

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

CIVIL REVISION APPLICATION NO. 37 OF 2017

Chhaganlal Lalchand Mehta
(Owner of Kirana Shop
Shri. Amrutlal Lalchand Mehta
since deceased - deleted)

- 1) Shri Kirit Amrutlal Mehta,
Age : 60 years, Occu.: Business,
R/o : Nandurbar, (Balajiwada)
Tq. and Dist. Nandurbar
- 2) Shri. Krishnakant Amrutlal Mehta,
Age : 65 years, Occu.: Service,
R/o : At post Nadiyad,
(Chhagan Damodar ni Khadki,
Sallon Bazar),
Dist. Kheda, (Gujrath)

.. Applicants
(Orig. Defendants)

Versus

Nanlal Govinddas Shah
since deceased - deleted

- 1) Smt. Pushpaben W/o. Nanlal Shah,
Age : 74 years, Occu. : Nil,
- 2) Shri. Yatin Aniruddha Shah,
Age : 33 years, Occu. : Business,
- 3) Shri. Manoj Aniruddha Shah,
Age : 31 years, Occu. : Nil,
- 4) Shri. Aashish Aniruddha Shah,
Age : 29 years, Occu. : Service,

All R/o. : Near Balaji Wada,
Nandurbar, Tq. and Dist. Nandurbar
(Maharashtra)

.. Respondents
(Orig. Plaintiffs)

Mr. Ruchir S. Wani, Advocate for applicants
Mr. S. V. Natu, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 08-03-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.
2. Present applicants were defendants in regular civil suit bearing no. 99 of 2002 instituted by present respondents seeking eviction of the applicants, mainly on three grounds, viz; default, nuisance and *bonafide* and reasonable requirement of respondents for starting business in suit property. Parties hereinafter would be referred to by their original status in aforesaid civil suit, applicants as 'defendants' and respondents as 'plaintiffs'.
3. The suit concerns an area of 40 ft. x 40 ft. on ground floor divisible into approximately three portions.
4. At the outset, learned counsel for parties fairly concede to that controversy narrows down in present revision to *bonafide* and reasonable requirement of plaintiffs, as suit of the plaintiffs has

been dismissed on other two grounds and the plaintiffs have not taken exception to the findings on those two grounds by trial court and save default the case on nuisance had not even been argued before appellate court.

5. Pleadings about premises being required for *bonafide* and reasonable use of plaintiffs broadly are contained in paragraph no. 5 and about comparative hardship in paragraphs no. 5(A) and 8 of the plaint, reading, thus :

" **5)** वादीस दाव्यातील मिळकत स्वतःचे धंद्यासाठी व वापरासाठी प्रामाणिकपणे व सद्भावनेने वीजबीरीत्या हवी आहे. वादी नं. ३ मनोज हा सुशिक्षित बेकार असून त्यांस स्वतःच्या धंद्यासाठी तसेच वादी नं. २ यतीन यांस सुद्धा धंद्यासाठी जागेची नितांत गरज असून प्र. वादीच्या ताब्यातील जागा धंद्यासाठी पाहिजे आहे. वादीचे वाढते कुटुंब असून वादीजवळ एकमेव घर आहे. वादीना जागेची खूपच जरूरी व आवश्यकता आहे. वादीची परिस्थितीही जेमतेम रोजच्या चरितार्थ चालविण्याची सुद्धा नाही. याउलट प्र.वादीची आर्थिक परिस्थिती खूपच श्रीमंतीची असून प्र. वादीच्या ताब्यात धंद्यासाठी दुसरी जागा आहे. तसेच प्र. वादी कोणत्याही ठिकाणी धंदा सुरु करण्यासाठी जागा घेऊ शकेल अशी प्र. वादीची ऐपत व परिस्थिती आहे. आपल्या स्वतःच्या जागेत धंदा करता यावा व चरितार्थ चालविता यावा अशी आंतरिक इच्छा वादीची आहे. तसेच दुसरीकडे जागा घेऊन धंदा टाकण्याची वादीची ऐपत व आर्थिक परिस्थिती नाही. प्र.वादीस या जागेची काहीएक आवश्यकता व जरूरी नसून प्र. वादीकडे दुसऱ्या जागा उपलब्ध आहेत. प्र.वादीने मुद्दाम असद् हेतूने ही जागा ताब्यात ठेवली आहे. प्र.वादीस जागा सोडावी लागल्यास त्यांस **HARDSHIP** होणार नाही. किंवा त्यांचे नुकसान होणार नाही. "

5 अ) प्र.वादीने दावा मिळकतीपासून थोड्याच अंतरावर त्याच रस्त्यावर बालाजी वाड्याजवळ प्र.वादीचा नातू श्री. हिरलकुमार किरीटभाई मेहता यांचे नावाने श्री.

गणपत मोतीराम सोनार यांचेकडून सि. स. नं. 259/2, क्षेत्र 33.4 चौ. मी. चे बांधीव घराची मिळकत ता. 21/7/2003 रोजी रजिस्टर्ड खरेदीखताने विकत घेतली आहे. ती प्र.वादीचे ताबे उपभोगात आहे. तसेच प्र.वादिची वडिलोपार्जित मिळकत सि.स.नं. 265/ब/2 क्षेत्र 9.2 चौ. मी. प्र.वादीचा मुलगा श्री. किरिटकुमार अमृतलाल मेहता यांचे नावे जरी केली असली तरी ती मिळकत सुद्धा प्र.वादीचे ताब्यात आहे. प्र.वादी, त्याचा मुलगा श्री. किरिटकुमार व नातू हिरलकुमार हे सर्व एकत्रीत राहतात व एकत्रीतच धंदा करतात. प्रत्यक्षांत ते विभक्त कधीही झालेले नसून एकत्र कुटुंब आहे. सबब प्र.वादीस या दोन्ही मिळकती त्याच दावा मिळकतीचे आसपास असल्याने उपलब्ध आहेत. त्यामुळे प्र.वादीचे व्यवसायावर दावा मिळकत सोडावी लागल्यास काहीएक परिणाम होणार नाही किंवा फरक पडणार नाही.

8. सदर दावा मिळकत तात्पुरती सोय म्हणून वादीच्या पूर्वाजांनी घरोब्याचे संबंध लक्षात घेऊन प्र. वादीस दिली होती. प्र.वादीची आर्थिक परिस्थिती भक्कम होऊन सुद्धा व दुसरीकडे घेतलेल्या जागा उपलब्ध असतांना सुद्धा व प्र.वादीस सदर जागेची कोणतीही गरज प्रत्यक्षांत आता राहिलेली नसतांना प्र.वादी मुद्दाम असद् हेतूने सदरची जागा वादीची अडवणूक करण्याचे इराद्याने ताब्यात ठेवली आहे. वास्तविक वादीचे कुटुंब मोठे व वाढते आहे. वादीना अश्या परिस्थितीत जागेची निकडीची गरज आहे. "

6. These pleadings are countered by defendants by paragraphs 4, 5 and 8 in their written statement, reading, thus:

" **4.** दावा कलम 5 मधील मजकूर खरा नाही. वादातील मिळकत वादी यांना धंद्यासाठी हवी असल्याचे खरे नाही. वादी नं. 2 व 3 यांना सदर भागाची धंद्यासाठी व इतर कोणत्याही कारणासाठी काहीही गरज नाही. वादीची वादातील मिळकतीचे पूर्व - दक्षिण भागात पानाची दुकान असून वादी नं. 2 व 3 हेच सदर दुकान चालवितात. नुकतेच त्यांनी सदर दुकान पुन्हा नवीन बांधून घेतलेले आहे. त्या दुकानात वादी नं. 2 व 3 यांचा धंदा खूपच चांगल्या प्रकारे चालतो. वादी नंबर 4 हा बँकेत नौकरी करतो व सदर नौकरी हि कायम स्वरूपाची आहे. वादी नंबर 1 हे वयस्कर आहेत. त्याच प्रमाणे सदर पान दुकानाचे मागे म्हणजेच पश्चिमेकडे व या

वादातील दुकानाचे दक्षिण - पश्चिम भागाकडे दुसरी दुकान असून ती पण वादीचे मालकीची व ताबेवहिवाटीतील आहे. पूर्वी वादी नं. 2 ते 4 यांचे वडील हे सदर दुकानात टेलरिंगचा व्यवसाय करीत होते. मात्र ते वारल्यानंतर सदर दुकान बरेच वर्षांपासून बंद पडलेले आहे. वादी यांना तेथे स्वतंत्र धंदा सुरु करणे शक्य असूनही त्यांनी आजपावेतो तेथे कोणताही धंदा किंवा व्यवसाय सुरु केलेला नाही. सबब वादीना सदर भागाची प्रामाणिकपणे गरज असल्याचे म्हणणे खरे नाही. वादीचे वाढते कुटुंब असल्याचेहि खरे नाही. प्रत्यक्षात वादी नं. 2, 3 व 4 यांचे लग्नही झालेले नाही. वादीचे कुटुंब बरेच वर्षांपासून आहे तेवढेच कायम आहे. सबब त्यांना स्वतंत्र धंद्याची गरज असल्याचे अत्यंत खोटे आहे. वादीची परिस्थिती गरिबीची असल्याचे व जेमतेम चरितार्थ चालेल अशी असल्याचे खरे नाही. वादीना गरज नसल्यानेच वादीनी आपसात समजुतीने भाड्याची रक्कम वाढवून व त्याप्रमाणे **Standard Rent** चा हुकूमनामा करून घेतला असून सदर मिळकत प्रतिवादीकडे भाड्याने कायम ठेवलेली आहे व त्यानंतर कोणताही बदल झाला नसल्याने वादीना सदर तक्रार कायद्याने घेता येऊ शकत नाही. त्यास **estoppel** चे तत्वांचा बाध येतो.

5. प्रतिवादीची परिस्थिती श्रीमंतीची असल्याचे तसेच त्याचेकडे धंद्यासाठी दुसरी जागा असल्याचे खरे नाही. प्रतिवादीकडे धंद्याची इतर कोणतीही जागा नाही. या प्रतिवादीची धंद्यासाठी दुसरी जागा घेणेची ऐपत नाही. वादीची त्याचे स्वतःचे म्हणजेच वादातील जागेत धंदा सुरु करण्याची व त्याद्वारे चरितार्थ चालविणेची आंतरिक ईच्छा असल्याचे खरे नाही. त्याची स्वतःची दुसरी दुकान त्याने बंद ठेवलेली आहे. सबब वादी यांस वादातील भागाची गरज नाही व त्याची मागणी **bonafide** नाही. प्रतिवादीस दुसरी कोणतीही जागा त्याचे धंद्यासाठी उपलब्ध नाही. वादीने वादातील भागाचा ताबा मुद्दाम व असद् हेतूने रोखून ठेवल्याचे खरे नाही. प्रतिवादी यांस सदर दुकान सोडावी लागल्यास त्यास दुसरी जागा उपलब्ध नसल्याने त्याचा बरेच वर्षांपासूनचा किराणा व्यवसाय बंद पडेल व त्याची उपासमार होईल. तसेच त्याचे न भरून येणारे नुकसान होईल. मात्र वादी यांस दुसरा धंदा करणे नसल्याने तसेच त्याचेकडे दुसरी दुकान त्याच भागात उपलब्ध असल्याने वादीचे मात्र कोणतेही नुकसान नाही. व त्यांस **hardship** ही होणार नाही. व म्हणून गरजेचे कारणाने केलेले ताब्याची मागणी रद्द होणेस पात्र आहे.

8. दावा कलम 8 मधील मजकूर खरा नाही. वादातील मिळकत या प्रतिवादीस तात्पुरती सोय म्हणून दिल्याचे म्हणणे अत्यंत खोटे आहे. आपसात समजुतीप्रमाणे

ठरलेल्या भाड्याच्या नवीन शर्तीमध्येहि तात्पुरती सोय म्हणून दिल्याचे नमूद करण्यात आलेले नाही. उलट भाडे वाढवून जादा उत्पन्न मिळावे या हेतूनेच प्रतिवादी यांस सदर मिळकत भाड्याने दिली आहे. इतर तक्रारीबाबत प्रतिवादीने सविस्तर उत्तर दिलेले आहे. "

7. Learned counsel Mr. Ruchir Wani appearing for defendants/applicants herein contends that in the plaint, according to him, except vague pleading that suit premises are required for business and use honestly and reasonably, nothing further is pleaded giving idea of nature of business to be started. He submits that nor do the plaintiffs refer to premises in their occupation rather, are shy of disclosing that they were already running some business.

8. He goes on to submit that in the first place, the plaintiffs had been running *pan* (betel nut) shop and further in evidence it has emerged that the plaintiffs had also been running grocery shop.

9. He submits, decree on the ground of *bonafide* and reasonable requirement of suit premises for carrying business on the basis of pleadings as are appearing would hardly be possible to be taken into account under position as would be emerging, from two decisions of this court, namely, *Hotel Rosalia Pvt. Ltd. vs. M/s Metro*

Hotels reported in 2001 (2) *Mh. L. J.* 881 and *Sitaram Narayan Shinde vs. Ibrahim Ismail Rais* reported in 2005 (1) *ALL MR* 74, which requires that the plaintiffs should give reasonable idea of the business to be carried on in order to let the defendant meet with pleaded requirement.

10. Learned counsel contends that having regard to observations of the court in aforesaid two decisions, with a vague case being put forth on the ground of *bonafide* requirement, suit should not have been decreed. He submits that evidence also discloses that plaintiffs do not have know-how to start business of hotel stated in their evidence. In such a case, it would not be said that plaintiffs' requirement is *bonafide* and reasonable. He submits that there are no *bonafides* in fact, for, the plaintiffs are already in possession of betel nut shop and premises where they are running grocery business. Aforesaid apart, according to him, plaintiffs are also in possession of quite a lot of open space.

11. Mr. Wani submits decision in *Hotel Rosalia Pvt. Ltd. vs. M/s Metro Hotels* (cited *supra*), as can be seen, deals with a situation quite similar to the one involved in present matter. In that case as well, with vague pleadings plaintiff had approached the court without giving any information as to nature of business to be

started and the court having regard to the position had observed that considering the nature of evidence, quality of pleadings will have to be assessed in the light of extent and magnitude of the need sought to be made out. He submits, the court has observed, in order to test whether the requirement is reasonable and *bonafide* and need being genuine, in contradiction to a mere desire, there should be some indication of the same in the pleadings and in present matter, according to him, there is absolute absence of any indication of nature of business to be carried out.

12. Learned counsel submits that in said case of *Hotel Rosalia Pvt. Ltd.* (supra), case of *Rajkumar Khaitan vs. Bibi Zubiada Khaitun* reported in (1997) 11 SCC 411 had been referred to and the court had found that observations therein ("*Rajkumar Khaitan*") will have to be read in the light of facts of that particular case. He purports to point to that decision in *Hotel Rosalia Pvt. Ltd.*, a decision by three judge bench *J. K. Iron and Steel Co. vs. Britannia Biscuits Co.* reported in AIR 1979 SC 1652, with regard to importance of pleadings has been referred to. He, therefore, submits that present case is squarely governed by observations as are appearing in paragraphs no. 21 and 22 of decision in the case of *Hotel Rosalia Pvt. Ltd.* (supra). He also draws attention to paragraph no. 7 of other case (*Sitaram Narayan Shinde*) relied upon by him. He submits that in present case as well, it can

hardly be said that the pleadings spell out intensity of need of plaintiffs, depriving in the process, letting defendants' opportunity to deal with and resist the same.

13. Learned counsel Mr. Wani further urges to consider also that even if it is to be assumed, the plaintiffs require premises for their use and occupation, yet in such a case, having regard to number of members in family and premises in occupation of the parties, it ought to be examined as to whether there can be a decree of partial eviction.

14. Mr. Wani submits, plaintiffs have not come to the court with clean hands and have kept back vital information. He goes on to submit that the plaintiffs additionally have a 'Wada' where intended hotel business could be started. Had the defendants been given idea of nature of business to be started by plaintiffs, an opportunity would have been available to defendant to meet with plaintiffs' evidence on the point of starting hotel business, however, such an opportunity has been lost. They have been deprived of opportunity at relevant time before court. According to him, the courts have thus committed error in not taking into account such material aspect involved in the matter and in decreeing the suit. All these aspects are required to be considered while dealing with

present matter on the ground of *bonafide* requirement.

15. Learned counsel Mr. Wani submits that courts hitherto have been in error in not properly appreciating that far more hardship would be faced by defendants in the event of eviction. According to him, defendants do not have alternate suitable accommodation available and plaintiffs readily have in their possession a '*Wada*' ("वाडा"), which can be utilized by them for starting the claimed business whereas the defendants, as stated above, do not have any such accommodation available. According to him, unwarranted considerations have weighed with the courts about acquisition of property by *Kiritkumar* son of defendant, who is an educated businessman and has acquired property. Besides defendants have earned goodwill in business in suit premises for several years. On the scale, measure of hardship faced by defendants discernibly outweighs the plaintiffs' discomfort, if any.

16. He additionally submits that plaintiffs' need is not *bonafide* also can be seen from that, they had attempted to sell suit property.

17. Learned counsel Mr. S.V. Natu appearing for plaintiffs - respondents contends that need of plaintiffs being *bonafide* and

reasonable, has been properly gauged by courts hitherto on evidence on either side as appearing and adduced in the matter. He submits that the courts have considered relevant material and have appreciated that the plaintiffs require suit premises reasonably and *bonafide* for running business. He submits, the courts have aptly appreciated that economic and financial condition of defendants is way superior to that of plaintiffs. The defendants have also acquired quite a lot of properties before the proceedings were initiated and even in the *interregnum* and had not made any efforts to look for suitable accommodation before or during *pendency* of proceedings. Hardship being suffered by plaintiffs is far more than would be suffered by the defendants.

18. Mr. Natu submits that thrust of defendants' contentions now appears on that pleadings with regard to *bonafide* requirement being not specifically referring to any particular business, are deficient, and, as such, suit ought not be decreed on that ground. He submits, the defendants are putting emphasis on two judgments, one in the case of *Hotel Rosalia Pvt. Ltd.* (supra) and other in the case of *Sitaram Narayan Shinde.* (supra). He contends that observations appearing in *Hotel Rosalia Pvt. Ltd.* (supra) are in very peculiar facts of that case, wherein the plaintiffs had undertaken a huge project and had then not referred to any particulars in the

pleadings. He submits that the court had been faced with situation wherein a big industrial activity was being undertaken and had specifically observed as under :-

" If need is for opening of big industrial unit, then considerations would be different in contrast to that where the need sought to be made out is for one or two rooms accommodation may be for the purpose of business or residence. In this case, the need sought to be made out is for 18 rooms located on first floor for running hotel business. The need is not for one or two rooms. Having seen the quality of pleadings extracted from the judgment of the Apex Court, one has to reach to the conclusion that the said pleadings were certainly better than the pleadings found and noticed in this particular case."

He submits that it is in this context, the court had further specifically observed as under:-

*" Therefore, in my opinion the judgment of the **Rajkumar Khaitan's case** (cited supra) does not help the petitioner plaintiff considering the facts and circumstances of the present case and the extent of need sought to be made out."*

He goes on to submit that thus, it emerges that it has not been the intention of the court to specifically lay down that in each and every case, it is incumbent to refer to the particulars of business intended by landlords in proceedings for eviction on the ground of *bonafide* need.

19. Learned counsel further submits that as a matter of fact, decision of supreme court in the case of *Rajkumar Khaitan*

(supra) would apply on all fours in present matter where the court had specifically ruled that it is not necessary for the landlords to indicate precise nature of business which they intended to start in the suit premises and further it has been observed that even if nature of business would have been indicated nobody could bind the landlords to start other business in the premises after it was vacated.

20. He further contends, position admittedly emerges in present matter that plaintiffs, even according to the case of the defendants, were and are involved in business and need the premises *bonafide* for starting a business, which according to defendants, has emerged in evidence about the same being for running a hotel. He submits that capital or for that matter, know-how for running the business are not the matters which are relevant to be considered while considering eviction on the ground of *bonafide* requirement of landlord. He submits that the plaintiffs have specifically referred to that family members of the plaintiffs are increasing and growing. They do not have any other suitable property for starting business. Plaintiff no. 2 has been in dire need of property for starting business. The plaintiffs who now are three brothers, with their growing family members, running betel nut shop in a small area is becoming uneconomical and unviable, while

larger area could be available. He purports to draw attention to that this position has not been seriously disputed save and except that the plaintiffs have been running a betel nut shop and that evidence would show that they are also running a grocery business. As such, naturally, this establishes that growing family needs business for earning income and income would have to be increased to maintain the family. Thus, the need being *bonafide* of the plaintiffs, has emerged even according to the case sought to be put forth by the defendants. On that count, according to him, the need being *bonafide*, emerges indisputably.

21. He submits that alternate accommodation available, as contended by defendants about 'Wada' being available, has been adequately dealt with by the courts finding that the same would not be suitable for running business. He further draws attention to that it has emerged in evidence that defendants and family members have been engaged in land dealings. In addition to the same, he submits that defendants have purchased quite a few real estates / landed properties in close vicinity which are easily available for business of the defendants. These being the findings on the basis of record, statutory requirements under the law, for eviction of defendants, are amply borne out and stand satisfied and established.

22. He submits that although it had not *hitherto* been urged at any point of time, an argument as advanced, if it is perceived that plaintiffs' need is *bonafide*, then in such a case, partial eviction can be considered. He submits that this submission is incompatible with the case sought to be urged *hitherto* on behalf of the defendants. Evidence shows and establishes that partial eviction for growing and increasing members of family of plaintiffs is not going to solve requirement of need of premises for running business. According to his submission, this gives an intention of intransigent attitude of defendants not to let the plaintiffs have accommodation of their own property.

23. He submits that the defendants have not only more than adequate but also copiously ample accommodation available. Looking at the businesses they carry on, it is not the case at all that businesses run by the defendants are likely to be stopped absolutely.

24. He submits that the position is largely settled that when landlord desires to have his own premises needing the same *bonafide* while the need is not fanciful or whimsical, the need of the landlord should receive its due. According to him, the law has taken ample care to avoid any arbitrary or whimsical act of the

landlord to evict tenant on this ground. For said purpose, he refers to and relies on a decision of the supreme court in the case of *Deena Nath Vs. Pooran Lal* reported in *2001 DGLS (Soft.) 843 : 2001 (5) SCC 705*. He, also, adverts to that the very same judgment also refers to that interference in the findings of facts is not warranted.

25. Learned counsel refers to and relies on decision of this court in the case of *Goverdhandas Mulchand Agrawal and others Vs. Bherulal Uderam Bagade and another* reported in *2005 (Supp.1) Bom.C.R. 643 : 2005 (3) Mh.L.J. 196*. He presses the same into service, to counter the argument of the applicants that since there is no know-how or expertise, there is no *bonafide* need for the same. In said decision, it appears to have been observed that it is not necessary for landlord to plead and prove that he has necessary know-how or expertise as well as financial capability to conduct business. Paragraphs no. 29 and 38 are reproduced below with reference to the same.

" 29. It is also necessary to note that ***while setting out the need for business premises and testing the reasonableness thereof, it is not necessary for the landlord to plead and prove that he has the necessary knowhow or expertise as well as financial capability to conduct the business. It is ultimately the aspect of need which is relevant. It should not be a mere wish or desire.***

.....

38. *I am unable to uphold the view that the deposition of the landlord was insufficient or inadequate. **Once the requirement of giving details of the business including sufficiency of capital and investment is not at all necessary**, then there is no reason to discard the pleadings and depositions of the petitioners. **It is not for the Courts to scrutinize and direct as to how the business is to be managed and conducted. It is not permissible in law for the Courts to go into the aspect of suitability or justifiability of carrying on a particular business from the business premises.** "*

26. In present matter, suit property has been claimed by plaintiffs *bonafide* on the ground that they require the same for business and use stating that plaintiff no. 3 - Manoj is an educated unemployed so is the case in respect of plaintiff no. 2 and the family is growing and they have only the suit property suitable to start and run business, as such, they are in dire need of the same for carrying on business to earn income. Family of the plaintiffs is big and growing. Such is not the case of the defendants. It is plaintiffs' case that defendants have been rich. They have other properties for business and have wherewithal to purchase property at any place. They are financially sound whereas plaintiffs are not in a position to acquire other property. It has been referred to that the defendant's son has purchased property at a very close place from suit property and are also possessed of ancestral property. The defendants are residing jointly and have been running business jointly. The defendants purport to deny the claims made in respect of the requirement of suit property contending that the plaintiffs have been running a betel nut shop on the south east portion. It

has been contended that plaintiff no. 4 had been working in a bank and plaintiff no. 1 is an old person. Plaintiffs have one shop on the western side wherein father of plaintiffs no. 2 to 4 had been carrying on tailoring business. After his death, the same has been closed. They have denied that terms and conditions with plaintiffs are not good. They have denied that defendants are wealthy persons and they have other properties. It has been contended that their grocery business would come to an end if they are evicted whereas such is not a position of plaintiffs.

27. Trial court had decided all the issues together and had considered, plaintiffs have proved that they require suit premises reasonably and *bonafide* and that hardship suffered by plaintiffs would be more in comparison to that of defendants. The plaintiffs are three brothers running betel nut shop which is a small business and that landlord is the best judge of his need and is entitled to decide as to how and in what manner, he should use the premises. The trial court has observed that plaintiffs are three brothers and are owners of the property situated in main market area of the city. The trial court also considered that capital and expertise or knowledge to run the business, is not a requirement to be proved for starting hotel business. The trial court, in this respect had referred to a decision relied on by plaintiffs in the case of *Dattatrya*

Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde reported in 1999(2) Mh.L.J. 793. The court had taken note of that the income may not be a criterion to consider *bonafide* requirement.

28. Perusal of appellate court's judgment shows that the matter has been considered quite elaborately. Appellate court has considered that the plaintiffs were in possession of eastern side *pan* (betel nut) shop which has been admeasuring 3' X 4' and shop had been on a platform below the staircase. It has further emerged that three brothers were running *pan* shop. Manoj is an educated person. The court adverted to that the plaintiffs were of marriageable age and will require to do some business to earn livelihood and running business in a small area would be inconvenient and it is not proper to let plaintiffs sit idle till getting possession of suit property by using small portion available with them for same business. Appellate court has also considered that even if it is considered that there had been an attempt to deal with the property, *inter-alia*, the same would hardly affect *bonafide* requirement of the plaintiffs. Appellate court had gauged, scanning of entire evidence shows that requirement of plaintiffs is genuine and in the circumstances, to force them to earn livelihood by running small business, is hardly going to cater to the needs of the plaintiffs. The litigation had been going on and to start grocery

shop in a smaller portion would not reflect upon the need being not *bonafide*. As far as hardship is considered, the court elaborately dealt with same finding that suggestion on behalf of the defendants of running business in the '*Wada*', is not a viable proposition and further that defendants are well placed and have some properties close by. As such, findings recorded on these two aspects are concurrent by both the courts.

29. Although, the submissions are quite emphatically and persuasively put forth on behalf of applicants, for want of proper pleadings rather the pleadings being deficient, having regard to rulings cited, if it is to be considered that the defendants lost out an opportunity to rebut the claims, yet, the situation as would be emerging, shows that finding by the two courts about need of plaintiffs being *bonafide* and genuine, are hardly impeachable.

30. Decision and observations in the case of *Rosalia Hotel Pvt. Ltd.* (supra) had been rendered in a very peculiar facts and circumstances. Said decision may not be able to hold sway over factual and circumstantial situation in present matter. The analogy sought to be drawn is rather overstretched and may not have relevance beyond that need expressed had been for a hotel.

31. It has emerged that suit premises are situated in the business area of the city. The plaintiffs appear to be running small business on smaller area. During the *pendency* of litigation, with growth in family, they are forced to carry on some additional business activity.

32. Looking at ages of the plaintiffs, one will have to consider that their families would be growing and they would be required to carry business to earn livelihood and for such a need, they are demanding possession of suit property. Once need appears to be *bonafide* and reasonable looking at number of persons as well as that plaintiff's family already is running business in small area, it would hardly be amenable for reconsideration that the need expressed and as established by plaintiffs is not *bonafide* and/or for that matter reasonable. Plaintiffs appear to require premises *bonafide* and reasonably for their carrying on business.

33. As far as know-how and wherewithal for carrying on business is concerned, the situation emerges that it is not hard and fast requirement to gauge that plaintiffs require premises to carry on intended business. As contended on behalf of the respondents - plaintiffs, with reference to supreme court judgment, it is not incumbent to start stated business and it is open for the landlord to

change the intended business. On this ground *although* arguments have been advanced, it is difficult to overturn the decisions rendered with reference to the facts and circumstances as are emerging on record. Thus, the civil revision application is not being entertained and same is dismissed.

34. At this stage, Mr. Ruchir Wani, learned advocate for the applicants seeks six months' time for vacating the suit premises. Learned advocate for the respondents, Mr. Natu, however, resists the request.

35. However, looking at that tenants are in occupation of suit premises since last 40 years, it may be expedient to grant six months' time to the tenants for vacating the suit premises. After completion of six months period from today, the tenants shall peacefully vacate and hand over the suit premises to the landlords personally and shall not create any impediment, hurdle and hitch, legal or factual and shall not create third party interest in the suit premises of any sort and if any such hurdle arises, the tenants would be solely responsible for the same. The applicants – tenants shall pay monthly compensation to the landlords at the same rate as rent was being paid by them during currency of tenancy. They shall file undertaking to aforesaid effect within a period of twelve

weeks from today and in case of failure to submit such an undertaking, it is open for the landlords to proceed with execution.

36. Rule stands discharged.

(SUNIL P. DESHMUKH)
JUDGE

arp/-