

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

Civil Revision Application No.253 of 2015

* Madankumar Kanji Joshi,
Age 64 years,
Occupation: Business,
R/o Aryaniwas, Modern Road,
Bhusawal, District Jalgaon. .. **Petitioner.**

Versus

- 1) Kailas s/o Ramlal Shriwas.
Died, respondent Nos.3,4 & 7
are already on record as his
legal representatives.
- 2) Nirmala Ramlal Shriwas
(deleted as per Court order
dated 29-1-2016).
- 3) Kamla Ramlal Shriwas,
Age 55 years,
R/o Shani Mandir Ward
Modern Road, Bhusawal
District Jalgaon.
- 4) Vimala Ramlal Shriwas
Age 53 years,
R/o Shani Mandir Ward
Modern Road, Bhusawal
District Jalgaon.
- 5) Sushila Ramlal Shriwas
(deleted as per Court order
dated 29-1-2016).
- 6) Urmila Ramlal Shriwas
(deleted as per Court order
dated 29-1-2016).

- 7) Ravindra s/o Vasant Choudhari,
Age 45 years,
Occupation: Business,
R/o Shani Mandir Ward
Modern Road, Bhusawal
District Jalgaon.

.. Respondents.

Shri. Mukul S. Kulkarni, Advocate, for petitioner.

Shri. P.R. Katneshwarkar, Advocate, for respondent
Nos.3,4 and 7.

CORAM: T.V. NALAWADE, J.

DATE : 4th JULY 2016

JUDGMENT:

1) Revision is admitted. Notice after admission made returnable forthwith. Heard both sides by consent for final disposal.

2) The proceeding is filed against the judgment and decree of Rent Suit No.206/1999 which was pending in the Court of the Civil Judge, Junior Division, Bhusawal and also against the judgment and decree of Rent Appeal No.60/2014 which was pending in the Court of the District Judge-1, Bhusawal. The suit was filed by the present appellant, landlord for eviction under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The trial Court has dismissed the suit and the

first appellate Court has confirmed the findings of the trial Court.

3) In short, the facts leading to the institution of the revision can be stated as follows :-

4) The suit property is a shop premises. It is in two pieces. One piece has the size of 10 ft x 10 ft and the other piece has the size of 3 ft x 4 ft. It is part and parcel of CTS No.1538 situated at Bhusawal and it is given Municipal House No.3394 (old) and 258 (New) in the assessment record of the municipal council.

5) It is the case of the plaintiff that the property was given on monthly rent basis to the father of the defendant Nos.1 to 6 and at present the defendant No.1 is in actual possession of the portion having size of 10 ft x 10 ft. It is contended that in the portion admeasuring 3 ft x 4 ft sub-tenant is doing some business. It is contended that initially the property was given for running hair cutting saloon but now there is no such saloon and the sub tenant is running a tea stall. Defendant No.7 is said to be the said sub tenant.

6) It is the case of the plaintiff that in the past Rent Application No.33/1976 was filed by the defendants for fixing standard rent and the standard rent was fixed at Rs.17.50 in respect of the portion in which hair cutting saloon was run and it was fixed at the rate of Rs.5.00 per month in respect of the other portion having size of 3 ft x 4 ft. It is contended that the defendants, tenants, are liable to pay the municipal taxes separately. It is contended that since the decision of the rent application which was given in the year 1982, no rent has been paid by the defendants of the suit premises.

7) In the plaint particulars of the municipal taxes are given and they are starting from the year 1982 till the year 1999. It is the case of the plaintiff that the defendants are liable to pay municipal taxes also for the period mentioned and the total amount of the taxes of the portion of the defendants is Rs.2616.58. It is contended that as the rent is not paid from the year 1982 the defendants are in arrears of rent of Rs.4815/-.

8) It is the case of the plaintiff that aforesaid amount was demanded by him many times to the defendants but they did not pay the amount and they are willful defaulters. It is the case of the plaintiff that he sent demand notice dated 29-9-1999 and in this notice tenancy was terminated on the ground of default. The tenancy was terminated by the end of October 1999. It is contended that even after receipt of the notice, the defendants have not paid the rent to the plaintiff and so the plaintiff is entitled to get decree of eviction on the ground of default.

9) The suit was filed on the ground of bona fide requirement for personal use. It is the case of the plaintiff that for starting the business for the sons, the plaintiff needs the suit premises and he has no such separate premises for starting business for his sons. The ground of sub tenancy was also taken and thus the suit was filed for eviction on aforesaid three grounds. Relief of recovery of arrears of rent and taxes recoverable under law for the preceding three years was also claimed.

10) The defendant Nos.1,3 and 4 filed joint written statement. They admitted that the plaintiff is the owner of the suit property. They contended that, the father of the plaintiff was collecting the rent from the defendants and he was acting as landlord. They denied the allegations of sub tenancy in favour of defendant No.7. They have denied the allegations that the rent and taxes were not paid for the period starting from the year 1982. They contended that after receipt of the notice of demand they filed Civil Application No.69/1999 for determining the taxes payable by the defendants.

11) It is the case of the defendants that they had sent rent and taxes amount in the past by money order but the plaintiff had refused to accept the amount. It is contended that one money order of Rs.135.- was accepted by the plaintiff. It is their case that they have paid rent for the period ending 31-8-1991 and this amount was accepted by the father of the plaintiff.

12) It is the case of the defendants that they have replied the notice of demand and in the reply they had

requested the plaintiff to give particulars of the taxes which fall to the share of the defendant and such demand was made under section 21 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act"). It is the case of the defendants that the plaintiff has not supplied the particulars of the taxes. It is also contended that they had sent money order in respect of arrears for the period starting from 1-9-1991 but this money order is refused by the plaintiff and so the defendants cannot be treated as defaulters. It is the case of the defendants that they were always ready and willing to pay the rent and they are still ready and willing to pay the rent but the demand made is excessive.

13) The notice of demand was sent on 29-9-1999 and it is admitted that it was served on the defendants. It is the case of the defendants that after service of notice on 7-10-1999 they filed application under section 11 of the Act on 28-10-1999 and they had requested the Court to determine permitted increases. They also contended that after decision of the application bearing No.33/1976 filed by them no particulars of taxes were informed by the

plaintiff. It is contended that the standard rent fixed by the Court in the said proceeding is Rs.22.50 per month and the defendant was sending this amount to the father of plaintiff namely Kanji Joshi. It is contended that Kanji then started refusing to accept rent sent by money order. It is contended that the plaintiff did not demand rent from the defendants and he avoided to collect rent from the defendants for the period of 17 years to create a ground and then he sent the notice of demand dated 29-9-1999. It is the case of the defendants that before filing application for determining the permitted increases that they had made inquiry with the local body about the taxes payable and they have realized that the demand made by the plaintiff is excessive. To the rent application reply was filed by the landlord and the aforesaid contentions were denied by him. The landlord contended that as the standard rent was already fixed in the previous proceeding, no application under section 11 of the Act is tenable. He also contended that the tenant knew the rate of taxes and the liability to pay the taxes but the tenant has avoided to pay the taxes and also the standard rent.

14) The Civil Application No.69/1999 was heard along with the suit by the trial Court. Issues were framed on 1-4-2005. The application under section 11 of the Act was made within 30 days of the receipt of the demand notice but as per the record no prayer was made by the tenant to allow him to deposit even the interim rent in the case. No readiness and willingness was shown to deposit the amount demanded in the notice of demand by the landlord. The record shows that first time on 15-9-2006 the tenant moved application and prayed to the Court in the Rent Application No.69/1999 to determine the rent and allow the tenant to deposit the rent. In this application the tenant did not show readiness and willingness to deposit entire amount demanded but he contended that he is liable to pay the rent for the period starting from 1-9-1991. The tenant did not request the Court to determine interim permitted increases and the tenant did not show readiness and willingness to deposit the taxes of which demand was made by the landlord in the demand notice. On 15-9-2006 itself say was filed by the landlord and it was submitted for the landlord that the Court may pass appropriate order on the application. The

Court made order on 15-9-2006 and directed the tenant to deposit standard rent as fixed in the previous proceeding No.33/1976 which was at the rate of Rs.22.50 per month. The amount was to be deposited within 15 days and then the tenant was to deposit further rent at the same rate for every month before 10th of next month. This order was complied with on 19-9-2006.

15) The oral evidence given by the plaintiff is as per the aforesaid pleadings in the plaint. It can be said that one of the defendants has given evidence in rebuttal but this defendant has not disputed the case of plaintiff and the evidence given by the plaintiff on many material points. The plaintiff has produced the relevant record of assessment of taxes made by the local body. He has produced the bills of demand issued by the local body and he has given evidence that he has paid entire tax which was demanded by the local body.

16) During arguments, learned counsel for the appellant did not press the ground of sub letting. There is also no convincing record to prove this ground. In view of

this circumstance only the material available on the remaining two grounds viz. the ground of default and the ground of bona fide requirement for personal use need to be considered.

17) On the ground of default, plaintiff has given substantive evidence that rent was not paid from the year 1982, the year in which application filed for fixing standard rent was decided. The defendant has come with the case that the rent was paid to Kanji, father of the plaintiff and it was paid upto the period ending 31-8-1991. There is specific case that after this period Kanji refused to accept the payment sent by money order and so the defendant is not the defaulter. In view of this rival contention, burden was on the defendants to prove that he was ready and willing to pay rent but it was not accepted by the landlord. From the record it can be said that even if the case of the defendant in respect of payment of rent made prior to 31-8-1991 is accepted as it is, the defendant tenant has failed to prove that after that date, rent was tendered even to the father of the plaintiff and the father had refused to accept the rent. For proving that the tenant

was ready and willing after 31-8-1991 to pay rent, it was necessary to prove the refusal to accept the rent from the side of the landlord.

18) Kamlal, defendant No.3, has given evidence for all defendants. No substantive evidence is given by her that any rent was paid or tendered by the defendants after 31-8-1991. She has only denied the case of the plaintiff that rent was not paid after that period. She has given evidence that application for fixing standard rent was made by the tenant in the Court and in that proceeding rent was deposited by the tenant for the period ending December 2007. The evidence also does not show that she was ready and willing to pay the tax demanded by the landlord. This lady has relied only on two receipts showing deposit of the rent in the Court in the suit filed for eviction.

19) In the cross-examination of plaintiff, copies of some money orders were confronted to him. He has admitted signatures of his father appearing on those receipts. So those documents are exhibited as Exhibits 62

to 68. There are only seven receipts and on many receipts amount of rent of Rs.135/- can be seen. The first receipt is of the year 1987 and the last receipt is of 3-9-1991. The last receipt is of Rs.135/-. All these receipts show the money orders sent by the defendant for payment of the rent which was on most of the occasions for the period of around 6 months was accepted by the father of the plaintiff. Thus there is no record with tenant to prove that entire standard rent as fixed by the Court was paid upto 31-8-1991. No money order is produced on the record to show that either the plaintiff or his father had refused to accept the rent sent by money orders prior to issue of demand notice. There is one money order of 31-10-1999 which was sent after termination of the tenancy and after demand of the arrears and this document needs to be considered separately. Thus there is no record with the tenant to show that from 3-9-1991 till 31-10-1999 on any occasion any amount was sent by money order to the landlord or to his father and they had refused to accept that amount.

20) There is one money order dated 31-10-1999 which is for Rs.2205/-. On this money order there is mention that the rent was for the period from 1-9-1991 to 31-10-1999 but no evidence is given for proving the endorsement made on this document and this document is not exhibited by the trial Court. If this amount is compared with the amount demanded by the landlord in the demand notice even in respect of the standard rent, it can be said that this amount was not as per the demand made by the landlord. In any case this document would not have shown that there was tender of tax amount of the share of the defendant. In the reply sent by the tenant, copy of which is at Exhibit 70 also it is mentioned that the tenant was sending only the standard rent for the aforesaid period.

21) The record shows that in the year 1999 after receipt of demand notice, application under section 11 of the Act was made. No readiness and willingness was shown till 15-9-2006 to deposit any amount in this proceeding. First time on 15-9-2006 readiness and willingness was shown to deposit the standard rent but no

readiness and willingness was shown to pay the permitted increases, taxes. The Court made order in view of this prayer and in view of the order made in the previous rent application and directed to pay standard rent as fixed in the previous proceeding. Only after the order, amount of Rs.4,140/- was deposited by the defendant and it was for the period from 1-9-1991 to 31-12-2006 and it was the standard rent fixed by the Court. At Exhibit 75 there is another receipt showing that on 4-11-2006 Rs.270/- was deposited as standard rent for the period from 1-1-2007 to 31-12-2007. Thus, at any time no readiness and willingness was shown in the trial Court or in the appellate Court by the tenant to pay the permitted increases.

22) The landlord gave oral evidence to prove his entitlement in respect of the permitted increases. For that he produced relevant record also. The record includes the assessment record prepared by the Bhusawal Municipal Council for the period 1980-81 to 2005-2006 at Exhibits 50 to 55. This record shows that in the house property there are only two shops. For one shop name of defendant

is entered and for other shop the name of one Ganeshprasad Rambharose was entered. On the basis of rateable value in respect of two shops the tax was imposed. The tax was under heads like general tax, education cess, water tax, special education tax etc. The tax was imposed for the years 1980 to 1984 of Rs.375/-. The ratable value of the shop of Ganesh was Rs.780/- at that time and that of the defendant was Rs.480/-. Under different heads the tax separately levied was also mentioned. For the years 1997-98 to 2001-2002 the total tax payable was Rs.504/-. In those years the rateable value of the shop of Ganesh was Rs.780/- and the rateable value of the shop of the defendant was Rs.504/-. Few bills issued by the local body in respect of aforesaid taxes are produced by the landlord at Exhibits 46 to 49. Certificate at Exhibit 45 shows that for the year ending 2006 entire property tax was paid by the plaintiff.

23) In the pleadings and in the reply to the notice, the defendants had contended that they had made inquiry with the local body to ascertain the tax recoverable. The aforesaid record was also available to the defendants. In

the demand notice standard rent starting from the year 1982 was demanded and the house tax, permitted increase in proportion to the property of the defendants was also demanded and that tax was for every year from 1982. In the notice itself particulars like general tax, special education tax, education cess, water tax were given by the landlord and that can be seen from Exhibit 56. Thus there was contention of the tenant that he had made inquiry and there was the record of aforesaid nature to establish the case of landlord of entitlement to recover the tax. In spite of these circumstances the Courts below have held that the particulars which were demanded under section 21 of the Act were not given. These circumstances show that there was non application of mind by both the Courts below and they failed to consider the aforesaid record and the nature of defence taken by the tenant. Further, there was no substantive evidence from the defendants that the defendants had tendered rent or tax in the past and the landlord had refused to accept the same. In view of these circumstances there is no other alternative than to hold that both the Courts below have committed error in giving finding on this point against

the landlord. This record and the admissions given by the tenant are sufficient to infer that the tenant had no intention to pay at least the permitted increases. There was virtually no record to prove that after 3-9-1991 any rent or tax was paid or tendered till the date of reply given to the statutory notice. Due to these circumstances the only finding which can be given is that the tenant was not ready and willing to pay standard rent and permitted increases and the tenant had become defaulter by not paying the rent continuously after 3-9-1991.

24) Both the sides have placed reliance on some reported cases in support of their submissions made on the ground of default. The notice of demand was issued on 29-9-1999 and so in the present matter the law as amended in the year 1987 needs to be considered and applied.

25) It is not disputed that in the Rent Application No.33/1976 standard rent was fixed and the decision was given on 9-11-1982 (Exhibit 44). Entitlement of the landlord to get permitted increases is not disputed by the

tenant. Further in law also the tenant could not have disputed such entitlement. In section 5(7) of the Act definition of "permitted increase" is given and section 10 makes it clear that the tenant is liable to pay house tax as permitted increase. The tax which needs to be paid by the tenant is to be in the proportion to the premises which is in his possession. The provisions of the Act have not given any procedure for ascertaining the increase by the Court before issue of demand notice and so the landlord can simply send bill, make demand of permitted increases according to the practice of recovery of rent. If the tenant does not take proper steps after such demand, the tenant is liable to make payment as per the demand to avoid the consequences of non payment.

26) In the present matter the tenant sent reply to the demand notice given by the landlord and asked to supply particulars as provided in Section 21 of the Act. The aforesaid discussion shows that particulars were supplied by the landlord in the demand notice itself. Further, there is oral evidence to show that in the past also the demand was made. In the reply given at Exhibit

70 the tenant contended that the demand of tax was excessive in comparison to the taxes which were payable in the year 1982-83. This contention shows that in the year 1982-83 also such demand was made by the landlord and tenant had made inquiry with the local body to ascertain his liability. Thus, the tenant gave false reply in Exhibit 70 that there were no particulars given to him.

27) The rights of the landlord and tenant when there is default in making payment of rent or permitted increases can be found in sections 11 and 12 of the Act. Provision of section 12 as amended in the year 1987 runs as under :-

"12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the

tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if any, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent, per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.

(4) Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increase due to him as the Court thinks fit.

Explanation I.-- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court.

Explanation II.-- For the purposes of sub-section (2), reference to "standard rent" and "permitted increase" shall include reference to "interim standard rent" and "interim permitted increase" specified under sub-section (3) or (4) of section 11.

Explanation III.-- For the purposes of this section where, a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery or any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deductions so made by him."

Relevant portion of section 11 which is section 11(2),(3)

and (4) runs as under :-

"11. Court may fix standard rent and permitted increases in certain cases.

(1)

(2) If there is any dispute between the landlord and the tenant regarding the amount of permitted increases, the Court may determine such amount.

(3) If any application for fixing the standard rent or for determining the permitted increases, is made by a tenant who has received a notice from his landlord under sub-section (2) of section 12, the Court shall forthwith specify the amount of rent or permitted increases which are to be deposited in Court by the tenant, and make an order directing the tenant to deposit such amount in Court or at the option of the tenant make an order to pay to the landlord such amount thereof as the Court may specify, pending the final decision of the application. A copy of the order shall be served upon the landlord. Out of any amount deposited in Court, the Court may make an order for payment of such reasonable sum to the landlord towards payment of rent or increase due to him as it thinks fit. If the tenant fails to deposit such

amount or, as the case may be, to pay such amount thereof to the landlord, his application shall be dismissed.

(4) Where at any stage of a suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in any other case if it appears to the Court that it is just and proper to make such an order the Court may make an order directing the tenant to deposit in Court forthwith such amount of the rent as the Court considers to be reasonably due to the landlord, or at the option of the tenant an order directing him to pay to the landlord such amount thereof as the Court may specify. The Court may further make an order directing the tenant to deposit in Court periodically, such amount as it considers proper as interim standard rent, or at the option of the tenant an order to pay to the landlord such amount thereof as the Court may specify, during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any order made as aforesaid, within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court, which leave may be granted subject to such terms and conditions as the Court may specify."

The provision of section 11 (4) of the Act is made to protect the rights of landlord. The aforesaid provisions show that it is necessary for tenant to apply to the Court to show his readiness and willingness to make payment rent (standard rent) or the permitted increase of which

demand is made. When demand is already made, he needs to show readiness and willingness by making the payment or by applying to the Court as provided under interim order which Court can make under the aforesaid provisions. It is already observed that such steps were not taken by the tenant till the year 2006.

28) It appears that the Courts below ultimately held that the application filed under section 11 was not tenable as in the past standard rent was fixed by the Court. Provision of Section 11-A was referred to give such decision. Provision of section 11-A runs as under :-

"11A. No new application for standard rent, etc., to be entertained if already duly fixed by a competent Court at the instance of other parties. No Court shall upon an application or in any suit proceeding, fix the standard rent of any premises under section 11, or entertain any plea that the rent or increases are excessive, if the standard rent or the permitted increases, in respect of the same premises have been duly fixed by a competent Court on the merits of the case, without any fraud or collusion or any error of the facts, and there has been no structural alterations or change in the amenities or in respect of any other factor which are relevant to the fixation of the standard rent, or change in such increase, thereafter in the premises."

The aforesaid provision shows that the bar is not applicable when there is change in increase or there is demand of permitted increase which is disputed by the tenant. In any case it was necessary for the tenant to pay or tender the amount demanded in respect of permitted increases or pay the amount which the Court could have determined as interim payment. This did not happen and so ultimate result of the application of rejection cannot be used by the tenant in the present matter.

29) Provision of section 12(3) gives one more opportunity to the tenant to pay or tender in the Court the standard rent or permitted increase. He can deposit such amount on the first date of hearing or before such other date as the Court may fix. In the present matter issues were framed on 1-4-2005. On application given on 15-9-2006 by the tenant the order was made by the Court on the same day and opportunity was given to the tenant to make payment within 15 days of the amount due (as standard rent) and continue to make payment before 10th of every month of completed month. In the case reported as **2002 BRC 489 SC (Vasant Ganesh Damle v. Shrikant**

Trimbak Datar) the Apex Court has laid down that the meaning of condition of "first date of hearing" used in section 12(3) of the Act cannot be stretched to any date beyond the date when the issues are framed in the suit. It is laid down by the Apex Court that at last stage the provision of section 12(3) of the Act cannot be used if it was not availed at the proper stage, on or before the first date of hearing.

30) The learned counsel for the tenant placed reliance on a case reported as **2008 (3) Mh.L.J. 610 (Sitaram v. Fakirchand)** and submitted that if the landlord had refused to accept the rent tendered, he cannot be allowed to say that the tenant had not paid the rent and he had become defaulter. This proposition cannot be disputed. Facts and circumstances of each and every case are always different and in the present matter there is no hesitation to hold that the tenant had not paid or tendered the rent after 3-9-1991, till receipt of demand notice of 1999.

31) The learned counsel for the landlord placed reliance on the case reported as **(2015) 6 SCC 526 (Yusufbhai Noormohammed Jodhpurwala v. Mohmmmed Sabir Ibrahim Byavarwala)**. The facts of the reported case show that rent was not paid from 1-3-1986 and notice of termination and demand was issued on 9-3-1987. The suit was filed in the year 1987. In view of the facts of the case provision of section 12(3)(a) and 12(3)(b) which were there prior to amendment of 1987, were considered and applied. Now there is only one provision like section 12(3). It is similar to the previous provision of section 12(3)(b). In this case two principles are laid down by the Apex Court like (1) the date of framing of issues is the date of first hearing; and (2) the Court has no discretion to hold that the tenant has substantially complied with condition laid down in section 12(3)(b) if the tenant has not paid the entire amount due and he has not strictly complied with the conditions given in section 12(3)(b). It is made clear that if there is no compliance of these conditions, decree of eviction must be given against the tenant. There cannot be dispute over this proposition. Considering the facts of the present matter this Court holds that the

aforesaid ratio needs to be used in the present case. Thus, on the ground of default, the landlord is entitled to decree of eviction and the Courts below have committed grave error in ignoring the aforesaid relevant material and the position of law.

32) On the ground of bona fide requirement mentioned in section 13(1)(b) of the Act there is specific pleading in the plaint and the substantive evidence given is consistent with the pleadings. The plaintiff has contended that he wants to start separate business for his two sons in the suit property. In rebuttal, the defendant has given evidence that the two sons are already doing separate business. However, there is no specific case or evidence that they have separate business. Evidence is also given by the defendant that the plaintiff is a rich person and the defendants have no other accommodation.

33) In the cross-examination, the defendant has admitted that the plaintiff has two sons and one of the two sons is handicapped. She has admitted that place of residence of the plaintiff is on the back side of the suit

property. These circumstances suggest that the suit property will be convenient for the business which can be started for the handicapped son as it is adjacent to the residential place.

34) In the cross-examination of the plaintiff it is brought on the record that the plaintiff has two brothers and partition has not taken place amongst the three brothers. He has also admitted that he is running Aryaniwas Restaurant of joint family and one son is assisting in that business. He has admitted in the cross examination that sons of one brother, Gangadhar are running one lodge and the said sons of Gangadhar are also shown as owners of the said property. The plaintiff has admitted in the evidence that son of his third brother runs other lodge. Vague admissions are brought on the record that his family possesses space which is more than requirement. This admission is not sufficient to infer that space suitable for starting business for handicapped son is available with the plaintiff which is other than the suit property.

35) Much was made out by the Courts below on the basis of aforesaid admissions given by the plaintiff in the cross examination. It is already observed that there is no substantive evidence that the two sons of the plaintiff have separate business. No record in that regard is produced by the defendant. The assessment record which is available shows that in the name of the plaintiff there is only one house in which there are two shops and the plaintiff is claiming possession of one such shop which is shown in two pieces in the plaint.

36) No evidence is given by the defendants that the defendant-tenant searched for alternative premises when the defendants learnt that the plaintiff was in need of the suit premises for the use of his sons. The evidence on the record shows that in the past hair cutting saloon was run in the suit property and now one tea stall is run. It was necessary for the defendants to create probability that the plaintiff has other alternative accommodation. No such probability is created. No evidence is given that alternative accommodation is not available in that locality or other locality for starting tea stall as there is no

evidence that such search was made by the defendants. In the case reported as **1997 (1) Mh.L.J. (S.C.) 121 (Meenal Eknath Kshirsagar v. Traders & Agencies)** it is laid down by the Apex Court that :

“the landlord is the best judge of his requirement and it is up to him to decide how and in what manner he should live or use his premises. If the landlord proves that he requires that premises, then the Court cannot dictate him to occupy other premises.”

Thus the Apex Court has laid down that the suitability point needs to be left with the landlord. In view of this position of law the contention of the tenant made on the basis of aforesaid vague admissions given by the landlord could not have been considered in favour of the tenant. The aforesaid position of law is not considered by the Courts below. This Court holds that on the ground of bona fide requirement also the landlord is entitled to decree of eviction.

37) In the result, the civil revision application is allowed. the judgment and decree of the trial Court and

the first Appellate Court are set aside. The suit for eviction filed by the landlord is decreed on the grounds of bona fide requirement and default committed by the respondents. Time of three months is given to the respondents to vacate the suit properties.

Sd/-
(T.V. NALAWADE, J.)

rs1