

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

**CIVIL REVISION APPLICATION NO. 91 OF 2021**

|                                       |    |            |
|---------------------------------------|----|------------|
| M/s. Vivek Trimbakrao Paturkar        | .. | Petitioner |
| Through Proprietor                    |    | [original  |
| Yuvraj s/o. Shrikrishnarao Paturkar   |    | defendant] |
| Age. 63 years, Occ. Business,         |    |            |
| R/o. Gujri Bazar, Near Shivaji Chowk, |    |            |
| Parbhani, Dist. Parbhani.             |    |            |

Versus

|                                     |    |            |
|-------------------------------------|----|------------|
| Sow. Sulochanabai w/o. Gangadharrao | .. | Respondent |
| Wattamwar, Age.75 years,            |    | [original  |
| Occ. Household & Agri.,             |    | plaintiff] |
| R/o. Shivaji Chowk, Parbhani,       |    |            |
| Through Power of Attorney Holder,   |    |            |
| Vivek Gangadharrao Wattamwar,       |    |            |
| Age. 55 years, Occ. Business,       |    |            |
| R/o. Parbhani, Dist. Parbhani.      |    |            |

Mr.M.K.Deshpande, Advocate for the applicant.  
Mr.P.R.Katneshwarkar h/f. Mr.A.S. Kulkarni, Advocate for  
sole respondent.

|               |   |                 |
|---------------|---|-----------------|
| CORAM         | : | VINAY JOSHI, J. |
| RESERVED ON   | : | 26.02.2022      |
| PRONOUNCED ON | : | 04.03.2022      |

**J U D G M E N T :-**

01. By this Civil Revision Application, the applicant landlord (plaintiff) has challenged the judgment and order dated 21.09.2021, passed by the District Judge-2, Parbhani in Regular Civil Appeal No.46 of 2013, by which the Appellate Court has reversed the finding of the Trial Court and passed eviction decree under the provisions of the Maharashtra Rent Control Act, 1999 (for short "the Rent Act"). The eviction decree was sought on the ground of bonafide requirement as contemplated under section 16(1)(g) of the Rent Act. The Trial Court held that the plaintiff failed to establish the ground of bonafide requirement and comparative hardship whilst the Appellate Court held that the plaintiff is entitled for possession decree on said ground.

02. The facts necessary to decide this revision in brief are that, plaintiff Sulochanabai was the owner of

the suit property which is particularly described in para 1 of the plaint. The suit property is consisting of three storeyed building out of which on the ground floor the defendant – tenant was running utensils shop, whilst on upper two floors the tenant was residing with his family. The suit property was initially let out to defendant's father in the year 1974 under lease deed, on monthly rent of Rs.800/- which was increased to the tune of Rs.1000/- per month. After demise of original tenant the plaintiff continued the tenancy. The suit property situates in market area.

03. It is plaintiff's case that she has three sons who are engaged in different kind of business. Though her three sons are running separate businesses at different premises, however, the business run by her two sons, namely, Vikas and Vishal situates in interior lane and therefore not suitable for business purpose. The existing area occupied by her sons was not within the market area and therefore they could not flourish their business. It

is plaintiff's case that her sons wanted to establish their business in the market area i.e. in the suit property. Moreover, it is plaintiff's case that at present her three sons are residing jointly with her in one tenement. They desire to reside separately for which also they are in genuine need of the suit property. Further the plaintiff came with a case that her two daughter-in-law are desiring to start new business of ladies emporium, garments and gift center, for which also they require the suit premises. Precisely the plaintiff has put up a case that the suit property is reasonably and bonafide required for her family for business as well as residence.

04. The plaintiff has also put up case that the suit premises is quite old and in dilapidated condition. The plaintiff desires to demolish the suit premises and to reconstruct new building and for that purpose also possession is sought. Though landlord can seek possession of tenanted premises for the purpose of demolishing the

property and erecting new building on the premises sought to be demolished under section 16(1)(i) of the Rent Act. However, no such specific case was made out to seek possession under said clause, for which pre-requisites of section 16(6) of the Rent Act has to be complied. The landlord has neither put up such specific case nor argued.

05. The defendant tenant resisted the suit by filing written statement. The defendant has not disputed about the landlord tenant relationship and amount of rent. The tenant has also not disputed that on ground floor he is running utensils shop whilst upper two floors were used for residential purpose. The tenant has seriously doubted the bonafide need of the landlord for the purpose of business as well as residence. It is contended that the landlord has several residential and commercial properties within the city limits. The existing premises of landlord is quite sufficient for the purpose of business. Some of the vacant properties are in possession

of landlord and they are suitable to cater the need of landlord. As against this, he has no other business as well as residential premises for his use and occupation. Moreover, the defendant denied that the suit premises is in dilapidated condition, requires demolition. With these contentions the suit is resisted.

06. The parties led evidence before the Trial Court. The plaintiff landlady has examined her elder son Vivek in the capacity of power of attorney holder. On the other hand, defendant Yuvraj led oral evidence and examined one witness Shivaji Wange to support his case. Besides that the defendant has produced several documents to impress that the landlord owns various properties within the prescient of city limits.

07. On the basis of said oral and documentary evidence, the Trial Court came to the conclusion that landlord has failed to prove his bonafide need and accordingly dismissed the suit for eviction (RCS

No.106/2010) vide judgment and order dated 25.02.2013. Feeling aggrieved by said dismissal of suit, landlord has filed RCS No.46/2013. The Appellate Court reassessed the evidence as well as considered various reported judgments cited by rival parties. On that basis, the Appellate Court by reversing finding of Trial Court has held that the landlord has proved that he reasonably and bonafide requires suit property and accordingly decreed the suit vide judgment and order dated 21.09.2021.

08. In the wake of such position, now it was turn of defendant – tenant to file revision seeking for restoration of dismissal order by setting aside the judgment and order of the Appellate Court. Keeping in mind limited scope of revisional jurisdictions, both sides were heard exhaustively as well as considered the judgments cited by respective parties. Perused impugned judgment as well as gone through the entire record and proceedings.

09. Before embarking on analyzing the facts, evidence and proof, reference can be made about uncontroverted facts of the case. The suit property is consisting of ground plus two upper floors. The defendant tenant is running utensil shop on ground floor whilst upper two floors are used for residential purpose. The plaintiff is the owner of suit building, which was let out to defendant on rent of Rs.1000/- per month. The plaintiff has three sons, namely, Vivek, Vikas and Vishal. All three are conducting different kind of business in their respective premises. The plaintiff has sought possession of the suit premises only on the ground of bonafide requirement for carrying business and for the purpose of residence.

10. It is the plaintiff's case that they belong to business community. They are running various kind of businesses at different places. The existing premises owned by the plaintiff is not suitable for the purpose of business. It is primarily contended that the plaintiff's

business premises is situated inside the lane whilst the suit property is at market place which is more suitable for their business. Moreover, it is contended that the plaintiff's family has expanded during the passage of time. The plaintiff's all three sons are desiring to reside separately and therefore the requirement.

11. The defendant took a specific plea that the plaintiff's claim is malafide so as to secure possession of the suit premises from the tenant. According to the defendant, absolutely there is no need of suit premises as the plaintiff owns various properties as well as some of them are vacant. The plaintiff's existing properties are equally in good market area. The requirement of premises for the plaintiff's daughters-in-laws for running ladies garment and emporium is fanciful as well as can be complied in their vacant premises. On the other hand, tenant has no other alternate place either for business or residence.

12. At the inception, learned Counsel appearing for landlord by placing reliance on catena of decisions has reminded the cherished principle that the landlord is the best judge of his requirement, he has complete freedom in the matter, tenant cannot dictate as to how landlord shall live, it is no concern of the Court to dictate the landlord in how and what manner he should live. There can be no dispute about said well settled principle in the field. However, when the question of establishing reasonable and bonafide requirement comes for scrutiny, it is totally factual aspect to see whether the landlord has established his need to the satisfaction of Court. Essentially bonafide and personal need is a question of fact to be decided on case to case basis. Bearing in mind above settles propositions of law, evidence adduced by parties requires consideration.

13. While disputing the genuineness of need, the defendant – tenant has brought on record various properties owned by landlord within the city limit. On

that basis it is strenuously canvassed on behalf of tenant that the landlord's existing property is more than sufficient and therefore there is no need for landlord of suit premises. Moreover, it is argued that by hook or crook the landlord wishes to take possession and therefore it is expressed that suit premises is in dilapidated condition.

14. The entire controversy revolves around landlord's reasonable and bonafide need of suit property. Certainly one cannot suspect the need of landlord unless some material is produced to create doubt about genuineness of need. The plaintiff's elder son Vivek in his evidence stated that family runs a firm namely M/s. Baliram Santoba Wattamwar at one premises. In the same building Vivek is running business as "Vaishali Saree Center". The plaintiff's second son Vikas is running a grocery shop known as "B.S. Wattamwar & Co." whilst younger one Vishal is running agency business known as "Varad Sales". The family owns a residential house

property behind those businesses wherein they are residing jointly.

15. The defendant in his written statement has exhaustively described the plaintiff's other properties situated in the city limits which were suppressed. It would be apt to skip written statement but to see the admissions given by the plaintiff about his other properties. The plaintiff has admitted that they have recently closed grocery business and in said premises cloth business has been expanded. The entire shop has been recently renovated. He admits that behind that business establishment, they owns house, namely, "Vivek Nivas" where they reside. The plaintiff admits that in the building known as "Vivek Nivas", they run their other wholesale businesses, namely, Godrej, Goodnight, Big TV etc. The plaintiff stated that all these businesses run at Vivek Nivas, are looked after by three brothers. He admits that in the month of September, 2010, they have started new Raymond shop (cloth shop). Two years prior

to the year 2010 they have purchased the premises from one Pralhad Deshmukh and constructed three storied building over there. On the ground floor, they have started Raymond cloth shop whilst admittedly upper two floors are vacant. The plaintiff further admits that prior to two years they have purchased a house property from one Ramrao Kanherkar, which is presently kept vacant. It has also come in the plaintiff's evidence that the Raymond shop premises i.e. new constructed building situates at Shivaji Road which is on main road. Likewise, he admits that the house property purchased from Kanherkar is adjacent to Subhash road which is main road. He admits that at half of the portion at Subhash road, there are business concerns. The list never ends as the plaintiff further admits that his father owns house premises at Ward No.28, bearing Gat/House No.379 and 399. Likewise, his father also owns house No.674 at Ward No.28. Through admissions, it has come on record that the plaintiff owns several properties out of which two upper floors of newly constructed building and the

house property purchased from one Kanherkar is entirely vacant. On the canvass of these admissions, genuineness of plaintiff's need is to be tested.

16. The defendant in his written statement has pleaded that the plaintiff's family owns various house properties bearing Nos.123, 125, 148, 21, 30, 457, 708, 379 to 399 and 674. Moreover, the defendant stated that the residential property of "Vikas Nivas" where plaintiffs are residing is consisting of 10 residential blocks. Pertinent to note that the defendant has not specifically denied said contention raised in the written statement. The defendant has obtained information regarding plaintiff's property under the Right to Information Act. The concerned information letter (Exh.43) is produced on record. The Public Information Officer of Nagar Parishad, Parbhani has provided list of properties owned by plaintiff's family. Precisely it is informed that the plaintiff's father Gangadhar owns (1) house No. 123 (ward No.25), (2) house No. 25 (Ward

No.25), (3) house No.148 (Ward No.25), (4) house Nos.379 to 399 (Ward No.28), (5) house No.674 (Ward No.28). Likewise it is also informed that plaintiff Sulochanabai owns (6) house No.520 of Ward No.30 and her son Vivek owns (7) house No.80 of ward No.14. Besides that (8) house No.21 situated at ward No.30 is in the name of grandson of the plaintiff. Certainly, said long list of house properties situated within city limits need serious concern.

17. It is the plaintiff's case that their existing premises is inside the lane and therefore not suitable for their business. True, neither tenant nor Court can dictate as to how and where the landlord shall run his business. However, it is for the landlord to satisfy the Court that his requirement is genuine, so as to succumb to his wish. The word "require" means more than mere wish or convenience or fancy of the landlord. He must show some need or necessity.

18. The defendant denied that plaintiff's properties are situated within the lane. As noted above, during cross-examination, the plaintiff admits that the newly constructed building on the premises purchased from Deshmukh situates at Shivaji Road, which is a main road. He also admits that the house property purchased from Kanherkar situates at Subhash road, which is adjacent to main road. Thus, it could not be said that the properties owned by the plaintiff are situated at odd places. Moreover, the plaintiff has not explained as to where his other properties situate which are brought on record through cross-examination and by adducing documentary evidence.

19. Learned Counsel appearing for the plaintiff by placing reliance on the decision in case of Anil Bajaj & Anr. Vs. Vinod Ahuja (2014) AIR (SCW) 3130 submitted that since the plaintiff's premises situates in narrow lane, he requires suit property which is on main road and the tenant cannot dictate as to how the landlord should

utilize his own property. Undoubtedly, the tenant cannot dictate. However, the factual aspect would prevail while considering genuine need. The observations made in above case would not assist the plaintiff, because in that case the landlord has offered alternate premises to the tenant which he declined. In said case, it is not clear as to how many properties were owned by the landlord and landlord's other premises were not vacant. Thus, being distinct facts, it would not assist the plaintiff to any extent.

20. The learned Counsel for the plaintiff further relied on the decision of the Supreme Court in the case of Mohd. Ayub & Anr. Vs. Mukesh Chand (Civil Appeal No.4495 of 2006) to contend that if tenant does not make genuine efforts to search premises, the issue of hardship will go against him. It is argued that it is for the landlord to decide as to where and how he should live. For this purpose, reliance is placed on the decisions in the cases of Pravita Devi (Smt.) Vs. T.V. Krishnan,

(1996) 5 SCC 353 and Rishi Kumar Govil Vs. Maqsoodan & Ors., (2007) 4 SCC 465. The learned Counsel appearing for landlord also relied on the decision of this Court in the case of Messrs. Indian Scientific Glass Industries Vs. M.K. Mahipalsingh, 2019(1) ALL MR 204 to impress the cherished principle that landlord is a best judge and the affluent financial position of landlord should not demerit while considering the issue of comparative hardship.

21. It takes me to the crucial aspect of the case, which pertains to the suppression of material facts. Basically the possession is sought on the ground of reasonable and bonafide requirement. The term "bonafide" assumes significance which is opposite to the term malafide. Unless the landlord shows his bonafides, the decree could not be passed. In that perspective it is expected from the landlord to be fair while seeking possession on said ground. It is defendant's case that though landlord owns several properties, he has

suppressed the same while stalling a claim of reasonable and bonafide need. Thus, according to tenant, the case of landlord is sheerly lacking bonafides making him disentitled for the relief. On careful examination of the plaint, I could hardly find a single line pleading that the plaintiff has no other own suitable premises available in market. Admittedly, the plaintiff landlord has not disclosed as to how many business premises as well as residential properties are owned by him within Nagar Parishad limits of Parbhani. In all fairness the plaintiff should have disclosed his other properties and then put up a case that as to how those are not suitable for his business purpose. However, the plaintiff has not referred either of his properties but made a guarded statement that he does not own other suitable premises.

22. Only when the landlord pleads and proves all these material facts then the Court would be able to adjudicate fully, completely and effectively as to whether the requirement pressed into service by the

landlord in the suit is bonafide and reasonable. As mentioned above, it is well settled that the landlord is not only required to establish his need to be bonafide but also to be reasonable. If the landlord has failed to disclose relevant material in the pleading, evidence and has not approached the Court with clean hands, it will be the duty of the Court to non-suit the landlord with regard to this ground for possession.

23. The learned Counsel appearing for the landlord would submit that it is not the case of suppression because the plaintiff does not have other suitable accommodation available for his use and occupation. According to him the case of suppression could be when the suitable premises if available and still suppressed. In this regard, he relied on the decision of Single Judge of this Court in the case of Chandrashekar s. Gadgil & Ors. Vs. Rameshprasad s/o. Madhavprasad Shukla & Anr., 2019(1) ALL MR 353 wherein it is observed that the aspect of suppression could be serious if other

properties are available and suitable for landlord.

24. This Court in a reported case of Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Ors. 2004 (Supp.) Bom.C.R.333, has ruled that it is landlord's duty to disclose material facts. It is obligatory on him to disclose in pleadings and evidence that he owns other premises capable of being utilized for the requirement pressed into service in suit and to explain that inspite of ownership of other premises, requirement pressed into service against tenant would still survive. The case could have been otherwise, if the landlord had disclosed his all properties and then explained that how those properties are not suitable to meet his need. The landlord has only explained about his existing business concerns by stating that the same is locates in narrow lane, of course, it is denied by the other side.

25. The tenant has managed to bring on record the material in the context of various premises which are

under control of landlord. In the entire plaint, there was no reference about other properties. Pertinent to note that it is not a case where the landlord has two or three other properties that too occupied by tenant or are quite inconvenient. However, through cross-examination as well as by filing documentary evidence, the tenant has amply brought on record that landlord's family owns eight properties within the limits of Nagar Parishad, Parbhani. Besides that it is extracted through cross-examination of the plaintiff that a new property was purchased from one Deshmukh where three storeyed building was constructed. He admits that two upper floors of said property situated at Shivaji road i.e. main road are vacant. Moreover, it has come on record that landlord has purchased one house property from Kanherkar on Subhash road adjacent to main road, which is totally vacant. The landlord ought to have described the properties and placed before the Court his difficulties whatever may be, as to how vacant properties are of no use. It has come on record that those properties are also situated on the main road.

Considering the conduct of the landlord, there is no certainty as to whether besides the properties brought by tenant on record, he has no other premises. However, even the existing material shows that the landlord has ample tenements out of which some are vacant. Belated explanation that they are not suitable does not stand to reason.

26. It was landlord's duty to first make disclosure and then offer explanation, howsoever brief, that could have been accepted. The conduct of landlord very much touches to his bonafides. The material brought on record by tenant through admissions and documentary evidence substantiates that there is no bonafide need of the landlord. Always the element of need must be genuine and made in good faith. Mere fanciful wish or dishonest desire cannot be said to be a reasonable requirement. The first appellate court while deciding this issue was much influenced by various reported judgments indicating the position that the landlord is the best judge and tenant

cannot dictate. However, the said principle is to be tested on the touchstone of facts and circumstances of each case. It has amply come on record that landlord has several properties apart from open plots in the limits of Parbhani city. I may clarify that open plots are not taken into account while considering landlord's need. There is no material to indicate that those properties were not suitable for residence or business purpose. In other words by suppressing the material information, the landlord has lost his opportunity to explain as to how other vacant properties are not suitable for his use and occupation. Therefore, certainly it is case where adverse inference could be drawn against the landlord.

27. In order to seek possession on the ground of need, it is requirement of law that the premises must be required reasonably and bonafide. In absence of satisfaction of these two components, decree cannot be passed. At one side, the landlord owns and possesses 7-8 properties in the city. It is not the case that all

premises are occupied by someone or not under use. On the other hand, the tenant does not have other properties either to run his business or for residence. Therefore, certainly comparative hardship would be of tenant, if eviction decree is passed.

28. Though the Trial Court has dismissed the suit, however, the Trial Court erred in observing that there is inordinate delay of 37 years in filing suit. Admittedly, the suit property was purchased by the landlord in the year 1974 and immediately it was let out to the tenant. The suit for eviction is filed in the year 2010. The Trial Court has observed that during these long years the plaintiff has not taken pains to get possession by terminating tenancy. Apparently, the Trial Court erred in weighing the delay as a ground while considering bonafides of the landlord. In-fact, there is no question of delay or limitation, since as and when the landlord requires the premises, he can file a suit. Be that as it may, ultimately, the Trial Court has held that the

plaintiff has failed to prove bonafide requirement and accordingly dismissed the suit.

29. The First Appellate Court seriously erred in drawing conclusion about bonafide need of landlord without going into the facts. The Court was much swayed by the authorities and without looking to its applicability on facts, drawn erroneous conclusion. The impugned judgment denotes that the most of the portion was exhausted in referring case law and at the fag end without evaluation of facts, conclusion has been drawn. Therefore, the impugned judgment would not sustain in the eyes of law. Apparently the Appellate Court failed to exercise its jurisdiction in proper manner and committed illegality while assessing the evidence. In the circumstances, the impugned judgment calls interference under the revisional jurisdiction. The revision petition deserves to be allowed and it is allowed accordingly. The impugned judgment and order dated 21.09.2021 passed in Regular Civil Appeal No.46 of 2013 is hereby quashed and

set aside. The judgment and order passed by the Trial Court in Regular Civil Suit No.106 of 2010 dismissing the suit is hereby restored. No order as to costs.

**[VINAY JOSHI,J.]**