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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION STAMP NO.26660 OF 2016
IN
WRIT PETITION NO.779 OF 2016

1. Trishla Vijaykumar Atri APPLICANTS
Age – 64 years, Occ – Household

2. Manish Vijaykumar Atri,
Age – 37 years, Occ – Business

Both R/o House No.2592, M. G. Road,
Ahmednagar, Taluka and District – Ahmednagar

VERSUS

1. Ishrat Fatima Ali Akbarkhan RESPONDENTS
Deceased through her LRs

1A. Fahim Shaikh Nadim,
Age – 34 years, Occ – Service

1B. Kalim Shaikh Nadim,
Age – 31 years, Occ – Service

1C. Farhat Abdulsami Shaikh,
Age – 35 years, Occ – Household

Respondents No.1A to 1C
R/o Gajanan Housing Society,
Mukund Nagar, Ahmednagar
Taluka and District – Ahmednagar

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

3. Kumar Mohammed Kazin Kadir Khan
Age – 26 years, Occ – Education

4. Kumar Abdul Kazin Kadir Khan
Age – 25 years, Occ – Education

Respondents No.2 to 4
R/o House No.2592, Pachilimb Galli
M. G. Road, Cloth Market, Ahmednagar
Taluka and District - Ahmednagar

WITH

REVIEW APPLICATION STAMP NO.26666 OF 2016
IN
WRIT PETITION NO.780 OF 2016

M/s Walker and Company,
Through its proprietors,

- | | | |
|----|--|------------|
| 1. | Trishla Vijaykumar Atri
Age – 64 years, Occ – Household | APPLICANTS |
| 2. | Manish Vijaykumar Atri,
Age – 37 years, Occ – Business | |

Both R/o House No.2592, M. G. Road,
Ahmednagar, Taluka and District – Ahmednagar

VERSUS

- | | | |
|-----|---|-------------|
| 1. | Ishrat Fatima Ali Akbarkhan
Deceased through her LRs | RESPONDENTS |
| 1A. | Fahim Shaikh Nadim,
Age – 34 years, Occ – Service | |
| 1B. | Kalim Shaikh Nadim,
Age – 31 years, Occ – Service | |
| 1C. | Farhat Abdulsami Shaikh,
Age – 35 years, Occ – Household | |

Respondents No.1A to 1C
R/o Gajanan Housing Society,
Mukund Nagar, Ahmednagar
Taluka and District – Ahmednagar

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|----|---|--|
| 2. | Nusrat Rabiya Ali Akbar Khan
Age – 48 years, Occ – Household | |
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R/o House No.2592, M. G. Road, Ahmednagar
Taluka and District - Ahmednagar

.....
Mr. P. B. Shirsath, Advocate for the applicants
Mr. V. S. Bedre, Advocate for respondents
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th JANUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.
2. Mr. P. B. Shirsath, learned advocate appearing for the review applicants contends that while the matters were being prosecuted before the trial as well as appellate courts and even before this court, all through it appears that relevant aspect relating to section 16 (2) of the Maharashtra Rent Control Act has been missed out. He, having regard to the provision as well as rulings on the same, particularly putting heavy emphasis on a judgment in the case of "*Gyanchand Parmanand Jain and Others V/s Wamanrao Vyankatrao Shinde*" reported in 2010 (5) Bom. C.R. 542, contends that looking at the contentions on behalf of the parties, along with the issue of *bonafide* requirement, a mandatory consideration alongside pursuant to section 16 (2) of the

Maharashtra Rent Control Act ought to have weighed with the courts, especially, having regard to the pleadings of the parties, as there were at least two shops which were available and in the circumstances, taking into account the discussion and the ratio emerging from the citation, which in turn has been with reference to various decisions, including decision by the Apex Court, question of partial eviction in the circumstances ought to have fallen for consideration.

3. Section 16 (2) of the Maharashtra Rent Control Act, on which heavy reliance is being placed by learned advocate for the review applicant reads thus -

“16. (1)

(2) No decree for eviction shall be passed on the ground, specified in clause (g) of sub-section (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.”

4. From aforesaid, it appears that a consideration is ordained about greater hardship being suffered by a party to the litigation.

5. In the present matters, perusal of the judgments hitherto and the one even by this court under the writ petitions do reflect that the contentions on hardship have not only been adverted to, but also have been dwelt upon. Submissions as were advanced and on the aspects on which they were advanced, appear to have been sufficiently referred to and considered and decided.

6. In the citation relied upon on behalf of the review applicant, it appears that it had been specifically pleaded by the tenant that from two shops which were let out, one shop may satisfy need of landlord and that apart two larger shops were given to M/s B. R. Patel and Company and were let out later than the defendant-tenant. One may have also to bear in mind that in case under citation, landlord had in trial court succeeded getting decree of eviction on the ground of *bonafide* requirement and comparative hardship was considered to be suffered more by landlord. However, appellate court had considered hardship would be suffered more by tenant and had set aside the decree. It is in this background the observations had occurred. It was

case wherein the matter was remanded for reconsideration with reference to pleadings. It has been observed in the judgment that parties are expected to raise specific pleadings and court has to frame issues based on those pleadings so as to enable the parties to lead evidence to enable the court to form an opinion on the issue. The case of Gyanchand (*supra*), being relied on to justify review, is distinguishable. As such, it would not be a case where it can be said that any of the considerations required for review of the matters are available in present case for review applicants.

7. It does not appear that any case had been pleaded, contended or even made out at any point of time during the litigation, even up to this court, while the writ petitions were being decided about partial eviction. It is after the decision has been rendered by this court, submissions, based on a decision of Hon'ble Single Judge of this court, the cited case, are being advanced, which appear to be a maiden attempt before this court in review.

8. So far as review of orders are concerned, it is well settled that a review could be available while there is an error apparent on the face of record or occurrence of such material which could

not have been produced before decision has been rendered or for any other sufficient reason. It does not appear to be such a case wherein aforesaid factors are available in present matter.

9. Additionally, it will have to be seen that even otherwise, the review applicants would not carry any benefit, for, the eviction has been granted by the courts hitherto on other ground as well - apart from *bonafide* requirement of landlord, on the ground of default, referable to section 15 of the Maharashtra Rent Control Act and thus, the review applications fail and stand dismissed. Rule stands discharged.

10. At this stage, Mr. Sirsath, learned advocate for the review applicants urges for continuation of interim relief for a period of eight weeks in order to enable review applicants to approach against the order passed in writ petitions as well as in the review applications. Learned advocate Mr. Bedre, however, has reservations and submits that no indulgence been shown to such a request. However, I deem it expedient to grant time as requested. As such, interim relief operating hitherto to continue to operate for a further period of eight weeks from today.

[SUNIL P. DESHMUKH, J.]