

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5045 OF 1998

1 Navinchandra Nanji

2 Laxmichand Nanji

Both Executors of the Last Will of
Nanji Raoji and also Last Will of
Mathabai Nanji,
Residing at Mulraj Bhuvan,
Acharya Dhonde Marg, Sewri,
Mumbai – 400 015

.... Petitioners
(Ori. Plaintiffs)

Vs.

Jivraj Bhanji
(since deceased) through Legal Heirs

.... Respondent
(Ori. Defendant)

1a Chunilal s/o Jivraj Bhanji
1b Harakchand s/o Jivraj Bhanji
1c Mrs. Nayna Pravin Malshi
d/o Jivraj Bhanji

1d Mrs. Bharti Harakchand Bhanji
d/o Jivraj Bhanji

1e Mrs. Pramila Ravindra Murji
d/o Jivraj Bhanji

All adults, Indian inhabitants having
their address at Agarwal Building,
No. 211, R.A. Kidwai Marg,
Wadala, Mumbai – 400 031

.... Proposed
Respondents

Mr. Preeti Gada, Advocate for the Petitioner.
Mr. S.P. Shetye i/by Mr. P.G. Karande, Advocate for the Respondents.

CORAM : G.S. KULKARNI, J.
Reserved on : 21st JULY, 2017
Pronounced on : 4th SEPTEMBER, 2017

JUDGMENT :

1 It is quite a wrench as also perturbing for a conscious judicial mind to note that in this case, a suit for eviction was instituted by the petitioner's father (landlord) in the year 1969, that is about forty eight years back. Soon the respondents would have celebrated the golden jubilee of the litigation. While the petitioners await the fruits of the litigation, the respondent-tenant, has been an undeserving beneficiary of the systemic delay in the judicial process. One would recall the following words of Justice K.T. Thomas (as His Lordship then was) in the case of **Gaya Prasad vs. Pradeep Srivastava**¹ :

“This case presents a sample scenario of the tormenting plight of an average litigant who approaches the court with all expectations of getting relief for his urgent need. But the snail paced litigation creeping through all the tiers of the judicial hierarchical forums would have frustrated all his expectations, though others could admire the tenacity with which he persisted with the cause. ”.

1 (2001) 2 SCC 604

2 The petitioners-landlords are before this Court in the present proceedings under Article 227 of the Constitution of India, assailing the judgment and order dated 15th April, 1998 passed by the appellate Bench of the Small Causes Court at Mumbai. The appellate Bench, by the impugned judgment has reversed the judgment and order of the learned trial Judge dated 11th October, 1984, by which the learned trial Judge had decreed the petitioners-landlords eviction and possession suit, on the ground of the respondent-tenant acquiring alternative premises. As the original parties have expired, their legal heirs pursued these proceedings. For convenience, the parties are referred as they stand before the trial Court.

3 It is not in dispute that the plaintiff is the landlord of the suit premises, which is room No. 87, 3rd floor in a building known as Nanji Ravji Building, Acharya Donde Marg, Sewree, Mumbai – 400 015. The plaintiff's case is that the defendant had made permanent alteration in the suit premises. The plaintiff, therefore, by his advocate's letter dated 9th November, 1967 terminated tenancy of the defendant and called upon the defendant to vacate the suit premises. This was denied by the defendant in a reply addressed to the plaintiff by his advocate's

letter dated 4th November, 1967. The plaintiff instituted R.A.E. Suit No.1259 of 1969 seeking a decree of eviction and possession against the defendant on the ground as available under Section 13(1)(b),(g) and (l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Bombay Rent Act') firstly that without permission of the plaintiff in writing, the defendant had erected a permanent alteration/structure namely a loft in the suit premises, as also enclosed the common passage by putting up a door converting the passage into a room. The second ground as urged by the plaintiff in seeking an eviction decree, was of the defendant acquiring suitable alternative premises namely a residence at Agrawal Building, No. 211, R.A. Kidwai Marg, Wadala, Mumbai. The plaintiff averred in the plaint that the defendant was residing in the said alternate premises with his family members. Thirdly the plaintiff contended that the plaintiff required the suit premises reasonably and bonafide.

4 The defendant resisted the suit by filing his written statement dated 16th September, 1969 denying the case of the plaintiffs. In regard to the alternate accommodation, the defendant's case was that the defendant was neither the tenant nor owner of the alternate

premises at Wadala as also he denied that he is residing with all members of his family.

5 As the plaintiff expired, the plaintiff amended the plaint to implead plaintiff no.1(a) Navinchandra Nanji being the executor of last will of the plaintiff. The defendant filed an additional written statement to this amended plaint.

6 The learned trial Judge framed seven issues. The relevant issues in the context of the dispute in the present proceedings are issue Nos. 3 and 3A, which read thus :

“3 Do the plaintiffs prove that the defendant has without the consent and permission in writing of the plaintiffs or their predecessor in title erected a permanent structure i.e. to say loft in the said room and enclosed a common passage converting a room ?

3A Do the plaintiffs prove that the defendant has acquired another suitable residential accommodation as alleged?

7 The parties went on a trial and examined their respective witnesses. The learned trial Judge, considering the evidence decided issue no.3 in the negative, holding that the plaintiff did not prove that the defendant had undertaken alternations of a permanent nature. As regards issue no.3A (supra) (referred as issue No.4A in the judgment of the learned trial Judge), the learned trial Judge held the same in favour

of the plaintiff and decreed the suit on this ground. The learned trial Judge observed that in the evidence, there was a categorical admission, of the defendant that he was residing in the alternate premises at Wadala alongwith his family members since 1968, though the said premises were said to be rented out in the name of his wife. It was observed that the defendant had admitted in the evidence that the defendant was required to shift to the premises at Wadala, as the suit premises were insufficient and inadequate to meet the residential requirement of the defendant and his growing family. It was thus observed that the documentary evidence coupled with the oral evidence clearly indicated that the defendant had shifted from the suit premises to the alternate self contained block at Wadala though it was rented out in his wife's name, entire family of the defendant shifted to the new residence at Wadala. The learned trial Judge referring to many documents in paragraph 28 of the judgment observed thus:-

“28 Now, as mentioned earlier, the strength of the defendant's family in 1968 was little more than what it is today. The defendant's three daughters were not married, and were residing with him. Thus, the plaintiffs contend that when he (the defendant) shifted from single room tenement, where he was greatly inconvenience to the self-contained block, then naturally all the members in his family would have, accompanied him to those new premises at Vadala. The documentary evidence on record clearly indicated that when the debt shifted from the suit premises to the self contained block, rented out by his wife, the entire family of the defendant

shifted to the new residence at Vadala. For that matter, the plaintiffs have relied upon certain documents like invitation cards of the marriage of the defendant's daughter's at Exh.G and J colly, a certified extract of voters' list at Ex. K colly, invitation card of religious function held at the house of the defendant Exh.L, the publications of the community to which the plaintiffs and the defendant belong at Ex. M and Exh.N. It was submitted by the plaintiffs that in all these documents, the address of the defendant and his family is that of the Vadala premises. The defendant has conceded in his cross-examination that the documents relating to the religious ceremonies showing the address of the defendant as that of Vadala premises, where his elder son Chunilal's wife had undertaken fast for eight days were correct. Likewise, the defendant also conceded that his name, his wife's name and also the daughters in laws' names in Exh. 10 (ration card) have been removed. The xerox copy of the ration card is on record at Ex.10 (A). It is seen from the pages of ration card (Exh.10A) that except the names of the defendant's sons Chunilal and Harakchand, the names of all other members of the defendant's family including the defendant himself were struck off. These changes appear to have been made some time in 1969, consequent upon the defendant's shifting from the suit premises to the new premises at Vadala at Exhibit 11(A).

On the basis of this evidence, the learned trial Judge held that the defendant has been residing in the alternate premises at Wadala right from the year 1968. The defendant had obtained ration card issued at the said new address in his name. It was observed that the defendant is a social worker, he has been holding meetings of the association of his community at the premises at Wadala. The contention of the defendant that his two sons were residing with their wives in the suit premises was also found to be incorrect and un-supported by any evidence. The learned trial Judge observed that it was clear from the evidence that the

suit premises have been retained by the defendant purely for providing boarding facility to his employees. It was further observed that there was nothing on record to show that the defendant's wife has any intention to dispossess the defendant from the suit premises. In fact, the wife of the defendant was not examined to show that she had any independent means of survival whereby she had acquired the premises at Wadala independently of her husband. It was further observed that the distance between Wadala and Sewree was insignificant and the business of the defendant being at Sewree, the Wadala premises were suitable premises for the defendant where he was residing with his family members. Thus, on the basis of these findings, the learned trial Judge decreed the suit of the plaintiff by his judgment and order dated 11th October, 1984, directing the defendant to vacate and handover vacant and peaceful possession of the suit premises on or before 31st December, 1984.

8 The defendant being aggrieved by the eviction decree as passed by the learned trial Judge on the ground of acquisition of alternate premises, approached the appellate Bench of the Small Causes Court by filing Appeal No. 810 of 1994. The plaintiff filed Cross-

Objections being unsuccessful before the learned trial Judge on the ground of the defendant making permanent alteration in the suit premises.

9 The appellate Bench of the Small Causes Court, by the impugned judgment and order dated 15th April, 1998 allowed the appeal of the defendant and dismissed the cross-objection of the plaintiffs thereby setting aside the eviction decree as passed by the learned trial Judge and further dismissed the cross-objection of the plaintiff. It is in these circumstances, the plaintiff filed this petition challenging the judgment and order passed by the appellate Bench of the Small Causes Court at Mumbai.

10 It may be observed that Ms. Preeti Gada, learned advocate for the petitioner argued this petition for final hearing in the morning session of 21st July, 2017 and in the post lunch session. For the respondent/defendant, Mr. S.P. Shetye, i/by Mr. P.G. Karande initially appeared in the morning session. However, in the second session surprisingly Mr. S.P. Shetye though was present in the morning sessions, however remained absent and thus the the respondent/defendant was

not being represented, as no counsel was present to appear on his behalf. There was no alternative for the court but to close the petition for judgment. On the next day, Mr. Karande, learned advocate for the respondent-tenant appeared and made an oral application that he and his associate advocate could not remain present on 25th July, 2017, when the final hearing was concluded, and therefore the respondent be heard on the final hearing. Significantly no justification whatsoever was submitted for abandoning the hearing in this manner. In view of this unacceptable conduct on the part of the defendant, the court thought it appropriate to put the respondents to terms by making the payment of costs, which was finally observed that it should be Rs.50,000/- and accordingly an opportunity was granted to the respondents to respond. Learned counsel for the respondents, however, on instructions from his client expressed the respondent's inability on the ground that his clients do not have sufficient means to pay the costs. These instructions were not supported by any material and in my opinion, the same are also not bonafide and honest considering the position of the respondents. Be that as it may, the message to these category of litigants who intend to create impediments and hurdles in the judicial process and that too in such old matters should be loud and clear, the wheels of justice cannot

be halted by such practices. This particularly when the defendant is enjoying the tenanted premises for about forty eight years and would definitely want a situation to prolong the hearing of the petition. If such conduct is accepted, it would be difficult for the court to conclude any hearing in old cases. Further if such pleas are accepted, the sanctity of court proceedings would certainly be eroded. Be that as it may, in the circumstances, the court needs to proceed and decide the petition.

11 Learned counsel for the plaintiff in assailing the judgment of the appellate Bench of the Small Causes Court has made the following submissions:

(1) In paragraph 3 of the plaint, the plaintiff had clearly set out three grounds on which the plaintiff sought a decree of eviction and possession against the defendant. In the written statement, there was no express denial of the averments as contained in para 3 of the plaint.

(2) There is perversity in the findings of the appellate Bench in as much as the material evidence, which would conclusively demonstrate that the defendant had acquired alternate premises and at all material times was in use and occupation of the same has been completely

overlooked.

(3) The appellate Bench is in serious error reversing the decree on a finding that the alternate premises were not acquired by the defendant but they were in the name of the defendant's wife. This was completely a false assertion unsupported by any evidence. Moreover, the evidence was sufficient to come to an unimpeachable conclusion that it was the defendant, who had acquired alternate premises and was residing in the same alongwith his family members. It is submitted that in this regard this is voluminous documentary evidence coupled with the admission of the defendant in his oral evidence which was sufficient to entitle the plaintiff with decree of eviction and possession as held by the trial court.

(5) It had conclusively come on record on the defendant's own admission that the suit premises were used by him for the purpose of a mess for the employees working in the shop, and were not used for residence but for business purposes. The findings as arrived at by the appellate Bench are thus wholly contrary to the evidence on record leading to perversity on facts and in law.

(6) The suit in question was instituted in the year 1969 and since 48 years, the plaintiffs are awaiting fruits of decree, though having succeeded before the trial court in the year 1984, the plaintiff is kept away from the decree on account of the perverse findings recorded by the appellate Bench.

12 In support of the submissions, learned counsel for the plaintiff has placed reliance on the following decisions: *V.K. Malhotra and Anr. vs. Smt. Ranjit Kaur (Delhi)*², *Savitaben Ramanlal Shah vs. Landge Bal Krishna Mahadeo*³, *Hamkhlal Raichand Shah vs. Arvinbhai Mohanlal Kapadia*⁴, *Rup Chand vs. Shanti Devi (Delhi)*⁵, *Chimanlal Sakalchand Shah vs. Dyanoba S. Kodre and Anrs.*⁶, *Ramesh Kumar vs. Kesho Ram*⁷, *Charan Santhal vs. Indrajit Sen*⁸, *Om Prakash Berlia and Anr. Vs. Unit Trust of India and Ors.*⁹, and *Hari Sharma Vs. Mr. Amarjit Singh Ramana*¹⁰. Learned counsel for the plaintiff has also placed compilations of the following judgments,

² 1985 (1) All India Rent Control Journal, 251

³ 1995 (1) Guj. L.R. 555

⁴ 1988 (2) R.C.R. 618,

⁵ 1987 (2) All India Rent Control Journal, 305

⁶ 1986 Bom. R.C. 295

⁷ AIR 1992, S.C. 700

⁸ AIR 1979, Cal. 256

⁹ A.I.R. 1983, Bom. 1

¹⁰ 1999 (50) DRJ Pg. 781.

which were referred by the appellate bench, and as relied upon by the defendant: *Shankar Nana Waychal and Ors. Vs. Mohan Ganesh Date & Anr*¹¹ and *B.R. Mehta vs. Smt. Atma Devi & Ors.*¹²

13 I have heard learned counsel for the plaintiff and with her assistance, I have perused the evidence on record and the judgments of the courts below. At the outset, it needs to be noted that learned counsel for the plaintiff has advanced arguments on the issue of the defendant acquiring alternate suitable premises, on which the plaintiff had succeeded before the trial court.

14 There is no dispute on the tenancy of the suit premises as created in favour of the respondent. A perusal of the plaint, clearly indicates that in paragraphs 2 and 3, the plaintiff categorically pleaded that the defendant had acquired suitable residence at Agrawal Building No. 211, R.A. Kidwai Marg, Wadala, Mumbai. Perusal of the written statement and the additional written statement would show firstly that there is no express denial of the contents of Paragraph 2 and 3 of the plaint except for a vague independent assertion in paras 8 and 9, which reads thus :

11 1984 Mah. L.J., 834

12 AIR, 1987 S.C. 2220

“8 Say that defendant is neither a tenant nor an owner of the said premises at Wadala and further deny that he is residing there with all the members of his family.

9 Deny that defendant acquired a suitable residence as alleged”.

15 Plaintiff no.1 in his evidence has deposed that the defendant was residing at the Wadala premises. He described the said premises as a self contained block with two balconies. Plaintiff no.1 stated that he had personally visited said premises and at the relevant time, there were six members of the family, who were residing in the said alternate premises. He also relied on the documentary evidence i.e. invitation card received by him of the marriage of eldest son of the defendant Chunilal, which was bearing the address of Wadala premises. Plaintiff no.1 then deposed that the defendant, his wife and children were staying at the Wadala premises. He deposed that the defendant's eldest daughter Jaya had left the premises on her marriage in the year 1974. The other daughter- Bharati was married in the year 1976. He deposed that ration card, which was issued in favour of the defendant was bearing address of Wadala premises. He stated that both the sons were residing at Wadala though the ration card of the sons continued to have

address of the suit premises. Also the defendant, his wife and son were registered as voters at the Wadala address as seen from the electoral rolls Exh. "K". The defendant had a telephone connection at Wadala address. He further deposed that his parents, four brothers and three sisters were residing at Mulraj Bhavan and they require the suit premises to accommodate the younger brother Mahendra for residential purposes. In the cross-examination, plaintiff no.1 clearly stated that he had visited the defendant's premises at Wadala for the first time in the year 1970 and thereafter he visited the said premises for marriage ceremonies etc. and for the last time, he visited in the year 1980-1981. He deposed that at the time of recording the deposition, there were 7 members in the family of the defendant namely the defendant, his wife, son Chunilal and his wife, daughter and another Harakchand and his wife. He denied the suggestion that the defendant had not gone to stay at Wadala in the year 1968-1969. The following are the categorical admissions in the evidence of the defendant :

"In 1968, the members of my family were myself, our two sons and three daughters. Presently my wife and I are residing at Bansidhar Building, R.A. Kidwai Road, Wadala, Bombay, in a three room self contained flat, admeasuring about 400 sq. ft. These three rooms consists of a bed room, one drawing room and a kitchen and my wife and I have been occupying those rooms since 1968. Prior to that, our entire family was residing at the suit premises. I shifted to Wadala premises as the suit premises.

were inadequate and insufficient for our family. As such my wife rented out these premises at Wadala in her name. I am producing the rent bill in my wife's name of the Wadala premises (14 such receipts produced by this witness taken on record and B.C. marked as Exh. 7 colly).

Even after my wife secured the Wadala premises, we were in need of additional accommodation of the suit premises. I say that Wadala premises are not adequate to accommodate all the members of my family. I have got my business at Sewri and I require the suit premises for the need of my family members as also for providing meals to my servants in business. My son Chunilal was residing in the suit premises at Sewri after his marriage. After Chunilal's marriage, Chunilal and his wife and my younger son Harakchand who was then studying were residing at the suit premises and my employees in my business were taking meals at the suit premises.

I am also a social worker in the community. I am connected with various social, commercial, educational and religious organisations. I am some office bearer or other of these institutions. In connection with these social activities of mine, several meetings are held at my place of residence at Wadala. Such meetings are held on 8/10 occasions in each month and they are held late in the evening and conclude after about 2/4 hours.

(Emphasis Supplied)

Perusal of the oral and documentary evidence leaves no manner of doubt that the defendant ceased to occupy the suit premises since the year 1968 and that he had shifted at alternative premises at Wadala as clearly admitted by him in his evidence. The question is whether the defendant's defence that such acquisition of the alternate premises is not by him but by his wife was an acceptable defence for the appellate court to non-suit the plaintiff on this ground of the defendant acquiring an alternate premises. This question was required to be examined on the

basis of the material, which was available on record and whether such material would in any manner indicate that the acquisition of the alternate premises is by the wife of the defendant independently and for such acquisition of the alternate premises is in no manner of any consequence or benefit to the defendant, so as to reach a conclusion that the suit premises are very much in use, occupation and necessity for the defendant. However, unfortunately for the defendant, except the fact that the rent receipt of the alternate premises stand in the name of his wife, there is no material to show that the defendant's wife had any independent cause, means, necessity from that of the defendant to possess alternate premises. In fact, the entire evidence would show that the alternate premises are acquired by the defendant himself for all purposes. Neither the wife of the defendant is examined by the defendant to show that the defendant is totally unconnected with such acquisition or that he has no concern whatsoever with such acquisition. As clear from the evidence for all purposes including the marriage functions in the family, also for all normal and day-to-day purposes, it was the alternate premises which were the real premises in use and occupation of the defendant. Apart from this, the ration card, electoral roll completely proved the case of the plaintiffs that the defendant had

acquired alternate premises. This, apart from the clear admission of the defendant in his evidence that he is staying at the Wadala premises. On the basis of this evidence, the learned trial Judge recorded that the defendant has acquired alternate premises and decreed the suit. In my opinion, there is no infirmity in the learned trial Judge forming this opinion. Perusal of the findings as recorded by the appellate Bench obviously would indicate a patent perversity in this regard. More particularly, when the appellate Bench had made the following observations:

“13.....It is also brought on record that the defendant and his wife along with his children are residing in Wadala premises whereas the suit premises is used by servants of the defendant who are working in his shop.”

“There is no dispute that the defendant and his wife are residing in Wadala premises and therefore various places of documents brought on record need not be discussed.”

However, the appellate Bench without an iota of acceptable material/evidence has come to a conclusion that the alternate premises are required to be considered as premises acquired by the wife and not by the defendant. In reaching this conclusion, the appellate Bench relied on the decision of ***B.R. Mehta vs. Smt. Atma Devi & Ors.***¹³. In my

13 AIR, 1987 S.C. 2220

opinion, the appellate Bench was under a total misconception and perversity in applying the said decision in the facts of the present case. In *Shankar Nana Waychal* (supra), the contention of the plaintiff in the said case was that the two sons of the second respondent-tenant had acquired accommodation elsewhere and this would tantamount to the second respondent-tenant himself acquiring suitable residence as mentioned in Clause (l) of Section 13(1) of the Bombay Rent Act. In this context, the Court held that the accommodation had been acquired by the sons of the tenant and not the tenant and hence it cannot be a ground for evicting the tenant under Section 13(1)(l) of the Bombay Rent Act. The Court observed that it is the common knowledge that when the family grows, some of the members of the family naturally leave the original premises and acquire other premises and that the provisions of Section 13(1)(l) of the Bombay Rent Act is not meant to cover such a situation. In fact what is relevant in this decision is the reference by the learned Single Judge in paragraph 4 to the decision in *B.R. Trivedi v. Kantilal Hiranman Pawar and Others* where the learned Single Judge was dealing with a case of an alternate accommodation being acquired in the name of the wife of the tenant. Upholding the decree passed on the ground that the tenant himself had acquired the

alternate suitable residence, as there was no evidence to show that the wife had independently acquired the premises and in fact tenant himself had undertaken the expenditure. The learned Single Judge in paragraph 4 of the judgment observed as under :

“4 Reliance has been placed by Mr. Dalvi on a judgment in B.R. Trivedi v. Kantilal Hiranman Pawar and others. Going through the said judgment with the assistance of Mr. Dalvi, I find that in that case the accommodation had been acquired in the name of the wife of the tenant, but as a finding of fact, the District Court had recorded that the tenant himself “had built or acquired suitable premises”. This finding was arrived at, as mentioned in paragraph 4 of the aforesaid judgment, by the Appeal Court on a fresh review of evidence. Decree passed on that ground was naturally supportable because the finding was that the tenant had himself acquired alternative suitable residence. In my opinion, this judgment is of no assistance to the petitioners before me.”

(emphasis supplied)

16 The case in hand can be said to similar to the case of **B.R. Trivedi** (supra), as although the defendant in the present case has asserted that the premises were acquired by his wife, however, there is no evidence to believe this assertion. The defendant also did not examine his wife. This apart from the fact, that the defendant in his deposition clearly admitted that he is not in occupation and possession of the suit premises and that he is staying in the alternative premises alongwith his wife.

17 The decision of the Supreme Court in ***B.R. Mehta vs. Smt. Atma Devi and Ors.*** (supra) would also not assist the defendant. This was a case where the wife had acquired alternative premises because of her official duties over which the husband had no right or domain or occupation. In this situation, it was held that if the wife or a husband acquired a property and other spouse if he/she is the tenant, has a legal right by virtue of his acquisition to stay in such acquired premises, only then can such acquisition or allotment of premises would dis-entitle or attract the provisions of Clause (h) of Section 14(1) of the Delhi Rent Control Act. The reliance on behalf of the defendant on this decision was misconceived, in the facts of the present case. It is, therefore, surprising, as to how, the appellate Bench could have reversed the finding of the learned trial Judge and reach to a conclusion, that the plaintiffs are not entitled for a decree of eviction for the defendant having acquired suitable alternate accommodation.

18 In the present case, there is plentiful and overflowing evidence to indicate that the defendant is living in the alternate accommodation alongwith his wife and other family members. There is nothing to show that the defendant's wife had any means to secure such

alternative premises. Further the admissions of the defendant as noted above to use alternative premises as a family house were crystal clear. In such circumstances, the learned counsel for the plaintiff would be correct in relying upon the decision in ***Hari Sharma vs. Mr. Amarjit Singh Ramana***¹⁴ wherein the Court in para 10 held as under:

“10. I am afraid that would not be proper course to decide as to whether any acquisition of a vacant residential house by wife would amount to acquisition by tenant. There was nothing on record suggesting that there was a dispute between the wife and the husband either in terms of their living together or otherwise. There was nothing on record to show that they were not sharing the common mess, rather, the evidence on record was to the contrary. It was brought on the record that wife of the tenant and other children were living together under the same roof, they had a common kitchen. In such a case, the ratio of B.R. Mehta's case (supra) regarding domain has to be construed. Whether, that domain which B.R. Mehta's case spoke of, would be in the nature of domain in terms of contribution of finances towards acquisition of alternative accommodation? Let us go to the ethos of our society in the realm of marriage, according to which the husband will have domain over wife not only in respect of physical terms but also to what she is possessed of including property. But we may not adopt that definition. What has to be seen in such a context to determine whether the family as a unit is living together, sharing a common kitchen and mess we have to see ground realities.

11. In a broader conspectus of universe family is the smallest unit and when husband, wife, parents and children hold the property jointly, they would be considered ordinarily as members of one unit and the requirement of one would be the requirement of the other. In view of the evidence on record that the tenant and his wife were living together one has acquired suitable residential accommodation and there is no evidence to the effect that they had not been looking upon themselves as one unit the acquisition of suitable residential accommodation by wife would be considered to be the

14 ILR 1999 Delhi 129

acquisition of a suitable residential accommodation by the tenant. As has been stated earlier, there is nothing on record which has been brought to show that the husband and wife were not having cordial relations or there was inter se dispute between both of them or they were not living as one unit. Look at the testimony of respondent-RW 4. He has stated that his wife and son and his parents were living with him. In cross-examination he has further admitted that his wife and his son are living with him permanently in the suit premises since the time they took the premises on rent in 1975. He further stated in the cross-examination that they had a common kitchen. In this case the wife of the tenant Smt. Sudesh Ramana also appeared in the witness box as RW 9. Specifically in the cross-examination she deposed:-

"It is correct that relation between myself and my husband and our son has always been cordial."

12. That being the situation can it be said that the acquisition of residence at Panchsheel Park by wife wherein she is realising rent at the rate of Rs. 50,000/ per month, whereas the husband tenant before me is paying rent at the rate of Rs. 1,500/- per month be permitted to do business on account of protection provided under the Act? The answer is in the negative.

13. There is no dispute between husband and wife. They constitute normal Hindu family where husband would have domain over his wife's property until disharmony, distrust or separation is pleaded. This view was taken by Punjab & Haryana High Court in the case of Laxmi Dass Aggarwal Vs. A.K. Bahal 1986(1) RCJ 190. Similar view was taken by Gujarat High Court in Hamukhlal Raichand Shah Vs. Arvind bhai Mohanlal Kapadia 1988 (2) RCJ 573.

14. As a matter of fact, the law has been succinctly reflected in the judgment of N.K. Rastogi Vs. karori Lal 1993 RLR 358 :

"The close analysis of this judgment given in case of B.R. Mehta (supra), which was a judgment given by two Hon'ble Judges, would show that ratio of which can be called from the judgment given in the case of Prem Chand's case (supra) a judgment given by three Hon'ble Judges, had not been in any

manner whittled down. The legal position of now very clear that it is not that every acquisition of a residential accommodation by the wife would mean acquisition of a residence by the tenant, but it will depend upon the facts of each case in order to decide whether alternate residential accommodation has become available to the tenant over which the tenant and his family members have a domain."

15. I am of the considered view that in B.R. Mehta's case (supra) the supreme Court has not whittled down the decision of Prem Chand's case (supra). In B.R. Mehta's case, Supreme Court held:-

"The said decision rested on the facts of the case. There in that case, this Court found that the respondent's wife had purchased a flat in Saket and further found that the flat was available to the respondent. In those circumstances it was held that there was acquisition of vacant possession of a residence and as such [Section 14\(1\)\(h\)](#) of the Act would be attracted. It cannot however be laid down as a general proposition of law that acquisition of flat by the wife in all circumstances would amount to acquisition of flat by the tenant."

What is necessary is that unless there is a positive evidence and here there is none, of acquisition of property prima facie in the name of the tenant or allotment or flat to the tenant, it cannot be said to have been acquired by or allotted to some members of the tenant's family other than the wife in her name. That cannot defeat the tenant's right under Clause (h) of [Section 14\(1\)](#). If there is such an acquisition by or on behalf of the tenant then the tenant and members of the tenant's family would have dominion over the acquired residence. Such acquisition would bring to the tenant the mischief of [Section 14\(1\)\(h\)](#) of the Act.

19 Thus considering the legal position in the facts of the present case, the plaintiff needs to succeed in the suit in question and would become entitled to a decree of eviction and possession against the defendant on the ground of the defendant having acquired suitable alternate accommodation as Section 13(1) (l) of the Bombay Rent Act

would mandate.

20 As regards the other contentions on the ground of permanent alternations as alleged to be made by the defendant, the case of the plaintiff was that the defendant had constructed a loft and the passage was closed by installing a door. I have perused the findings as recorded by both the courts below, which are against plaintiffs. It has come on record that the plaintiff himself was not aware whether there was a existing loft in the premises when plaintiff's father acquired the premises in the year 1967. The loft in question is of a nature which can be removed without causing any damage to the structure. Further, it appears that the same was installed for the beneficial enjoyment of the suit premises. In any event, it is not an alteration of a permanent nature being completely removable. I am, therefore, in complete agreement with the findings recorded by both the courts below. The plaintiff would not be entitled to a decree on the ground of the defendant having indulged into a permanent alterations as sought to be urged to seek a decree under Section 13(1)(a) of the Bombay Rent Act.

21 In the light of the above discussion, the petition is partly allowed with costs in the following terms :

- (i) The impugned judgment and order dated 15th April, 1998 passed by the Appellate Bench of Small Causes Court at Mumbai in Appeal No. 810 of 1984 is quashed and set aside.
- (ii) The judgment and decree passed by the Small Causes Court at Mumbai in R.A.E. Suit No. 1259 of 1969 stands restored.
- (iii) The defendant/respondent is directed to handover possession of the suit premises to the petitioners-plaintiffs within a period of twelve weeks from today.

(G.S. KULKARNI, J.)