

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7447 OF 2026

Shri. Leelaram Odharmal Akatrai

.. Petitioner

Vs.

Shri. Abbas Fidaali & Anr.

.. Respondents

WITH

WRIT PETITION NO. 7473 OF 2026

Mrs. Sangeeta Arjandas Bharwani & Ors.

...Petitioners

Vs

Shri. Abbas Fidaali

...Respondents

Adv. Jaydeep Deo a/w. Adv. Onkar Gawade, for the Petitioner in WP No. 7447 of 2026.

Adv. Manjiri P. a/w. Adv. Samiksha Lokhande, for Petitioners in WP No. 7473 of 2026.

Senior Adv. A. Y. Sakhare a/w. Viraj Kadam i/b Adv. Nitán Mayekar, Adv. Rukhsar Ansari, for Respondents.

CORAM : ARUN R. PEDNEKER, J.

Date : 22nd SEPTEMBER 2026

P.C. :

1. Heard Mr. Jaydeep Deo, learned Counsel appearing for Petitioner and Mr. A. Y. Sakhare, learned Senior Counsel appearing for Respondents.

2. The present Petition challenges the common Judgment and Order dated 04/05/2026 passed by the learned District Judge-19, Pune, dismissing

Regular Civil Appeal No.597 of 2014 filed by the Petitioner and Civil Appeal No.660 of 2014 filed by Defendant Nos.3 and 4, and confirming the Judgment and Decree dated 07/10/2014 passed by the Principal Judge, Small Causes Court, Pune, in Small Causes Suit No.444 of 2009. The said suit was instituted by Respondent No.1–Plaintiff for eviction of the Petitioner. The Trial Court decreed eviction on the ground of bonafide requirement and held that greater hardship would be caused to the Plaintiff if eviction was refused. By the impugned common Judgment and Order dated 04/05/2026, the learned District Judge dismissed both appeals and confirmed the eviction decree.

3. The Petitioner’s case in the suit for eviction is that the building bearing House No.539, Centre Street, Pune, originally belonged to the Plaintiff’s father, Fida Ali Tayaballi, who conducted business from the ground-floor premises. Under a registered Sale Deed dated 20/09/1960, the stock-in-trade of the business was sold to the Petitioner’s father, late Odharmal Akatrai, and one Ramchandani, and tenancy of the shop and rear room was created in their favour. The initial rent was Rs. 2,100/- per month. On 07/08/1961, Odharmal Akatrai and Ramchandani executed a partnership deed. After dissolution of the partnership on 31/12/1964, Odharmal Akatrai became the exclusive tenant, and the rent was subsequently stated to be Rs.

110/- per month. On 01/04/1978, the Petitioner joined his father's business under a partnership deed providing for equal profit-sharing. In 1993, the Petitioner's sister, Sangita Arjandas Bharwani, joined the business under a partnership deed between Odharmal Akatrai, the Petitioner and Sangita, in the ratio of 40:40:20. Odharmal Akatrai died on 25/01/1998. Thereafter, the Petitioner's unmarried sister, Lalita Odharmal Akatrai, joined the business in his place under a further partnership deed. The Petitioner contends that rent receipts continued to be issued in the name of Odharmal Akatrai and that the rent had increased to ₹1,380/- per month. Fida Ali Tayaballi died in 2003-04, after which Respondent No.1 became owner of the building. Respondent No.1 had retired voluntarily from Mercantile Co-operative Bank on 05/07/2003. He issued a possession notice dated 14/08/2009, which was replied to by the Petitioner on 05/09/2009. The suit was instituted on 25/09/2009. The Trial Court rejected the claims based on arrears of rent and change of user but decreed eviction on bonafide requirement. The District Court dismissed two separate Appeals filed by Defendants and confirmed the eviction decree, leading to the present Petitions.

4. It is the case of the Plaintiff/Respondent in suit that he has retired from service and that he needs a premises for running of the business, particularly his son, who is an Electronic Engineer. It is stated that the Plaintiff and his

son does not have any other commercial premises to run business except the suit premises and accordingly the suit was filed for seeking possession of the suit premises on the ground of bonafide requirement and considering the defendant contested the suit and submitted that the Petitioner has other premises in which the businesses could be carried on.

5. Considering the material placed on record, the Trial Court so also the Appellate Court has consistently held that the Plaintiff requires a suit premises for their own business and has accordingly directed the defendant to vacate the suit premises. The Court's have also considered comparative hardship held that the defendant has other premises in the locality, whereas the Plaintiff has only one commercial shop for the purpose of carrying on his business.

6. Challenging the concurrent decree passed by the Courts, the learned Counsel appearing for Petitioner in Writ Petition No. 7447 of 2026 submits that the son of the Plaintiff, in his deposition in cross-examination has stated that he is happy with his job and earns an annual salary of 9,80,000/- approximately. Based on this witness, the learned counsel for the Petitioner submits that the son of the Plaintiff is happily doing a job and has further also stated that he prefers to continue a job in the company.

7. This aspect of the matter has been considered by the trial Court so also

by the Appellate Court. The learned Counsel appearing for the Petitioner is relying upon a stray sentence out of context from the cross-examination, to make out a case that the Respondent does not require the suit premises for business. It is undisputed that the Original Plaintiff has retired from the service and that his son is an Electronic Engineer. It has come on record that he has money in his account to start business and he has relevant understanding of the business. A statement in cross-examination that he is happy in the job is not sufficient to conclude that the Plaintiff does not require the suit premises for business purposes.

8. This aspect has been specifically considered by both the Courts and finding is rendered thereon that the Plaintiff requires the suit premises for business. This Court, in exercise of the writ jurisdiction, would not reexamine the factual matter, particularly the evidence and rendered an alternate finding on that aspect. As regards the comparative hardship is concerned, the trial Court so also the Appellate Court has observed that the Petitioners have other premises in the vicinity in which they can run their business. As such, no case is made out to interfere with the impugned order in Writ Petition No. 7447 of 2026.

9. The Writ Petition No. 7473 of 2026 has been filed by the sister of the Defendant Nos. 3 and 4. The Learned counsel appearing for the Petitioner

contends that the comparative hardship is not discussed vis-a-vis the Defendant Nos. 3 and 4. It is brought to my notice that the defendant Nos. 3 and 4 has filed written statements. However, they did not step into witness box. They have not made out a case of comparative hardship to analyse comparative hardship. The case has put up by the concerned Defendants ought to have been established by leading evidence. The Courts below have noted that they neither deposed nor put up a case before the Trial Court.

10. Considering this aspect the comparative hardship could not be discussed vis-a-vis Defendant Nos. 3 and 4. In view of this, there is no case made out to interfere with the order passed by the Trial Court and Appellate Court.

11. Both Writ Petitions are accordingly dismissed.

(ARUN R. PEDNEKER, J.)