

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

**WRIT PETITION NO. 2646/2019**

(AZIZ KHAN CHHOTE KHAN (D) THR. LR's SHAHNAZ PARVEEN MOHD. KHAN & OTHERS VERSUS  
 MAQSOOD AHMED MOHD. SALIM JILEBIWALA)

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 Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders  
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Court's or Judge's orders

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 Shri S.A. Mohta, counsel for petitioners.

**CORAM : A.S. CHANDURKAR, J.**

**DATE : APRIL 01, 2019.**

The unsuccessful defendants who are the tenants of the premises admeasuring 4 Feet X 4 Feet owned by the respondent herein have challenged the decree for eviction as passed under provisions of Sections 16(1)(b) and 16(1)(g) of the Maharashtra Rent Control Act, 1999. That decree has been confirmed by the Appellate Court.

It is the case of the landlord that he is running his business in an area admeasuring 10 Feet X 13 Feet for about thirty years. The original tenant was let out a temporary structure admeasuring 4 Feet X 4 Feet wherein he was doing his business. Since the landlord was in need of additional area to do his business, the aforesaid suit came to be filed. Another ground on which eviction was that the defendants had made permanent construction in the suit property without permission of the landlord. According to the defendants, the repairs to the suit premises were carried out after obtaining permission from the landlord. It was denied that the plaintiff had any bona fide need so as to evict the tenant. The trial Court after considering the evidence on record held that the bona fide need of the plaintiff was duly proved. Similarly, the

permanent construction was made without prior permission of the landlord. The Appellate Court has thereafter confirmed the decree for possession.

Shri S.A. Mohta, learned counsel for the petitioners, submitted that the plaintiff in his cross-examination admitted that in August-2009, he had permitted the tenant to affix tin sheets on the suit property. Therefore, eviction of the tenant on the ground of carrying out permanent construction could not have been granted. Similarly, it was submitted that the plaintiff was having other properties in the same locality where he could carry out his own business and expand the same. Since the tenant was occupying area admeasuring only 4 Feet X 4 Feet and it was not shown that such small area would satisfy the need of the landlord, the tenant was not liable to be evicted. Moreover, the tenant was in possession for last thirty years and he would be deprived from carrying out his own business. As these aspects were not considered by the Courts, the decree for eviction was liable to be set aside.

Heard learned counsel for the petitioners and perused the evidence on record. The need as pleaded by the landlord is for expanding the existing business. In paragraph 5 of the plaint, necessary pleadings have been made indicating increase in the number of family members after marriage of his children. The trial Court as well as the Appellate Court have referred to the evidence on record and have found that the need of the landlord was bona fide. Though the plaintiff had some other property to the north of the premises occupied by tenant as well as on the first floor, it was found that the need for expansion of the business was bona fide. The suit property was located on the main road and hence the Courts have decreed the suit for possession. It is thus found that

the finding recorded as to the bona fide need of the plaintiff is based on evidence on record not warranting any interference. The aspect of hardship has also been considered in favour of the landlord.

Even if the admission of the landlord that he had granted permission to the tenant to replace the tin sheets is accepted, the landlord having proved his bona fide need, he is entitled to succeed on that count. It is therefore found that the decree for eviction as passed is reasonable not warranting any interference. However, considering the fact that the petitioners are in occupation of the premises for a considerable period, they are granted time till the end of October-2019 to vacate the suit premises. The petitioners shall file an undertaking in this Court within four weeks from today stating that they would handover vacant possession to the respondent by the end of October-2019. They shall not create any third party rights in the suit property and would continue to pay the monthly rent to the respondent.

The Writ Petition is disposed of in aforesaid terms. No costs.

**JUDGE**

APTE