

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.42 OF 2012

Smt. Wajeda Jabbar Maindargi

Age- 51 years, Occ : Household,

R/o 5296, Burud Lane, Ahmednagar ...Applicant

Versus

Madanlal Sheshmal Unecha

Age : Major, Occ : Business,

R/o at 5296, Burud Lane, Ahmednagar ... Respondent

Mr.R.N. Dhorde – Senior Counsel i/b Mr.V.R. Dhorde, Advocate for the Applicant.

Mr.S.S. Katariya, Advocate for Respondent.

CORAM: GAURI GODSE, J.

RESERVED ON: 2nd February 2023

PRONOUNCED ON: 27th April 2023

JUDGMENT:

1. This civil revision application is filed by the landlord challenging the dismissal of the suit by the First Appellate Court. The suit filed by the Applicant for eviction on the ground of default in payment of arrears of rent, personal bonafide requirement and bonafide requirement for demolition for compliance with notice for demolition issued by the local authority was decreed by the Trial Court on the

ground of default.

2. The Applicant filed Regular Civil Suit No.541 of 2002 in the Court of Civil Judge, senior Division, Ahmednagar, for eviction of the respondent under the Maharashtra Rent Control Act 1999 ("Rent Act") on the ground of arrears of rent under Section 15(3), personal bonafide requirement under Section 16(1)(g) and bonafide requirement under Section 16(1)(k) for demolition in compliance with a notice issued by the Municipal Council under Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("the said Act of 1965"). The ground for the personal bonafide requirement was that residential accommodation available for the Applicant's family consisting of her husband, sons, daughters, mother and mentally disabled brother and sister was insufficient.

CASE OF THE APPLICANT/LANDLADY:

3. The property bearing C.T.S. No.2572/1, Municipal House Nos. 5296 to 5301, a household property situated at Burudgalli, Ahmednagar, is owned by the applicant and out of the said property, a portion admeasuring 15 X 30 feet on the ground floor was let out to the respondent for

commercial purpose on the monthly rent of Rs.1300/-, by executing an agreement dated 1st August 1998. A demand notice dated 6th June 2002 was issued as the respondent was in arrears of rent for a period of 35 months from 1st July 1999 to 31st May 2002 for an amount of Rs.45,000/-. Respondent had replied to the said notice and disputed the rate of rent as claimed and also denied that he was in arrears of rent. Respondent had filed an application for fixation of standard rent and deposited an amount of Rs.46,800/- in the standard rent application. However, thereafter, the respondent failed to pay the monthly rent. Hence, the applicant filed the said suit for eviction of the respondent. The applicant contended that the respondent was in arrears of rent for an amount of Rs.21,800/- on the date of filing of the suit.

4. The building where the suit property was situated had developed multiple cracks due to a fire in the year 1993, and it had become dangerous and was likely to collapse at any point. The Municipal Council had issued a notice under section 195 of the said Act of 1965. Though the respondent was well aware that the building was in a dilapidated condition, he challenged the said notice. Thus, it was

contended that the applicant required possession of the suit premises as the applicant was under obligation to demolish the building as per the notice issued by the Municipal Council.

5. Applicant also contended that she was residing in a small portion of the property where the suit premises is situated along with her husband, sons, daughters, her mother, her brother and sister. The Applicant contended that her children were grown up and required additional premises for their education and for other activities as they required privacy. The Applicant's brother and sister residing with her are mentally disabled, and they require proper care at the hands of the Applicant and her mother. Thus, the Applicant faced difficulties in the small portion of the premises which were in her possession. The Applicant thus contended that the premises available to her were insufficient to accommodate all her family members. Thus, the suit was filed on the ground of default in payment of rent, the bonafide requirement for the purpose of demolition of the building where the suit premises were situated, as well as for the personal bonafide requirement of the applicant.

CASE OF THE RESPONDENT / TENANT:

6. Respondent filed a written statement and denied the suit claim. Respondent contended that irrespective of the property where the suit premises were situated, there were other properties available for the applicant, hence ground of personal requirement is not genuine and bonafide. With respect to the ground of default, the respondent contended that he had paid the rent amount by sending money orders and subsequently deposited the amount in the standard rent application. Respondent also disputed the rate of rent being exorbitant and unreasonable and claimed that the reasonable rent was not more than Rs.200/- per month.
7. Respondent denied the contention that the building where the suit premises were situated was in a dilapidated condition and was required to be demolished. Respondent contended that the notice issued by the Municipal Council under section 195 of the said Act of 1965 was illegal and was issued in connivance with the applicant. Hence, the Respondent challenged the said notice by filing Regular Civil Suit No.590 of 1999. The suit filed by the Respondent was decreed, and the notice was held to be illegal thus, the Applicant was restrained from evicting the Respondent from

the suit premises.

TRIAL COURT PROCEEDINGS:

8. Learned 6th Joint Civil Judge, Junior Division, Ahmednagar, by judgment and decree dated 30th January 2008, decreed the suit for eviction of the Respondent on the ground of default in payment of arrears of rent and directed to pay Rs.1300/- per month for compensation for unauthorised use of suit premises to the Applicant from the date of termination of tenancy, i.e. from 1st September 2002 till handing over of possession. Learned trial Judge disbelieved the case of the Applicant on the ground of personal bonafide requirement as well as the requirement of the suit premises for the purpose of demolition of the same on the ground of the building being dilapidated as per the notice issued by the Municipal Council.

APPELLATE COURT PROCEEDINGS:

9. Being aggrieved by the decree passed by the trial Court, the Respondent-tenant preferred Regular Civil Appeal No. 105 of 2008. Learned Principal District Judge Ahmednagar, by judgment and decree dated 16th August 2011, allowed the appeal preferred by the Respondent and set aside the decree of eviction passed by the trial Court and thus, the

suit of the Applicant was dismissed. The Applicant had filed the cross-objection for the purpose of granting the decree on the ground of personal bonafide requirement as well as the requirement of the suit premises for demolition of the building as per the notice issued by the Municipal Council. By the judgment and decree passed by the learned District Judge, the cross-objection filed by the Applicant was dismissed. Hence, the original plaintiff-landlady has filed the present civil revision application.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

10. Mr Dhorde, learned senior counsel appearing on behalf of the Applicant, submitted that the Respondent had filed an application for fixation of standard rent and had deposited the demanded amount in the said proceedings. The standard rent application was dismissed for default in the year 2002. Though, admittedly, there was a tenancy agreement, which had fixed the rent at Rs.1300/- per month, the Respondent had disputed the same by filing a standard rent application. After the deposit of the initial amount as demanded by the Applicant, the Respondent failed to deposit the monthly rent. Thus, learned senior counsel submitted that only making a deposit of the amount that was

demanded was not sufficient to avoid the decree of eviction and that the Respondent was under obligation to continue to pay the rent amount. There is nothing produced on record by the Respondent to show that he continued to pay the rent regularly. Learned senior counsel relied upon the specific pleading in the plaint, which stated that even after depositing the amount as per demand notice, the Respondent was in arrears of rent on the date of filing of the suit, hence without there being any proof of payment produced by Respondent, he was not entitled to claim any protection from eviction decree.

11. Learned senior counsel further submitted that there was no merit in the case of the Respondent with respect to his contention that payment of rent was sent by money orders and that the same was allegedly refused by the Applicant. Admittedly, the application for fixation of standard rent was dismissed for default. The Respondent had failed to produce on record the single receipt to show that he had paid rent in the Court in the pending suit, and thus, in the absence of any proof of regular payment of rent during the pendency of the suit, the Respondent was not entitled to protection from eviction decree. Learned senior counsel

submitted that as per section 15(3) of the Rent Act, the Respondent is required to make payment of arrears of rent as prayed in the suit along with permitted increases as well as simple interest on the amount of arrears @ 15% per annum within a period of 90 days from the date of service of the suit summons and continue to pay the rent amount till the suit is finally decided. Learned senior counsel further submitted that the Trial Court had rightly taken into consideration the default on the part of the Respondent in making payment of rent and had correctly passed the decree of eviction on the ground of default.

12. The First Appellate Court had not recorded any valid reasons for reversing the findings of facts recorded by the trial Court. The First Appellate Court erroneously relied upon only the fact of deposit of the amount of arrears of rent in the standard rent application and that the Respondent had deposited more amount than the amount that was demanded. The First Appellate Court erred in recording the finding that on the date of filing of the suit, there were no arrears of rent as the Respondent had already deposited the same in the standard rent application. The First Appellate Court has further erred in recording that once the

tenant had paid the arrears that were demanded within one month from the date of issuance of the notice, there was no cause of action available for the landlord to file the suit for eviction on the ground of default. The First Appellate Court had erroneously relied upon the provisions of section 12(2) (3)(b) of the Old Bombay Rent Act and completely ignored to examine the applicable provisions of section 15(3) of the Maharashtra Rent Control Act 1999. Thus, the learned senior counsel submitted that the reasonings given by the First Appellate Court were illegal and perverse as the learned First Appellate Court had completely failed to appreciate the provisions of section 15(3) of the Rent Act, which required the tenant to pay the arrears of rent within 90 days of service of suit summons as well as to continue to pay the rent till the date of the decision of the suit.

13. Learned senior Counsel in support of the ground of personal bonafide requirement of the applicant submitted that the applicant was living along with her husband, her sons and daughters, her mother, as well as her brother and sister, who were mentally disabled. Learned senior counsel submitted that the mother of the Applicant had grown old, and hence there was an application filed for appointing the

Applicant as guardian of her brother and sister, who are mentally disabled. The order appointing the Applicant as guardian for her mentally disabled brother and sister was placed on record. The Applicant had specifically pleaded that the premises in her possession were insufficient to accommodate her family, which includes the mentally disabled brother and sister and thus, required larger premises for taking care of them. Learned senior counsel thus submitted that evidence on record showed that the Applicant was in need of the suit premises for her personal and bonafide requirement.

14. He submitted that the evidence that was sought to be produced on record by the Respondent by way of cross-examination of the Applicant was not her exclusive property and was not available to the Applicant. Learned senior counsel submitted that both the Courts were in error in not properly appreciating the oral evidence on record with respect to the other premises allegedly available for the Applicant, as contended by the Respondent.
15. Learned senior counsel thus submitted that the findings recorded by both the Courts on the point of personal bonafide requirement are totally contrary to the oral as well

as documentary evidence on record. Both the courts have failed to properly appreciate the evidence, which in fact, shows that except for the suit premises, no other premises were available for the applicant to accommodate her family, which required larger premises than the premises available with the Applicant.

16. The learned senior counsel submitted that it is well-settled law that the landlady is the best judge of her need or requirement, and the tenant cannot dictate terms by insisting upon the various permutations and combinations regarding the area of certain premises that may have been available to the landlady for personal bonafide use.
17. With respect to the ground for bonafide use for the purpose of demolition of the building where the suit premises is situated, learned senior counsel submitted that though the notice issued by the Municipal Council was held to be illegal in the suit filed by the Respondent, the condition of the suit building where the suit premises is situated continued to be deteriorating and dangerous. Learned senior Counsel submitted that it was not disputed that the building where the suit premises is situated is 100 years old. The evidence that was produced on record showed that the building was

dilapidated and was not fit for habitation. The premises where the applicant was residing along with her family was in dilapidated condition and hence was not safe for human habitation.

18. Learned senior Counsel submitted that during the pendency of the civil revision application, the condition of the building where the suit premises is situated has deteriorated and hence by amending the civil revision application, the Applicant has placed on record the structural audit report prepared by the Professor and Head of Department of Applied Mechanics, Government College of Engineering, Aurangabad. A perusal of the said report shows that the building is a load-bearing structure, and the structure is in a damaged condition, has cracks in the building and is structurally unstable and is not fit for its intended use. Learned senior counsel submitted that by way of the amendment as well as by filing an additional affidavit, the Applicant has produced on record the recent photographs showing that the building is in a dilapidated condition and, except for the Respondent, the building is not occupied by any other person. Learned senior counsel also relied upon fresh notice issued by the Municipal Corporation under

section 264 of the Maharashtra Municipal Corporation Act, 1949, thereby declaring the suit building as dangerous and not habitable and thus calling upon the Applicant to demolish the same. Learned senior counsel submitted that the notice of demolition is dated 10th November 2022 and that the photographs produced on record show that Applicant has already put up a notice on the suit building, thereby stating that there is already notice of demolition issued by the Municipal Corporation.

19. Learned senior counsel submitted that these subsequent events and evidence brought on record are not disputed by the Respondent. All these facts show that the suit building is not habitable and is dangerous for human habitation. It was submitted that all these subsequent events specifically show that the possession of the suit premises is required by the Applicant for the purpose of demolition as she is under obligation to comply with the notice of demolition issued by the Municipal Corporation. Learned senior counsel relied upon the amended part of the present civil revision application, which stated that the sister of the Applicant Samiya, who was mentally disabled and was residing along with the applicant, expired on 14th December 2014. Learned

senior counsel thus submitted that the mentally disabled sister of the applicant had already expired, and her brother, who is also mentally disabled, is growing old and is about 52 years old, and the applicant is required to take care of him. Hence, she requires additional separate premises. Thus, learned senior counsel submitted that even as of date, the Applicant requires the suit premises for her personal bonafide need as well as demolition of the suit building as same is dilapidated as per the notice issued by the Municipal Corporation.

20. Thus, learned senior counsel submitted that the Applicant is entitled to a decree of eviction on the ground of default as well as personal bonafide requirement and bonafide requirement for the purpose of demolition of the suit building. Learned senior counsel thus submitted that the civil revision application be allowed, and the suit of the Applicant be decreed as prayed on all three grounds.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

21. Mr. Kasliwal, the learned counsel for the Respondent, contended that the suit was filed on 30th October 2002 on the basis of the demand notice dated 6th June 2002, thereby

demanding the arrears of rent amount of Rs. 45,500/-. Respondent deposited an amount of Rs.46,800/- on 12th August 2002 by filing a standard rent application. Though the standard rent application was disposed of on 2nd February 2005, the fact is undisputed that the Respondent had deposited more amount than the amount demanded in the notice much prior to the filing of the suit, hence on the date of filing of the suit, there were no arrears, and therefore, there was no cause of action for filing the suit, and that, the suit was not maintainable on the ground of default. Learned counsel also submitted that the Respondent has deposited the various amounts in the Trial Court as well as in the First Appellate Court. The learned counsel submitted that all the payment receipts produced by the Respondent in the trial Court with respect to the deposit of the amount in the standard rent application as well as during the pendency of the suit would show that as of the date of the decision of the suit, Respondent was not in arrears of rent. Even during the pendency of the first appeal as well as the present civil revision application, the Respondent has made payments which are more than sufficient, even as per the agreed rate of rent. Thus, the Respondent is not in any willful default, and there is no

question of passing the decree of eviction on the ground of default. Hence, there is no ground made out for the grant of a decree of eviction on the ground of default.

22. In support of the submissions with respect to the non-availability of ground of default, learned counsel relied upon the decision of this Court in the case of *Narhar Damodar Wani Vs. Narmadabai T. Nave Deceased Through L.Rs.*¹ as well as the decision in the case of *Vinayak Narayan Deshpande and others Vs. Deelip Pralhad Shisode*².
23. Learned counsel relied upon the various admissions given by the Applicant in cross-examination. Learned counsel thus submitted that the admissions given by the Applicant showed that apart from the suit premises, there were other premises available for the use of the Applicant and that the admissions given by the Applicant herself showed that the need, as pleaded by the Applicant was not bonafide and genuine need, and that, the same was raised only for the purpose of evicting Respondent. Learned counsel submitted that the suit building was purchased by the Applicant from her mother in April 1997, and thereafter, the suit property was let out to the Respondent. Therefore, it is clear that the

¹ 1984 Mh.L.J. 313

² 2010(2) All MR 747

requirement pleaded by the Applicant is not a genuine and bonafide requirement. Learned counsel further submitted that the Applicant had sold her other available property during the pendency of the suit. Thus, though there was another property available, the Applicant had falsely contended that the only available property for her requirement was the suit property.

24. Learned counsel for Respondent thus submitted that the evidence on record shows that the suit building where the suit premises is situated is totally admeasuring 2100 square feet, and there are three other tenants who were occupying parts of the suit building. Applicant admittedly did not initiate any proceedings against other tenants and thus, with a malafide intention, only proceeded against Respondent on the false pretext of bonafide requirement. Learned counsel also relied upon certain admissions given by the Applicant that there were other premises available for the Applicant where she was conducting the classes, and hence, it was clear that apart from the suit premises, there were premises available for the personal need of the Applicant. It was further submitted that the oral evidence on record showed that during the pendency of the suit, other tenants had

vacated the suit premises. Hence, there was no requirement of the suit premises on the date of the decision of the suit. Hence, the Applicant was not entitled to a decree of eviction on the ground of personal bonafide requirement.

25. With respect to the ground of requirement of suit premises for the purpose of demolition, it was submitted on behalf of the Respondent that, admittedly Applicant had not carried out repairs as per the permission of the Court for the purpose of carrying out repairs. So far as subsequent developments with respect to the structural audit report and fresh notice issued by the Municipal Corporation are concerned, learned counsel submitted that the same are subsequent events and cannot relate back to the filing of the suit, hence is of no assistance to the Applicant for claiming decree of eviction on the ground of requirement for the purpose of demolition. With respect to the structural report, which was produced during the pendency of this civil revision application, learned counsel submitted that perusal of the report shows that there was no inspection carried out of the suit premises, hence the same cannot be relied upon against respondent for the ground of requirement of the suit premises for the purpose of demolition. Thus, learned

counsel submitted that both the grounds with respect to the requirement of personal bonafide need as well as the requirement for the purpose of demolition are not genuine grounds raised by the Applicant and that the same is only a got-up plea for the purpose of evicting respondent. Learned counsel for the Respondent strongly relied upon the admissions given by the Applicant, thereby stating that apart from the suit premises, there were various other premises available for the Applicant.

26. Learned counsel also objected to the need of the Applicant on the ground that she required the premises for her brother and sister, who are mentally disabled, and that she was appointed as their guardian. Learned counsel submitted that the order appointing the Applicant as guardian was never produced on record, and therefore, the same was not believable. Thus, the submission of learned counsel on behalf of the Respondent was that the bonafide requirement as pleaded by the Applicant was not a genuine requirement and that Applicant had not pleaded and disclosed with respect to already available premises, and hence the ground of bonafide requirement was not acceptable. In support of this submission, learned counsel relied upon the

decision of this Court in the case of *Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh and Another* ³. Thus, learned counsel submitted that the landlord is duty-bound to make disclosure of any subsequent acquisition of premises and that such disclosure would enable the tenants to meet the case set out by the landlord. Thus, in the absence of such disclosures on relevant matters, the landlord is not entitled to a decree of eviction on the ground of bonafide personal requirement as contemplated under section 16(1)(g) of the said Act of 1999.

27. Learned counsel also submitted that the scope of interference under section 115 of CPC was limited as per the proposition laid down by the Hon'ble Supreme Court in the case of *Gandhe Vijay Kumar Vs. Mulji @ Mulchand* ⁴. Learned counsel thus submitted that both the Courts have disbelieved the case of the Applicant on the ground of personal bonafide need as well as the requirement of the suit premises for the purpose of demolition. Thus, in the limited scope of interference under section 115 of CPC, the findings of fact recorded by both Courts cannot be interfered with, and thus, there is no question of granting a decree of

³ 2016(4) All MR 174

⁴ 2018 All SCR 235

eviction on the ground of personal need and requirement for demolition.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE APPLICANT:

28. In response to the submissions made on behalf of the Respondent that the order appointing the Applicant as guardian of her mentally disabled brother and sister is not produced on record, learned senior counsel for the Applicant submitted that the order passed by the District Court was produced on record at Exhibit-20. Hence, there is no merit in the submissions of learned counsel for the Respondent that there is no evidence produced on record in support of the same. He submitted that the Respondent was under obligation to get an order for fixing the interim maintenance and deposit the same in the Court and continue to deposit the same till the decision of the suit. Admittedly, no such attempt was made by the Respondent, hence Respondent was not entitled to any protection from the decree of eviction on the ground of default. As the Respondent has not complied with the requirement as contemplated under section 15(3) of the Rent Act, he was not entitled to avoid the decree of eviction on the ground of

default. The subsequent events with respect to the condition of the suit building as produced on record by the Applicant are not disputed by the Respondent. The pleading of the Applicant at the time of filing of the suit as well as the present civil revision application is sufficient to prove that the Applicant is in personal bonafide need of the suit premises. Hence Applicant is also entitled to a decree of eviction on the ground of personal bonafide requirement as well as the requirement for demolition.

CONSIDERATION OF SUBMISSIONS AND CONCLUSIONS :

29. I have considered the submissions made by both parties. I have perused the record of the Civil Revision Application. In the Civil Revision Application, all three grounds pleaded by the Applicant are required to be examined. The suit was filed by the Respondent on three grounds (i) default under Section 15(3) of the Rent Act, (ii) Personal bonafide requirement under Section 16(1)(g) and (iii) 16(1)(k) of the Rent Act.
30. So far as the prayer for decree on the ground of default is concerned, there is no dispute that the Tenancy Agreement was executed on 1st August 1998, and the suit premises was let out to the Respondent at a monthly rent of

Rs.1300/-. A demand notice issued by the Applicant demanding a sum of Rs. 45,000/- towards arrears of rent from 1st July 1999 to 31st May 2002 was served upon the Respondent. Respondent had filed an application for fixation of standard rent, and in the said application, he deposited the amount of Rs. 46,800/-. However, the application for fixation of standard rent was subsequently dismissed. A perusal of the record shows that no steps were taken by the Respondent to make payment of rent after depositing an amount of Rs. 46,800/- in the application filed for fixation of standard rent.

31. The suit was filed by the Applicant on the ground that the Respondent was in arrears of rent for an amount of Rs. 21,800/- on the date of filing of the suit. In the plaint, the Applicant has very specifically pleaded with respect to the arrears of rent as demanded, the amount deposited by the Respondent in the standard rent application, and the amount of arrears of rent as on the date of filing of the suit. Respondent appeared in the suit, however, did not take any steps for paying and/or tendering the amount of the arrears of rent within the period of 90 days from the date of service of summons of the suit. For the purpose of examining the

ground of eviction for default in payment of rent, it is necessary to peruse Section 15 of the Rent Act of 1999, which reads as under:

15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the

Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

32. Sub Section 2 of Section 15 of the Rent Act states that no suit for recovery of possession shall be instituted by the

landlord on the ground of non-payment of standard rent or permitted increases until the expiration of ninety days next after notice in writing demanding the arrears. In the present case, it is not disputed that such a demand notice was served upon the Respondent. Sub-Section 3 of Section 15 provides that no decree for eviction shall be passed in any suit for recovery of possession on the ground of arrears of standard rent if within a period of ninety days from the date of service of summons of the suit the tenant pays or tenders in court the standard rent and permitted increase then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided. Thus, in view of sub-section (3) of Section 15, there is an opportunity for the tenant to avoid the decree of eviction on the ground of default by complying with the conditions as specified in sub-section (3).

33. It is not sufficient that the tenant only pays or tenders the amount of arrears of rent as demanded and thereafter avoids regularly making payment of rent. In the present case, the learned counsel for the Respondent submitted

that the Respondent had initially deposited the amount of Rs. 46,800/- in the application filed for fixation of standard rent. Thereafter Respondent deposited Rs. 13000/- in the suit on 4th August 2007, Rs. 74,100/- on 8th February 2008, Rs. 49,400/- on 7th April 2011 and Rs. 5200/- on 23rd June 2011. A perusal of the dates of deposit as stated above shows that only one payment was made during the pendency of the suit by the respondent by depositing an amount of Rs. 13000/- on 4th August 2007. The second deposit was made in the Suit was for an amount of Rs. 74,100/- on 8th February 2008. The suit was filed on 30th October 2002 and was decided on 30th January 2008. Thus, the relevant payments to be taken into consideration are the amount of Rs. 46,800/- deposited on 12th August 2002 in standard rent application and Rs. 13,000/- deposited on 4th August 2007 in the suit. The suit was filed claiming arrears of rent of Rs. 21,800/- as of the date of filing of the suit after taking into consideration the said amount of Rs. 46800/- deposited in the standard rent application. The amount of Rs. 46,800/- was deposited by the Respondent in the standard rent application before the filing of the suit. Thus, the said amount deposited was towards the amount of Rs.45,000/- claimed by the Applicant

towards arrears of rent from 1st July 1999 to 31st May 2002.

34. The Applicant had claimed arrears of rent of Rs. 21,000/- as of the date of filing of the suit after taking into consideration the amount of Rs. 46,800/- already deposited by the respondent. Thus, the particulars of the deposit of the rent amount by the Respondent during the pendency of the suit show that the Respondent failed to make the payment within ninety days of the date of service of the suit summons as required by mandatory requirement of sub-section (3) of Section 15 of the Rent Act of 1999. After taking into consideration the particulars of the amount deposited by the Respondent and the dates on which the same was deposited, it is clear that the Respondent has not complied with the requirement as per sub-section (3) of Section 15 to avoid the decree of eviction on the ground of default.
35. It is a settled principle of law that if the tenant fails to comply with the requirement as set out under Section 15 of the Rent Act of 1999, the decree for eviction on the ground of default has to follow. Thus, it is clear that the Respondent was in arrears of rent as of the date of filing of the suit as well as on the date of passing the decree by the trial Court.

36. The first Appellate Court has erroneously relied upon only payment of Rs. 46,800/- deposited by the Respondent in the standard rent application before the filing of the suit. The first Appellate Court has further erroneously relied upon receipts of money orders produced on record, and observed that the money orders were refused by the Applicant. The dates of money orders issued by the Respondents are 20th December 1999 and 25th August 2000. It cannot be disputed that the Respondent was in arrears of rent when the suit was instituted. Even assuming that the case of sending money orders is true, that does not absolve the tenant from his obligation to comply with the mandatory requirement of Sub-Section (3) of Section 15 of making payment of arrears with interest within the stipulated time of ninety days. That is the only method by which the tenant can save himself from a decree of eviction. Even otherwise, there is no evidence led to support the case of payment of rent by money orders.
37. The first appellate Court has further relied upon the provisions of the unamended Bombay Rent Act of 1947 and has erroneously referred to Section 12(2) and Section 12(3) (b) of the old Rent Act. The suit was governed by the Rent

Act of 1999. The first appellate Court has further misinterpreted the provisions of Section 15 of the Rent Act as well as misread the law laid down by this Court in the case of *Narhar Damodhar Wani*.

38. The learned senior counsel for the Applicant has rightly relied upon the decision of this Court in the case of *Ataullahkhan s/o. Mohammadkhan (D) through Legal Heirs Vs. Kernath Jaywantrao Nagargoje & Another*⁵ and *Tulshiram Bhumayya Shriram and Others Vs. Akbarkhan Mujafarkhan and Another*.⁶ in support of his submission that for failure to deposit the amount of arrears of rent, the Applicant is entitled to a decree of possession on the ground of default in making payment of arrears of rent.
39. Considering the provision of Section 15 of the Rent Act, the reasons recorded by the first appellate Court for setting aside the decree passed by the trial Court on the ground of eviction are clearly contrary to the provision of Section 15, and this finding recorded by the first appellate Court cannot be sustained. The reasons recorded above clearly show that the Respondent has not complied with the mandatory requirement as contemplated under sub-section (3) of

⁵ 2019(3) ALL MR 628

⁶ 2004 Bom. R.C. 623

Section 15 of the Rent Act. Thus, for want of compliance under sub-Section (3) of Section 15 of the Rent Act, the Applicant is entitled to a decree of eviction on the ground of arrears of rent. Though the learned counsel for the Respondent has relied upon payment receipts, the same would not be of any assistance to the Respondent as none of the receipts shows that the payment as contemplated by sub-section (3) of Section 15 is complied with by making payment of arrears of rent. Thus, for the reasons recorded above the Applicant is entitled for a decree of possession under section 15(3) of the Rent Act.

40. So far as the ground of eviction under section 16(1)(g) is concerned, it is necessary to refer to the relevant pleadings and evidence. The Applicant has come up with a specific plea that she is residing in a small portion on the first floor of the structure where the suit premises is situated along with her husband, mother, grown-up children, as well as her brother and sister, who are mentally disabled. Admittedly some part of the first floor was damaged during fire in the year 1993. She has pleaded that her brother and sister require proper care at the hands of the Applicant and her mother. Thus, it was pleaded that the Applicant and her

family are facing a lot of inconvenience in the small portion of the premises, which is in their possession. It has come on record in oral evidence of the Applicant that the building where the said premises is situated is ground plus one floor on the Northern side and remaining is single storied. Total area is 2100 square feet. There are two more tenants apart from the Respondent, out of whom one tenant Shetia has vacated his premises which is situated in between the premises of Respondent and another tenant. The Applicant has amended the Civil Revision Application and brought on record subsequent events. The Applicant has brought on record that though her daughters are now married and are residing separately, her son is also married and is residing at Pune for his job as he could not start his business due to want of accommodation. Hence, suit premises is required for business of her son. The Applicant is in possession of a premises of 20 x 20 and her mentally disabled brother is residing on the rear side admeasuring 15 X 12 area which is dilapidated. The Applicant has stated that her mentally disabled brother is now running 52 years of age, and it has become difficult for the Applicant to take care of her mentally disabled brother in an insufficient accommodation. It is her case that, considering the age and medical

condition of her brother, she will require a bigger space for taking proper care of her brother.

41. The Applicant has also brought on record that the Applicant's sister, who was also mentally disabled, resided along with the Applicant and expired on 14th December 2014. It is important to note that one of the grounds that the premises required for the personal use of the Applicant also included the requirement of sufficient premises as the Applicant's mentally disabled sister was residing with her. However, unfortunately, the sister of the Applicant has expired during the pendency of the proceeding. The Applicant has placed on record the copy of the order dated 5th May 2001 appointing the Applicant as guardian of her mentally disabled brother and sister. The Applicant, thus, by way of amendment, has contended that even today, the Applicant and her family are facing hardships due to insufficient premises in their possession.

42. A perusal of the oral evidence does not show that the premises shown by the Respondent to have been available for the Applicant, exclusively belong to the Applicant and are available for the Applicant's accommodation. The evidence only shows that the Applicant may only have a share in

some joint family property, which is in possession of other family members. The Respondent has relied upon some oral evidence to show that the Applicant is carrying out some sewing classes in some other premises in her possession and out of the other two tenants, one of them have vacated the premises. A perusal of the oral evidence shows that one of the premises vacated by one of the tenants – Shetia, is in between the suit premises and another premises occupied by other tenant. There is no evidence to show that it is possible for the Applicant to use the said shop premises for the purpose of residence and requirement pleaded by her.

43. Reliance is placed by the Respondent on the decision of this Court in the case of *Vijay Gangadhar Dande (Dead) through Lrs. Vs. Dilip Gyanchand Khemani* ⁷ in support of his submission that the landlord is under obligation to establish that the premises in occupation of the landlord is insufficient and hence tenanted premises is required for personal bonafide use. I have perused the said decision. This Court was dealing with a case where the question involved was with respect to the bonafide requirement of the landlord for commercial use regarding a shop premises. In

⁷ 2015 (5) ALL MR 559

the context of the facts of that case, this Court held that under provisions of Section 16(1)(g) of the Rent Act, the landlord has to establish that premises are reasonable and bonafide required by the landlord for occupation by himself for the purpose for which it was pleaded. The decision in the said case is purely on the facts of that case. In the facts of the present case, the said decision is of no assistance to the Respondent.

44. It is a well-established principle of law that the tenant is not entitled to dictate terms to the landlord with respect to the requirement and the nature of the use of the premises. It is also well established that the landlord is the best judge about the requirement of the landlord for the purpose of personal bonafide needs. In the present case, though the Respondent has sought to bring on record the availability of other premises to the Applicant, the same does not show that the Applicant has any exclusive right over the said property and is in her possession for the purpose of satisfying the need as pleaded by the Applicant.
45. The pleadings and evidence on record clearly show that the Applicant needed suit premises for the personal use of the Applicant as the Applicant was residing along with her

children, her mother and her mentally disabled brother and sister. During the pendency of the proceeding, the son of the Applicant is married, and it has been brought on record that they are residing elsewhere with their family for want of sufficient premises for their accommodation. It is also brought on record by way of the amendment that son of Applicant, after completion of his studies, could not start his business for want of accommodation. The facts with respect to the requirement of the suit premises brought on record by way of the amendment is not disputed by the Respondent. Even otherwise, pleadings and evidence show that the Applicant has made out a specific case for the personal requirement for accommodating her family as well as her mentally disabled brother and sister.

46. The Respondent had raised the objection that there was no proof on record to support the contention of the Applicant that her brother and sister were mentally disabled. A perusal of the record shows that the Applicant has produced on record a copy of the order passed by the District Court, thereby appointing the Applicant as guardian of her disabled brother and sister. I do not see any reason for disbelieving the case of the Applicant regarding the requirement of the

suit premises for her personal bonafide use.

47. The Applicant has brought on record the present status with respect to the requirement of her son, who is married and has a son and a daughter, and thus submitted that even today, the Applicant is in need of suit premises for her personal requirement. The entire evidence on record shows that the Applicant has made out a case that even today, she requires additional premises to accommodate her large family of her husband, mother, children and mentally disabled brother. It is a matter of common knowledge that a mentally disabled person of advanced age will always require some help and thus will be in need of sufficient accommodation. Considering the evidence on record regarding the Applicant being appointed as guardian of her mentally disabled brother and his advanced age, a judicial note of such a genuine and personal need of the Applicant must be taken.
48. Mr. Dhorde, in support of his submissions on the personal bonafide requirement of the Applicant, has rightly relied upon the decision of this Court in the case of *Chandrashekhar S. Gadgil and others Vs. Rameshprasad*

Madhavprasad Shukla and Another.⁸ The proposition of law laid down in the aforesaid decision squarely applies to the facts of the present case. The Applicant-landlady is the best judge of her need or requirement, and the Respondent-tenant cannot dictate terms by insisting upon the various permutations and combinations regarding the area of certain premises that may have been available to the landlord for personal bonafide use.

49. A perusal of the evidence on record shows that findings recorded by both the Courts on the issue of the personal bonafide requirement of the Applicant are grossly erroneous and without properly appreciating the important evidence on record. The findings by both Courts on this issue are thus illegal and perverse. Thus, the decision of the Hon'ble Supreme Court in the case of *Gandhe Kumar* is of no assistance to the Respondent.
50. There is no dispute that the Respondent has not pleaded and proved that he had made any efforts to acquire any suitable premises after the Applicant filed a suit for eviction on the ground of personal bonafide requirement. Thus, the Respondent is not entitled to take any benefit by submitting

⁸ 2019 (1) ALL MR 353

that greater hardship would be caused in the event an eviction decree is granted on the ground of the personal bonafide requirement of the Applicant.

51. For the reasons stated above, in my view, the Applicant is entitled to a decree of eviction also on the ground of personal bonafide requirement under section 16(1)(g) of the Rent Act of 1999.
52. With respect to the third ground, as pleaded by the Applicant regarding the requirement of the premises for demolition as ordered by the Municipal Council is concerned, it is not in dispute that notice was issued by the Municipal Council under Section 195 of the said Act of 1965. However, the said notice is held to be illegal. By way of amendment, the Applicant has brought on record a structural audit report of the suit building prepared by the Government College of Engineering, Aurangabad. The Applicant, by way of amendment, has contended that as per the structural report, the building where the suit premises is situated is in a dangerous condition and is required to be pulled down. The Applicant has also relied upon certain photographs which are brought on record to show that the building is in dilapidated condition and that is not fit for

human habitation. The photograph produced on record are relied upon by the learned counsel for the Applicant to show that the Applicant is residing in a small portion of the building which is an old structure. The Applicant has also placed on record a fresh notice issued under Section 364 of the Maharashtra Municipal Corporation Act.

53. The earlier notice relied upon by the Applicant claiming eviction under Section 16(1)(k) is already held to be illegal in the suit filed by the Respondent. The fresh notice issued under Section 364 is a new cause of action, and the same cannot be relied upon by the Respondent for seeking a decree of eviction in the present suit. The learned counsel for the Respondent relied upon the decision of this Court in the case of *Vasant Mahadeo Gurjar* and submitted that this Court has specifically held that for the purpose of passing a decree for the requirement of the suit premises for the purpose of demolition, it is always open to the Rent Court to examine whether order made by the local authority is passed on relevant consideration or not. This Court has further held that some enquiry is also warranted in the context of expression on "immediate purpose", since the expression is not a mere surplusage, and the same has to

be considered having regard to the various circumstances, including subsequent events. This Court, therefore, held that the Rent Court is required to record satisfaction as to whether the premises are required for immediate demolition. Thus, at this stage, only on the basis of the subsequent events brought on record by way of amendment to the Revision memo and by filing an affidavit, it is not possible to conclude that the suit premises is required for immediate demolition.

54. Both Courts, after examining the evidence on record, have concluded that no case was made out by the Applicant that the suit premises was required for immediate demolition. In view of the facts and circumstances stated above, the decision of the Hon'ble Supreme Court in the case of *Hukum Chandra (Dead) through Legal Representatives Vs. Nemi Chand Jain and Others*.⁹ relied upon by Mr Dhorde in support of his submissions for the grant of a decree under Section 16(1)(k) is of no assistance to the Applicant. Therefore, in my view, there is no ground made out by the Applicant for seeking a decree for eviction on the ground under section 16(1)(k).

⁹ (2019) 13 Supreme Court Cases 363

55. So far as the prayer of the Applicant for possession of the suit premises on the ground of default and personal bonafide requirement is concerned, I have already held that the Applicant is entitled to a decree of eviction on the ground of default in payment of rent and has also made out a case with respect to the requirement of the suit premises for the personal bonafide requirement of the Applicant.
56. Hence following order is passed:
- (i) Judgment and decree dated 16th August 2011 passed by the learned Principal District Judge, Ahmednagar, in Regular Civil Appeal No. 105 of 2008, is quashed and set aside, and the Regular Civil Appeal No. 105 of 2008 is dismissed.
 - (ii) Cross objections filed by the Applicant/Plaintiff in Regular Civil Appeal No. 105 of 2008 are partly allowed, and the Judgment and decree dated 30th January 2008 passed by the 6th Joint Civil Judge (Junior Division) Ahmednagar in Regular Civil Suit No. 541 of 2002 is modified, and the Regular Civil Suit No. 541 of 2002 is decreed under section 15(3) as well as under section 16(1)(g) of the Maharashtra Rent Control Act 1999.

- (iii) Respondent/Defendant is directed to deliver vacant possession of the suit premises to the Applicant/Plaintiff within a period of three months from today.
- (iv) Respondent/Defendant is directed to pay to the Applicant/Plaintiff Rs. 1300/- per month towards compensation for the unauthorized use of the suit premises from the date of termination of tenancy i.e. 1st September 2002, till handing over possession of the suit premises to the Applicant/Plaintiff.
- (v) Civil Revision Application is allowed in the aforesaid terms. There will be no order as to costs.
- (vi) Decree to be drawn up accordingly.

(GAURI GODSE, J.)