports the impugned decree. He submits that the suit for eviction on the ground of *bona fide* requirement was filed on 2nd March 2000. He submits that during the pendency of the civil revision application, the landlady expired sometime in 2022 and her heirs and legal representatives were brought on record. He submits that the specific pleadings for *bona fide* requirement for her personal use for residence are substantially supported by leading evidence. All the premises shown to have been acquired by the landlady are commercial premises on the ground floor. So far as the second floor premises, i.e. flat no.4 is concerned, he submits that it is not 750 Sq.Ft., as contended by the applicant, but it is only 650 Sq. Ft. Even otherwise, flat no.4 is situated on the second floor, and the suit premises are situated on the first floor, which is Adm. 700 Sq.Ft. He submits that the medical ground and the requirement for her son's residence were specific contentions raised by the landlady in seeking eviction on the ground of *bona fide* requirement. The suit premises on the second floor, i.e. flat no.4 is not suitable for the landlady.

12. Accordingly, an affidavit-in-reply has been filed on

behalf of the landlady, stating that her requirement was always for the first-floor premises due to her ill health and her son's needs. He, therefore, submits that the flat on the second floor and the commercial premises would be no ground to contend that the landlady's requirement for residence is satisfied.

13. Learned counsel for the landlady, therefore, submits that none of the premises acquired during the pendency of the proceedings is suitable for the landlady's requirement for residence on the ground of medical issues and the requirement for her son. With reference to flat no.4, there was no ground in respect of the said premises for seeking eviction. However, the suit premises situated on the first floor is suitable for the landlady and so far as the hardship is concerned, the facts clearly would support the landlady's contention that more hardship would be caused to the landlady, if the decree for eviction on the first floor premises is refused and there would not be any hardship to the defendant if the eviction decree is passed in respect of the suit premises. None of the subsequent events pleaded in the civil application would show that the landlady's requirement is

satisfied.

14. To support his submissions, the learned counsel for the landlady has relied upon the decision of this court in **Anil Bhausaheb Patil and Ors. Vs. Sangli Urban Cooperative Bank Ltd.**⁸ By referring to the well-settled legal principles in the decision of the Hon'ble Supreme Court in the case of **Gaya Prasad**, this court has taken a view that the cognisance in respect of the subsequent events can be considered provided such subsequent events are of such a nature that the requirement of the landlord is completely eclipsed. He, thus, submits that if the requirement as pleaded and proved by way of evidence is not fully satisfied by the subsequent developments, it cannot be a ground to interfere with the eviction decree. He submits that this court held that the subsequent developments, if they overshadow the genuineness of the need, can be considered. He, therefore, submits that in the present case the landlady's requirement of *bona fide* use of the suit premises on the ground of her medical issues and the requirement for her son cannot be said to be satisfied for interfering with the eviction decree on the ground of subsequent developments.

⁸ 2025 SCC OnLine Bom 2966

15. He also relies upon the relevant observations of the Apex Court in ***Gaya Prasad*** to support his submission that the subsequent development during the pendency of the eviction proceedings, occurring because of the slowness of the process of the litigation itself and made use by the sitting tenants, cannot be made the basis for denying the landlord relief when the litigation is at the final stage. He submits that the Apex Court has taken a view that the subsequent events may be considered in some cases only if it overshadows the genuineness of the landlord's requirement. He, therefore, submits that in the present case the landlady's *bona fide* requirement is not satisfied in view of the subsequent developments warranting any interference in the eviction decree.

16. I have carefully perused the papers of the civil revision application and the civil application filed by the applicant regarding the subsequent developments. The suit was filed in March 2000, seeking a decree of eviction on the ground of *bona fide* requirement, as the landlady was suffering from chronic diabetes and was unable to climb the stairs to her existing rented premises, which were situated on the third

floor. There is no dispute that the landlady's premises were on the third floor of the building without a lift. The suit premises is admeasuring 700 Sq. Ft. on the first floor. Although the suit premises are used for commercial purposes, there is no dispute that they are residential premises. It was also sought to be contended on behalf of the applicant that the suit premises were acquired in 1999 and immediately within a few months the present suit was filed. It was also argued on behalf of the applicant that the plaintiff's husband was acting as rent collector of the original landlord. However, the plaintiff made no attempt to acquire any other premises before filing this suit for eviction. It is one of the arguments on behalf of the applicant that on the date of the purchase of the building where the suit premises are situated, the plaintiff was well aware that the suit premises were occupied by the present applicant and were being used as commercial premises.

17. In view of the objections raised to the decree for eviction on the ground of *bona fide* requirement, it is necessary to refer to the specific pleading and evidence led on behalf of the plaintiff. The plaintiff has specifically pleaded

that she requires the suit premises for her own use for residence. It is pleaded that the current premises occupied by her for residence are not suitable. In the oral evidence, the landlady has specifically contended that she is 55 years of age and is suffering from chronic diabetes, and it is difficult for her to climb up and down the staircase. She has stated that there are four members in her family and her son is 20 years of age. She has stated that she is finding it difficult to accommodate her son in the smaller premises and to arrange his marriage for want of sufficient accommodation.

18. There is no dispute that the landlady has pleaded and proved such a requirement in evidence. The main objection raised by the defendant is that the landlady has adequate premises available for her residence. As specifically referred to in the aforesaid paragraphs, the alternate premises are sought to be brought on record by way of civil application on the ground of subsequent developments. However, an important aspect cannot be ignored: the *bona fide* requirement pleaded as on the date of filing of the suit still existed, as the suit premises are suitable as pleaded by the plaintiff, being on the first floor. Hence, the basic requirement

pleaded and proved is that the first-floor premises are more suitable for the landlady, considering her medical issues. The ground of medical issues is not in dispute. The requirement for her son is also not in dispute. Hence, if the premises available in view of the subsequent development is viewed with reference to the ground of *bona fide* requirement, none of the premises brought on record can be accepted as suitable for the requirement pleaded by the plaintiff.

19. Unfortunately, the landlady has expired during the pendency of this civil application. However, the requirement pleaded and supported by her evidence in the suit is reiterated in her reply to the civil application. She has specifically pleaded in her reply that she requires the suit premises, which are situated on the first floor. In view of her family's needs and her ailing health, her current residence on the third floor is unsuitable. She has also stated in her affidavit-in-reply that the building in which her existing premises are situated is very old and has no lift facility. Hence, she has reiterated that, considering her ailing health, the suit premises situated on the first floor are more convenient and that her *bona fide* requirement still exists.

20. I have perused the documents annexed to the civil application for the four premises, brought on record, as the subsequent developments acquired by the plaintiff are commercial premises. The residential premises to be considered is flat no.4 on the second floor. The dispute is sought to be raised that the flat has not been transferred as contended by the landlady, but a new tenancy is created in view of the monetary transaction. The monetary transaction is not on record. Even if the contention is accepted that it is not an internal transfer of tenancy between the family of the original tenant and that it is a creation of a new tenancy, the factual aspect cannot be ignored that the plaintiff's requirement of the suit premises was on the ground that it is situated on the first floor and would be convenient for the landlady considering her ailing health. Thus, none of the subsequent developments can be considered as satisfying the landlady's *bona fide* requirement of residence on the first floor on the ground of her ailing health and requirement for her son.

21. In view of the different facts of the present case the decision of this court in ***Tarachand Hassaram Shamdasani***

and **Sitaram Narayan Shinde** relied upon by the learned counsel for the applicant would not assist the arguments raised on behalf of the applicant. In **Shiv Sarup Gupta** the Apex Court held that on the facts substantiated by the landlord to occupy the tenanted premises can be said to be natural, real, sincere and honest. The need, if found to be reasonable, the landlord would be entitled to a decree for eviction. Thus, it is held that the alternative accommodation if available for the landlord, should be reasonably suitable and only then the court can ask the landlord why he is not willing to occupy such accommodation to satisfy the needs. It is also held that the convenience and the comfort of the landlord and his family members would be relevant factor for considering the need pleaded by the landlord. The need pleaded by the plaintiff (landlady) is for a convenient premises on the first floor for her comfort considering her ill health and the extra premises for the need of her son. Hence, the said decisions would also not be of any assistance to the arguments raised on behalf of the applicant.

22. In the decision of this court in **Vivek Trimbakrao**

Paturkar, it is held that when the landlord pleads and proves all the material facts, then the court would be able to adjudicate fully, completely and effectively, as to whether the requirement pressed into service of the landlord is *bona fide*. In the present case the landlady's need is pleaded and proved by way of evidence. The applicant (defendant) has not raised any grounds to disprove the genuineness of the need pleaded and proved by the landlady. In **Vasant Mahadeo Gujar** this court held that when some of the premises if acquired post institution of the suit and the premises subsequently acquired and left out of consideration there was a duty upon the landlord to disclose the acquisition. It held that such a non disclosure would be relevant consideration in the context of determining the reasonability and as well as *bona fide* need.

23. In the present case the subsequent acquisition which is brought on record by the applicant is in regard to the commercial premises and so far as the residential flat on the second floor is concerned, the same is not acquired by the landlady, but is occupied by the tenant. Even otherwise the same does not satisfy the need pleaded and proved by the

landlady. Hence, non disclosure of the said flat would not be relevant in deciding the the eviction decree which is challenged by the defendant in the present civil revision application.

24. In the decision of the Apex court in ***Gulabbai***, it is held that the words “reasonable requirement” undoubtedly postulate that there must be an element of need as opposed to mere desire. It is held that the distinction between the desire and need should doubtless be kept in mind, but not so as to make even the genuine need as nothing but desire. Hence, in the present case when there is no doubt raised on the genuineness of the *bona fide* requirement of the landlady pleaded and proved, mere bringing on record subsequent development would not be a relevant ground to interfere with the eviction decree. The subsequent development which does not satisfy the need pleaded and proved, cannot be a ground to non-suit the landlady in whose favour an eviction decree is passed. Hence, none of the decisions relied upon by the learned counsel for the applicant would be of any assistance to the arguments raised on behalf applicant and thus would not warrant any

interference with the decree for eviction on the ground of *bona fide* requirement.

25. There is no dispute that the eviction decree was sought on the ground of *bona fide* requirement, considering her medical issues; hence, none of the subsequent developments can be considered to satisfy the requirement pleaded and proved by the landlady. Even in the decision relied upon by the learned counsel for the applicant, the view taken by the court on considering the *bona fide* requirement of the landlord would support the landlady's contention in the present case. The Apex Court in the decision of **Gaya Prasad** has referred to the consideration of the subsequent events in paragraphs 13 and 14 which read as under :-

“13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in *Pasupuleti Venkateswarlu v. Motor and General Traders*³ which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action

in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

14. The next three-Judge Bench of this Court, which approved and followed the above decision, in *Hasmat Rai v. Raghunath Prasad* has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would

be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. *If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.*” ”

26. This court in the decision of **Anil Bhausaheb Patil** has followed the legal principles settled by the Apex Court as observed in paragraph 30 and 31, which reads as under:-

“30. It is trite that the requirement of the landlord has to be judged in the context of the facts as they obtained on the date of the institution of the Suit. That remains the basic rule. However, the Court is required to take a cautious cognizance of the subsequent events. In cases where the subsequent developments are such that the requirement of the landlord is completely eclipsed, the Court may be justified in modifying the decree.

31. A useful reference in this context can be made to a decision of the Supreme Court in the case of *Gaya Prasad v. Pradeep Srivastava*, wherein it was enunciated that, the crucial date for deciding as to the bona fide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fide of the requirement pleaded by landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.”

27. Considering the facts of the present case, where the landlady has prayed for a decree of eviction on the ground of *bona fide* requirement owing to her ailing health, the applicant's contentions on the ground of subsequent developments are no ground to interfere with the eviction

decree. The subsequent developments would not show that the landlady's requirement is satisfied and she would not be entitled to a decree of eviction. So far as the hardship is concerned, nothing is shown that any hardship would be caused to the defendant if the decree for eviction is passed.

28. I see no reason to disbelieve the findings on the grounds of the landlady that the hardship would be caused to the landlady and her family if the decree of eviction is not granted. Unfortunately, in the present case, the landlady has expired without getting the benefit of the decree in her favour. Even in the affidavit-in-reply filed by the landlady in this court, she had contended that she required the suit premises situated at the first floor due to her ailing health. Even otherwise, the landlady's need pleaded is for convenient premises on the first floor for her residence. The subsequent developments pertain to the commercial premises. The residential premises brought on record are on the second floor and do not satisfy the need pleaded and proved by the landlady for the first-floor premises, owing to her ill health.

29. With reference to these facts, the observations of the Apex Court in ***Gaya Prasad*** become crucial, where it is

clarified that subsequent events can be considered only when they overshadow the genuineness of the landlord's need. It is held that at the end of the litigation, the subsequent events cannot be considered if they are insufficient to overshadow the *bona fide* need found by the court. In the present case, the affidavit-in-reply filed by the landlady shows that her *bona fide* requirement continued even on the date of the filing of the reply. Hence, none of the subsequent developments brought on record by the defendant is sufficient to hold that the landlady's requirement is satisfied. Similarly, none of the subsequent developments would indicate that the *bona fide* requirement pleaded and proved by the landlady was not genuine. Hence, the findings recorded by the appellate court would not warrant any interference on the grounds argued on behalf of the applicant or on the ground of the subsequent developments.

30. I do not find any jurisdictional error or any other manifest error warranting any interference in the impugned judgment and decree in the exercise of the powers under Section 115 of the Civil Procedure Code, 1908 ("CPC").

31. The subsequent developments are considered by this

Court. Hence, Civil Application No. 57 of 2017 is allowed in the aforesaid terms.

32. For the reasons recorded above, Civil Revision Application No. 110 of 2017 is dismissed.

INTERIM APPLICATION NO. 2434 OF 2022

1. This application is filed by the original plaintiff seeking *mesne profits* and compensation. The civil revision application is dismissed, and the decree for possession is confirmed. In view of Order XX Rule 12 of the Code of Civil Procedure, 1908, the applicants (heirs and legal representatives of the plaintiff) are permitted to file an appropriate application for an inquiry into *mesne profits before* the trial court. All rival contentions of the parties in respect thereof are kept open.

2. The interim application is disposed of in the aforesaid terms.

[GAURI GODSE, J.]