

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD.**

**WRIT PETITION NO. 779 OF 2016**

1. Smt. Trishla Vijayukumar Atri,  
Age 64 years. Occ. Household.

2. Manish Vijaykumar Atri,  
Age 37 years, Occu. Business.

Both R/o Govindpura, Ahmednagar,  
Dist. Ahmednagar

... Petitioners

**Vs.**

1. Isharat Fatima Ali Akbar Khan,  
(Deceased) her LRS

1A. Fahim Shaikh Nadim,  
Age 34 years, Occu. Service

1B. Kalim Shaikh Nadim,  
Age 31 years, Occu. Service,

1C. Farhat Abdulsami Shaikh,  
Age 35 years, Occu. Household,

Respondent no.1A to 1C  
R/o Gajanan Housing Society,  
Mukund Nagar, Ahmednagar.

2. Nusrat Rabiya Ali Akbar Khan,  
Age 48 years, Occu. Household,

3. Kumar Mohammed Kazim Kadir Khan,  
Age 26 years, Occu. Education

4. Kumar Abdul Kazim Kadir Khan  
Age 25 years, Occu. Education

Respondent 2, 3 and 4 all R/o  
H.No. 2592, Pachilimb Galli,  
M.G. Road, Cloth Market,  
Ahmednagar, Dist. Ahmednagar.

... Respondents

**WITH  
WRIT PETITION NO. 780 OF 2016  
WITH  
CIVIL APPLICATION NO. 10883 OF 2015**

M/s. Walkar & Company,  
Through its Proprietors

1. Smt. Trishla Vijayukumar Atri,  
Age 64 years. Occ. Household.
2. Manish Vijaykumar Atri,  
Age 37 years, Occu. Business.

Both R/o H.No. 2592, M.G. Road,  
Ahmednagar,  
Tq. & Dist. Ahmednagar

... Petitioners

**Vs.**

1. Isharat Fatima Ali Akbar Khan,  
(Deceased) her LRS
- 1A. Fahim Shaikh Nadim,  
Age 34 years, Occu. Service
- 1B. Kalim Shaikh Nadim,  
Age 31 years, Occu. Service,
- 1C. Farhat Abdulsami Shaikh,  
Age 35 years, Occu. Household,

All R/o Gajanan Housing Society,  
Mukund Nagar, Ahmednagar.

2. Nusrat Rabiya Ali Akbar Khan,  
Age 48 years, Occu. Household,  
R/o H.No. 2592, M.G. Road,  
Ahmednagar, Dist. Ahmednagar.

... Respondents

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Mr. R.R. Karpe, Advocate for the petitioners.  
Mr. V.S. Bedre, Advocate for the respondents.

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**CORAM : SUNIL P. DESHMUKH, J.**  
**DATE : 23-06-2016.**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties. Both the petitioners involve similar grounds and circumstances and to a fair degree evidence as such are being decided by this common judgment.

2. The petitioners are tenants in the respective suit premises whereas respondents are the landlords of said premises. The landlord initiated eviction proceedings against tenants on various grounds primarily on the grounds of default as tenants have fallen in arrears and *bonafide* and reasonable requirement of the landlord. The trial as well as the appellate court have concurrently held the issues in respect to aforesaid grounds in favour of the landlord finding that termination of tenancy on the ground of arrears is in compliance of provision of section 15 of Maharashtra Rent Control Act, 1999 as well as that the plaintiff-landlord requires suit premises for *bonafide* requirement. The consequent issue with regard to hardship has also been held in the affirmative in favour of the landlords.

3. Learned counsel for the petitioner, Mr. R.R. Karpe, with quite some exuberance contends that may be if it is to assume that

the landlords is in *bonafide* requirement of the suit premises yet the factual situation shows that landlords had also certain other premises owned by them wherein tenants have been staying however, no proceedings against them have been initiated, whereas, petitioners have no other accommodation or could have secured any other accommodation in the vicinity and the consideration that the tenants were to receive some property in MIDC is a consideration rather strayed one looking at the distance between M.G. Road and MIDC. It cannot be said that the petitioners could have secured reasonably an accommodation similar to the tenanted premises which would be suitable for their business.

4. He therefore, submits that even assuming that the landlords require suit premises reasonably *bonafide* yet the ground of comparative hardship has not been properly decided and if that is decided in favour of the tenants, the eviction decree is not possible. He further purported to contend the suit has been filed during the subsistence of the period of notice on the ground of arrears of rent and as such the suit could not have been decreed. He further submits that, as a matter of fact, arrears of rent had been deposited during the course of trial .

5. Learned counsel for the respondents Mr. Bedre on the other hand opposes aforesaid submissions, in the first place,

pointing out that the suit has been filed well after expiry of 90 days after the notice had been served on the petitioners and that the payment which has been allegedly made has also been beyond the period prescribed under section 15 Maharashtra Rent Control Act, 1999. In the circumstances, finding thereon about default and breach of compliance of the statutory provisions, eviction decree entailed in favour of the petitioners.

6. He submits that it is a settled law that a tenant cannot foist choice on the landlord and the land lord is the best judge of his need. Therefore, the alternative which has been suggested in the arguments about other premises being available in the vicinity may not be of any assistance against the concurrent finding of facts rendered by courts.

7. He submits that the ground of comparative hardship has also been properly decided. He further submits that it does emerge on record that tenants have not exerted themselves finding out alternate accommodation at any point of time. In the circumstance, the finding of comparative hardship cannot be faulted with.

8. Notice with reference to section 15 of the Maharashtra Rent Control Act, 1999 Act appears to have been served on the petitioners in September and the suit was filed in January shows

that there is no substance in the contention that suit has been filed before expiry of statutory period. Having regard to the findings of fact that the tenant had committed breaches in respect of compliance of the mandatory provisions under section 15 of the Maharashtra Rent Control Act, 1999 as well as both the courts have found concurrently that the need of landlords *bonafide*, the inference drawn from the facts as has emerged on record on evidence that hardship would be suffered more by the landlords than the tenants, it is difficult to indulge into request being made on behalf of petitioners.

9. Writ petitions as such are not being entertained and are dismissed. Civil Application disposed of. Rule discharged.

**(SUNIL P. DESHMUKH)**  
**JUDGE**