

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5734 OF 1995

Central Bank of India	..Petitioner
VS.	
Sunshine Sewing and Embroidery Class	..Respondent

Mr. Agnel Carneiro with Mr. Rushil Mathur i/b. M/s. Mulla & Mulla
and Craigie Blunt & Caroe for Petitioner.
Mr. Durgesh Kulkarni i/b. Mr. Durgaprasad Sabnis for Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 06 October 2017
Date of Pronouncing the Judgment : 11 October 2017

JUDGMENT :-

1] The petitioner bank questions the judgment and decree dated 14th July 1995 made by the appellate bench of the Small Causes Court (appeal court), reversing the judgment and decree dated 4th October 1986 made by the Small Causes Court (trial court) in RAE Suit No.2566 of 1971.

2] The trial court, by judgment and decree dated 4th October 1986 had ordered the eviction of the respondent on three grounds:-

- (a) Reasonable and *bona fide* requirement (section 13(1) (g) of the Bombay Rent Act);
- (b) Illegal and unauthorised subletting (section 13(1)(e) of the Bombay Rent Act); and
- (c) Non user of the suit premises (section 13(1)(k) of the Bombay Rent Act) for a period of more than six months.

3] The appeal court, by judgment and decree dated 14th July

1995 has reversed the trial court, on all three grounds and dismissed the petitioner's RAE Suit No. 2566 of 1971. Hence, the present petition.

4] Mr. Carneiro, learned counsel for the petitioner bank submits that the appeal court, has very selectively referred to certain statements of paragraphs from the depositions but ignored relevant and vital statements, which were not even seriously disputed. Mr. Carneiro submits that the petitioner is a nationalized bank in *bona fide* need of additional space. Mr. Carneiro submits that there was nothing *mala fide* or unreasonable in the requirement pleaded and proved by the petitioner bank. Mr. Carneiro submits that permitting the respondent to retain the suit premises, which are virtually in the midst of other office space held by the petitioner bank in the very same building, is certainly not conducive to the banking business of the petitioner which, since, nationalization has increased in leaps and bounds. Mr. Carneiro submits that the appeal court, has completely misconstrued scope of reasonable and *bona fide* requirement and further, has ignored several Supreme Court decisions which have laid down that the landlord is a best judge of its own requirements and there is no question of either the tenant or the court directing or advising the landlord as to the manner in which the landlord must undertake his business activity. Mr. Carneiro has made reference to some decisions of the Supreme Court, which will be addressed in the course of this judgment and order.

5] Mr. Carneiro submits that there is ample material on record to establish that the tenant had in fact sublet the suit premises to Advocate Bhawalkar. Merely because said Advocate Bhawalkar may have stated that he was paying Rs.300/- for the use of the

furniture and further, he was permitted to use the suit premises on account of '*friendly relations*' was not sufficient for the appeal court to reverse the trial court. Mr. Carneiro submits that the terms of contract between the tenant and the sub tenant are matters within the exclusive knowledge of the two parties. In the present case, the material on record establishes that the possession of the suit premises was parted to Advocate Bhawalkar and further, Mr. Bhawalkar has himself admitted that he was making payments to the respondent tenant. Mr. Carneiro submits that this material was more than sufficient to order eviction on the ground contemplated under section 13(1)(e) of the Bombay Rent Act.

6] Mr. Carneiro submits that there is evidence on record that the respondent tenant had failed to use the suit premises for a continuous period of more than six months, when she had travelled to England. Mr. Carneiro submits that this circumstance without anything else was sufficient to make a decree for eviction under section 13(1)(k) of the Bombay Rent Act.

7] For all the aforesaid reasons, Mr. Carneiro submits that the decree made by the trial court was correct. He submits that the decree made by the appeal court exceeds jurisdiction and therefore warrants interference, in the facts and circumstances of the present case.

8] Mr. Durgesh Kulkarni, learned counsel for the respondent tenant submits that there is no evidence on record that the suit premises were not in use for a continuous period of over six months. In any case, he submits that the respondent tenant has deposed that for some time she had travelled to England and during that period, the premises were closed. Mr. Kulkarni submits that

this is more than sufficient cause and therefore no decree for eviction could have been made under under section 13(1)(k) of the Bombay Rent Act.

9] Mr. Kulkarni submits that in this case the tenant has explained relationship between herself and Advocate Bhawalkar, who was, in any case, using only part of the suit premises. Mr. Kulkarni submits that the key to the main door of the suit premises was always held by the tenant and in that sense, no exclusive possession was also handed over to Advocate Bhawalkar. Without prejudice, Mr. Kulkarni submits that as pleaded by the respondent tenant, Advocate Bhawalkar, was only a licensee in respect of a portion of the suit premises. He points out that in this case since, this licence was created prior to 1st February 1973, protection under section 15(2) of the Bombay Rent Act was available and there was no question of making any decree under section 13(1)(e) of the Bombay Rent Act.

10] Mr. Kulkarni submits that the burden of establishing reasonable and *bona fide* requirement as also comparative hardship is always on the landlord. He submits that such burden was never discharged in the facts and circumstances of the present case. Mr. Kulkarni submits that the petitioner bank, not only had a large area in the same building where the suit premises are located but further, the petitioner bank, in the vicinity acquired a huge building. Mr. Kulkarni points out that the suit premises in the present case admeasure hardly 272 sq. ft. Taking into consideration the excessive space which the petitioner bank has already acquired, there was no case made out for securing the eviction of the respondent tenant on the ground of reasonable and *bona fide* requirement. Mr. Kulkarni submits that there is absolutely nothing reasonable about the requirement portrayed by the petitioner

bank. He submits that the petitioner bank is in a very sound financial position and therefore in a position to acquire as much space as it requires. He submits that the respondent tenant who was only conducting embroidery classes from the suit premises, will not be in a position to acquire similar premises in the similar locality. Accordingly, the issue of comparative hardship is required to be answered in favour of the respondent tenant. Mr. Kulkarni submits that the witnesses on behalf of the petitioner bank have admitted that some of the activities of the bank were closed down and further, the witnesses disclaim any knowledge as to the precise purpose for which the suit premises were to be put to use, in case, the possession was recovered. Mr. Kulkarni submits that the appeal court, which is a final court of facts, has, upon appreciation of the material on record, quite correctly held that the requirement of the petitioner bank was neither *bona fide* nor reasonable. He submits that the issue of comparative hardship has been rightly answered in favour of the respondent tenant.

11] Mr. Kulkarni submits that in this case the notice for eviction was issued in the year 1959 and the suit for eviction was instituted in the year 1969. Relaying upon the case of ***Abdul Alim Abdul Majidkhan vs. Mulshankar Jaychand Vora***¹, Mr. Kulkarni submits that the delay involved, clearly mitigates against the *bona fides* of the requirement.

12] Finally, Mr. Kulkarni submits that the reasonable and *bona fide* requirement of the landlord is required to be existing not only on the date of the suit but also it should continue to subsist till the date on which the decree is made. Mr. Kulkarni submits that by the time the decree was made, the petitioner bank had already acquired larger premises in the vicinity, and therefore, the

1 147 Bom. R.C. 1986

requirement, if any, did not subsist on the date of the decree. He relies upon **Waman Dattattraya Kale & Anr. vs. Waman D. Purohit**² in support of such proposition.

13] The rival contentions now fall for determination.

14] In so far as the ground of non user is concerned, Mr. Kulkarni is right that there is no case made out to warrant eviction under section 13(1)(k) of the Bombay Rent Act. In the first place, neither the pleadings nor the evidence is quite clear as regards the extent of non user. Secondly, the material on record suggests that the respondent tenant had travelled to England for some time and it is during this period, that the premises may not have been used for the purpose for which they were let out. Section 13(1)(k) permits eviction where premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. In the facts and circumstances of the present case, it cannot be said that the ground as contemplated by section 13(1)(k) has been made out. Accordingly, there is no reason to interfere with the order of the appeal court, to the extent, it reversed the trial court as regards eviction on the ground under section 13(1)(k) of the Bombay Rent Act.

15] As regards the ground of subletting, reference is required to be made to the provisions in section 13(1)(e), which read as follows:

“(e) that the tenant has, since the coming into operation of this Act, [unlawfully sub-let] [, or after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises as assigned or transferred in any other manner] his interest therein; or”

2 367 Bom. R. C. 1985

16] The provisions of section 13(1)(e) are required to be read and construed along with the provisions in section 15 of the Bombay Rent Act, which read as follows:

“15. (1) Notwithstanding anything contained in any law (but subject to any contract to the contrary,) it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein [and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises]:

Provided that the [State] Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held [under such [leases or class of leases [or the giving on licence any premises or class of premises] and to such extent as may be specified in the notification.]

(2) The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant and against the assignment or transfer in any other manner of the interest of the tenant therein contained in sub-section (1), shall subject to the provisions of this sub-section be deemed to have had no effect [before the 1st day of February 1973], in any area in which this act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a Court, any such sub-lease, assignment or transfer of any such purported sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1), as purported sub-lessee, assignee or transferee and has continued in a possession [on the date aforesaid] shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13.

The provisions aforesaid of this sub-section shall not affect in any manner the operation of the sub-section (1) after the [date aforesaid].”

[Emphasis supplied]

17] In this case, the plaint alleges that in or about November 1969, the petitioner bank noticed that the suit premises were not being used by the respondent tenant or her business of sewing and embroidery class, but the premises were found to be in occupation of some stranger. In the plaint it is further stated that the notice was addressed on 8th November 1969 by the petitioner to the respondent. The respondent by her reply dated 25th November 1969, stated that one A. S. Bhawalkar was in occupation of the suit premises on '*leave and licence basis*'.

18] Mr. A. S. Bhawalkar, was examined as a witness in the proceedings. He has stated that he was occupying a portion of the suit premises as he was permitted to do so by the respondent. He has deposed that such permission was granted, as a parties were friends and further, Mr. Bhawalkar was paying an amount of Rs.300/- for use of the furniture in the suit premises. Allegations of sub tenancy were squarely denied.

19] Although, Mr. Carneiro, learned counsel for the petitioner is right in his submission that the burden of establishing the precise relationship between the tenant and the person, who is found in possession in the tenanted premises, lies on the tenant, in the facts and circumstances of the present case, the matter has to be considered in the light of the statutory provisions contained in section 13(1)(e) and section 15 of the Bombay Rent Act.

20] In this case, the suit for eviction i.e. RAE Suit No. 256 of 1971 was instituted in the year 1971. The allegation in the suit was that the respondent tenant had sublet the suit premises sometime in the year 1969 or even earlier. Section 13(1)(e) provides that where the tenant has unlawfully sublet or after the date of commencement of

the Bombay Rent (Amendment) Act, 1973 unlawfully given on licence the whole or part of premises, then, such tenant, shall be liable to eviction. Section 15(1) of the Bombay Rent Act, which begins with a non obstante clause however provides that it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises and after the date of commencement of the Bombay Rent Act (Amendment) 1973 for any tenant to give on licence the whole or any part of such premises provided that the State Government may by notification in the official gazette permit in any area the transfer of interest in premises held under such leases or class of leases or giving on licence any premises or class of premises and to such extent as may be specified in the notification.

21] Section 15(2) however, in terms, provides that the prohibition against subletting of whole or any part of the premises which have been let to any tenant and against assignment or transfer of any other manner of the interest of the tenant therein contained in sub section (1) shall, subject to provisions of this sub section be deemed to have had no effect before the first day of February 1973, in any area in which this Act was in operation before such commencement and accordingly, notwithstanding anything contained in any contract or in any judgment, decree or order of a court, any such subletting, assignment or transfer of any such purported sub lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub section (1), as purported sub lessee, assignee or transferee and has continued in a possession on the date aforesaid, shall be deemed to be valid and effectual for all purposes, and any tenant who has sublet any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under

section 13(1)(e) of the Bombay Rent Act.

22] From the aforesaid, it does appear that any sub lease or licence prior to 1st February 1973 is protected and on the basis of the same, no decree of eviction can be made under section 13(1)(e) of the Bombay Rent Act. Further, from the evidence on record it does appear that no sub lease was created in favour of Advocate Bhawalkar but at the highest, Advocate Bhawalkar, was granted use of a portion of the suit premises on leave and licence basis. Since, admittedly, such user was prior to 1st February 1973, the respondent was entitled to the benefit of section 15(2) of the Bombay Rent Act. Therefore, no decree could have been made under section 15(2) of the Bombay Rent Act. The conclusion of the appeal court on this issue warrants no interference, though for reasons other than those stated by the appeal court. Since, conclusion is right there is no question of interfering with the appeal court's order, in so far as it relates to eviction on the ground contemplated by section 13(1)(e) of the Bombay Rent Act.

23] On the aspect of eviction on the ground of reasonable and *bona fide* requirement however, it appears that the appeal court has misdirected itself both in law as well as facts. Relevant and vital evidence on behalf of the petitioner bank has been completely glossed over and instead, the appeal court, has chosen to rely upon certain portions or passages from the evidence, in order to non suit the petitioner. The portion or passages relied upon are also construed out of context. The principles laid down by the Supreme Court, in matters, where eviction is applied for on the ground of reasonable and *bona fide* requirement have also been ignored by the appeal court. The appeal court has clearly erred in placing the entire burden of establishing comparative hardships on the

petitioner landlord. The appeal court has also erred in taking into consideration certain irrelevant matters like the payment capacity of the petitioner landlord in determining issue of comparative hardships.

24] In the present case, the suit premises are described as room no. 7 admeasuring 272 sq. ft. in the east wing of the 4th floor of the Central Bank building. There is material on record which suggests that since the entire building is owned by the petitioner bank, most of the premises therein are possessed by the petitioner bank itself. Only some of the premises continue in the occupation of tenants and taking into consideration the growing needs of the bank, the petitioner bank, has been taking steps to secure eviction of the tenants on the ground that the petitioner bank reasonably and *bona fide* requires such premises for its own use.

25] The petitioner bank has examined no less than five witnesses in support of its case.

26] Mr. Divakar Narayan Opalekar (P.W. 2), Officer on Special Duty with the Central Bank has deposed in the matter. After indicating the various capacities in which he has worked with the bank, he has deposed that the bank was nationalized in the year 1969 and the workload has considerably considered since. He has deposed that the number of branches having increased from 3000 to 21000. He has deposed that the deposits which were in the range of Rs.800 Crores in 1969 have presently increased to Rs.3,000 Crores. The advances made by the bank have also increased considerably i.e. upto 1,800 crores. He has deposed that the Bombay office is concerned with clearing of cheques received from other branches in the entire country. He has deposed that

after nationalization, additional works were allotted to the Bombay main office in the Central Bank building where the suit premises are located. He has no doubt deposed that number of departments from the Bombay main office have been shifted to the adjoining Wadia building, Standard building and Chandramukhi building between the years 1971 to 1973. He has stated that such shifting was on account of bank experiencing shortage of accommodation and the expansion of its business. He deposed that the Home Saving Department was shifted from Bombay main office to Wadia building. He deposed that even the Executor and Trustee department, Credit Investment Department were also shifted from the Bombay main building to Wadia building. He admitted that the bank purchased one building named as Ewart House from LIC and the Foreign Exchange Department was shifted to this building. He has deposed that inspite of such shifting of various departments to other building the bank experienced shortage of accommodation in the main building. He deposed that the bank purchased premises admeasuring 24000 sq. ft. in Maker Towers last year i.e. in the year 1981 and shifted the Central Accounts Department and Provident Fund Department. He has deposed that he is unable to recollect the strength of employees in 1971 but has stated that the present strength of employees throughout India is 36,000. He has stated that there is about 25% increase in the staff strength since 1971. He has deposed that the bank is experiencing difficulties in accommodating different departments in the suit building.

27] In cross-examination, Divakar Opalekar (P.W. 2) has stated that he does know the exact area of the suit premises. He has also stated that he is not precisely aware as to the number of tenants the bank has in the Central Bank building. Thereafter, he has deposed that the area of the suit premises would be around 270 sq. ft. He

has stated that his deposition is partly from record and partly from his personal knowledge.

28] Mr. Divakar Opalekar (P.W. 2) has finally deposed as follows:

“5. Plffs have filed this suit against deft as they want the suit premises for their own use ---- on account of experiencing difficulties in accommodating different departments in the suit building. Our bank also received information that the suit premises have been let out by deft to some others and therefore also our bank has filed suit against deft. Our bank has filed suits against other tenants also in the suit building on the ground of personal requirement.”

29] The appeal court has virtually glossed over the deposition of P.W. 2 Opalekar by making the following observation at paragraph 14.

“14.....In view of the aforesaid discussion and considering the statement made by P.W. 1. Mr. Divakar Upalekar on page 4 of the notes of evidence where, he has clearly stated that they want the suit premises for their own use an account of experiencing difficulties in accommodating different departments in the suit building, and they had also received information that the suit premises have been let out by the appellant / defendant to some other and therefore the bank has filed the suit against the defendant. Therefore, it appears that filing of the suit is much more influenced because of the information received that the defendant had parted with possession of the suit premises. Therefore, we are of the opinion that this appears to be a were desire and not bonafide and reasonable requirement of the respondents / plaintiffs.....”

30] Although, the appeal court, is normally final court of facts, this is not a manner in which the deposition of the witness is to be dealt with. In this case, eviction was applied for on three grounds i.e. *bona fide* requirement, unlawful subletting and non user. In these circumstances, P.W. 2 stated that the suit premises were required by the bank for their own purpose since they were experiencing

difficulties in accommodating several of their departments in the building itself. P.W. 2, in the context of the charge of subletting also made a statement that the bank had received information that the suit premises have been let out by the defendant to some other persons and therefore, the suit is filed. The appeal court was not at all justified in commenting that the filing of the suit was because of information received by the bank that the defendant had parted with possession of the suit premises. The appeal court was not at all justified, on these basis or otherwise to conclude that this was a case of mere desire as opposed to *bona fide* and reasonable requirement of the petitioner bank. This is a case of not only misreading of evidence but also a case of not advertent to vital and relevant evidence on record. The above quoted observation / comment from the order of the appeal court, is an instance of perversity.

31] Again, this is not a case where the evidence of the petitioner bank was restricted only to the deposition of P.W. 2 Divakar Opalekar. On behalf of bank, Mr. Piroj k. Patel (P.W. 3) Chief Manager in the Bombay main office, also deposed. After stating various capacities in which he has worked with the petitioner bank at the relevant time, he has referred to the various departments in the main office building and has deposed to the fact that the bank was required to acquire several other premises because the existing premises were not sufficient to cope up with the workload. He has also referred to the exponential increase in the business of the bank. This witness has also deposed to the aspect of subletting.

32] In his cross-examination, he however stated that he does not know the purpose for which the suit was filed. He has also stated that he does not know for which particular department of the bank

the suit premises were earmarked at the time when the suit was instituted. He however added that circumstantially he can say that this suit was filed with a view to acquire additional premises for the bank taking into circumstances prevailing in the year 1971. He has added that at this stage the bank had to acquire additional premises and shift the departments to such additional premises because there was severe shortage of accommodation. The appeal court, has merely transcribed some stray sentences from P.W. 3's deposition to the effect that he was not personally aware the purpose for which the present suit was filed or that he was not aware for which particular department of the bank the suit premises were earmarked and on the said basis, to hold that the ground of reasonable and *bona fide* requirement was not made out. Again, it is a clear case where the entire evidence has not been read in the context. On the basis of such stray sentences, the appeal court, was not at all entitled to interfere with the order made by the trial court accepting the petitioner bank's case on the aspect of personal and *bona fide* requirement.

33] The petitioner bank examined Bhalchandra Purshottam Godbole (P.W. 4), Architect employed by the petitioner bank. His evidence appears to have been completely glossed over by the appeal court. This witness, has deposed in details the position in the building in which the suit premises are situated. This witness has deposed to the position of other premises acquired by the petitioner bank. This witness has also deposed to the area occupied by some other tenants. All this evidence was quite relevant, however, the appeal court, has completely glossed over the same.

34] Finally, the bank examined Mohan Pandurang Tawde, who was the Chief Manager in 1985 as P.W. 5. This witness has also

deposed that there are 54 departments in the Bombay main office. He has also deposed the circumstances in which several departments had to be shifted to other premises because of paucity of space in the main building. He has deposed that if many such departments are brought back to the Bombay main building, the customers service can be improved. He has also deposed that the bank even now requires additional space in the Bombay main building for accommodation of various departments due to expansion of scheme and introduction of computer machines for magnetic ink recognition character system which was to be introduced by RBI very shortly. This witness has deposed in details as to the departments which are proposed to be shifted to the main building in the course of his cross-examination.

35] Again, for extremely flimsy reasons, the deposition of this witness has been glossed over by the appeal court. This is really a case of non consideration of relevant and vital evidence by the appeal court, and therefore, the impugned order made by the appeal court warrants interference in so far as the ground of reasonable and *bona fide* requirement is concerned.

36] On behalf of the respondents, Mrs. Kashmira Aspi Turel, daughter of the original tenant and Advocate Anant Bhawalkar came to be examined. The deposition of these two witnesses mainly concerns the issue of non user and unauthorised subletting. These witnesses, have neither contradicted nor made any dent on the deposition of the petitioner's witnesses on the aspect of reasonable and *bona fide* requirement.

37] In the facts and circumstances of the present case, there is overwhelming material on record which makes out the ground for

reasonable and *bona fide* requirement. The appeal court was not at all justified in interfering with the well reasoned order of the trial court at least in so far as the issue of reasonable and *bona fide* requirement was concerned.

38] The decision in the case of *Abdul Alim Abdul Majidkhan* (supra) is quite distinguishable. It is true that in this case a notice was issued in the year 1959. However, in this case there is ample evidence which establishes that the need, not only continue on the date of institution of the suit, but, the need was substantially enhanced since, in the meanwhile, the petitioner bank was nationalized and its business increased exponentially. The decision in *Abdul Alim Abdul Majidkhan* (supra) is therefore clearly distinguishable.

39] Similarly, the decision in *Waman Kale* (supra), is also distinguishable, because in the facts of the present case, the requirement which was existing on the date of institution of the suit has subsisted till the date on which the decree was made. In this case, there is evidence on record that because the space in the main building was inadequate, the petitioner bank, by paying huge amounts, had to acquire alternate properties. There is evidence on record that even after acquisition of the alternate properties, the need in the main building continues. Accordingly, the decision in *Waman Kale* (supra) is also distinguishable.

40] In ***Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.***³, the Supreme Court has held that there is no necessity to plead the precise nature of business which landlord intends to start in order to make out a case of reasonable and *bona fide*

3 (1997) 11 SCC 411

requirement.

41] In ***Meenal Eknath Kshirsagar (Mrs) vs. Traders & Agencies & Anr.***⁴, the Supreme Court has held that the landlord is the best judge of his requirement. It is for the landlord to decide how and in what manner he should live and he is the best judge of his requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient, it is not for the courts to dictate to him to continue to occupy such premises.

42] In *Dattatraya Laxman Kamble vs. Abdul Rasul Moulali Kotkunde & Anr.*⁵, the Supreme Court has held that there is no doubt that a landlord has to prove that he needs the building for his own occupation but there is no warrant for presuming that his need is not *bona fide*. In appropriate cases, it is even open to the court to presume that the landlord's requirement is *bona fide* and to place the burden of disproving the presumption on the tenant. In the same case, the Supreme Court has held that the court ought not to take charitable view of the landlord.

43] In ***Mohd. Ayub & Anr. vs. Mukesh Chand***⁵, the Supreme Court has held that the landlord's requirement need not to be a dire necessity. Further, the circumstance that the landlord is more affluent and could have purchased another building is irrelevant if the landlord *bona fide* and reasonably requires the suit premises. Similarly, the length of tenancy is also not very relevant. The hardship that the landlord would suffer by not occupying his own premises would be far greater than the hardship the tenant would suffer by having to move up to another place. The courts, cannot

4 (1996) 5 SCC 344

5 (2012) 2 SCC 155

direct the landlord the manner in which landlord must conduct his business or how best the landlord can conduct his business.

44] Now, if the order of the appeal court is perused, it is clear that the appeal court has misdirected itself in law by not adhering to the aforesaid principles in matter where eviction is applied for on the ground of reasonable and *bona fide* requirement.

45] Even on the aspect of comparative hardships, the trial Court, had correctly held in favour of the petitioner bank. There is ample evidence on record that the need of the petitioner bank is ever expanding. Besides the matter has to be also construed from the perspective that it will not be in the interest of the institution like the petitioner bank to have in its midst some tenant occupying some premises. The integrity of the building and the banking business, thereby, is bound to suffer. Although, eviction cannot be ordered on the ground of subletting or on the ground of non user, it is necessary to note that at one stage, the tenant, had stopped using the premises because, she was away in England. On another occasion, Mr. Bhawalkar, Advocate was found to be using the suit premises as a licensee. From this, it is quite clear that the hardship, if any, which the tenant will suffer is not greater than the hardship which the petitioner bank will suffer, if it is denied possession of the suit premises.

46] The subsequent events in the present case, need not be looked into whether at the behest of the petitioner or the respondent. The material on record establishes that the need of the petitioner bank is expanding. In such circumstances, there is no merit in the submission of Mr. Kulkarni that the petitioner bank having acquired several other premises in the locality, the need no

longer subsists. This is a case of a nationalized bank. This is also a case where the suit premises are located in the building of the petitioner bank. The fact that even after the filing of the suit the petitioner bank had to, by paying huge amounts, acquire several other premises, indicates that the need of the bank was quite dire. In such circumstances, the appeal court, was not at all justified in holding that the need of the bank was in the nature of a mere desire and that there were neither any *bona fides* nor any reasonability in such need. The findings of the appeal court are vitiated by perversity. The approach of the appeal court is vitiated by misdirection in law. The reasoning of the appeal court is contrary to the decisions of the Supreme Court which have been referred to in the course of this judgment.

47] For all the aforesaid reasons, the impugned order, to the extent it denies the petitioner bank decree of eviction on the ground of reasonable and *bona fide* requirement is liable to be reversed and is hereby reversed. However, the impugned order, in so far as it denies the petitioner bank decree of eviction on the ground of subletting or non user is sustained.

48] Rule is accordingly made absolute to the aforesaid extent. The impugned order to the extent it denies the eviction on the ground of reasonable and *bona fide* requirement is hereby set aside. The respondent is ordered to restore the possession of the suit premises to the petitioner within a period of three months from today. In the meanwhile, the respondent to file the usual undertaking in the Registry within a period of four weeks from today. The respondent to furnish a copy of such undertaking to the learned counsel appearing for the petitioner. If no such undertaking is filed within four weeks from today, the petitioner shall be entitled to

execute the decree after the expiry of four weeks.

49] In the facts and circumstances of the case there shall be no order as to costs.

(M. S. SONAK, J.)

Chandka