

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**CIVIL REVISION APPLICATION NO.54 OF 2020 WITH
CIVIL APPLICATION NO.917 OF 2021**

Guruvirsingh s/o Harasingh Bagga
age 66 years, Occu. Hotel Business,
R/o 62, Polan Peth, Jalgaon,
Taluka and District Jalgaon

**... APPLICANT
(Orig. Deft. No.1)**

VERSUS

- 1) Arvind s/o Bankatlal Lathi,
Age 72 years, Occu. Business,
R/o 25, Prabhat Colony,
Jalgaon, Taluka and District Jalgaon
- 2) Anil s/o Bankatlal Lathi,
Age 68 years, Occu. Business,
R/o 7, Polan Peth, Jalgaon
Taluka and District Jalgaon
- 3) Dilip s/o Bankatlal Lathi,
Age 64 years, Occu. Business
- 4) Avinash s/o Bankatlal Lathi,
Age 59 years, Occu. Business,

Nos.3 and 4 R/o 25, Prabhat Colony,
Jalgaon, Taluka and District Jalgaon

**... RESPONDENTS
(Orig. Plaintiffs)**

.....
Shri K.C. Sant, Advocate for applicants
Shri A.G. Talhar, Advocate for respondents

.....

WITH

**CIVIL APPLICATION NO.8037 OF 2020 IN
CIVIL REVISION APPLICATION NO.54 OF 2020**

:: 2 ::

1. Shri Jaspalsingh Harasingh Bagga,
Age 68 years, Occu. Businessmen,
Resident of : 110/A, Adarsh Nagar
Jalgaon, District Jalgaon
2. Shri Devendrasingh Harasingh Bagga,
Age 62 years, Occu. Business
Resident of : 110/C, Adarsh Nagar,
Jalgaon, District Jalgaon ... **APPLICANTS**

VERSUS

1. Shri Guruvirsingh Harasingh Bagga,
Age 66 years, Occu. Hotel Business,
Resident of : 62, Polan Peth,
Jalgaon, District Jalgaon
2. Shri Arvind Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon
3. Shri Anil Bankatlal Lathi,
Age 68 years, Occu. Business
Resident of : 7, Polan Peth,
Jalgaon, District Jalgaon
4. Shri Dilip Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon
5. Shri Avinash Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon ... **RESPONDENTS**

.....
Shri M.S. Kulkarni, Advocate for applicants
Shri K.C. Sant, Advocate for respondent No.1.
Shri A.G. Talhar, Advocate for respondent No.2 to 5

.....

WITH

WRIT PETITION NO.380 OF 2021

1. Shri Jaspalsing Harasingh Bagga,
Age 68 years, Occu. Businessmen,
Resident of : 110/A, Adarsh Nagar
Jalgaon, District Jalgaon
2. Shri Devendrasingh Harasingh Bagga,
Age 62 years, Occu. Business
Resident of : 110/C, Adarsh Nagar,
Jalgaon, District Jalgaon

... **PETITIONERS**
(Orig. Applicants
seeking intervention)

VERSUS

1. Shri Guruvirsingh Harasingh Bagga,
Age 66 years, Occu. Hotel Business,
Resident of : 62, Polan Peth,
Jalgaon, District Jalgaon
2. Shri Arvind Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon
3. Shri Anil Bankatlal Lathi,
Age 68 years, Occu. Business
Resident of : 7, Polan Peth,
Jalgaon, District Jalgaon
4. Shri Dilip Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon
5. Shri Avinash Bankatlal Lathi,
Age 72 years, Occu. Business,
Resident of 25, Prabhat Colony,
Jalgaon, District Jalgaon

... **RESPONDENTS**
(No.1 Orig. Tenant/ Appellant
2 – 5 – Plaintiffs/ Respondents)

.....
Shri M.S. Kulkarni, Advocate for petitioners
Shri K.C. Sant, Advocate for respondent No.1
Shri A.G. Talhar, Advocate for respondent No.2
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 27th January, 2021

Date of pronouncing judgment : 3rd February, 2021

J U D G M E N T :

Both the proceedings are decided by this common judgment since these are interconnected.

2. The challenge in Civil Revision Application (CRA) No.54/2020 is to the judgment and decree dated 30/11/2015, passed by 2nd Jt. Civil Judge, Junior Division, Jalgaon and affirmed by the Principal District Judge (PDJ), by judgment and decree dated 3/10/2020, passed in appeal – being Regular Civil Appeal No.3/2016. While the challenge in Writ Petition No.380/2021 is to the order dated 3/10/2020, passed by PDJ, Jalgaon below application Exh.24 in Regular Civil Appeal No.3/2016. By the impugned order, the application preferred by the petitioners for intervention/ impleadment as party defendants to Regular civil Suit No.243/2019 came to be rejected. For the sake of convenience, parties to the Civil Revision Application are referred to as per their status in the suit.

3. The applicant is original defendant in the suit. The respondents are plaintiffs. The plaintiffs filed the suit against

the defendant for arrears of rent and recovery of possession of a tenanted premises on the grounds of default, bonafide requirement and change of user. The trial Court decreed the suit on the grounds of bonafide requirement and change of user. The applicant has been held to have not been defaulter in payment of rent. The appellate Court confirmed the decree passed by the trial Court on both the grounds.

4. Mr. K.C. Sant, learned counsel appearing for the respondent would submit that, the suit premises were given on rent to the father of the applicant for running of a hotel about 60 years back. In the year 1978, Beer Bar was opened in the suit premises while since 1981, Permit Room has been run therein. Late Kashinath Lathi never ever objected for operating Beer Bar and Permit Room in the suit premises. As such, the landlord acquiesced in. Moreover, the applicant has not discontinued Restaurant-cum-Hotel business. As such, it could not be said that the applicant has changed the user of the premises or the premises have not been used for a period of six months next before the institution of the suit for the purpose for which it were let. The learned counsel would further submit that the applicant had moved an application for production of additional evidence in appeal. The application was preferred well in advance so that the applicant could have

led oral evidence in proof of the documents. The learned District Judge had deferred the hearing of the application moved for production of additional evidence. The application was heard along with the main appeal. The applicant has lost opportunity to prove the respondents to have several properties at Jalgaon which could have been used for the purpose for which the possession of the suit premises is asked for. According to learned counsel, the plaint was conspicuously silent to disclose material facts. The respondents did not disclose the properties they have owned and which are capable of being utilised for the requirement pressed into service in the suit. The learned counsel has relied on the judgment of this Court in case of **Tarachand Hassaram Shamdasani V/s Durgashankar G. Shroff & others**, reported in **2004 (Supp.) Bom.C.R. 333**. He would further submit that, the applicant had categorically stated in his evidence that he has searched for a suitable premises but was unable to afford to buy the same or even take on rent. According to him, if the applicant is directed to vacate the suit premises, greater hardship would be caused to him.

5. Shri M.S. Kulkarni, learned counsel for the petitioner/ intervener would submit that the suit premises were let to the father of the applicant and the writ petitioners.

On the demise of the father, the suit premises are being used by all the brothers. The petitioners ought to have been impleaded as defendants in the suit. The petitioners realised very late about the decree having been passed in the suit. The appellate Court rejected the application moved for intervention. The applicant did not have opportunity to challenge the said order immediately since the intervention application and the appeal came to be decided same day. Learned counsel, therefore, urged for allowing the Writ Petition and remanding the matter back to the trial Court to afford the petitioners an opportunity to meet the applicant's case.

6. Mr. Talhar, learned counsel for the respondent No.2 would, on the other hand, submit that, both the Courts below have given concurrent findings of facts. In exercise of revisional jurisdiction, this Court cannot interfere therewith since there is nothing to suggest any of the findings recorded by both the Courts to be perverse. According to him, the application moved by the petitioners seeking intervention was with a view to delay handing over possession of the suit premises. Learned counsel, therefore, urged for dismissal of both the proceedings.

7. In case of **Addissery Raghavan V/s Cheruvalath Krishnandasan** reported in (2020) 6 SCC 275, it has been held:-

“High Court, exercising revisional jurisdiction is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it, however, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, it cannot exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts.”

8. The suit premises were let out to the father of the applicant for running of a hotel therein about 60 years ago. It was the case of the respondents that their family is comprised of 16 persons. This fact has not been disputed in evidence. It was the position on the date of the suit. With the passage of time, daughters got married and ceased to be members of the family. Similarly, on marriages of male members, number of family members got increased. Bonafide requirement as on the date of the suit is required to be seen. Landlord is said to be a best judge of his own requirement. Landlord cannot be dictated in what manner he should live or make use of his premises. Before the trial Court, one of the plaintiffs gave evidence on oath and reiterated the plaint averments. According to him, the suit premises are required for doing

business therein by members of family of the landlord. There is nothing on record to indicate that the requirement of the respondents is neither reasonable nor bonafide. True, the family of the respondents appears to be affluent. It owns number of properties at Jalgaon. It is also true that the plaint is silent to disclose what properties the respondents own and whether any of those properties could be used for the requirement for which possession of the suit premises is sought. Failure to disclose such facts in the plaint, however, cannot be termed to be lack of bonafides. Parties to the suit are both residents of Jalgaon, a small town in the days when the premises were let out and even when the suit was filed. Parties know each other well. They must be presumed to have known each other's immovable properties. Lack of pleadings in this regard cannot be termed to be suppression of material facts. The appellate Court has appreciated the documentary evidence produced by the applicant in appeal. The appellate Court has observed that the respondents do not have any other premises in the hub of the town. The agricultural land has been far away. Although the respondents run a petrol pump, it is at Pimpalkotha, 25 Kms. away from the town. The fact that the respondents have filed two more suits against the tenants for possession of two other

premises let out to them would be of little consequence. The respondents have been unsuccessful in the suit. The appeals are pending. Considering overall evidence in the case, both the Courts below have rightly held the respondents to have made out a case of bonafide requirement.

9. The burden to prove that a greater hardship would be caused by passing the decree than refusing to pass, is on the tenant/ applicant. Admittedly, for over 40 years the applicant has been running a Beer Bar and Permit Room in the suit premises. The applicant has some other properties at Jalgaon. The same would suggest him to be a man of means. His son runs a hotel on highway. The written statement is silent to state the applicant to have had made efforts to secure alternative premises, but could not, due to financial constraints. The applicant failed to discharge the burden as regards the issue of hardship. Both the Courts below rightly granted decree on the ground of bonafide requirement.

10. So far as regards ground of change of user is concerned, one may not agree with the findings recorded by both the Courts below. The findings, however, could not be termed to be perverse. The suit premises were originally let out for hotel business. With the passage of time, a Permit

Room and Beer Bar has been opened therein. No written consent of the landlord had ever been obtained therefor. Suffice it to say that the findings on this issue as well are not found to be perverse. No interference therewith is called for in exercise of revisional jurisdiction.

11. The suit premises were let out to the father of the applicant and the petitioners. On the demise of the father, the hotel licence and the permit to run the Beer Bar and Permit Room has been in the name of the applicant. Assuming but without accepting the case of the applicant that it is a joint family that has been running the hotel in the suit premises, the family has been duly represented by the applicant.

12. Section 7(15) of the Maharashtra Rent Control Act, 1999 defines the term 'tenant' to mean any person by whom or on whose account rent is payable for any premises and includes in relation to any premises, when the tenant dies, any member of the tenant's family, who, – where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death or in the absence of such member, any heir of the deceased tenant, as may be decided in the absence of

agreement, by the Court. For over years the applicant has been in possession of the suit premises. It is he who has been paying the rent. Along with the application seeking intervention, there is nothing to suggest the intervener – applicants to have been doing business in the suit premises along with the applicant. The application moved for seeking intervention was nothing but an afterthought and moved with a view to defeat the decree or delay its execution.

13. The appellate Court has rightly rejected the intervention application. Thus, there is no merit in the Civil Revision Application and the Writ Petition as well. The Civil Revision Application and the Writ Petition, therefore, fail. The same are dismissed.

Civil Application No.8037/2020 is rejected.

Civil Application No. No.917/2021 is allowed.

**(R. G. AVACHAT)
JUDGE**

At this stage, learned counsel for the applicant seeks time of three years for vacating the suit premises.

Since the hotel is being operated from the suit

premises, the applicant necessarily requires some time for shifting the hotel to some other premises. Therefore, time of six months is granted for vacating the suit premises.

**(R. G. AVACHAT)
JUDGE**

fmp/-