

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

WRIT PETITION NO.3203 OF 2020

- 1) M/S. IBRAHIM BROTHERS,
Through its partners Having its place of
business at Sitabuldi, Main Road, Opp.
Regal Cinema, Nagpur.
- 2) ~~ABID BHAI S/O. IBRAHIM,~~
~~Aged about 76 years, Occ: Business.~~
- 3) MUSABHAI S/O. IBRAHIM
Aged about 67 years, Occ.: Business.
- 4) SHAKEEL NAWAZ S/O. ABIDBHAI IBRAHIM,
Aged about 50 years, Occ: Business.
- 5) HASEEB NAWAZ S/O. ABIDBHAI IBRAHIM,
Aged about 46 years, Occ: Business.
- 6) NAUSHAD NAWAZ S/O. MUSABHAI IBRAHIM,
Aged about adult, Occ: Business.
- 7) DILSHAD NAWAZ S/O MUSABHAI IBRAHIM,
Aged about 40 years, Occ: Business.

Deleted as per
Order dt.
12.01.2022

Petitioners No.2 to 7 are all resident of
Mehandi Bagh Colony, Dr. Ambedkar Post
Office, Near Railway Crossing,
Mehandibagh Road, Nagpur.

..... **PETITIONERS**

...V E R S U S...

- 1) SMT. GOPI W/O. MOHAN JASWANI,
Aged about 53 years, Occ.: Business,
R/o. 35, Red Cross Road, Sadar,
Nagpur.

- 2) SHRI DEEPAK S/O. HIRALAL JASWANI,
Aged about 22 years, Occ.: Business,
R/o 35, Red Cross Road, Sadar, Nagpur.
- 3) SHRI. SANTOSH RADHESHYAM JASWANI,
Aged about 42 years, Occ.: Business
R/o. Santosh Apartments, Byramji Road,
Byramji Town, Nagpur. **RESPONDENTS**

Mr. Makarand M. Agnihotri, Counsel for Petitioners.
Mr. R. R. Srivastava, Counsel for Respondents.

CORAM: ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : 29.04.2022
DATE OF PRONOUNCING THE JUDGMENT: 06.05.2022

JUDGMENT:

Heard Mr. Makarand Agnihotri, the learned Counsel
for the petitioners and Mr. R. R. Srivastava, the learned Counsel
for the respondents.

2. Petitioners, M/s. Ibrahim Brothers and its partners
(collectively referred to as the tenant) assail the judgment and
decree dated 26.06.2018 rendered by the learned Additional
Judge, Small Causes Court, Nagpur in Regular Civil Suit 127/2008
instituted by the respondents (collectively referred to as the
landlord) whereby the suit for possession under Section 33 of the

Maharashtra Rent Control Act, 1999 (Rent Act) is partly decreed and the tenant is directed to deliver peaceful and vacant possession of the suit shop block to the landlord.

3. The tenant is further challenging the judgment dated 07.02.2020 rendered by the learned District Judge-15, Nagpur in Regular Civil Appeal 431/2018 whereby the judgment and decree of eviction is confirmed in favour of the landlord.

4. The suit shop block is assigned Municipal House Number 14/0, admeasuring 672 sq. ft. in area with ceiling height of 16 ft. and is situated on Plots 10, 11 and 14, Khasra 327 of Mouza Sitabuldi, Tahsil and District Nagpur. The suit shop block is purchased by the landlord from Mr. Shrikrishna Sakharam Mahajan vide sale-deed registered on 02.04.2008. It is uncontroverted that the suit shop block is located in highly sought after commercial area of Nagpur.

4.1 M/s. Ibrahim Brothers was occupying the shop block as tenant of the predecessor-in-title Mr. Shrikrishna Sakharam Mahajan. Consequent to the sale, the tenancy stood duly attorned.

4.2 The landlord contends that the tenant owns property assigned Municipal House Number 13/0-1 admeasuring 2639 sq. ft. situated on Plot 11, Sitabuldi, Nagpur having acquired the same by and under registered sale-deed dated 21.06.1985. The said property is a doubled storied structure, the ground floor admeasures 1350 sq. ft. and comprises two shop blocks and the first floor admeasures 960 sq. ft. The said property adjoins the suit shop block.

4.3 The eastern portion of the ground floor of the property owned by the tenant was in possession of M/s. S. V. Kedari & Company and the western portion was in possession of M/s. All India Handloom House. The tenant instituted Regular Civil Suit 612/2003 and Regular Civil Suit 613/2003 seeking decree of eviction against M/s. S. V. Kedari & Company and M/s. All India Handloom House, which suits were decreed. The appeals preferred by M/s. S. V. Kedari & Company and M/s. All India Handloom House came to be dismissed. Writ Petitions 2428/2007 and 2442/2007 which were preferred challenging the eviction decree/s were dismissed by the High Court.

4.4 The landlord contends that during the course of the trial in Regular Civil Suit 612/2003 and Regular Civil Suit 613/2003 Mr. Haseeb Nawaz who is a partner of M/s. Ibrahim Brothers admitted that the possession of the suit shop block (Municipal House Number 14/0) shall be handed over to the landlord if M/s. Ibrahim Brothers secure the possession of the shop block 13/0-1 owned by the firm. The landlord contends that in view of the decree of eviction, M/s. All India Handloom House and M/s. S. V. Kedari & Company delivered possession of shop block 13/0-1 to the tenant. Pertinently, the landlord – plaintiff 3 Mr. Santosh Jaswani, the mother of landlord – plaintiff 2 Mrs. Damayanti Jaswani and landlord – plaintiff 1 Mrs. Gopi Mohan Jaswani were the partners of M/s. All India Handloom House and Mr. Mohan Jaswani the husband of landlord – plaintiff 1, Mrs. Sunita Jaswani the mother of landlord – plaintiff 1 and Mr. Dhanesh Jaswani were the partners of M/s. S. V. Kedari & Company.

4.5 The landlord asserts that the tenant having secured the possession of the shop blocks which were occupied by the landlord as tenant, the landlord is entitled to the possession of

shop block 14 which is in occupation of the tenant. The tenant asserts that the facts are self-speaking and the *bona fide* need to occupy shop block 14 is writ large. The landlord would emphasize that while pursuing the eviction suits against the landlord in relation to property assigned Municipal House Number 13/0-1, the case of the tenant was that if possession of the said shop block 13 is secured, the tenant shall vacate shop block 14 which is owned by the landlord.

4.6 The landlord did not rest with the simplistic submission that the tenant has secured alternate accommodation, having succeeded in evicting the landlord from shop block 13. In the suit for eviction from which the petition emanates, in paragraphs 11 to 18 the landlord pleaded with particularity the *bona fide* need of the landlord and the family members. Briefly, the landlord contends that the family of landlord – plaintiff 1 Smt. Gopi Jaswani comprises Mr. Mohan Jaswani (husband), Mr. Dhanesh Jaswani (son) and Smt. Suchitra Jaswani (daughter-in-law). Mr. Mohan Jaswani is desirous of starting independent business of Readymade Clothes and Garment. Smt. Suichitra is also interested in starting business in the suit

block. The family of plaintiff – landlord 2 Mr. Deepak Jaswani comprises Mr. Hiralal Jaswani (father), Smt. Damayanti Jaswani (mother) and Mr. Lalit Jaswani (brother). Mr. Hiralal is employed with M/s. Maharashtra Emporium Private Limited and Mr. Lalit is pursuing Business Administration course. Plaintiff – landlord 2 intends to start a Readymade Clothes and Garment business and so does the family of the plaintiff – landlord 3.

4.7 The firm and its partners defendants 2 to 5 and 8 resisted the suit claim vide written statement Exhibit-19 emphasizing that the landlord is involved in several businesses in Nagpur *inter alia* Maharashtra Handloom Private Limited, Nagpur, M/s. All India Handloom House, Vidarbha Emporium, S. V. Kedari & Company, Apna Bhandar, Maharashtra Emporium and business at Badkas Chowk, Mahal, Nagpur. It is further contended by the said defendants, that while decree of eviction was indeed obtained against M/s. All India Handloom House and M/s. S. V. Kedari & Company, the *bona fide* need pleaded to secure the decree was that of defendants 6 and 7 who are also partners of the defendant 1 firm M/s. Ibrahim Brothers. It is further contended that while M/s. All India Handloom House and M/s. S. V. Kedari & Company

did vacate the shop block owned by the tenant, the same is forcibly and illegally occupied by one Mohammed Ejaz and steps are initiated to oust Mohammed Ejaz from the illegal occupation of shop block 13. The attempt of defendant 1 firm and its partners defendants 2 to 5 and 8 is to demonstrate that shop block 13 is not available for the *bona fide* use of the firm and the partners.

4.8 Defendants 6 and 7 who are also partners of the defendant 1 M/s. Ibrahim Brothers filed separate written statement Exhibit-21 contending that the decree of eviction against M/s. S. V. Kedari & Company and M/s. All India Handloom House was on the basis of their *bona fide* need and that the plaintiffs are guilty of suppression of material facts. Defendants 6 and 7 contended that the plaintiffs constitute Hindu Undivided Family and are in occupation of vast property in Sitabuldi, Nagpur and elsewhere.

4.9 The trial court held the *bona fide* need of the landlord stood proved. The trial court further found that if decree of eviction is refused, greater hardship will be caused to the landlord. The trial court however, rejected the claim of mesne profit.

As noted *supra*, the Appellate Court dismissed the appeal preferred by the tenant M/s. Ibrahim Brothers and its partners.

5. The findings recorded by the courts below may briefly be noted since in writ jurisdiction, it would not be permissible for the High Court to interfere with findings of fact unless gross illegality, substantive or procedural, causing miscarriage of justice is demonstrated.

5.1 The trial court analyzed the evidence of Mr. Santosh – PW 1 and Mr. Dilshad Nawaz – DW 1. The trial court noted that in the cross-examination Mr. Dilshad Nawaz admitted that the property owned by the tenant is adjacent to the suit shop block. Mr. Dilshad Nawaz however, is not aware whether Civil Suits 612/2003 and 613/2003 were instituted against M/s. S. V. Kedari & Company and M/s. All India Handloom House nor is he aware whether any attempt was made to search for any other suitable accommodation.

5.2 Adverting to the proceedings of the civil suits instituted by the tenant against M/s. S. V. Kedari & Company and

M/s. All India Handloom House the trial court noted that the plaintiffs – landlords delivered possession in favour of the tenant on 07.01.2012 and that the defendant 6 partner admitted in the evidence recorded in Regular Civil Suit 612/2003 that business shall be shifted to shop block 13 if possession thereof is secured from M/s. S. V. Kedari & Company and M/s. All India Handloom House. The trial court noted that while deciding Writ Petition 2442/2007 the High Court too referred to such an admission.

5.3 Considering the plea of *bona fide* need the learned trial court observed thus:

24) The plaintiffs have contended that due to facing of eviction proceeding, they are in need of suit premises. Under the Maharashtra Rent Control Act, the kinds/specific instances of bona fide need are not prescribed. Running of garment business and facing eviction proceeding both can be termed as bona fide need. In the plaint the plaintiffs have mentioned about the partners of M/s. Maharashtra Emporium Pvt. Ltd. and Vidarbha Emporium. They have not suppressed this fact. The suit is filed on 28/04/2008. The landlord cannot suppose to stay static till getting decision from the court. If the plaintiffs have opened the business after filing of the suit, it cannot be said that their bona fide need comes to an end. There is no dispute about the ratio laid down in the case law submitted by learned counsel for the defendants. Considering the evidence on record, the ratio

laid down in authority Smt. Sulochanabai Gujar (cited supra) filed by learned counsel for the plaintiffs is clearly applicable to the present case. As per the defendants themselves the plaintiffs have Hindu Undivided Family. It is on record that All India Handloom and S. V. Kedari & Co. both firms are dissolved. It corresponds the need of starting the business and not ending the business. From the above circumstances, it can be said that the plaintiffs have proved bona fide need for the suit property. In the result, findings to this point is recorded in the affirmative.

5.4 On the aspect of comparative hardship, the learned trial court observed:

27) Considering the above contentions, here, it is necessary to state that Regular Civil Suit No.612/2003 and 613/2003 were filed by defendant No.1 to 4 to satisfy or fulfill bona fide need of defendant No.6 and 7. The possession of two tenanted premises was handed over to the defendants. The pleadings in R.C.S. No.455/2012 filed by Mohd. Ejaj shows that the defendants gave said premises to him on rent. Though the defendants have pleaded that Mr. Ejaj is in illegal and forcible possession of said premises, the defendants have not explained that how Mr. Ejaj came into possession of the said premises. Under these circumstances, it can be said that more hardship will be caused to the plaintiffs if the decree of eviction is not passed. In the result findings to this point is recorded accordingly.

5.5 It was argued in appeal that the landlord has shifted business at Santosh Apartment, Byramji Town, Nagpur and 35,

Red Cross Road, Sadar, Nagpur and therefore, the *bona fide* need of the landlord does not exist. This argument was on the basis of the cross-examination of PW-1 in which it is extracted that the business which was run from shop block 13 owned by the tenant is shifted. The learned Appellate Court rejected the said submission articulating thus:

8) *The learned counsel for appellants relied upon the cross examination of the respondents' witness. P.W.1 in R.C.S. No.127/2008 in his cross-examination admitted that the business which was being run in the tenanted premises owned by the appellants is shifted to the new place. It seems that merely because the business is being shifted to the new place does not mean that the bona fide need of the respondents have come to an end. The respondents in their pleadings in R.C.S. No.127/2008 had mentioned that both the partnership firm i.e. M/s. S. V. Kedari and Company and M/s All India Handloom House are facing eviction proceeding filed by the appellants. It was also stated that both the business came to an end they do not own any other premises. However, in para No.11 of the pleading of the plaint, the respondents had stated that respondent No.1 is a partner in the partnership firms M/s. S. V. Kedari and Company. His wife requires the suit premises for carrying on the business and so also, plaintiff No.2 wants to settle his sons and wants to open business for them. Similarly, respondent No.2 wants to do the business of cloths and readymade garments and thus he wants to support the business. It was also stated that respondent No.3 has two sons and in future he would require the suit premises for starting*

business in their names. Thus, as per the pleadings, the suit premises was required for the business of the respondent, wife of respondent No.3 and their grown up children. It is an admitted position that the suit premises is in the commercial locality suitable for business of cloth and readymade garments and is also in the area which is purely commercial area known for retail market for cloth and readymade garments and is also located in the area which is purely commercial area known for retail market for cloth and readymade garments. Also the respondents were doing business in the existing locality i.e. in the premises owned by the appellants from last many years and therefore, it cannot be said that simply because the business of M/s. S. V. Kedari and Company and M/s. All India Handloom House is shifted to another place, the bona fide need of the respondent has come to an end. Merely due to shifting of the existing business, the bona fide need of the respondents does not come to an end. The prospect of the business at the place shifted and the business at the highly commercial locality would make a difference in the business of the respondents.

5.6 The learned Appellate Court then considered the submission that the landlord suppressed material facts. The tenant argued thus on the premise that the landlord suppressed that the business was shifted and that there are other business entities of the joint Undivided Hindu Family. Referring to certain decisions of this Court, the learned Appellate Court observed thus:

It seems that admittedly, the business

being carried in the nearby premises was shifted to some other place. The fact is also been admitted by P.W.1 in his cross-examination. The appellants had also filed various documents, photographs to show that the joint Hindu Family of the respondents was carrying out business in other premises also. That does not mean that the premises might not be required to the respondents for carrying out their business into the same locality. It is also an admitted position that the respondents were carrying business in the same locality and it can therefore be presumed that the business being carried in the same locality for several years would have developed a good will and reputation which would be required for again starting their business in the premises owned by them for flourishing their business further. It will not amount to suppression of facts and thus above rulings are not helpful to appellants.

As observed in the various rulings of High Courts and Apex Courts cited by the respondents, it seems that the landlord cannot be dictated as to in which premises he should run his business. Even though if he is having other premises, does not mean that his need to start the business has come to an end. Also if the other members of the family are running the similar business and the landlord are the partners in the same, does not mean that they cannot start their independent business. So far as the question of suppression of fact is concerned, it seems that the suit was filed in the year 2008 and the eviction proceeding in R.C.S. No.612/2003 and 613/2003 is being filed prior to filing of the suit. Thus, the respondents were not expected to sit idle and would not take search of the suitable accommodation and therefore, during the pendency of R.C.S. No.612/2003 and 613/2003, the suitable

accommodation was searched and the business was shifted by the respondent. That does not mean that the respondent suppressed the facts.

5.7 The learned Appellate Court found no error in the finding recorded by the learned trial court that shop block 14 was *bona fide* needed by the landlord, and that the issue of comparative hardship must be answered in favour of the landlord since the shop block 13 owned by the tenant is duly vacated by the landlord and the said building admeasures 2639 sq. ft. in area. The learned Appellate Court was not impressed with the submission that although shop block 13 was vacated pursuant to the decrees of eviction, since the said premises is illegally occupied by one Mohammed Ejaz, the tenant shall be put to greater hardship if asked to vacate shop block 14 owned by the landlord. The learned Appellate Court discussed the said aspect thus:

15) Now, it is the case of the appellant No.6 and 7 that one Mohd. Ejaj forcibly obtained the possession of the said premises and suit is filed for declaration and perpetual injunction against appellant No.6 and 7. The copy of the same bearing R.C.S. No.455/2012 was filed to Exh.203. It seems that said Mohd. Ejaj was inducted as tenant in the tenanted shop by appellant No.2 and 3. Said Mohd. Ejaj in the said suit prayed for declaration that he is the statutory tenant and he cannot be evicted by the defendants in R.C.S. No.455/2012. In the

evidence before the trial court respondents filed the copy of the judgment passed in W.P. No.4248/2007 and 4227/2007 vide Exh.27. It has been observed by the Hon'ble High Court that in the judgment and decree in R.C.S. No.612/2003 and 613/2003, the trial Court and the first appellate court had considered the bona fide need of the landlord and directed the tenants to vacate the suit premises. The reference was also made to the cross-examination wherein the respondents gave undertaking to vacate the tenanted block, if they shifted to the suit premises. Earlier the respondents were the tenants in the premises owned by the appellants and the appellants were the tenants in the premises owned by the respondents and therefore, it was agreed between the parties that they both would vacate their possession over the respective premises and either party will handover the vacant possession to the owners thereof. Now the respondents by virtue of the undertaking had handed over the premises in their possession and complied their undertaking. However, the appellants had not vacated the premises and brought the new theory of illegal encroachment by one Mohd. Ejaj. It, therefore, seems that even though if it is presumed that the suit premises in possession of the Mohd. Ejaj is not vacated but that does not give right to the appellants to remain in possession of the suit premises after undertaking given by them. The respondents, therefore, were constrained to file R.C.S. No.127/2008. During all these years during the pendency of R.C.S. No.127/2008. And till date the appellants had not handed over the premises to the respondents. It, therefore, seems that it is clearly breach of the undertaking given before the Hon'ble High Court. Apart from the bona fide need to shift the business of M/s. S. V. Kedari and Company and M/s. All India Handloom House,

the landlord had sought the possession of the suit premises for starting the business for their sons and therefore, the trial court had decided the issue of comparative hardship by considering all the evidence and the documents filed by both the parties. The learned counsel for the appellants argued that the trial court had not considered the admission given by P.W.1. It seems that the trial court has observed in the judgment regarding the admission and on the basis of the other bona fide needs of the respondent had decided the issue of comparative hardship. As such, while deciding the issue of comparative hardship in favour of the landlord, it also seems that the area of the premises owned by the appellants is more than as that compared to the area owned by respondents. But still the appellants had not vacated the suit premises and handed over the tenanted premises to the respondents. Even if it is considered that the respondents are running the business under various legal entities but still that does not preclude them from shifting the business to the more suitable premises and for their better future prospects and therefore, the trial court had rightly considered the issue and decided the issue of bona fide need and comparative hardship in favour of the respondents.

6. Mr. Makarand Agnihotri, the learned counsel for the tenant would strenuously urge that the concurrent findings recorded by the courts below are vitiated. During the course of the lengthy and painstaking argument, Mr. Makarand Agnihotri invited my attention to the pleadings and the evidence on record to buttress the submission that the landlord suppressed material

facts, that the joint family of the landlord owns or occupies several properties and that the need of the landlord to occupy suit shop block 14 is not genuine and is indeed non-existent. While Mr. Makarand Agnihotri accepted that the tenant did not adduce evidence to show that he did make efforts to secure alternate accommodation, Mr. Makarand Agnihotri emphasized that if the issue of *bona fide* need is held against the landlord, the question of comparative hardship pales into insignificance. However, Mr. Makarand Agnihotri did emphasize that the premises in building assigned Municipal House Number 13 which the landlord vacated are not presently available for the use of the tenant in view of the illegal occupation thereof by Mohammed Ejaz.

In rebuttal the learned counsel for the landlord Mr. R. R. Srivastava would submit that there is no suppression of material fact, and assuming that some property is not disclosed, non-disclosure is not suppression unless the property which is not disclosed has bearing on the *bona fide* need. Mr. R. R. Srivastava would emphasize that the property to which reference is made by Mr. Makarand Agnihotri is not owned by the landlord. Illustratively, Mr. R. R. Srivastava would refer to the property

which according to the tenant is owned by Maharashtra Emporium Company, which company is a distinct juristic entity. Mr. R. R. Srivastava would submit that even if it is assumed that the plaintiffs – landlords or their family members are shareholders in the said company, the plaintiffs – landlords cannot assert ownership rights over the property owned by the company, which is a distinct juristic entity. The extension of the submission is, that in any event, even if it is assumed that the landlord has share and interest in joint family property, the landlord cannot be prevented from starting independent venture in property exclusively owned by the landlord.

7. Mr. Makarand Agnihotri and Mr. R. R. Srivastava have invited my attention to plethora of decisions and the same shall be considered at a later stage, to the extent relevant. The decisions which Mr. Makarand Agnihotri has pressed in service are *(i) Kurian Chacko v. Varkey Ouseph 1968 SCC OnLine Ker 101*, *(ii) C. Venkata Swamy v. H. N. Shivanna (Dead) by legal representative and another (2018) 1 SCC 604*, *(iii) Anita M Barretto v. Abdul Wahid Sanaullah 1984 SCC OnLine Bom 233*, *(iv) Tarachand Hassaram Shamdasani v. Durgashankar G. Shroff &*

others 2004 (Supp.) Bom.C.R. 333, (v) Shiv Sarup Gupta v. Dr Mahesh Chand Gupta (1999) 6 SCC 222, (vi) Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada (2003) 2 SCC 320, (vii) Vasant Mahadeo Gujar v. Baitulla Ismail Shaikh & Anr. 2015 SCC OnLine Bom 4470, (viii) Ram Narain Arora v. Asha Rani and others (1999) 1 SCC 141, (ix) Micro Hotel Private Limited v. Hotel Torrento Limited and others (2012) 10 SCC 290, (x) Hasmat Rai and another v. Raghunath Prasad (1981) 3 SCC 103 and (xi) Yadarao Dajiba Shrawane (Dead) by LRS. v. Nanilal Harakchand Shah (Dead) and others (2002) 6 SCC 404 and Narendra Gulabrao Zade v. Shiocharan Ghashiram Gupta since deceased through LRs Smt. Radhabai Shivcharan Gupta and another 2011(1) Mh.L.J. 839, while Mr. R. R. Srivastava has relied on (i) Faruk Ilahi Tamboli and another v. B. S. Shankarrao Kokate (Dead) by legal representatives and others (2016) 15 SCC 431, (ii) Bhupinder Singh Bawa v. Asha Devi (2016) 10 SCC 209, (iii) Anil Bajaj and another v. Vinod Ahuja (2014) 15 SCC 610 (iv) Deep Chandra Juneja v. Lajwanti Kathuria (Smt) (Dead) through LRS. (2008) 8 SCC 497, (v) Akhileshwar Kumar and others v. Mustaqim and others (2003) 1 SCC 462, (vi) Nilkanthrao Raghunathji Chute v. Dattatraya Narayanrao Balakhe 2019(3)

Mh.L.J. 874, (vii) Mohd. Ayub and another v. Mukesh Chand (2012) 2 SCC 155, (viii) Mohanlal s/o Chandulal Agrawal v. Navalkishor s/o Radheshyam Kulwal 2016(1) Mh.L.J. 735, (ix) Nana s/o Kisanrao Thokade (since deceased) through his L.Rs. Ratnamala w/o Nana Thokade and others v. Prabhakar s/o Ambadas Gosavi 2014(6) Mh.L.J. 563, (x) Rasiklal s/o Revchand Shah and others v. Paraskumar s/o Balchand Thole and another 2015(1) Mh.L.J. 382, (xi) Mrs. Bega Begum and others v. Abdul Ahad Khan (dead) by L. R.s. and others (1979) 1 SCC 273, (xii) C. Karunakaran (Dead) by LRS. v. T. Meenakshi (2005) 13 SCC 99, (xiii) Shamshad Ahmad and others v. Tilak Raj Bajaj (Deceased) through LRS. and others (2008) 9 SCC 1, (xiv) Mani Nariman Daruwala alias Bharucha (Deceased) through LRS. and others v. Phiroz N. Bhatena and others (1991) 3 SCC 141, (xv) Ataullakhan s/o Mohammadkhan (dead) through Legal Heirs Zarullakhan s/o Ataullakhan and others v. Kernath Jaywantrao Nagargoje 2019(2) Mh.L.J. 471 and (xvi) Dr Ranbir Singh v. Asharfi Lal (1995) 6 SCC 580.

8. In all fairness to the learned counsel Mr. Makarand Agnihotri, no argument was advanced militating against the well

entrenched position of law that ordinarily the landlord is the best judge of the need and cannot be dictated, either by the tenant or by the court, as to how and which property should be used to start the business or to satisfy such need as is pleaded. It would therefore, not be necessary to consider the ratio of certain decisions which are pressed in service on behalf of the landlord which enunciate such proposition. What is in essence the focus of the submissions on behalf of the tenant is that the need of the landlord is not genuine. The tenant asserts that the landlord has other properties, that the business of M/s. S. V. Kedari and M/s. All India Handloom House is already shifted and the need is therefore non-existent. I am afraid, the submission of the tenant that the *bona fide* need is not established deserves outright rejection and the concurrent findings recorded by the court on the aspect of *bona fide* need do not warrant any interference in writ jurisdiction.

9. It is not in dispute that the plaintiffs – landlords were partners in M/s. S. V. Kedari and M/s. All India Handloom House which firms occupied part or portion of building assigned Municipal House 13 which is owned by the tenant. Pursuant to

eviction proceedings initiated by the tenant (the landlord as regards building assigned Municipal House Number 13) the plaintiffs delivered possession to their landlord – tenant in the present proceedings. In the eviction suits initiated by the tenant in the present proceedings, the partner of the firm Mr. Haseeb Nawaz, deposed thus :-

Area of plaintiffs' shop in possession on ground-floor is of 650 sq.ft. There is mezzanine floor in that shop. I do not know the height available on ground floor and mezzanine floor. It is near about of 6 ft. height. There is staircase between mezzanine floor to ground floor. From mezzanine floor there is entry for first floor. This first floor is about the suit premises. I do not know that area of 3110 sq.ft. is available with us. We will vacate the tenanted block i.e. in our possession, in case if we shift to the suit premises.

10. The tenant – petitioner herein secured possession of the premises occupied by the two firms of which the plaintiffs – landlord were partners, on 07.01.2012. The partners of M/s. Ibrahim Brothers now contend that while the firms controlled by the plaintiffs – landlord did vacate building assigned Municipal House Number 13, one Mohammad Ejaz forcibly occupied certain portion thereof which renders the entire building

unavailable for the use of the petitioner. The plaintiffs – landlord has a counter narrative. Both the learned counsel have invited my attention to certain pleadings in the litigation *inter se* between the petitioner and Mohammed Ejaz. I need not delve deeper in the narrative and the counter narrative. Whether Mohammad Ejaz was inducted as a tenant or licensee or forcibly occupied any portion of building assigned Municipal House 13 is irrelevant. The portion on the ground floor which the plaintiffs – landlord occupied was handed over to the petitioner tenant. Assuming *arguendo*, that Mohammad Ejaz was not a lawful occupant, it was the duty of the petitioner – tenant to protect their property after the same was vacated by the plaintiffs – landlord. It is common ground that the petitioner – tenant is pursuing legal remedy to secure possession from Mohammad Ejaz. Be that as it may, the petitioner – tenant cannot be heard saying that since Mohammad Ejaz is in unlawful occupation of portion of the building assigned Municipal House 13, the petitioner – tenant shall be put to greater hardship, particularly since an unequivocal statement was made in the eviction suits instituted against the plaintiffs – landlord, that if possession of the ground floor of building assigned Municipal House 13 is secured, the

petitioner – tenant shall vacate the suit block.

11. Mr. Makarand Agnihotri would submit that M/s. S. V. Kedari & Company and M/s. All India Handloom House have shifted business and therefore, the need to occupy shop block 14 stands obliterated. The submission merits rejection for reasons more than one. Apart from the fact, that according to the plaintiffs – landlord the said firms stand dissolved, the plaintiffs – landlord have pleaded and proved the desire and need of the landlord and the family members to start business in Readymade Garment/s in the suit shop block 14. The evidence of the plaintiffs – landlord is not shaken in the cross-examination. The courts below have concurrently accepted the *bona fide* need of the plaintiffs – landlord and their family members and even if it is assumed that M/s. S. V. Kedari & Company and Maharashtra Emporium have shifted business, and are not dissolved, the plaintiffs – landlord cannot be denied the possession of the suit shop block.

12. Mr. Makarand Agnihotri would invite my attention to the deposition of plaintiff Mr. Santosh to the effect that he has

share in plot 705 admeasuring 4050 sq. ft. at Mouza Indora, Nagpur, along with his father. Such acceptance, which is touted as admission and suppression, is absolutely irrelevant. The *bona fide* need is to occupy commercial space at Sitabuldi, Nagpur. The fact that plaintiff Mr. Santosh has share in an open plot at Indora, Nagpur has no bearing or significance, and therefore, is neither suppression nor admission of availability of alternate space. In written submissions dated 13.03.2022 there is a reference to construction, without any elaboration, which allegedly took place on the said plot 705. Assuming, that one of the plaintiffs Mr. Santosh and his father have constructed on plot 705, the said construction at Indora, Nagpur which is situated in North Nagpur is not shown to be of such nature and extent as would satisfy the need of Mr. Santosh, much less the other plaintiffs. In any event, it is not for the tenant and indeed not even for the court to advise Mr. Santosh as to how to organize his business.

13. Mr. Makarand Agnihotri would highlight that Maharashtra Emporium Private Limited is the owner of commercial property comprising five storied building which is situated at Pachpaoli, Indora Chowk, Nagpur, ground + two

storied building located at Sitabuldi, Nagpur which the said company purchased on 07.05.2012, property at Friends Colony, Katol Road, Nagpur and existing business in Sitabuldi and Mahal. Mr. Makarand Agnihotri would submit that while the properties are acquired after the institution of the suit, the businesses in Sitabuldi and Mahal were in existence as on the date of the institution of the suit. Mr. Makarand Agnihotri would submit that rent from the property situated at Neelkamal Complex and dividend declared by the company Maharashtra Emporium is received by the plaintiff/s. Scrutiny of the evidence reveals that while the properties owned by Maharashtra Emporium which admittedly is a company incorporated under the Companies Act are brought on record, no attempt is made to show that the need pleaded can be satisfied by the properties owned by the company. I have already observed supra, that the plaintiffs are not the owners of the property owned by the company. Even if it is assumed, that by lifting the corporate veil, the properties owned by the Maharashtra Emporium Private Limited can be considered as properties of the Hindu Undivided Family, as appears to be the contention of the tenant, the plaintiffs herein cannot be prevented from starting independent business. Apart from the fact that the

relationship between the plaintiffs and Maharashtra Emporium is blurred, even if the best possible case is assumed in favour of the tenant, and the property owned by the company is treated as property of the Hindu Undivided Family, and it is further assumed that the plaintiffs are members of such Hindu Undivided Family, the case of the tenant is not taken any further.

14. In *Faruk Ilahi Tamboli and another v. B. S. Shankarrao Kokate (Dead) by legal representatives and others* (2016) 15 SCC 431 supra considering the submission of the tenant that on account of purchase of business premises during the pendency of the proceedings, the *bona fide* need was not subsisting, the Apex Court observed thus:

It was not the case of the respondents, that any business activities were being carried out by the appellants independently, from their father and uncle, when the civil suit was filed. It certainly cannot be the claim at the behest of a tenant, that the owner of a premises must continue in business with his parents or relations, assuming there was a joint business activity, to start with. That is usual, and happens all the time when children come of age. And thereafter, they must have the choice to run their own life, by earning their own livelihood. The property owner has the right to use his property as he chooses, and if the appellants in the instant case had purchased the suit property, for running their own business, we find no irregularity therein, nor can there be any doubt about their bona fide

desire to run the proposed business in the premises, independent of the other family members.

15. In ***Anil Bajaj and another v. Vinod Ahuja (2014) 15 SCC 610*** considering a submission which is similar to the one canvassed by Mr. Makarand Agnihotri, the Apex Court observed thus:

What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.

16. In ***Deep Chandra Juneja v. Lajwani Kathuria (Smt) (Dead) through LRS. (2008) 8 SCC 497*** supra the Apex Court emphasize that the landlord is the best judge of his requirement and neither the tenant nor the court can dictate the landlord as to how and in what manner he should organize his life. It is further observed that the *bona fide* need of the landlord is a question of

fact which should not be normally interfered with.

17. In my considered view, the *bona fide* need of the landlord is well and truly established. In any event, the findings of fact which are recorded by the courts below are not finding which are based on no evidence nor are the findings such as no reasonable person would arrive at on the basis of the material on record. Neither writ nor supervisory jurisdiction can be exercised to correct errors within jurisdiction, unless the error is a grave error of law or fact as would occasion serious miscarriage of justice. Suffice it to note the following observations of the Apex Court in *M/s Garment Craft Vs. Prakash Chand Goel in Civil Appeal 314 of 2022*.

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of

correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

18. Both the courts have concurrently held that greater hardship shall be caused to the landlord if the decree of eviction is refused, which finding too is an unexceptionable. Both, the landlord and the tenant are well to do businessmen. It has come in the evidence, and indeed it is the case of the tenant, that commercial properties are available in the vicinity. It has come on record that the tenant did not make any effort to secure suitable accommodation. The peculiar and interesting feature of the litigative battle is that the tenant who is resisting the eviction was the landlord of the plaintiffs – landlord herein. As noted *supra*, the tenant waged a legal battle seeking to oust the landlord herein from commercial building 13, and succeeded. The tenant, then the landlord, undertook to shift his business from the suit shop block 14 which is owned by the plaintiffs – landlord, if possession of commercial building 13 is secured. The cumulative circumstances lead to the irresistible conclusion that the issue of comparative hardship can be answered only in favour of the present landlord who as the tenant vacated the adjoining commercial building 13 which is owned by the tenant herein.

19. The decisions pressed in service by Mr. Makarand

Agnihotri may now be considered. *Kurian Chacko v. Varkey Ouseph* 1968 SCC OnLine Ker 101 supra emphasizes that the function of the Appellate Court is to ascertain whether the judgment of the trial court is wrong, and not to limit the inquiry to finding out whether the judgment is perverse. *C. Venkata Swamy v. H. N. Shivanna (Dead) by legal representative and another* (2018) 1 SCC 604 supra again explains the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion. The decision of the learned Single Judge in *Anita M. Barretto v. Abdul Wahid Sanaullah* 1984 SCC OnLine Bom 233 supra also considers the duty of the first Appellate Court to re-appreciate the evidence and arrive at independent findings. The decision of the learned Single Judge in *Tarachand Hassaram Shamdasani v. Durgashankar G. Shroff & others* 2004 (Supp.) Bom.C.R. 333 supra enunciates that it is the duty of the landlord to disclose material facts, and that he owns other premises capable of being utilized for the requirement pressed into service. The said decision has no applicability in the factual matrix, in as much as there is neither any suppression as such of property owned by the plaintiffs, nor is there any material to suggest that any property owned by the joint family members, if

at all, was available to satisfy the need pleaded. ***Shiv Sarup Gupta v. Dr Mahesh Chand Gupta (1999) 6 SCC 222*** supra emphasizes that the expression “need” denotes a certain degree of want. The same decision emphasizes that the landlords subjective choice, from among the more than one accommodation available to him, should be respected by the court. ***Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada (2003) 2 SCC 320*** supra enunciates that the burden of proving greater hardship lies on the tenant, and if the proved requirement can be satisfied by partial eviction, the same may be ordered. The said decision is of no assistance to the tenant. It is not even the case of the tenant that partial eviction is physically or practically feasible. Paragraphs 9 and 11 of the said decision are relied on to buttress the submission that for deciding the issue of comparative hardship, the availability of other premises with the landlord, which may not necessarily be alternative to the suit premises, may still be considered. For reasons which I have already spelt out, the premises occupied by the company, even if it is assumed that the plaintiffs are members of a Hindu Undivided Family which controls the affairs of the company, cannot be considered as premises available to the landlord. ***Vasant Mahadeo Gujar v.***

Baitulla Ismail Shaikh & Anr. 2015 SCC OnLine Bom 4470 supra again considers the implication of suppression of several premises in the pleadings. The learned Single Judge was persuaded to set aside the decree of eviction, *inter alia* in the light of the suppression. In the factual matrix, the landlord claimed that the tenanted premises is required for the purposes of residence as well as hotel business of the family members. The learned Single Judge noted that the landlord suppressed that besides the suit premises, several other premises are being used by the landlord for the purposes of residence as well as commerce. The learned Single Judge considered the nature and extent of the other premises the details of which were not disclosed, and recorded a finding that the non-disclosure of the premises available reflected on the conduct of the landlord and is a relevant aspect which renders the decree of eviction vulnerable. The said decision turns on the glaring facts of the case. *Ram Narain Arora v. Asha Rani and others (1999) 1 SCC 141* supra which is pressed in service by the tenant, supports the submission of the landlord, rather than the tenant. Paragraph 12 of the said decision which articulates that pure findings of fact may not be open to be interfered with, but if any given case, the finding of fact is given on a wrong premise of

law, it would be open to the Revisional Court to interfere, is emphasized. With due respect, there cannot be any quarrel with the said proposition. *Micro Hotel Private Limited v. Hotel Torrento Limited and others (2012) 10 SCC 290* supra articulates the duty of the court to consider facts and to apply the law correctly. *Hasmat Rai and another v. Raghunath Prasad (1981) 3 SCC 103* supra emphasizes that it is the burden of the landlord to incorporate specific pleadings and to establish that the statutory requirements are satisfied. *Yadarao Dajiba Shrawane (Dead) by LRS. v. Nailal Harakchand Shah (Dead) and others (2002) 6 SCC 404* supra explains the scope of interference with findings of fact, in exercise of jurisdiction under Section 100 of the Civil Procedure Code. *Narendra Gulabrao Zade v. Shiocharan Ghashiram Gupta since deceased through LRs Smt. Radhabai Shivcharan Gupta and another 2011(1) Mh.L.J. 839* supra holds that it is after fair disclosure of all options available, that the landlord can claim to be the best judge of his need.

20. Mr. R. R. Srivastava is relying on *Faruk Ilahi Tamboli and another v. B. S. Shankarrao Kokate (Dead) by legal representatives and others (2016) 15 SCC 431* supra, which

decision is already considered and noted. *Bhupinder Singh Bawa v. Asha Devi (2016) 10 SCC 209* supra is pressed in service to buttress the submission that it is open to the landlord to choose a more suitable premises to satisfy the need pleaded and neither the tenant nor the court can dictate the landlord in such choice. *Anil Bajaj and another v. Vinod Ahumta (2014) 15 SCC 610* and *Deep Chandra Juneja v. Lajwanti Kathuria (Smt) (Dead) through LRS. (2008) 8 SCC 497* are already considered. *Akhilshwar Kumar and others v. Mustaqim and others (2003) 1 SCC 462* supra articulates that once it is proved by landlord that the suit premises is required *bona fide*, and such satisfaction withstands the test of objective assessment by the court of fact, then the choice of accommodation is left to the subjective exercise of the landlord. *Nilkanthrao Raghunathji Chute v. Dattatraya Narayan Balakhe 2019(3) Mh.L.J. 874* supra reiterates the settled position of law that the landlord is the best judge of his need and the court cannot suggest alternatives to him. In *Mohd. Ayub and another v. Mukesh Chand (2012) 2 SCC 155* supra the Apex Court enunciates that the requirement need not be a dire necessity and the choice of the premises must be left to the landlord. In *Mohanlal s/o Chandulal Agrawal v. Navalkishor s/o*

Radheyshyam Kulwal 2016(1) Mh.L.J. 735 supra the learned Single Judge has held that once the *bona fide* need of the landlord is proved, the question of hardship normally tilts in favour of the landlord. *Nana s/o Kisanrao Thokade (since deceased) through his L.Rs. Ratnamala w/o Nana Thokade and others v. Prabhakar s/o Ambadas Gosavi 2014(6) Mh.L.J. 563* and *Rasiklal s/o Revchand Shah and others v. Paraskumar s/o Balchand Thole and another* supra reiterate the settled position that it is the tenant's burden to prove that greater hardship will be caused to him if the eviction is ordered. *Mrs. Bega Begum and others v. Abdul Ahad Khan (dead) by L. R.s. and others (1979) 1 SCC 273* supra explains the concept of requirement. *Shamshad Ahmad and others v. Tilak Raj Bajaj (Deceased) through LRS. and others (2008) 9 SCC 1* reiterates that findings as to *bona fide* requirement recorded are findings of fact and interference in writ jurisdiction is impermissible. *Ataullakhan s/o Mohammadkhan (dead) through Legal Heirs Azarullakhan s/o Ataullakhan and others 2019(2) Mh.L.J. 471* supra is a decision of learned Single Judge of this Court enunciating that the High Court cannot act as an Appellate Court while exercising writ jurisdiction. *Dr. Ranbir Singh v. Asharfi Lal (1995) 6 SCC 580* supra articulates that the findings

concurrently recorded are not open to interference by the High Court in exercise of jurisdiction under Section 100 of the Civil Procedure Code. The other decisions which Mr. R. R. Srivastava relies on by and large reiterate the position of law considered and explained in the decisions considered *supra*.

21. On a holistic consideration, I do not find any reason to interfere in writ jurisdiction, and the petition is accordingly dismissed.

22. No order as to cost.

23. The petitioner – tenant shall vacate the tenanted premises within the next six months.

JUDGE