



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

**WRIT PETITION NO.1645/2023**

**PETITIONER :**

The Nagpur Popular Book Shop,  
through its Manager Vilas Todkar,  
aged about – 72 yrs., Having  
address at Hill Top Lodge Building,  
opposite Patwardhan High School,  
Sitabuldi, Nagpur – 440012.

**-VERSUS-**

**RESPONDENTS:**  
(Original Plaintiffs)

1. Manohar Ramdas Burudkar (Dead)  
through his legal heirs.
- 1.1. Smt. Shanta wd/o Manohar  
Buradkar aged about 59 years,  
Occ. Household,
- 1.2. Sau. Suchitra w/o Prafulla Dakhole,  
aged about 36 yrs., Occ. Household,
- 1.3. Pravin s/o Manohar Buradkar, aged  
about 35 yrs., Occ. Business,
- 1.4. Sau. Priti w/o Shekhar Lande, aged  
about 30 yrs., Occ. Household,
- 1.5. Nishant s/o Manohar Buradkar, aged  
about 26 yrs., Occ. Business,

(All legal heirs of Original Plaintiff  
Late Shri Manohar Ramdas  
Burudkar)

All resident of Hill Top Lodge,  
Opposite Patwardhan High School,  
Sitabuldi, Nagpur-440012.

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Mr. T.D.Mandlekar, counsel for the petitioner.  
Mr. V.G.Bhamburkar, counsel for the respondents.  
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**CORAM : AVINASH G. GHAROTE, J.**

**Date of reserving the judgment : 03/11/2023**

**Date of pronouncing the judgment : 10/11/2023**

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

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

3. Writ Petition No.3221/2023 and Writ Petition No.1952/2021, one by the landlord and one by the tenant, both challenging the judgment and decree in Fair Rent proceedings between the same parties have also been heard and are being separately decided.

4. This petition questions the judgment passed by the Additional Judge Small Causes Court, Nagpur in Regular Civil Suit No.105/2012, dated 09/09/2019 under Section 16(1)(g) of the

Maharashtra Rent Control Act ('MRC Act' for short hereinafter), granting a decree for eviction and the judgment dated 12/01/2023, in Regular Civil Appeal No.422/2019, by the learned District Judge, dismissing the Appeal by the tenant. A challenge is also raised to the orders below Exhibits-35, 37, 40 and 41 dated 12/01/2023, rejecting all these applications.

5. For the sake of convenience, the parties are referred to as the 'landlord' and the 'tenant'.

6. It is not in dispute that the suit premises is a shop No.2-Southern side shop, on the ground floor of the building situated on Nehru Marg, opposite Patwardhan High School at Sitabuldi, Nagpur bearing House No.291 [old] 386 [new] within the limits of the Nagpur Municipal Corporation, Nagpur. The ownership of the shop premises by the landlord is not disputed, nor is it disputed that the tenant is running his business therein under the name and style of "Nagpur Popular Book Shop". It is also not disputed that the tenancy is since 15/09/1986.

7. There appears to be a dispute regarding the area of the shop, which the landlord claims to be 645 sq. feet, including the mezzanine floor, which is claimed to be 450 sq. feet by the tenant, including the mezzanine floor. That dispute however may not be germane, to the present proceedings as the claim is for eviction from the entire shop No.2, by the landlord. The monthly rent of the shop No.2 is Rs.900/- per month inclusive of corporation taxes and exclusive of electricity consumption charges. The tenancy is governed by the English calendar month and commences on 1<sup>st</sup> of each month.

8. The suit was initially initiated by Manohar Ramdas Buradkar, upon whose demise on 27/12/2012, his legal representatives were brought on record.

9. The landlord, had earlier initiated a suit namely RCS No.602/2002, against the tenant, claiming a decree for eviction for the bonafide need for his elder son Praveen, which came to be dismissed on 27/11/2009, an appeal against which RCA No.68/2010 by the landlord also came to be dismissed on 02/05/2014. However, before the dismissal of RCA No.68/2010,

the landlord had filed RCS No.105/2012, a suit for eviction under section 16(1)(g) of the MRC Act, on 13/03/2012, for the bonafide need of his second son Nishant, which came to be decreed on 09/09/2019, the appeal against which RCA No.422/2019, having been dismissed on 07/02/2023, this petition has been filed by the tenant.

10. In RCS No.105/2012, two witnesses came to be examined on behalf of the landlord, namely Nishant Buradkar as PW-1 vide Ex.14 and Praveen Buradkar as PW-2 at Ex.51. The tenant had examined himself at Ex.57, and had filed the deposition of Praveen in RCS No.602/2004, deposition of Parvez Khan vide Ex.65, certified copy of judgment and decree in RCS No.602/2004 vide Ex.67, certified copy of judgment in RCA No.68/2010 vide Ex.71 and several other documents as noted by the learned Small Causes Court in para 10 of its judgment.

11. The main bulwark of challenge by the tenant is that when the earlier RCS No.602/2004, in which bonafide need was claimed by the landlord for his son Praveen was pending due to pendency of RCA No.68/2010, the subsequent suit RCS

No.105/2012, claiming a bonafide need for his second son Nishant came to be filed, which according to Mr.Mandlekar, learned counsel for the tenant, was not permissible in law. It is his contention that the need for the second son Nishant, ought to have been claimed in the original RCS No.602/2004, itself or at the most after RCA No.68/2010 and the consequent writ petition which may have arisen due to its decision. The filing of RCS No.105/2012, on 13/03/2012, when the lis in RCS No.602/2004, was yet to culminate finally, according to him was not permissible in law.

12. In my considered opinion, this argument is totally misconceived for the need of the second son Nishant, who was aged 26 years when his affidavit evidence came to be filed on 10/08/2012, to start the business of a restaurant was an independent need and had nothing to do with the need of the elder son Praveen, on account of whose need, the earlier suit bearing RCS No.602/2004, was filed in the year 2004. There is no restriction in the provisions of the MRC Act, which requires the separate and independent need of all members of the family to be pleaded at the same time, though on account of prudence and to

save time spent in the litigation, it would be advisable for the same to be pleaded together in one suit itself. However, there being no statutory bar in this regard, nothing prevents the landlord pleading the need for his sons separately in separate suits. That apart, the need pleaded for Praveen in RCS No.602/2004, was in the year 2004, at which time calculating reversely the age to Nishant which was 26 years in 2012, would have been 18 years, when he must have been a college going student. In view of the above factual position, the proposition as laid down in *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.* reported in *(2001) 8 SCC 397*; *Godrej and Boyce MFG Co. Ltd. v. Sridhar Jagannath Nerurkar* reported in *2005 (1) Mh.L.J. 1097* and *Kumud Kumar v. Central Bank of India* reported in *(2000) 9 SCC 244* are of no assistance to the argument canvassed by Mr.Mandlekar, learned counsel for the petitioner. Thus I, do not see any merit in this contention. The same is therefore rejected.

13. It is then contended by Mr. Mandlekar, learned counsel for the tenant, that (a) the bonafide need was not proved; (b) the evidence on record was not considered; (c) the position of comparative hardships was not considered; (d) there was no

disclosure of the other properties owned by the landlord-House No.223 behind suit building; (e) earlier there was restaurant business run by the landlord which was closed down-if there was need the same ought not to have been closed down; (f) evidence of Parvez (Ex.103) in earlier suit, indicated that the premises which he had vacated in front of the building – was let out to flower shop owner Manoj Ambule which was not considered; (g) One Malode, who also was a tenant, had vacated, and therefore there was no need; (h) the application under Order XLI Rules 31 & 33 of Civil Procedure Code (CPC) – Ex.40 (pg.286) was rejected and (i) the application under Order XLI Rule 27 of CPC at Ex.35 (pg.275) for leading additional evidence was also rejected without any reason; all of which indicate the absence of bonafide need and comparative hardship with the tenant was more and therefore the petition needs to be allowed.

14. Mr.Mandlekar, learned Counsel for the tenant, has placed reliance upon the following judgments.

| Sr.No. | Case Laws                                                                                                    |
|--------|--------------------------------------------------------------------------------------------------------------|
| 1.     | <b><i>Vivek Trimbakrao Paturkar Vs. Sow.Sulochanabai {2022 SCC OnLine BOM 441} decided on 04/03/2022</i></b> |
| 2.     | <b><i>Tarachand Hassaram Shamdasani Vs. Shri Durgashankar G. Shroff Decided on 12/08/2022 –</i></b>          |

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|-----|-------------------------------------------------------------------------------------------------------------------------------------|
| 3.  | <i>Bismilla Bee W/o Sk. Chand Vs. Mohd. Anwar Akhtar {2010 (2) Mh.L.J. - Decided on 14/12/2009</i>                                  |
| 4.  | <i>Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222, decided on 30/07/1999</i>                                          |
| 5.  | <i>G.C.Kapoor Vs. Nand Kumar Bhasin (2002) 1 SCC 610 decided on 20/11/2001</i>                                                      |
| 6.  | <i>Smt. Dwarkadevi Wd/o Jagdisgprasad Chaudhary Vs. Narsingdas s/o Rampratap Sharma 1987 SCC OnLineBom 1, decided on 04/01/1987</i> |
| 7.  | <i>Kempaiah Vs. Lingaiah (2001) 8 SCC 718, decided on 31/10/2001, Para 8</i>                                                        |
| 8.  | <i>Union Bank of India Vs. Ibrahim Uddin (2012) 8 SCC 148, decided on 17/07/2012</i>                                                |
| 9.  | <i>Union of India Vs. K.V.Lakshman (2016) 13 SCC 124, decided on 29/06/2016</i>                                                     |
| 10. | <i>K.Venkataramiah Vs. A. Seetharama Reddy (1964) 2 SCR 35, decided on 12/02/1963</i>                                               |
| 11. | <i>K. R. Mohan Reddy Vs. Net Work Inc. (2007) 14 SCC 257, decided on 26/09/2007</i>                                                 |
| 12. | <i>North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (2008) 8 SCC 511, decided on 11/04/2008</i>                      |
| 13. | <i>Mahavir Singh Vs. Naresh Chandra (2001) 1 SCC 309, decided on 08/11/2000</i>                                                     |
| 14. | <i>Phool Chand Jain Vs. Smt.Jotri Devi Jain 2001 SCC OnLine 698, decided on 18/07/2001</i>                                          |
| 15. | <i>Shivajirao Nilangekar Patil Vs. Dr.Mahesh Madhav Gosavi (1987) 1 SCC 227 decided on 09/12/1986</i>                               |
| 16. | <i>Nagindas Ramdas Vs. Dalpatram Iccgaram (1974) 1 SCC 242, decided on 30/11/1973</i>                                               |
| 17. | <i>Thimmappa Rai Vs. Ramanna Rai (2007) 14 SCC 63, decided on 09/05/2007</i>                                                        |
| 18. | <i>Vice Chairman Kendriya Vidyalaya Sangathan Vs. Girdharilal yadav (2004) 6 SCC 325, decided on 28/04/2004</i>                     |
| 19. | <i>Avtar Singh Vs. Gurdial Singh (2006) 12 SCC 552,</i>                                                                             |

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|-----|-------------------------------------------------------------------------------------------------------------------|
|     | <i>decided on 04/12/2006</i>                                                                                      |
| 20. | <i>Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal &amp; Co. (2001) 8 SCC 397, decided on 27/08/2001</i>          |
| 21. | <i>Godrej and Boyce MFG.Co.Ltd. Vs. Sridhar Jagannath Nerurkar, 2005 (1) Mh.L.J. decided on 06/07/2002 Para-8</i> |
| 22. | <i>Kumud Kumar Vs. Central Bank of India and others, (2000) 9 SCC 244</i>                                         |

15. In so far as disclosure of other properties are concerned, it would be material to note that no document has been produced on record by the tenant indicating that the landlord owns other properties in the locality, which are more suitable for the need pleaded. The contention regarding House No.223, even if accepted, would indicate that it is a building on the back side of House No.386, the building on the ground floor of which the suit shop is situated and therefore would clearly not be suitable for the need of the landlord for running a restaurant, for which need is claimed.

16. What is also necessary to be noted is that the suit shop, is on the ground floor of the House No.386, from the upper portion/floors of which the landlord is running a lodge by name 'Hill Top Lodge', and a restaurant for the occupants of the lodge, is

obviously an ideal business. The suit shop is situated on the ground floor of the building from which the lodge is being run and thus would be ideally suited for the purposes of the landlord, besides which the House No.386, is on the main road, as compared to House No.223, which is on the back side. Thus, the plea that any right which the tenant claims the landlord to have in House No.223, not having been disclosed, would be of no consequences, considering that the suit shop is situated on the ground floor of the House No.386, from the upper floors of which the lodge business is being run by the landlord, which is on the main road.

17. The plea that earlier the landlord was running a restaurant and ought not to have closed it down, is neither here nor there, as the place from where it was being operated and circumstances in which it was required to be closed down, have not been brought on record by the tenant.

18. It is also material to note that there are only two shop blocks on the ground floor of House No.386, one on the Northern side, which is Shop No.1, is occupied by the brother of the

landlord, from where he is doing his own business of furniture, which is demonstrated by the evidence of Parvez [Ex.103 in RCS No.602/2004] and the other is occupied by the tenant.

19. Though reliance is being placed upon the evidence of Parvez in RCS No.602/2004, it is material to note that the area occupied by Manoj Ambule, who is running a flower business, is in the front margin of the plot and is a tin tapari, as already held by me in the connected petitions, based upon the cross-examination of the tenant, and is admeasuring 4.5 ft x 6.5 ft. = 29.25 sq.ft., which does not appear to be sanctioned by the Planning Authority and can by no stretch of imagination be held to be appropriate for the need of the landlord for starting the restaurant business. Similar is the case of the portion in the front margin, claimed to be occupied by Mr.Malode, both of which are not situated in the building in which the shop of the tenant is situated and are covered by cement sheets, according to the evidence of Parvez. Ultimately, the landlord is the best judge of his need and a tenant cannot dictate how and in what manner the need can be satisfied.

20. Considering the need pleaded for son Nishant, for starting a restaurant which would in fact be conducive to the already existing business of running a lodge from the upper floors of the same building, the need clearly appears to be bonafide, and the findings rendered by the Courts below, are reasoned ones taking into consideration the relevant factors as applicable thereto.

21. Though *Vivek Trimbak Paturkar* and *Tarachand Hasaram Shamdasani* (supra) have been relied upon by Mr.Mandlekar, learned counsel for the petitioner, which hold that the landlord should plead details of his properties and then state his requirement, which indicate a disclosure of all the properties owned by him. *Shiv Sarup Gupta* (supra) holds that the need of the landlord should be genuine and honest. *G.C.Kapoor* (supra) holds that the requirement must be honest and not tainted with oblique motive. *Smt.Dwarkadevi Wd/o Jagdishprasad Choudhary* (supra) holds that mere desire is not enough and the need should be genuine. *Kempaiah* (supra) holds that the word “require” implies something more than mere wish or desire of the landlord and there ought to be element “must have” in relation to the requirement of bonafide need pleaded. In the instant case, the

existence of the house on the back side namely House No.223 has already come on record, and being in the back-lane, is clearly not suitable for the purpose of running a business of restaurant for the occupants of the lodge, which is in House No.386 and therefore, this cannot be a ground, on which the need as established on record by the landlord can be said to have been nullified. It has also come on record that the landlord was indeed running a business of restaurant earlier in point of time which would indicate, that son Nishant for whom the need is being pleaded, is not aligned to the said business. The entire struggle of the landlord for recovery of the premises, from 2004 till date indicates that the need, is not a mere wish or desire, but is genuine and bonafide.

22. Much has been said about comparative hardship and the hardship of the tenant being more. True section 16(2) of the MRC Act, requires the Court to take into consideration comparative hardships, however its assessment is always factual and there cannot be any formula derived for the same. In the instant case, the tenant has been occupying the tenanted shop, since 1986. The sons of the landlord, who were not even born

then, have now become major and have a need to start their own business. Over a passage of time, even the original landlord, who had initiated the proceedings has passed away. His struggle to get back the premises for the need of his sons has nearly seen two decades. True that the earlier suit filed by the landlord for the need of his elder son Praveen was dismissed, however that does not mean that the need, now for the second son cannot be put forth. As indicated above, both the Courts have concurrently held that the need as pleaded for the second son by the landlord was bonafide and have granted permission. The suit shop is the only property on the ground floor which is suitable and available for the restaurant business. The area of the suit shop is also not of such a magnitude that it can be divided into two and in the divided portion the restaurant can be run by the landlord, the same being only 450 sq.ft. according to the tenant, whereas according to the landlord, it is 645 sq.ft. The two structures in the front margin which have been let to Manoj Ambule for a flower shop and the other shed which was earlier occupied by Mr. Malode, which is now vacant, are in fact illegal temporary structures, which are not part of the building, which is evident from the evidence of Manoj Ambule himself, and thus cannot be

said to something suitable for running the business of a restaurant. At the same time, the tenant since 2004 was aware of the need of the landlord and could have searched for alternate premises, either in the same locality or anywhere else, which has not been done by him. The tenant has enjoyed the premises for more than 35 years and when the need has been established for the son of the landlord, ought to yield to such need. The learned Small Causes Court has considered this question in paras 35 to 39 of its judgment and the learned Appellate Court in paras 14 and 15 (pg.71-72) of its judgment, and in my opinion, in the correct perspective, which findings need no interference.

22-A. ***Bismilla Bee Sk. Chand;*** (supra) indicates that Section 16(2) of the MRC Act contemplates an enquiry regarding the comparative hardships. As indicated in para supra, both the Courts below have considered the position of comparative hardships, by applying their mind to the position availing on record and have arrived at a finding that the hardships would be more to the landlord than to the tenant, considering which it is apparent that the enquiry as required by law has indeed been made by the Courts below.

23. The next plea which needs consideration is the rejection of the application under Order XLI Rules 31 and 33 of CPC [Ex.40] by the learned Appellate Court. By Ex.40, the tenant requested the Appellate Court to frame as many as 10 points for its determination, which according to him, needed determination. The learned Appellate Court by its order dated 12.01.2023 (pg.286) rejected the application by holding that several of the points which were raised were covered under one head or the other and therefore were not required to be independently framed and that it would consider the points for determination in light of the requirements of Order XLI Rules 31 & 33 of CPC. Looking to the nature of the points as raised in para 8(1) to 8(10) of the application at Ex.40, and the language of Order XLI Rules 31 & 33 of CPC, in my considered opinion, Order XLI Rule 31 has no applicability. Insofar as Rule 33 of Order XLI of CPC is concerned, the same empowers the Court of Appeal to pass any decree and makes such order which ought to have been passed, which again has no applicability insofar as the fact position availing on record is concerned, as the Courts below have applied their mind and

given reasons for arriving at a conclusion for granting the decree for eviction on account of bonafide need.

24. That takes me to the rejection of the applications at Ex.35-for permission to examine three additional witnesses; Ex. 37-for production of additional documents, i.e judgments and orders in previous litigation; Ex.41–application to file documents, i.e. judgment in CRA No.17/2014 decided on 09/02/2021 and paper book in RCA No.68/2010 on record. The reason for all of this was mistake of Counsel. In so far as Ex.37 is concerned, the same sought to place on record the documents relating to the litigation between the landlord and tenant for determining the fair rent of the shop premises in occupation of the tenant and the earlier litigation in RCS No.602/2004, including the evidence of Parvez as recorded therein. In my considered opinion, most of the documents in RCS No.602/2004, were already filed by the tenant on record at the time of his evidence, which is evident from his examination-in-chief and therefore these were mere repetitions, barring a few, which did not have any bearing on the matter in issue of bonafide need. Though the rejection is on the ground that the blame placed on the erstwhile counsel was not justified,

however even considering the nature of the documents, it would be apparent that the Court below had already considered the import and effect of the earlier litigation RCS No.602/2004 and the evidence as recorded therein and therefore nothing turned upon the documents sought to be filed and the application below Ex.35. The rejection therefore is clearly justified, though on different grounds.

25. In so far as the application at Ex.41-to file judgment in CRA No.17/2014 and paper book in RCS No.68/2010 is concerned, it would be material to note that RCA No.68/2010, arose out of RCS No.602/2004, and therefore all the documents and pleadings in RCS No.602/2004 were already on record. In so far as judgment in CRA No.17/2014 decided on 09/02/2021 is concerned, the same arose out of MJC No.28/2005 filed by the landlord for fixing the fair rent of the suit shop, which was fixed by the learned Additional Judge, Small Causes Court, Nagpur at Rs.12,000/- per month, which was confirmed by dismissal of the CRA No.17/2014 by the learned Revisional Court by the judgment dated 09/02/2021 (pg. 248), thereby confirming the fair rent

fixed and therefore had no bearing altogether on the issue of bonafide need.

26. The Application at Ex.37 was for production of additional evidence/documents/court orders, in appeal, all of which again were the same documents as were sought to be filed under Ex.35 & 41, relating to the old litigation between the parties and the documents in RCS No.298/2011 between the landlord and Manoj Ambule, which were already on record (pg.262-267). Thus, the rejection also cannot faulted with.

27. Though *Union of India v. Ibrahim Uddin; Union of India v. Lakshman; K.Venkataramiah v. A. Seetharama Reddy; K.R.Mohan Reddy v. Net Work Inc.; North Eastern Railway Administration v. Bhagwan Das; Mahavir Singh v. Naresh Chandra; Phool Chand Jain v. Smt.Jotri Devi Jain* and *Shivajirao Nilangekar Patil v. Dr.Mahesh Madhav Gosavi* (supra) have been relied upon by Mr.Mandlekar, learned counsel for the tenant, in support of his contentions that Ex.35, 37 & 41 ought to have been allowed, and the propositions as laid down therein cannot be disputed, however considering the factual position as enumerated

above, in my considered opinion, these are not of any assistance to the case canvassed by the tenant, as not a single document has been brought to my attention by Mr. Mandlekar, learned counsel for the tenant, to point out that the same had any bearing upon the issue of bonafide need and non-consideration has caused any prejudice to the tenant. The rejection for this reason also cannot be faulted with, though the grounds are different.

28. Though *Nagindas Ramdas v. Dalpatram Iccgaram; Thimmappa Rai v. Ramanna Rai; Vice-Chairman, Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* and *Avtar Singh v. Gurdial Singh* (supra) have been relied upon to contend that there is an admission by the tenant in the earlier suit namely RCS No.602 of 2004, regarding the suit bearing RCS No.298 of 2011 between the landlord and one Manoj Ambule, being a tenant, which is claimed to not to have been considered, the judgment in appeal in paras-11 and 13 specifically considered this position. The judgment of the learned Trial Court also considered this in para-22 and goes on to hold the establishment of the bonafide need. It is also necessary to note that the property bearing House No.223 and its non-availability has also been considered by the

learned Trial Court (para-33). It is therefore, apparent that the plea that an admission has not been considered does not hold any water.

29. In light of the above discussion, I, do not see any reason to interfere in the impugned judgments of the Courts below. In the result, the petition is hereby dismissed. Considering the circumstance there shall be no order as to costs.

30. Rule stands discharged.

**(AVINASH G. GHAROTE, J.)**

Later on –

At this stage, Ms T. V. Fadnavis, learned counsel holding for Mr.T.D.Mandlekar, learned counsel for the petitioner, seeks stay of execution proceedings for a period of eight weeks to enable the petitioner to approach the Hon'ble Apex Court.

2. Mr. Bhamburkar, learned counsel for the respondents, is not present.

3. Considering that there was a stay during the pendency of the present petition by the order dated 16/03/2023 to the Darkhast No.135 of 2019, the same shall continue for a period of four weeks from today, after expiry of which, it will stand automatically vacated.

**(AVINASH G. GHAROTE, J.)**