

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.
WRIT PETITION No. 5530/2022

M/s. Khandelwal Steel & Pipe Distributors,
a partnership firm through its partner
Dineshkumar S/o. Krishna Swaroop Khandelwal,
aged about 71 years, Occ. Business,
R/o. 210, Hanuman Nagar, Nagpur, at present
residing at Flat No. 202, Plot No. 63,
Universal Project Building, Shivajinagar, Nagpur.

... **PETITIONER**
(Orig Defendant on R/A)

VERSUS

1. Rajendra S/o. Ganpatray Malhotra (deceased),
L.Rs.
- 1.1. Smt. Prashantlal wd/o. Rajendranath Malhotra,
Aged about 81 yrs., Occ. Household,
- 1.2. Kamal S/o. Rajendranath Malhotra,
aged about 53 yrs., Occ. Business,
- 1.3. Navin S/o. Rajendranath Malhotra,
Aged about 49 yrs., Occ. Business,

All R/o. Plot No. 1420, Deshpande Layout,
Nagpur.
- 1.4. Smt. Manju w/o. Manoj Bhasin,
Aged about 60 yrs., Occ. Business,
R/o. B134, Mount Kailash, Opp. DPS
School, New Delhi 65, at present 1420,
Deshpande Layout, Nagpur,

- 1.5. Smt. Mamta w/o. Chandramohan Hingle,
Aged about 58 yrs., Occ. Household,
R/o. 54, Ramdaspath, Nagpur.
2. Subhashchandra S/o. Ganpatrai Malhotra,
Aged about 69 yrs., Occ. Business,
3. Deepak S/o. Late Surendra Mohan Malhotra,
Aged about 50 yrs., Occ. Business,
4. Gaura S/o. Late Surendra Mohan Malhotra,
Aged about 41 yrs., Occ. Business,
R/o. Plot No. 1420, Deshpande, Layout,
Nagpur-440008.

... **RESPONDENTS.**
(Orig. Defs. On R/A)

Mr. R.M. Sharma, Advocate for petitioner
Mr. P.M. Shukla, Advocate for respondents.

CORAM : VINAY JOSHI, J.

JUDGMENT RESERVED ON : **21.11.2022**
JUDGMENT PRONOUNCED ON : **06.04.2023**

JUDGMENT

Heard finally by consent of the learned Counsel
appearing for the parties. Rule. Rule is made returnable forthwith.

2. This writ petition filed under Article 227 of the Constitution of India takes exception to the judgment and decree passed by the learned District Judge, Nagpur dated 10th January, 2022 in Regular Civil Appeal No. 250/2019 dismissing the appeal preferred by the petitioner-tenant upholding the eviction decree passed by the Small Causes Court Nagpur in Regular Civil Suit No. 42/2015 dated, 15th May 2019.

3. Briefly stated, the respondent-landlord has filed Regular Civil Suit No. 42/2015 seeking eviction decree against the petitioner-tenant in terms of Section 16(1)(g) of the Maharashtra Rent Control Act ('Rent Act'). For the sake of convenience, the parties are referred as per their status before the Trial Court. The plaintiff-landlord is the owner of three storied house property situated at Central Avenue, Nagpur which is specifically described in para one of the plaint. The said building consists of ground, mezzanine, first, second and third floor. The defendant is the tenant of a shop premises situated on the ground floor admeasuring 177 sq.ft. area. The defendant is running business in the said premises since last 40 years. The tenancy commences from the first day of

each month as per English calendar and ends on the last date of the respective month. The agreed rent of suit premises was Rs. 350/- per month including Municipal Taxes.

4. The entire building is possessed by plaintiff landlord, except suit shop situated on the ground floor. The plaintiff is doing business of lodging, boarding and running a restaurant in said property in the name and style of "M/s. Malhotra Brothers". The suit shop being part of the ground floor, the plaintiff requires the same for his bonafide use and occupation. The plaintiff intended to convert suit shop into conference hall by making suitable alteration and renovation, for expanding business activity. The conference hall would be used for meetings, seminars, training programs parties etc. The availability of conference hall would be an additional feature for the lodging business. The plaintiff is keen to expand his business by constructing conference hall at the place of suit shop. The plaintiff has prepared a plan for renovation of ground floor area. The plaintiff time and again requested the defendant to vacate the suit premises, however later did not. Precisely, it is plaintiff's case that he requires suit premises reasonably and bonafidly for his own use

and occupation.

5. The defendant-tenant contested the suit by filing written statement. The defendant has admitted the relationship of landlord and tenant in between them. There is no dispute about the location of suit premises which is a ground floor shop admeasuring 177 sq. ft. Moreover, there is no dispute on the point of quantum of rent. It is defendant's case that since last 40 years, he is using suit premises for business activity. Defendant has denied that plaintiff requires suit premises reasonably and bonafide for his personal use and occupation. It is stated that the landlord does not require suit shop for erecting conference hall. According to defendant, plaintiff owns other properties within the Nagpur city from which he can very well satisfy his need. It is contended that the defendant's children are settled abroad and he is the only earning member of his family. His entire livelihood is depending on the business run in the suit shop. The defendant has tried to search another premises in the Central Avenue area but he could not. It is contended that no similar premises is available in the said vicinity. The defendant would submit that if decree of eviction is passed, he would suffer greater

hardship. On the other hand, the plaintiff has several premises and therefore he would not suffer hardship in case of refusal of eviction decree. The defendant also took a plea that the suit premises is situated in declared slum area and therefore suit is not maintainable for want of permission from the competent authority. With these contentions, defendant prayed for dismissal of suit.

6. The parties led evidence before the trial court. Considering rival submission, issues have been framed. The Trial Court answered the issue of bonafide requirement and comparative hardship in favour of the plaintiff landlord. The Trial court also held that the suit property does not fall within the declared slum area. On the basis of said findings, the Trial Court has passed eviction decree. Being aggrieved, the defendant-tenant has preferred Regular Civil Appeal No. 250/2019 in the District Court, Nagpur. On appreciation of evidence, the First Appellate Court affirmed the finding on both crucial issues that is bonafide requirement and comparative hardship. Resultantly, eviction decree was upheld, therefore this petition.

7

7. At the inception, it may be clarified that the petitioner-tenant has conceded the position that suit property does not fall in slum area, therefore said ground does not survive. Moreover, the learned counsel appearing for defendant has not challenged the finding on the point of bonafide requirement, but seriously disputed the issue of hardship. It is argued that both Courts below failed to appreciate the issue of hardship in proper perspective. It is argued that the requirement of establishing the aspect of greater hardship is mandatory. Section 16(2) of the Rent Act, operates as an injunction on Court, not to pass a decree of eviction, if it is satisfied that the greater hardship would be caused to the tenant by passing the decree, then refusing to pass. The requirement is mandatory and once the satisfaction contemplated therein is reached, it leaves no choice to the Court, but refuse to pass the decree of eviction. In support of said contention, the learned counsel for petitioner tenant has relied on the decision of this Court in case of **Bismilla Bee w/o Sk. Chand & anr. Vs. Mohd. Anwar S/o. Mohd. Akhtar, 2010(2) Mh.L.J., 829**. In said decision, learned Single Judge of this Court has emphasized upon the requirement of the Court to consider the issue

of greater hardship. Even if landlord succeeds in proving his reasonable and bonafide need, however unless the issue of hardship tilts in his favour, he cannot get a decree of eviction. This Court has also considered the second part of Section 16(2) of the Rent Act about passing of partial eviction decree. In sum and substance, emphasis is laid on the ground that the issue of comparative hardship is to be assessed by striking right balance in between both landlord and tenant.

8. It is plaintiff's case that he requires the suit premises for his bonafide use and occupation. The plaintiff came with a specific case that the suit shop situates on the ground floor of tenement. The rest portion of the entire suit building is used by the plaintiff for doing business of lodging, boarding. They are also running restaurant on the part of building. The plaintiff desires to set up a conference hall for improving business by renovating the ground floor. Accordingly, the plaintiff needs suit property for expansion of business activities. The plaintiff has examined an architect who has prepared a plan for expansion. The defendant though challenged the need of landlord in both courts below, however no submissions have

been made on the point of bonafide requirement. The only challenge is about the issue of comparative hardship.

9. The learned counsel appearing for petitioner would submit that the tenant is age-old person running pipe business in suit shop since last 40 years. He has searched for alternate premises, however he could not get or secure alternate accommodation in the same vicinity. The entire livelihood of petitioner-tenant depends upon the business run in suit premises. The petitioner's children are settled abroad and therefore, if he has been evicted from the suit premises, he would be on streets. Moreover, it is submitted that landlord has several premises in the Nagpur city for which some admissions have been shown. On the other hand, the learned counsel appearing for respondent- landlord would submit that the landlord though owns some premises in different parts of the city, but the requirement is for construction of conference hall which is peculiar one. Since landlord is running hotel and restaurant, construction of conference hall is ancillary business which has to be in the business premises only.

10. The issue for consideration is principally about the comparative hardship. So far as the ground of reasonable and bonafide requirement of the landlord for occupation of commercial premises is concerned, Section 16(1)(g) of the Rent Act contemplates a decree for eviction to be passed on proof of availability of the ground of bonafide need. In spite of ground for eviction under Section 16(1)(g) of the Rent Act, the Court may deny the relief of eviction if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Thus, the provision of Section 16(2) is a prerequisite for passing a decree on the ground of bonafides requirement despite landlord succeeds in proving the same.

11. The learned counsel appearing for the petitioner strongly relied on the evidence of petitioner tenant. It is his submission that the tenant in his evidence has specifically stated that if decree of eviction has been passed, he would be put to greater hardship. The petitioner would submit that there is no challenge in the cross examination on the point of comparative hardship and therefore, the said issue has to be taken as admission of landlord. In this regard,

petitioner took through the cross-examination of tenant recorded by the Trial court on 8.1.2018. True no specific suggestion has been given in cross-examination to the tenant on account of issue of greater hardship. Rather the tenant's evidence on the point of greater hardship remained unchallenged. The question falls for consideration is whether the absence of suggestion in cross-examination would ipso facto suffice to decide the issue of hardship in favour of tenant. To put it differently is it the decisive factor of the lis to jump on conclusion only on the basis that the learned counsel for landlord has not challenged the tenant's evidence pertaining to greater hardship in cross-examination.

12. The learned counsel for petitioner relied on the decision of Supreme Court in case of **Rajinder Pershad (dead) by LRs. Vs. Darshana Devi (Smt), (2001) 7 SCC 69** to contend that, in absence of cross examination, the evidence led in chief examination has to be relied. In said decision, it was landlord's plea that eviction notice on account of default in payment of rent was served on tenant. In order to establish service of notice, landlord has examined postman. It was the defence of tenant that at relevant time postman was on

leave. However, there was no cross examination of the postman on this crucial aspect and therefore his statement made in examination-in-chief has been relied upon. In general sense, if evidence led by one party is not denied by another, it is to be taken as admission. However, herein it is not a case that a statement of fact was made but was not denied by other side. One could understand the submission if tenant leads a specific evidence that he has searched for premises and there is no cross examination to said evidence. However the tenant made a statement that he would suffer “greater hardship” which is in fact a term devised under law. Therefore, non-denial of such material by landlord in cross-examination cannot be said as a landlord’s acceptance that tenant would suffer greater hardship. On mere technicality, the issue cannot be decided by ignoring the entire evidence adduced by the parties.

13. For the purposes of Section 16(2) of the Rent Act, it is a judicious process of finding out, as far as practicable by making a comparison to measure of the two. For the sake of convenience Section 16(2) of the Rent Act is reproduced here in below:-

“16(2). No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.”

14. It is the satisfaction of the Court based on all the circumstances of the case including the question whether either landlord and tenant has other reasonable accommodation available. On that premise, it is for the Court to decide by making comparative study as to who will suffer greater hardship which is called as judicious process. In this regard, the learned counsel appearing for respondent landlord relied on the decision of Supreme Court in case of **Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada**, AIR 2003 SC 2713. In said decision, it has been ruled that

the Act does not lay down any guidelines or relevant factors to decide comparative hardship. The relevant observations made in para 8 and 9 of the decision are reproduced here in below:-

“8. Sub-section (2) of Section 13 falls more appropriately within the domain of equitable or social justice. Section 13(2) obliges the Court, in spite of the finding as to reasonable and genuine requirement having been arrived at in favour of the landlord, to weigh in scales placing the hardship which would result to the landlord in case of denial of eviction in one balance pan and the hardship likely to be suffered by the tenant in case of his being evicted in the other and then find out judiciously which way the balance tilts. An empty truism cannot be hardship. A failure of the landlord to make out a case for eviction under Section 13(1)(g) is not a hardship to landlord; so also on a case for eviction under Section 13(1)(g) having been made out the fact that the tenant will be liable to be evicted is not by itself hardship to tenant. A mere wish or desire of the landlord to acquire possession over the tenancy premises cannot be said to be bona fide and reasonable requirement. Requirement implies an element of necessity. The necessity is a necessity without regard to the degree of which it may be. For the purpose of Section 13(2) the degree of urgency

or the intensity of felt-need assumes significance. It is a judicious process of finding out, as far as practicable, and then making a comparative measure of the two degrees, which is involved in arriving at a finding on comparative hardship.

“9. The family, the business background of the parties, the availability of accommodation with either parties or in the township, the extent of direness or pressing nature of the need for eviction as against the direness of need or urge of the tenant to continue to occupy or cling to the tenancy premises, with reasons therefor, assume relevance. The Court may keep in view how the things would take shape in a reasonably foreseeable future in either event. The conduct of the parties, their mutual relationship may also be relevant. In spite of the availability of ground for eviction being legally sustainable, for the purpose of deciding the issue as to comparative hardship, the Court may take into consideration availability of such other premises with the landlord, which though not necessarily alternative to the suit premises, may still be available to accommodate the proven requirement of the landlord. The fact that the

tenant could have had shifted to other premises or has missed the opportunity of availing occupation of their premises or is likely to part with possession over other premises whereto his business can be or could have been shifted are all relevant factors for the purpose of Section 13(2) though may not be relevant for the purpose of Section 13(1)(g). These are illustrative factor, incapable of being listed fully and precisely, which enter into the thinking process leading to formulation of opinion on comparative hardship.”

15. In view of above, there is no doubt that in spite of the finding recorded in favour of landlord that he reasonably and bonafidly requires the suit premises, the fate of case depends upon decision of issue of greater hardship. In order to decide the issue of hardship, the Court has to weigh in scale the hardship which would result to the landlord in case of denial of eviction in one hand, and hardship likely to be suffered by the tenant in case of his being evicted on the other. It is particularly observed that the assessment of both sides is a judicious process which is to be undertaken by the

Court on various parameters by making comparative study. Therefore, merely on account of non-putting a question in cross-examination does not mean that the landlord has accepted the tenant's case that tenant would suffer greater hardship.

16. The learned counsel appearing for respondent-landlord relied on the decision in case of **Dr. Ranbir Singh Vs. Asharfi Lal, (1995) 6 SCC 580** to content that issue of comparative hardship is a finding of fact which is not open to interfere with the concurrent finding in second appeal by High Court. In said decision while considering the powers under Section 100 of the Code of Civil Procedure pertaining to second appeal, the Supreme Court has observed that High Court's power of interference with finding of fact in second appeal are limited. The said ratio is inapplicable as the principles governing second appeal would not apply to writ jurisdiction.

17. Both the Court's below have recorded concurrent finding that the landlord would suffer greater hardship than the tenant. In case of *Badrinarayan Chunilal Bhutada (supra)*, it has been ruled that the burden to prove comparative hardship lies on tenant. Thus,

the tenant is not relieved by saying that he would suffer comparative hardship, but, he has to establish by adducing evidence or pointing towards circumstances that in case of passing of eviction decree, he would suffer greater hardship.

18. While deciding the issue of bonafide requirement, both Courts have rightly observed that though the landlord owns certain premises at different places, however those cannot be considered for deciding the issue of hardships. Pertinent to note that the landlord's need is peculiar one. Admittedly, the suit building is three storied entirely occupied by the landlord except a ground floor suit shop measuring 177 sq.ft. in position of the tenant. Undisputedly, landlord is running hotel and restaurant business in the entire building. It is landlord's specific case that he desires to construct or convert ground floor suit shop in conference hall so as to provide better amenities to his customers. Availability of conference hall has become an accessory to the hotel business, which cannot be at distant place. There can be no dispute that the hotel, lodging restaurant and conference hall shall be at one place to consider it as an additional amenity. Therefore, even if the landlord owns some

premises in other parts of the city, that has no impact while considering the aspect of hardship.

19. On the other hand, the tenant is an age old person whose children are settled Abroad. It is tenant's contention that the suit premises is only available premises for him. He has tried to search alternate premises, however he could not. The tenant in his evidence stated that initially due to health constrains, he was not in position to find out another premises in Central Avenue area. However, in the month of April May 2017, he undertook the exercise of finding suitable premises on Central Avenue by personally visiting, however he could not get. Thus, it is tenant's contention that though he took diligent search in the Central Avenue area, but the premises were not available.

20. In the reported case of **Rasiklal s/o. Revchand Shah and others Vs. Shah Vs. Paraskumar s/o Balchand Thole and another, 2015 (1) Mh.LJ 382**, this Court has expressed that the burden lies on the tenant to prove that greater hardship will be caused to him if the order of eviction is made. In case of eviction under section 16(1)(g) of the Rent Act, the tenant will be liable to be evicted is not

by itself hardship to tenant, the degree of urgency or the intensity of bonafide – need assumes significance. So it is to be seen as to what effort the tenant has made in searching another premises which is an important aspect to decide the issue of hardship. In this regard, the tenant deposed that somewhere in the month of April May 2017, he has searched for suitable premises on Central Avenue by personally visiting the shops in the area. In said commercial locality virtually no other suitable premises was available. The tenant has examined PW-4 Maneesh Kanojia who is a property broker. It has come in his evidence that somewhere in the month of April-May 2015 at the request of defendant-tenant, he has searched shop premises in Central Avenue Road and within the radius of 1 ½ k.m., however he could not get such premises. Thus, it is a case of tenant that he himself has personally searched for premises, as well as he has also searched the premises through estate broker.

21. It is a matter of appreciation, whether tenant has made genuine efforts to search the premises as he was under the shadow of eviction decree since the eviction suit was pending from the year 2015. The tenant in his evidence has not specifically stated as to in

which area he has searched besides Central Avenue Road.

22. Reverting to Section 16(2) of the Rent Act, two broad parameters are that the Court has to consider all the circumstances of the case and whether other reasonable accommodation is available to either of them. The Section does not say that suitable accommodation is available or not but reasonable accommodation is the term used in the Section. The tenant shall not expect that he should get the another accommodation in the same vicinity rather for the same quantum of rent. The evidence as laid only suggests that the tenant has searched for the premises in Central Avenue area only. Moreover, the tenant's witness- DW-4 Mr Kanojia has stated that he has searched for the premises in Central Avenue area and within the radius of 1 km only. Such restricted search even if accepted as it is, still it fails short to show that the tenant has made diligent search. If the tenant's urge for another premises was genuine then he would have searched the premises in the larger part of the city which could be termed a genuine effort.

23. Pertinent to note that tenant has not pleaded that he has engaged services of broker to search for the premises. Likewise

tenant in his evidence has not uttered a single word that he has engaged the services of broker Kanojia to look for the premises. In absence of such foundation, it is difficult to rely on the evidence of PW-4 Kanojia who is a broker. The evidence affidavit has been filed by tenant on 19th December, 17 and his cross-examination was conducted on 8th January 2018. There is no slightest reference in the tenant's evidence about appointment of Mr Kanojia, however later on, Kanojia has been examined on 02.03.2019 putting up a case supporting the tenant's stand. Thus, in absence of pleadings or even reference of broker, it is difficult to rely on the evidence of tenant's witness-DW4 Mr Kanojia.

24. It is a statutory obligation on the Court to weigh and assess the comparative hardship from both angles. Already, it is noted that the landlord has proved reasonable and genuine need of the suit premises for expansion of business. Obviously, landlord has a right to use his premises as per his choice being the owner of the property. On the other hand, tenant's children are settled at abroad and at old age he is running a shop. If he was in genuine need to continue his business for his survival then certainly he would have

taken thorough search for the premises in any part of the city but he did not. When both the situations are put in the scale it is evident that the tenant was not keen to protect his business by searching another premises. Therefore, the result would be that the tenant would not suffer that much hardship which was tried to be canvassed. On the other hand when the landlord has proved his ground of reasonable need, by making comparison the hardship would be caused to the landlord, if decree of eviction has not been passed.

25. Merely because the tenant will be ousted from the premises itself, cannot be considered to be a hardship and a valid ground for refusing the landlord a decree for eviction. In deciding the extent of the hardship, each party has to prove its relative advantages or disadvantages which they may suffer. The owner of the property cannot be denied eviction merely on the ground that tenant has no other premises. It is the duty of the tenant to search for the premises but on fact, it is evident that tenant was quite casual as he has not searched the premises in the city. The tenant's contention that he searched premises in Central Avenue area only

which itself shows that he was not serious about finding out the premises. As referred above the evidence of tenant's witness broker is not reliable.

26. In view of above discussion, the landlord has duly established bonafide and genuine need which is considered by both the Courts below. Moreover both the Courts below have held that the issue of comparative hardship tilts in favour of landlord. In this petition, submission on the point of comparative hardship has been independently assessed on the basis of emerging evidence. For the reasons stated above, no interference is called in the impugned judgment and order. There is no merit in the writ petition hence it stands dismissed. The petitioner/ tenant is directed to vacate the suit premises within two months from the date of uploading of this order.

27. No order as to costs.

(VINAY JOSHI, J.)