

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.721 OF 2008

Regal Tea Depot through its Partners

1. Jaffer Abdeali Chawala
 2. Kasim Abdeali Chawala
- ... Applicants

Vs.

1. Altaf Abumiya Tamboli
 2. Iqbal Abumiya Tamboli
- ... Respondents

Mr. Y. S. Jahagirdar, Senior Advocate i/b. Mr. S. S. Kanetkar for Applicants.
Mr Vishal Kale a/w. Mr. Amey Deshpande for Respondents.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 18, 2016

JUDGMENT :

Heard Mr. Jahagirdar, learned Senior Counsel for the applicants and Mr. Kale, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, applicants, hereinafter referred to as 'defendants', have challenged the judgment and decree dated 13.10.2008 passed by the learned District Judge-12, Pune in Regular Civil Appeal No.481 of 2007. By that order, the learned District Judge quashed and set aside the judgment and decree dated 20.04.2007 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.208 of 2003 and decreed the Suit instituted by the respondents, hereinafter referred to as 'plaintiffs' for recovery of possession of shop admeasuring about 324 sq.ft. situate on the ground floor of Cantonment House No.1923, Blundell Road, Pune Camp, Pune 411 001, as more particularly described in paragraph 1 of the plaint (for short 'suit premises') on the ground of bonafide and reasonable requirement as contemplated by Section 16(1)(g) of the

Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendants to vacate the suit premises within 4 months from the date of the order. The relevant and material facts, giving rise to filing of this Civil Revision Application, briefly stated, are as under:

3. Plaintiffs have instituted Suit for recovery of suit premises inter alia on the ground that they are the owners and landlords of house No.1923, Blundell Road, Pune 411 001. Defendants are the monthly tenants in the suit premises and monthly rent is Rs.156/- (Rs.150/- rent + Rs.6/- education cess). Plaintiffs contended that plaintiff No.1 is carrying on business in the adjacent premises shown in the slanting lines on the eastern side of the suit premises in the area about 90 sq.ft. shown in letters 'A', 'B', 'G' and 'H'. Plaintiff No.1 carries on business of selling cosmetics and imitation jewelery articles and toys under the name and style as “AAFREEN” since the year 1989. Plaintiff No.1 has completed M.Com in the year 1982. He was jobless. He obtained vacant possession from the previous tenant Karachi Sweet Mart in the part of premises 'A', 'B', 'G' and 'H' in the year about 1989. Plaintiff No.2 is the elder brother of the plaintiff No.1. Both of them are residing jointly on the upper floor in the suit property. There are about 11 members in the family of plaintiffs No.1 and 2 and it is very difficult for them to maintain their family within the small income of their business. Plaintiffs, therefore, decided to augment their business and with that intention, they made a request for vacant possession of the suit premises to the defendants. Plaintiffs contended that defendants have two more premises for carrying on their business in Bhawani Peth, Pune - 42. Shop No.3, Shireen Apartments Co-operative Housing Society, House No.928, Synagogue Street, Pune - 411 001 is in possession of defendants No.1 and 2. These shops stand in the name of NAFISA, wife of defendant No.1. Defendants No.1 and 2 have also interest in the property bearing house No.36, M. G. Road, Pune 411 001. There are

two shop premises on the ground floor of the said property.

4. Plaintiffs further contended that plaintiffs want the suit premises reasonably and bonafide in order to expand and augment their business of selling cosmetic articles, imitation jewelery and toys. The premises in possession of the plaintiffs are utterly insufficient for the business of the plaintiffs. As a matter of fact, the area of the shop premises in possession of the plaintiffs is so short and meager that even the customers cannot stand in the shop. They are required to stand on the public road and are required to take delivery of the goods purchased. The area of the shop is so small that there is no scope to increase the area of the shop. They cannot augment their business due to short of premises and since the suit premises are adjoining premises, the plaintiffs can easily increase their business and augment their business. Similarly, due to increase in family members, it is very difficult for plaintiffs to make both ends meet. For all these reasons, plaintiffs claim possession of the suit premises.

5. Defendants resisted the Suit by filing written statement dated 06.10.2003 at exhibit-20. It was inter alia contended that the contention of the plaintiffs that the area of the suit premises is 370 sq.ft. is totally false. Defendants are in possession of the premises admeasuring 316 sq.ft. and not 370 sq.ft. It was denied that plaintiffs are residing jointly on the upper floor of the suit property. It was contended that the plaintiffs have constructed two floors in the year 1999 above the suit shop and are residing with their family respectively. Plaintiff No.2 resides with 5 members of his family on the first floor and plaintiff No.1 resides with four members of his family on the second floor.

6. Defendants further contended that plaintiff No.1 is in possession of 130 sq.ft. and not 90 sq.ft. as alleged in the plaint. It was further contended that plaintiffs have suppressed material facts from the Court.

Plaintiffs are having the shop by name “AAFREEN” adjoining to the suit shop and apart from that shop, plaintiffs possess another shop by name “AAFREEN Jewellery” situate at 1897, Blundell Road, Camp, Pune 411 001 admeasuring about 120 sq.ft., which is diagonally opposite to Aafreen shop. The second shop is also on the same road. Thus, both the plaintiffs are having separate shops. Both the shops of the plaintiffs i.e. AAFREEN and AAFREEN Jewellery are situate at prime location and are doing extremely good business through out the year. Adjacent to the suit premises, area of 45 sq.ft. is kept closed by the plaintiffs. Defendants filed additional written statement dated 04.09.2006 controverting the allegations made by the plaintiffs in respect of shop No.3, Shirin Apartment as also House No.36 situate on M.G.Road, Pune - 411 001.

7. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. Parties led oral and documentary evidence. After considering the evidence on record, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiffs preferred Appeal, which is allowed by the learned District Judge. It is against this order, defendants have instituted the present C.R.A. C.R.A. was admitted on 04.03.2011 by issuing Rule.

8. In support of this Application, Mr. Jahagirdar has taken me through the pleadings, evidence on record, findings recorded by the trial Court as also the District Court. He submitted that in the plaint, plaintiffs specifically pleaded requirement of plaintiffs No.1 and 2 as also their family members. Plaintiffs No.1 and 2 are carrying on their business separately. They are also residing separately. In short, plaintiffs are not joint and are doing separate business. During the course of evidence, plaintiff No.1 deposed only about his requirement and not that of plaintiff No.2 or that of 11 family members. Thus, the

requirement of the plaintiffs to be considered in the present case is that of plaintiff No.1 alone and not of anybody else. He further submitted that alongwith the plaint, plaintiffs have annexed tentative plan with measurements. Perusal of this map shows that portion 'A', 'B', 'H', 'G' admeasures 90 sq.ft. However, plaintiffs admitted that the portion shown as 'A', 'B', 'H', 'G' admeasures 130 sq.ft. In other words, plaintiffs have suppressed that plaintiff No.1 is in possession of 130 sq.ft. and not 90 sq.ft. As the plaintiffs have suppressed material facts as regards premises in their possession, the learned District Judge was not justified in accepting their case of reasonable and bonafide requirement.

9. He has also invited my attention to the affidavit of plaintiff No.1 at exhibit-28 and submitted that perusal of this affidavit in examination-in-chief will also show that plaintiff No.1 had suppressed that he is in possession of 45 sq.ft., which was earlier in possession of one Inayat, erstwhile tenant. Possession of area admeasuring 45 sq.ft. in possession of Inayat was obtained by plaintiff No.1 even before instituting the present Suit. In examination-in-chief, plaintiff No.1 deposed about his requirement alone. In paragraph 5 of examination-in-chief, he deposed that Suit was filed against one tenant by name, 'Karachi Sweet Mart'. The said premises are at present in his possession denoted with letters 'A', 'B', 'G', 'H' on the tentative plan annexed with the plaint. He got possession of these premises through Court in 1988-89. In paragraph 9, P.W.1 stated that plaintiff No.2 has his own shop and is carrying on business under the name and style as "AAFREEN Jewellery". He is doing separate business under the name and style as "AAFREEN" Shop of plaintiff No.2 admeasuring 8" x 10" is situate at house No.1897, Blundell Road, Pune - 1. The said premises are rented premises. He has no concern with the said business. Thus, the requirement is of plaintiff No.1 alone.

10. In cross-examination, P.W.1 admitted that the shop in possession of one Inayat (tenant of plaintiffs) was adjacent to the shop of Karachiwala. He admitted that plaintiff had received possession of shop premises of Inayat about 15 years back. He did not disclose the said fact in the plaint. He was put specific question that he did not state in the plaint, the area of shop of said Inayat, which he answered that he has stated the area whatever in his possession on the date of filing of the suit. He admitted sketch at exhibit-68 showing position / location of shop premises of Karachiwala and Inayat. Mr. Jahagirdar submitted that in paragraph 10, P.W.1 admitted that even after receiving possession of Inayat's premises, he did not expand the business because he was using it as a store.

11. Mr. Jahagirdar submitted that plaintiffs did not disclose obtaining possession from other tenant Inayat. Plaintiffs also did not disclose the area of premises in possession of erstwhile tenant Inayat. He further submitted that while answering the question of comparative hardship, the learned District Judge has considered availability of premises which stand in the name of wives of defendants. The learned District Judge was not justified in answering the question of comparative hardship in favour of the plaintiffs.

12. Mr. Jahagirdar criticized the evidence of plaintiff No.1 on the ground that initially, plaintiffs pleaded requirement of plaintiffs No.1 and 2 as also their family members. However, since plaintiffs found it inconvenient as plaintiff No.2 has his own premises, plaintiffs improved their case and deposed only about requirement of plaintiff No.1.

13. As the plaintiffs have suppressed premises in their possession, and more particularly 45 sq.ft. of the erstwhile tenant Inayat, the learned

District Judge was not justified in passing the decree of eviction under Section 16(1)(g) of the Act. In support of this submission, he relied upon the decision of *Tarachand Vs. Durgashankar*, 2004 (Supp.) Bom.C.R. 333, and in particular paragraphs 8 and 9 thereof.

14. Mr. Jahagirdar also invited my attention to the affidavit dated 20.07.2016 made by Kasim Abdeali Chawalla. In paragraph 2, without prejudice to the rights and contentions, it is stated that applicants are ready to handover part of the suit premises, which are in their occupation, to the respondents so as to satisfy the requirement, if any, and to mitigate any hardship to the respondents. Along with the affidavit, map at exhibit-A is enclosed. Defendants have expressed their willingness to handover possession of portion shown in letters 'A', 'B', 'C' and 'D' to the respondents while retaining portion shown as 'A', 'E', 'F' and 'G'. Both these portions can be separated by partition as shown in the map by two red colour lines. In other words, he submitted that partial decree of eviction may be passed against the defendants so as to satisfy the requirement of plaintiffs, if any.

15. Mr. Jahagirdar submitted that the suit premises marked in letters 'A', 'B', 'C', 'D', 'E', 'F', 'G' in map at exhibit-68 admeasures about 324 sq.ft. In the Suit, requirement of plaintiffs No.1 and 2 is pleaded. However, during the course of deposition, requirement of only plaintiff No.1 was made out. Even the learned District Judge has recorded a finding in paragraph 20 that the requirement is of plaintiff No.1. Even if it is accepted that plaintiff No.1 has established his requirement, the learned District Judge was not justified in passing eviction decree in respect of the entire suit premises. The learned District Judge ought to have passed partial eviction decree to the extent of half of the suit premises, more particularly as suggested in the affidavit dated

20.07.2016 made by Kasim Abedali Chawala. Along with this affidavit, map at exhibit-68 is enclosed, which is admitted by the plaintiff No.1. He, therefore, prayed for setting aside the impugned order thereby dismissing the Suit.

16. On the other hand, Mr. Kale supported the impugned order. He submitted that plaintiffs have not suppressed premises in their possession. In fact, in paragraph 1 of the plaint, plaintiffs have specifically asserted that in order to appreciate the suit premises and premises in possession of the plaintiffs, they have enclosed tentative plan along with the measurements, which may be considered as part of the plaint. In paragraph 3, plaintiffs have also disclosed the area of portion shown by letters 'A','B','G','H' as 90 sq.ft. In other words, it cannot be said that plaintiffs have suppressed possession of premises, which were in occupation of erstwhile tenant Inayat. At the highest, it can be said that the area in possession of erstwhile tenant Inayat was 135 sq.ft. As against which the plaintiffs have mentioned area of 90 sq.ft. It, therefore, cannot be said that plaintiffs have suppressed material facts from the Court so as to warrant dismissal of the Suit. He, therefore, prayed for dismissal of C.R.A.

17. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether plaintiffs have established the requirement of plaintiff No.1 and whether the learned District Judge was justified in passing the eviction decree. The other issue is whether the plaintiffs are dis-entitled to eviction decree on the ground of suppression of material facts. Mr. Jahagirdar relied upon the decision of **Tarachand** (*supra*). In that case, plaintiff had pleaded ground of requirement in paragraph 7. In paragraph 7, plaintiff asserted that he was doing

business in partnership with Suresh Achaldas Shroff and others. The said Suresh is young and head strong and it became difficult for the plaintiff to carry on business with him and other partners. Plaintiff and the partners are carrying on the partnership business in the premises owned by Suresh and his family members. Said Suresh is after the plaintiff to dissolve the partnership and vacate the premises, where the plaintiff is carrying on the business. On the request of one Hassaram, plaintiff somehow managed to pull on with the said Suresh but then, it became impossible for him to do so.

18. It is only after plaintiff had stepped into the witness box, he thought it appropriate to amend the plaint. By amending the plaint, plaintiff came with the case of requirement of residence by him for himself and his family members in view of growing requirement of family which consisted of three couples and 3 unmarried sons, who were likely to get married very soon. During the course of cross-examination, plaintiff was confronted with material facts when he had to admit that he was also owning various other premises namely, 1) House No. 597 Sachapir Street which was located in business locality in Central area and had potential for opening business therein which consisted of four blocks and garage; 2) House No. 489 Centre Street, Pune. It came in his evidence that the ground floor in this building can be used for commercial purpose, whereas the upper floor can be used for residence; 3) House No. 1553 at Bhimpura which is a two storied building consisting of 4 rooms on each floor. The building also can be used for residence; and 4) House No. 1420 at Bhimpura which is a single storey building consisting of three rooms. Besides the plaintiff was also in possession of the first floor in House No. 6A Ambedkar Road which consisted of three bed rooms, whereas, the ground floor in that building was in possession of tenant Sara Raut against whom decree for eviction

was already passed. In paragraph 20 of the cross-examination, plaintiff admitted that he received possession of the said premises from the tenant. Besides, the plaintiff admitted in evidence that he owns house No. 1243 at Mochi Mohalla which is a two storeyed building consisting of four rooms on each floor. That building can be used for residence. It is in that context, the learned Single Judge of this Court observed that these facts were indeed relevant for deciding the issue of bonafide and reasonableness of the requirement of the plaintiff, but were not disclosed either in the pleadings or atleast in the examination-in-chief when the plaintiff entered the witness box. It was observed in paragraphs 8 and 9 thus,

“8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisitions and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bonafide and reasonable.

9. I have no hesitation in taking the view that in the fact situation of the present case the Plaintiffs has failed to plead and also depose in his evidence (examination-in-chief) about the ownership of other premises capable of being used for the requirement pressed into service in the subject suit. Besides, he has failed to disclose and explain that even the other premises were not sufficient to satisfy the requirement pressed into service in the suit against the tenant. Only when the landlord pleads and proves all these material facts that the Court would be able to adjudicate fully, completely and effectually as to whether the requirement pressed into service by the landlord in the suit so filed is bonafide and reasonable. As mentioned earlier, it is well settled that the landlord is not only required to establish his need to be bonafide but also to be reasonable. If the landlord fails to plead or establish either of this ingredient then the ground under Section 13(1)(g) of the Act for eviction is unavailable to the landlord. Inherent in this test is that if the landlord has failed to disclose relevant materials in the pleading and in his evidence (examination-in-chief), de jure, the landlord has not approached the court with clean hands. In such a case, it will be the duty of the court to non-suit the landlord with regard to this ground. It will be useful to place reliance on the enunciation of the Apex court in the case of S.P.

Chengalvaraya Naidu's case (supra). The Apex Court has observed that duty is cast upon the Plaintiff to disclose all the facts, it is the duty of the Plaintiff to come to Court with true case and prove it by true evidence. The Apex Court has further observed that deliberate deception with the desire of securing something by taking unfair advantage of another, it is a deception in order to gain by another's loss, it is a cheating intended to get an advantage. Further, in Paragraph 6 it has observed that, non disclosure of all the material and relevant facts at the trial tantamount to playing fraud on the Court. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. Withholding of any vital document in this case information, in order to gain advantage on the other side then he would be guilty of fraud on the Court as well as on the opposite party. Such a person can be summarily thrown out at any stage of the litigation. If this principle is to be applied to the facts of the present case, I have no manner of doubt that the Respondent-Landlord will have to be non suited on this ground. Because, it is a case of non disclosure of material facts and information, therefore, one of approaching the Court with unclean hands. And as observed by the Apex Court tantamount to playing fraud on the court as well as the opposite side. In this case sheerly because the Petitioner tenant was vigilant enough, could muster the necessary information to confront the Respondent landlord regarding his need being note bonafide and reasonable. What is relevant to note is that during the cross examination the Plaintiff not only conceded that he owns and possessed other premises, but also conceded the fact that he had filed atleast three suits against some other tenants and, in all the three suits he has succeeded in getting the decree for possession. As a matter of fact, in the cross examination the plaintiff has admitted that he has obtained possession in respect of ground floor premises in the building in which he is presently staying situated at 6A Dr. Ambedkar road, from his erstwhile tenant. That premises is undoubtedly consisting of three rooms. This is crucial fact and ought to have been disclosed during the evidence since that event had happened prior to the Plaintiff entering the witness box. This fact by itself clearly indicates the need pressed into service by the landlord for himself and his family members was neither bonafide nor reasonable. Besides this premises, the landlord has also admitted in his evidence that the suit filed against the other two tenants Nanawani and Kanawala have been decreed in respect of the properties House No. 1420 at Bhimpura and House No. 597 Sachpir Street respectively. No positive evidence has been brought on record by the Plaintiff landlord that those premises are not in his possession. What is further relevant to note is that in so far as the House No. 489 Centre Street is concerned, the plaintiff has admitted in his cross examination at Para 13 that even that property is owned by him and the ground floor is commercial while the first floor is for residence. Moreover, during the examination in chief the Defendants' witness has positively stated in Para 11 that House No. 489 Centre Street, first floor is vacant. There is no cross examination on this material aspect. The learned counsel for the Respondent

landlord is not in a position to point out from the cross examination or other evidence to counter this position. Taking over all view of the matter, the inescapable conclusion is that the case as pleaded by the Plaintiff has not been proved. On the other hand, the evidence on record would clearly show that the landlord has admitted that he is owner of the suit property and also in possession of other premises which can be used both for business as well as residence. Viewed in this perspective, no amount of any other reasoning can be of any avail to the Respondent-Plaintiff. In this view of the matter even the issue of bonafide and reasonable requirement will have to answered against the Respondent-landlord.”

19. Plaintiff Altaf stated in paragraph 2 of the affidavit that he has filed a tentative plan showing suit premises in possession of the tenant and the premises in his possession along with the plaint; it is the part of plaint. He is in possession of 90 sq.ft. The premises shown in the tentative plan and denoted in slanting line is in his possession. The premises in his possession is having frontage facing the main road about 4 feet 10 inches only East, West and South, North about 10 ft. in length. The premises in his possession are denoted with letters 'A','B','G','H'. The rest of the area on the ground floor in the suit premises in possession of the defendant are denoted with letters 'A', 'F', 'E', 'D', 'C', 'B' and it measures four times bigger than the premises in his possession. The premises in his possession is situate as a matter of fact in a lane known as Kolea Galli. In paragraph 5, he stated that he has no place of business. He had instituted Suit against one tenant in the property by name 'Karachi Sweet Mart'. The said premises at present are in his possession denoted with letters 'A', 'B', 'G', 'H' on the plaint. He got possession of that much area shown with the letters 'A', 'B', 'G', 'H' through Court in 1988-89. The premises in his possession are so small that after putting a wooden cupboard for exhibition of articles, there remains no place for customers to stand in the shop. The customers are, therefore, required to stand on the road to take delivery of the purchased goods. His family is increasing and at present, there are 6 members. It is, therefore, very difficult for him to maintain his family within a small

income from the present business. He cannot earn more to maintain his family unless he augments his business, and therefore, the said premises are required reasonably and bonafide. Thus, in the plaint as also in the examination-in-chief, plaintiff has specifically deposed premises in his possession, albeit admeasuring 90 sq.ft. as against 130 sq.ft. He further deposed that defendants and sister, Mehfuza are the children of Abedali Mohammadali Chawala. Nafisa is wife of defendant No.1. Fatima is wife of defendant No.2. He further deposed that shops No.8 and 9 admeasuring 314 sq.ft. and 366 sq.ft., in all, admeasuring 680 sq.ft. are situate in Mehta Apartment, C.T.S.No.813/814, Bhawani Peth, Pune 42. The said premises are situate in busy business locality and residential locality. Defendants are in possession of these premises and have been purchased from their funds by defendants No.1 and 2 but in the names of their wives and sister, Mehfuza. He further deposed that shop No.3, Shireen Apartments is in possession of the defendants. Shops stand in the name of Nafisa, wife of defendant No.1. This shop is actually in possession of defendants No.1 and 2. Defendants No.1 and 2 have interest in house No.36, M. G. Road, Pune-1. He has also produced photographs on record. Perusal of the cross-examination does not indicate that any favourable response was elicited by the defendants. Mr. Jahagirdar relied upon paragraph 10 of the cross-examination wherein plaintiffs stated that after receiving possession of Inayat's premises, he did not expand the business because he was using it as a store. In my opinion, Karachiwala Sweet Mart were occupying 90 sq.ft. and behind this, Inayat was occupying 45 sq.ft. Perusal of tentative plan annexed along with the plaint shows that it is in possession of plaintiffs. Plaintiffs denied the suggestion that shutter of Inayat's shop always remained closed. In other words, it cannot be said that premises admeasuring 45 sq.ft. in possession of the erstwhile tenant Inayat are not in use. They are very much used by the plaintiffs as a store room. As

far as the statement of the plaintiff that after putting wooden cupboard for exhibition of articles, there remains no place for customers to stand in the shop and that they are required to stand on the road to take delivery of purchased goods remained unchallenged.

20. As noted earlier, in the present case, it cannot be said that plaintiffs had suppressed availability of other premises shown by letters 'A', 'B', 'H', 'G'. At the highest, instead of that portion admeasuring 135 sq.ft., plaintiffs have described area to the extent of 90 sq.ft. However, nothing turns by not disclosing the exact area as far as the bonafide requirement of the plaintiffs is concerned.

21. The learned District Judge has considered the ground of bonafide requirement from paragraphs 13 to 23. In paragraph 20, the learned District Judge has observed that the dominant intention appears to be to acquire the suit premises for augmenting the business of plaintiff No.1. The non-disclosure of other rented premises in possession of plaintiff No.2 will not be fatal to the plaintiffs requirement. The insufficiency of premises in possession of plaintiff No.1 can be gathered from the suggestions given on behalf of the defendants that the customers can stand on the platform of 2 to 2 ½ ft. in width. I do not find that the learned District Judge has committed any error in that regard. As noted earlier, the learned District Judge has accepted that the suit premises are bonafide and reasonably required by the plaintiff No.1. In fact, perusal of paragraph 9 of examination-in-chief of plaintiff No.1 shows that plaintiff No.2 has his own shop and is carrying on business under the name and style as “AAFREEN Jewellery”. He is doing separate business in the suit property under the name and style as “AAFREEN”. Plaintiff No.2 is in possession of shop admeasuring about 80 sq.ft. situate at house No.1897, Blundell Road, Pune 411 001. What is relevant to note

is that the said premises are also rented premises. Plaintiff No.1 further deposed that he has no concern with the said business.

22. As far as the question of comparative hardship is concerned, the learned District Judge has considered this issue from paragraphs 24 onwards. Even if we exclude from consideration, premises standing in the name of defendant's wife, still, no material is produced on record by defendants to show that they made any attempt to secure alternate accommodation. In paragraph 26, the learned District Judge observed that defendants are in possession of two rented shops bearing No.8 and 9 at Bhavani Peth admeasuring 296 sq.mtrs. and 30 sq.mtrs. respectively. The said shops are located in the business locality. It has further come on record that defendants have not searched for any premises after filing of the Suit. In view of the decision in ***Suhasisni Atmaram Parab Vs. B. H. Khata*, 2002 (4) ALL M.R. 770**, the greater hardship will be caused to the plaintiffs if the decree is refused. The decision of ***Suhasisni*** (*supra*) is based on the decision of the Apex Court in the case of ***Bega Begum Vs. Abdulahad Khan*, AIR 1979 SC 272**.

23. Mr. Jahagirdar relied upon affidavit dated 20.07.2016 made by Kasim Abedali Chawala to contend that partial eviction decree may be passed. Mr. Kale submitted that the suggestion made in the affidavit is not acceptable to the plaintiffs. Even otherwise, I do not find any merit in the suggestion made in the affidavit. In the first place, no such suggestion was given in the Courts below. In fact in the Courts below, defendants have contested claim of bonafide requirement made by the plaintiffs. Secondly, in the case of ***Chetan Anand Vs. Indrajeet*, 2013 (3) Mh.L.J. 31**, the learned Single Judge, after exhaustively considering question of passing of partial eviction decree, has held that plea of partial decree in relation to the part of the premises is a mixed question,

and therefore, cannot be entertained for the first time in revisional jurisdiction. It was observed in paragraph 38 thus,

“38. To my mind, Mr. Sakhare's reliance on this judgment of the learned Single Judge is apposite and appropriate. It is not as if in the case like the present one, the Applicants for the first time in revisional jurisdiction can urge before this Court that the Trial Court has failed to abide by the statutory mandate flowing from sub-section (2) of Section 13. For such plea being raised in revisional jurisdiction and which jurisdiction is limited, there has to be some material before the Courts below. If the materials before the Courts below rest only on the availability of other accommodation and premises to the landlord for his requirement, either of residential or non residential nature, then, the parties like the Applicants cannot claim as of right that they be permitted to raise a plea of the present nature and for the first time in the revisional jurisdiction. Concededly, there is nothing in the judgments of the Courts below or in the oral and documentary evidence, which would enable me to hold that the Applicants did request the Trial Court or the lower Appellate Court to consider passing of a partial Decree or in relation to a part of the premises. Therefore, this is a plea raised for the first time and it being a mixed question, to my mind, it would not be proper to entertain it. Assuming that Mr. Jahagirdar is right in contending that there is a mandate on the Court flowing from the legal provision, yet that mandate is required to be fulfilled by the Courts below provided the parties place before it necessary materials. The Supreme Court judgment in *Badrinarayan* (supra) does not dispense with such requirement, but rather reaffirms the position that the parties cannot, in the absence of all such materials, urge such a plea for the first time in a higher court. Even if there is mandate which is required to be fulfilled as urged by Mr. Jahagirdar and that mandate is to record satisfaction that no hardship would be caused either to the tenant or to the landlord, but if the Court is satisfied that having regard to all the circumstances of the case including the question as to whether other reasonable accommodation is available for the landlord or the tenant, the greater hardship would be caused by passing the Decree than refusing it, and in relation to that mandate the Applicants have miserably failed to prove their case, then, they cannot be heard in the facts and circumstances of this case to urge that the statutory mandate is not discharged. That statutory mandate requires two things, the Court must be satisfied that no hardship would be caused to either of the parties. That hardship would not be caused by passing a Decree in respect of a part of the premises. If on the earlier point the Court is satisfied that the need of the landlord is proved and in relation to the entire premises and that need could not be satisfied because other accommodation available at his disposal is not reasonable, then, the parties like the Applicants cannot be heard to say that there is

non fulfillment of the later statutory mandate, particularly when they fail to place any material in the first instance or the first available opportunity. If such pleas are raised in the highest court for the first time, they cannot be entertained without any material. That means there is no finality to proceedings. This is really the ratio of the above decisions. To my mind, the argument which has been raised before me is as a last resort to avoid consequences of the Decree. That hotel business has been settled by the Applicants in 1976 as claimed by them and has been continuing for decades from the suit premises, is no ground to hold that non fulfillment of the statutory mandate as urged by Mr. Jahagirdar vitiates the decree in this case. Once concurrent findings on the point of both reasonable and bonafide requirement and comparative hardship have been rightly rendered in favour of the Respondents, then, it is futile to urge that a partial decree should be passed. That would mean that this Court finds fault with the satisfaction that has been reached with regard to requirement of the premises by the Respondents. Once that satisfaction in this case has not been found to be vitiated by any error of jurisdiction and particularly the Courts below have not acted illegally nor they committed material irregularity, then, all the more the concurrent decrees cannot be set aside in revisional jurisdiction.”

24. In the light of the aforesaid discussion, I do not find that the defendants have made out any case for invocation of powers under Section 115 of C.P.C. Defendants were not in a position to demonstrate that the findings recorded by the learned District Judge are based on no evidence or that they are contrary to the evidence on record. Defendants were also not in a position to demonstrate that on the basis of evidence on record, no reasonable or prudent person would have reached the conclusions arrived at by the District Court. Merely because on the basis of evidence on record, another view is possible that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, Application fails and the same is dismissed. Rule is discharged in the circumstances of the case. There shall be no order as to costs.

25. At this stage, Mr. Jahagirdar orally applies for continuation of the interim order for the period of 12 weeks from today. He assures that within 3 weeks from today, applicants and all adult family members using the suit premises, will give usual undertaking with advance copy

to the other side, incorporating therein that,

- i) they are in possession and nobody else is in possession of the suit premises;
- ii) they have neither created third party interest nor parted with possession of the suit premises;
- iii) they will hereafter neither create third party interest nor part with possession of the suit premises;
- iv) they will pay up-to-date arrears of rent, if any, to the respondents within two weeks from today;
- v) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will vacate and handover vacant and peaceful possession of the suit premises to the respondents;

26. Subject to applicants and all adult family members using the suit premises filing undertaking in the aforesaid terms within three weeks from today after giving advance copy to the other side, decree shall not be executed for a period of twelve weeks from today. It is made clear that in case they do not file undertaking within three weeks from today, the interim order shall stand vacated without further reference to the Court.

27. List the Application for 'reporting compliance' after four weeks.

(R. G. KETKAR, J.)

Minal Parab