

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6991 OF 2000

Smt. Shalini Wamanrao Korade & Ors. .. Petitioners
VS.
Shankar Ningusa Solanki .. Respondent

Mr. Uday P. Warunjikar with Mr. G. H. Keluskar and Mr. Devidas H. Keluskar for Petitioners.
Mr. A. M. Kulkarni with Mr. Sarthak Diwan for Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 09 July 2015

Date of Pronouncing the Judgment : 21 August 2015

JUDGMENT :-

1] This petition is directed against the judgments and decrees dated 28 August 1991 and 31 January 2000 made by the Trial Court and the Appeal Court dismissing Regular Civil Suit No. 820 of 1980 instituted by the petitioners (landlords) for recovery of possession of the suit premises from the respondent (tenant).

2] From the year 1924, the premises ad-measuring 103.05 sq. meters, with open space at the rear side, City Survey No.173 in 'C' Ward, Kolhapur (suit premises) have been let out to the tenant for commercial user. The present landlords, who purchased the suit premises in the year 1971 or thereabouts, instituted Regular Civil Suit No. 820 of 1980 before the Civil Judge, Junior Division, Kolhapur (Trial Court) seeking recovery of possession on the grounds of non-user, erection of permanent structure without

consent and reasonable and *bona fide* requirement. The suit was dismissed on 28 August 1991 and the Additional District Judge, Kolhapur (Appeal Court) dismissed the appeal against the same on 31 January 2000. Hence, the present petition by the landlords.

3] Although the recovery of possession was applied for on three distinct grounds, Mr. Warunjikar, learned counsel for the landlords has chosen to press the ground of reasonable and *bona fide* requirement alone, in the present petition. Even otherwise, the material on record hardly warrants interference with the concurrent findings of fact on the aspect of non-user or erection of permanent structure without consent.

4] On the aspect of eviction on the ground of reasonable and *bona fide* requirement, Mr. Warunjikar submitted that the two Courts have failed to apply the correct tests, ignored relevant material and relied upon irrelevant and extraneous material.

5] Mr. A.M. Kulkarni, learned counsel for the tenant, however, submitted that the concurrent findings of fact even on the aspect of reasonable and *bona fide* requirement are amply borne from the material on record. Mr. Kulkarni pointed out that in fact plaintiff No.2, the sole deponent on behalf of the plaintiffs, has in terms, admitted

in the course of cross-examination that the plaintiffs are not in need to get the possession of the suit premises. The landlords, apart from the suit premises, own and possess several other premises in Kolhapur. The plaintiff No.2, the sole witnesses examined on behalf of the landlords, is settled in Belgaum and carries out several businesses therefrom. Apart from, the suit premises, the tenant has no other premises to carry on the business of Bar and Restaurant. For all these reasons, Mr. Kulkarni submitted that the ground of reasonable and *bona fide* requirement has not been made out by the landlords. In any case, Mr. Kulkarni submitted that the issue of comparative hardship shall have to be answered in favour of the tenant.

6] Rival contentions now fall for determination.

7] In the exercise of jurisdiction under Article 227 of the Constitution of India, this Court is not expected to re-appreciate the material on record, as if it were exercising appellate jurisdiction. The limited reference to the material on record is for the purposes of assessing the contention regards exclusion of relevant material and irrelevant or extraneous material forming the basis of decision making process. The contention that the two Courts have applied incorrect tests or adopted incorrect principles, shall have to be

assessed by reference to reasoning in the impugned judgments and decrees. In any case, the matter shall have to be assessed, keeping in mind the limited jurisdictional parameters under Article 227 of the Constitution of India.

8] The two Courts have not independently, assessed the twin aspects of '*reasonable and bona fide requirement*' and '*comparative hardship*'. The consideration of the two aspects is common. This is improper. Because, in the first place, the Courts are required to consider whether on the basis of the material on record, the landlords have made out a case for recovery of possession on the ground of reasonable and *bona fide* requirement. Even, if the Courts come to the conclusion that the landlords have made out such a case, there is no question of straightaway making a decree for eviction. The Courts are, thereafter, required to consider the aspect of comparative hardship as also the aspect whether a decree of partial eviction will suffice the reasonable and *bona fide* requirement of the landlords. These aspects are distinct and are required to be independently assessed.

9] On the aspect of reasonable and *bona fide* requirement, the two Courts have held against the landlords, primarily on the following grounds :

(A) That the landlords have not established that they have experience in the business of sale of clothes;

(B) The landlords' case that the suit premises are located in market area, which is abound with shops for sale of clothes, is not correct;

(C) That plaintiff No.1 and his sons have alternate business premises, through which they operate sweet mart. The plaintiff No.2 and his sons have established business for sale of clothes in Belgaum;

(D) Neither plaintiff No.1 nor his sons have stepped into witness box in support of their plea for reasonable and *bona fide* requirement;

(E) The plaintiff No.2, the sole witness on behalf of the landlords, has sold the portion of his ancestral property in Kolhapur to plaintiff No.1 for Rs.45,000/-. This suggests that neither plaintiff No.2 nor his sons had any interest in shifting the business from Belgaum to Kolhapur;

(F) The tenant's family comprised at least '14' members and apart from the suit premises, the tenant has no other premises through which he undertake the business of Bar and Restaurant ; and

(G) The tenant, who has acquired substantial goodwill in the area, would suffer greater hardship, if evicted.

10] The circumstances that the landlords have no much experience in the business of sale of clothes or that the area in which the suit premises are located is not abound by several other premises engaged in sale of clothes, are really irrelevant circumstances, in the context of determining whether the landlords requirement is reasonable and *bona fide*. That apart, there is overwhelming material on record, which suggest that the landlords are not novices when it comes to the business of sale of clothes. Such overwhelming material has been completely ignored by the two Courts. This is accordingly, a case where relevant and vital material has been ignored and irrelevant or extraneous material given undue weightage.

11] The brother and the constituted Attorney of the tenant, sole deponent on behalf of the tenant had admitted that the landlords are

from Namdeo Shimpi community, which is traditionally involved in vocation of tailoring and the business of sale of clothes. That apart, it is the case of the tenant that the plaintiff No.2 Vittal Korade has established business of sale of clothes at Belgaum. This material is sufficient to establish experience. However, what is more is that there is no requirement under the law that the landlord establishes that he has past experience in the business, which he proposes to set up through the suit premises, for the recovery of possession on the grounds of reasonable and *bona fide* requirement. The Apex Court in the case of ***Dattatraya Laxman Kamble vs. Abdul Rasul Moulali Kotkunde & Anr.***¹ has held that denial of decree on the grounds of reasonable and *bona fide* requirement to a landlord on the ground of such landlord seeks to venture in a business field without acquiring past experience is fallacious and un-pragmatic. In paragraphs 11, 12 and 13, the Apex Court has observed thus :

11. Learned single judge opted to interfere with the fact finding only on the premise that in his opinion "if the landlord is really in a position to commence the business one of the ingredients that has to be established by the landlord is that he possesses the know-how necessary for doing the business.

12. If a person wants to start new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bona fides is a fallacious and un-pragmatic approach. Many a business have flourished in this country by leaps and bounds which were started by novice in the field; and many other business ventures have gone hay

1 1992 (2) Mh. L. J. 793

wire despite vast experience to the credit of the propounders. The opinion of the learned single judge that acquisition of sufficient know-how is a pre-condition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that 'no experience no venture'.

13. That apart, appellant is not a total novice in the field of dealings in electrical equipment. The fact that the discipline in his academic specialization was Electrical Engineering is quite indicative of some knowledge he has in the subject, though a business in such commodities may have different phases. Learned single judge seems to have written him off as a person totally unfamiliar with any transaction in electrical goods. Such an angle is not a charitable view towards the landlord. At any rate there may be different views for different people on how to start a business. The High Court has committed jurisdictional error in upsetting a fact finding merely on the individual view held by the learned judge about business venture. We have no doubt that reversal of the appellate court order on the above ground is unsupportable in law and hence is liable to be interfered with. We do so."

12] Similarly, the circumstance that in and around the suit premises, there are no shops carrying on business of sale of clothes, is again not a reason to deny a decree on ground of reasonable and *bona fide* requirement. In fact, there is overwhelming the material on record which establishes that the suit premises are located in market area which is in fact abound by several shops and establishment dealing in the business of sale of clothes. However, even if it were not so, as long as it is not established that there was any legal bar for undertaking the

business of this nature, the circumstance that there were no shops or establishments engaged in the sale of clothes, cannot reflect upon the reasonableness or *bona fides* of the landlords' requirement.

13] The plaintiff No. 2-Vittal Korade in his examination in chief has deposed that suit premises are situated on Bhausingji Road in the heart of Kolhapur and shops which sell clothes are situated on both sides of the road. Besides, the tenant Vasant in his deposition has admitted that opposite the suit premises there are two-three garment shops. Further, adjacent to the suit premises towards the South there are shops of Korde and Korde Textile shop, wholesale cloth shops of Ratilal Genaji Rathod and Textile shop of Kalyankar and Co. and Mukund Vana Velhal. After all these admissions, the tenant has denied the suggestion that the suit premises is surrounded by maximum number of textile shops or that Bhausingji Road is not famous for textile and textile products. All these relevant and vital material has been completely ignored by the two Courts. Based upon this material, it is clear that in and around the suit premises there are several shops and establishments dealing with clothes and textiles. Even if this were not to be the position, the decree on the ground of reasonable and *bona fide* requirement could not have been denied on the ground that there are no textile

and cloth shops in the proximity of the suit premises. Such a circumstance is clearly irrelevant, in the context of determining reasonable and *bona fide* requirement.

14] The circumstance that the plaintiff No.1 and his sons have alternate premises through which they run Sweet Marts or that the plaintiff No.2 and his sons have alternate premises in Belgaum through which they carry out business of sale of clothes, is also not sufficient to deny a decree of eviction on the ground of reasonable and *bona fide* requirement. On the aspect of reasonable and *bona fide* requirement, the landlords have pleaded that the suit premises are located at Bhausingji Road, which is abound by several clothes and textile shops dealing in wholesale, retail and readymade garments. The landlords have pleaded that such business is carried on by their family for generations. However, on account of paucity of space, Deepak, the son of plaintiff No.1 is required to carry out alternate business through rented premises. Similarly, Rajendra, the second son of plaintiff No.1 is also interested in commencing the business of sale of clothes. The landlords have further pleaded that the plaintiff No.2 is carrying on the business of sale of clothes in Belgaum and his son is desirous of commencing the same business in Kolhapur, but on account of lack of any commercial premises, they are unable to do so. The landlords have further pleaded that

the children of plaintiff Nos.1 and 2, who have attained majority find it necessary to commence the business of sale of clothes and for this purpose there is *bona fide* and *reasonable* requirement of the suit premises.

15] Vittal Korade-plaintiff No.2 in his deposition has stated that plaintiff No.1 has three sons viz., Deepak, Rajendra and Kishor and Vittal, i.e., plaintiff No.2 also has three sons viz., Sanjay, Santosh and Shrikant. Vittal has deposed that Deepak operates a Sweet Mart in rented premises at Mahadwar Road. There is no material on record to indicate that any business undertaken by Rajendra and Kishor. Vittal has deposed that income from his own business and the business of Deepak is not sufficient to maintain the families of plaintiff Nos.1 and 2. Vittal has deposed that his sons do not have any independent businesses of their own, though, in cross-examination he had admitted that his sons are partners in the business run at Belgaum. There is also material on record which indicates that the plaintiff No.1 is also carrying on business of sale of sweets from a shop in front of Ghati Darwaja near Mahalaxmi Temple on Jotiba Road and through Deepak Fursan Mart on New Mahadwar Road. Now, even though it is true that the plaintiff No.1 and his three sons are presently engaged in the business of sale of sweets and plaintiff No.2 and his three sons are engaged in the

business of sale of clothes at Belgaum, that by itself does not render the need for the suit premises any less reasonable or *bona fide*. Ultimately, it is to be noted that the plaintiffs have three sons each, who in turn have their own families. The premises through which Deepak operates Sweet Mart is a shop admeasuring 7 ft x 10 ft and the same is rented premises. Same is the position of the premises through which the plaintiff No.2 and his sons carry on the business of sale of clothes at Belgaum, in the sense that the said premises are rented premises. No doubt, the plaintiff No.2 has purchased the property on the backside of the rented premises. However, the same is in possession of the tenants. Considering that apart from the two plaintiffs, each of them have three sons and each of sons have their own families, it cannot be said that the requirement of the landlords is neither *bona fide* nor reasonable.

16] The deposition, of plaintiff No.2 Vittal, has to be appreciated in its entirety. Throughout the deposition, Vittal has deposed to the need of recovery of suit premises for reasonable and *bona fide* purposes of commencing or in any case expanding the business of sale of clothes in Kolhapur. A stray sentence to the effect that the plaintiffs are not in need to get the possession of the suit premises, can hardly diminish the evidentiary value of the entire deposition. It is quite obvious that the sentence is either a typographical error or

an unintentional error in the matter of record of evidence. Significantly, no contention on basis of such stray sentence appears to have been raised by the tenant before the Trial Court or the Appeal Court. Similarly, neither the Trial Court nor the Appeal Court have based their decisions upon such stray sentence. Therefore, on basis of such a stray sentence, it is not possible to accept the contention of Mr. Kulkarni that no case with regard to reasonable and *bona fide* requirement was made out by the landlords.

17] It is settled position in law that it is for the landlord to decide how and in what manner he should carry on his business and it is neither for the Court nor for the tenants to dictate any terms to the landlords in this regard. The landlord is a best judge in this regard and has considerable freedom in this regard. The word '*require*' in the context of reasonable and *bona fide* requirement means more than a mere wish or a convenience or fancy of the landlord. But it does not mean an absolute need or absolute requirement in the sense that the landlord will virtually starve, in case, the possession of the suit premises is not restored. Similarly, the *bona fide* need of setting up business by the family members cannot be negated on the ground that some of the family members have already commenced some alternate business or taken up some other employment or work during the pendency of the litigation. In this

case, it is true that the plaintiffs and their sons have some other premises. However, it is required to be noted that there are in all six adult members and their respective families, apart from the two plaintiffs. The plaintiff No.1 has since expired. When considered from such perspective, decree of eviction on the ground of reasonable and *bona fide* requirement could not have been declined merely on the ground that there were other businesses undertaken by the plaintiffs or some of their sons.

18] The circumstance that only Vittal-plaintiff No.2 was examined was also not sufficient for declining decree on the grounds of reasonable and *bona fide* requirement. Vittal deposed not merely for himself but also on behalf of plaintiff No.1. Vittal deposed to the need of the family members of himself and his brother plaintiff No.1. Vittal was extensively cross-examined and his testimony has remained unshaken. The tenant in his deposition has also not brought-forth any material other than what was disclosed by Vittal in his deposition.

19] The circumstance that Vittal sold his portion in the ancestral property to the plaintiff No.1 for consideration of Rs.45,000/- was also not a circumstance which could have been used against the plaintiffs for denying the decree on the ground of reasonable and

bona fide requirement. The material on ground indicates that the plaintiff No.1 and his family members were residing in ancestral house. In these circumstances, if Vittal has sold share in the ancestral property to plaintiff No.1, there is nothing unreasonable in the same. Such circumstance does not militate against the requirement of the suit premises on the ground of reasonable and *bona fide* requirement. The inference that Vittal or his sons never genuinely desire to commence any business in Kolhapur is a mere surmise or a conjecture. The distance between Belgaum and Kolhapur is also not such that would disable the commencement of business in Kolhapur, though Vittal and his sons ordinarily reside in Belgaum. There is accordingly, merit in the submission that incorrect tests have been applied, relevant material has been excluded from the consideration and material, which is irrelevant, has been taken into consideration by the two Courts in the context of determining reasonable and *bona fide* requirement.

20] On the aspect of comparative hardship, the two Courts have held that the tenants family comprises at least fourteen members and apart from the suit premises, the tenant has no other premises through which he undertakes he undertakes the business of Bar and Restaurant. The two Courts have also held that the tenant has acquired substantial goodwill in the area and would suffer greater hardship, if evicted.

21] On the aspect of tenant acquiring goodwill, this Court in the case of ***Gurulingappa Sharnappa Birajdar since deceased through legal heirs and representatives Ashokkumar Gurulingappa Birajdar & Anr. vs. Sidramappa Ganpatrao Mulge & Ors.***², has held that the circumstance that the tenant has acquired goodwill on account of business conducted in the suit premises can be no ground to deny the relief of possession to the landlord. That consequence, is inevitable. The circumstance that the tenant has a large family and that the tenant has no other premises through which he undertakes the business of Bar and Restaurant may be a relevant circumstance in the context of comparative hardship. However, the material on record in the present case, indicates that the tenant has taken no steps whatsoever in the matter of acquiring alternate premises, even though, several alternate premises may have been available to the tenant. This is a relevant circumstance, which the two Courts have completely ignored. There is material on record that the tenant is in a financially sound position. The tenant has purchased and constructed his own house at Tarabai Park, which is a prime residential locality.

22] Vittal Korade-plaintiff No.2, in his deposition, has stated that there are different kind of shops available adjacent to the suit premises in Shivaji Market Complex, Shivaji Stadium Market and

2 2009 (3) Mh. L. J. 661

some other places. The tenant's brother, who has deposed as a constituted attorney for the tenant has admitted that around Shivaji Stadium, which is near the suit premises, there is shopping center complex. Further, at some distance, there is Shivaji Market Complex in which there are number of shopping centers/complexes. Besides, there are number of shopping centers and complexes which have come up near S.T. Stand, Mahalaxmi Temple, Mahalaxmi Chambers, New Shahpuri etc. The tenant has admitted to not having approached to the Kolhapur Municipal Council for alternate shop premises on the ground that some land appurtenant to the suit premises was acquired for the road widening. This material is sufficient to indicate that there are several other premises, which were available, but the tenant did not make any serious efforts for the acquisition of the same.

23] The financial position of the tenant is also quite strong. In the first place, for last several years, the tenant has been carrying on business of Bar and Restaurant from the suit premises. The suit premises are located in prime market area. The tenant has admitted to having purchased a plot in Padma Cooperative Housing Society and to the construction of residential Bungalow thereon, in which the tenant and his family members reside. The statement of the tenant's brother and constituted attorney that the tenant will starve, if evicted

from the suit premises hardly inspires any confidence. Therefore, upon cumulative consideration of the aforesaid facts and circumstances, there is merit in the contention of the Mr. Warunjikar that the two Courts have failed to apply the correct tests and principles in the matter of determination of reasonable and *bona fide* requirement and comparative hardship. Vital and relevant material on record has been completely overlooked and instead, the decision to deny decree of eviction came to be based upon the irrelevant circumstances or circumstances which were really not germane to the issue. Ignorance of vital and relevant material or taking into consideration of irrelevant and extraneous material constitutes unreasonableness, which is a specie of perversity in the record of finding of fact. Besides, the true and correct principles with regard to determination of reasonable and *bona fide* requirement have not been applied by the two Courts, which is also a ground for interference.

24] On the aspect of final relief however, this does not appear to be a case where the landlords should be permitted to recover the possession of the entire suit premises. Rather this is a fit case where the Court ought to consider the proviso to Section 13(2) of the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (Rent Act), which enables the Court to pass a

decree in respect of part of the suit premises, having regard to all the circumstances of the case, including the issue of comparative hardship. In this case, the tenant has deposed that his family comprises of 14 members, who are dependent upon the income from the business of Bar and Restaurant undertaken through the suit premises. The tenant, through his Predecessor-in-title, has been in possession of the suit premises since the year 1924 or thereabouts. The suit premises are substantially large, in that they admeasure around 103.05 sq.meters with open space on the rear side. The suit premises comprise ground and first storey. Although, the need of the landlords may be reasonable and *bona fide*, regard shall have to be had to such factors particularly in the context of provisions contained in Section 13(2) of the Rent Act. The aspect of hardship would be suitably balanced, if the recovery of possession is permitted in respect of part of the suit premises, particularly because in the facts and circumstances of the present case, it is easily possible to partition the suit premises into half shares, so that the landlords as well as the tenant are able to undertake their respective businesses.

25] The Apex Court in case of *The Apex Court in the case of **Badrinarayan Chunilal Bhutada vs. Govindram Ramgopal Mundada***³ has held that sub-section 2 of Section 13 of the Rent Act

3 (2003) 2 SCC 320

falls more appropriately within the domain of equitable or social justice. Section 13(2) obliges the Court, in spite of the finding as to reasonable and genuine requirement having been arrived at in favour of the landlords, to weigh in scales placing the hardship which would result to the landlord in case of denial of eviction in one balance pan and the hardship likely to be suffered by the tenant in case of his being evicted in the other and then find out judiciously which way the balance tilts. An empty truism cannot be hardship. A failure of the landlord to make out a case for eviction under Section 13(1)(g) is not a hardship to the landlord; so also on a case for eviction under Section 13(1)(g) having been made out, the fact that the tenant will be liable to be evicted, is not by itself hardship to the tenant. A mere wish or desire of the landlord to acquire possession over the tenancy premises cannot be said to be *bona fide* and reasonable requirement. The requirement implies an element of necessity. The necessity is a necessity without regard to the degree of which it may be. For the purpose of Section 13(2), the degree of urgency or the intensity of felt need assumes significance. It is a judicious process of finding out, as far as practicable, and then making a comparative measure of the two degrees, which is involved in arriving at the finding on comparative hardship.

26] The provisions of the Rent Act do not bar a partial eviction. Rather, they contemplate a partial eviction specifically. This would of course depend on the answer to the question whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of the comparative hardship. If the Court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the Court may order partial eviction so that the requirement of landlord is satisfied and the tenant is also not deprived of his running business activity.

27] Inasmuch as Section 13(2) entails the consequence of the landlord being denied the decree of eviction, wholly and partly, in spite of his having proved reasonable and *bona fide* requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds under Section 13(2) of the Rent Act is on the tenant. It is expected of the parties to raise necessary pleadings, and the Court to frame an issue based on the pleadings so as to enable the parties to adduce evidence and bring on record such relevant material as would enable the Court forming opinion on the issue as to comparative hardship and consistently with such finding whether partial eviction would meet the ends of justice. Even if no

issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.

28] The Rent Act does not lay down any guidelines or relevant factors based whereon the issue of comparative hardship is to be determined. A slight indication is contained in the first paragraph of Section 13(2) that the Court must have regard to all the circumstances of the case, including the question whether other reasonable accommodation is available to the landlord or the tenant. The expression '*other reasonable accommodation*' does not mean an accommodation suitable in all respects as the suit accommodation. The legislature has chosen it appropriate to leave the determination of issue in the discretion of the Court.

29] Thus, there is an obligation cast upon the Court to not only consider the issue of comparative hardship, but also consider the issue as to whether partial eviction might suffice to balance the issue of hardship. This is the reason the Apex Court has described the provisions contained in Section 13(2) of the Rent Act as one in tune with the principles of equitable and social justice. The statutory scheme as expressed in Section 13(2) of the Rent Act does not merely bar, but rather contemplates the consideration of issue of partial eviction. The Apex Court in case of ***Badrinarayan Chunialal***

Bhutada (supra), has no doubt held that ordinarily an issue is liable to be framed in this regard. However, the Apex Court has proceeded to hold that even if no issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.

30] In the present case, the landlords had instituted the suit seeking recovery of possession in the year 1980. A remand, after a lapse of almost 35 years, is hardly an appropriate option. The material on record, as noted earlier, establishes that the landlords have made out a case for reasonable and *bona fide* requirement. The reasoning adopted by two Courts in the matters of determination of reasonable and *bona fide* requirement as well as comparative hardship is not in accordance with law. Nevertheless, the material on record does establish that the appropriate manner balancing the equities would be to direct the partial eviction of the tenant from the suit premises. That would, in the peculiar facts and circumstances of the present case, meet with the ends of social and equitable justice, which is domain within which the provisions contained in Section 13(2) of the Rent Act legitimately fall. The tenant and his 14 family members, indeed are dependent upon the Bar and Restaurant business undertaken through the suit premises. The tenant through his predecessor-in-title, has been in occupation

of the suit premises since the year 1924 and in such circumstances, ouster from the entire suit premises would far outweigh the hardship which the tenant and his family members will occasion, as compared to hardship which the landlords may occasion by way of grant of partial decree for recovery of possession. Ultimately, the evidence on record also establishes that the landlords and their children have some businesses, both at Kolhapur and Belgaum. The requirement of the landlords and their family members is no doubt reasonable and *bona fide*. The financial position of both the landlords as well as the tenant is quite sound, therefore, the balancing the equities, it will be appropriate if the recovery of possession is permitted in respect of half of the suit premises only.

31] Accordingly, this petition is disposed of with the following order:

a] The impugned judgments and decrees dated 28 August 1991 and 31 January 2000 are set aside;

b] The petitioners Regular Civil Suit No. 820 of 1980 is partly decreed. The petitioners-landlords are held entitled to recovery of possession of half the portion of the suit premises and consequently the respondent-tenant is directed to deliver the same to the petitioners-landlords;

c] There shall however be a stay upon the execution of partial eviction decree as aforesaid, for a period of three months from today;

d] After expiry of three months from today, should the petitioners-landlords institute execution proceedings, the Executing Court is directed to adopt the following course of action:

(i) To appoint a suitable Engineer/Architect as a Court Commissioner to visit the suit premises and to submit a Report and Plans for partition of the suit premises into two suitable halves;

(ii) To afford reasonable opportunity to both the parties to furnish their say and make submissions upon such Commissioner's Report and Plans;

(iii) To make appropriate orders on the aspect of the partition of the suit premises into two halves upon consideration of the Commissioner's Report, Plans and the contentions of both the parties; and

(iv) To make allotment of the respective portions of the suit premises to the parties, if possible, with the agreement of the parties. However, if no agreement is possible, the Executing Court is at liberty to make allotment by draw of lots.

32] Rule is made absolute to the aforesaid extent.

33] There shall, however, be no order as to costs.

34] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)