

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

WRIT PETITION NO. 7437 OF 2018

Ashok Bacchulal Gangwani,
Aged 53 years, Occ. - Business,
R/o Devi Ward, Pusad, Taq. Pusad,
District Yavatmal.

....PETITIONER

VERSUS

1) Kishor Gokuldas Adatiya (Dead)
L.Rs.

- 1-A) Smt. Pravina Kishor Adatiya,
Aged 50 years, Occ. - Household,
1-B) Ku. Vaishnavi Kishor Adatiya,
Aged 25 years, Occ.- Education.
1-C) Ku. Palak Kishor Adatiya,
Aged 12 years, Occ.- Education,
Minor – Through Natural Guardian
Respondent No.1-A Smt. Pravina
Adatiya.

2) Sanjay Gokuldas Adatiya,
Aged 45 years, Occ. - Business,

3) Kirti Gokuldas Adatiya,
Aged 43 years, Occ. - Business,

All R/o Old Devi Ward, Pusad,
Taq. Pusad, District Yavatmal.

....RESPONDENTS

Dr. Anjan De, Counsel for the petitioner,
Mr. C.S. Kaptan, Senior Counsel assisted by Mr. K.S.
Narwade, Counsel for the respondents.

CORAM : **ROHIT B. DEO, J.**
DATED : 19.06.2023

ORAL JUDGMENT :

The petitioner-tenant is assailing the judgment and

decree dated 09-1-2014 passed by the 4th Joint Civil Judge (Junior Division), Pusad in Regular Civil Suit 145/2000 and the confirmatory appellate judgment and decree dated 09-8-2018 rendered by the Ad hoc District Judge-1, Pusad in Regular Civil Appeal 7/2014.

2. Broad facts and the grounds on which the petition is founded, may be summarized thus :

a) Respondents 1-A, 1-B and 1-C are the legal heirs of late Mr. Kishor Gokuldas Adatiya. Respondents are the owners and landlord, *inter alia*, of shop admeasuring 280 square feet situated in building in Ward 16 of Pusad city. According to the landlord, the said shop (suit shop) is joint family property.

b) The father of the landlord died in 1994 leaving behind in addition to the landlord, six daughters namely, Ms. Aruna Majethiyata, Ms. Rekha Vitthalani, Ms. Vidhya Sanghani, Ms. Gupa Bhnida, Ms. Kiran Vasant and Sau. Bela Raja.

c) It was late Mr. Gokuldas who leased the suit

shop to the tenant and the rent is Rs.1800/- (Rupees One Thousand Eight Hundred) per annum inclusive of taxes. The tenant is carrying out business under the name “Anil Cloth Store” from the suit shop.

d) The landlord earlier instituted Regular Civil Suit 145/2000 seeking decree of eviction on the ground of *bona fide* need. The said suit was decreed on 28-8-2007, and the appeal preferred by the tenant came to be dismissed by the judgment dated 14-5-2010. The tenant approached the High Court which allowed the petition and remitted the matter to the trial Court for fresh decision in the light of the observations of the High Court.

e) Regular Civil Suit 145/2000 was decreed on 09-1-2014, the tenant preferred Regular Civil Appeal 7/2014 in which an application under Order XLI Rule 27 of the Civil Procedure Code (Code) was moved. The said application was not decided, and the High Court again remitted the matter to the appellate Court for deciding the appeal afresh.

f) The tenant contends that the application under Order XLI Rule 27 of the Code was filed since after the

judgment of the trial Court the tenant learnt that the landlord had purchased Nazul Plot 6172 of 2021, admeasuring 127.18 square meters vide sale-deed dated 15-4-2014, construction was made and the landlord started residing therein. It is also the case of the tenant that the landlord also purchased an open plot and the acquisition of the said properties was not disclosed to the Court.

g) The tenant emphasizes that in the building in which the suit shop is situated, there are 14 rooms on the first floor which are used as a guest house and most of the rooms are vacant and can be conveniently used for any business purpose. The tenant further contends that the ground floor and second floor which were used for residence, became vacant and available in view of the respondents shifting to the house constructed on the plot acquired after the judgment of the trial Court, and the *bona fide* need of the plaintiff did not subsist.

h) The tenant contends that while the landlord has ample space available, the tenant would not be in a position to secure alternate premises on similar rent, elsewhere, and

therefore, the issue of comparative hardship must be answered in favour of the tenant.

i) The tenant contends that the appellate Court permitted amendment of pleadings. The parties were not on the same page as to who should lead the evidence first in view of the burden of proof and the matter was carried to the High Court which directed the appellate Court to comply with the requirements of Order XLI Rule 29 of the Code.

j) The appellate Court framed the following additional point for consideration -

“Whether plaintiff proves that bonafide requirement subsist even after acquisition of the new property bearing No.1672/21, Nazul Sheet No.118, admeasuring 127.18 square meters situated at Pusad?”

The tenant, however, contends that the additional point supra was erroneously formulated.

k) The landlord led evidence first and the tenant then entered the witness box. According to the tenant, it has come in evidence that apart from property purchased on 15-4-2014, several other properties are owned and possessed by

the landlord, the details of which were suppressed.

l) The tenant then claims that the Joint Civil Judge (Senior Division) did not have the jurisdiction to entertain the suit. However, the objection to the jurisdiction of the civil Court is not pressed during the course of hearing.

m) The tenant contends that the need pleaded by the landlord is not *bona fide* inasmuch as there is overwhelming evidence on record to show that the landlord has ample space available, the details of which are suppressed. It is further emphasized that the landlord has not pleaded the necessary details as regards the number of the rooms on the ground floor and the second floor. It is submitted that there is no evidence on record to suggest that the rooms on the first floor from which the “Vaishnavi Guest House” is being run, are now required. It is further submitted that the rooms situated on the first floor and the second and the ground floors can be utilized for the sweet mart and hotel business which is the claimed *bona fide* need.

n) The tenant submits that the concurrent findings recorded suffer from grave errors. It is submitted that the

landlord sold the shop from which “Saylee Ladies Articles” was run in the year 2006, which again indicates that the need of the landlord is not *bona fide*. It is emphasized that the landlord falsely claimed that the said shop was sold in 2006 to liquidate the bank loan, and as a fact, the loan was liquidated in 2009.

o) The tenant submits that the observation of the trial Court that every brother is entitled to have one business is hypothetical and an attempt to lean in favour of the landlord inasmuch as there is no evidence of partition.

p) The tenant emphasizes that the Courts below have committed grave error in dealing with and answering the issue of comparative hardship.

q) Civil Application 497/2022 is preferred by the tenant in an endeavour to bring on record the subsequent events. It is averred that the premises from which Sweet Mart and Hotel was operational, are now locked and not put to use. It is further averred that the premises earlier occupied by Vaishnavi Guest House are available in entirety

as the guest house is closed down. The next averment is that no member of the family of the landlord/s resides in the suit building. It is also averred that landlord Mr. Kishor Adatiya and Mr. Sanjay Adatiya were owners of double storied house constructed on plot 6193/2020, admeasuring 165.42 Square Meters, situated in layout 20, Kasba Pusad. It is further submitted that Mr. Sanjay Adatiya, Ms. Palak Adatiya and Mrs. Pravina Adatiya are co-owners of double storied house situated at nazul plot 6 in layout 20, admeasuring 165.42 Square Meters which is to be purchased by Dr. Pankaj Narwade and that permission is obtained from District Judge-1, Pusad on 22.11.2021 to sell the said property since one of the co-owners Ms. Palak Adatiya was a minor.

r) The landlord/s have responded to the Civil Application 497/2022 denying that Sweet Mart and Hotel is closed. The landlord/s further deny that Vaishnavi Guest House is closed. The landlord/s submit that it has also come on record in appeal that landlord/s had purchased layout plot 20 in two parts and had constructed a house. It is emphasized, that the said aspect is duly considered by the

learned Appellate Judge. Lastly, it is emphasized that considering the need pleaded, the availability of residential space, assuming that ample space is available for residential purpose, is of no relevance. During the course of the hearing, affidavit dated 4.4.2022 is filed by the tenant stating that respondent 3 Mr. Kirit Adatiya is running a catering business in the name and style "Gujrati Caterers". In response, Mr. Kirit Adatiya has filed counter affidavit dated 5.4.2022, the relevant portion of which is extracted below:

4. I say that presently I am running Sweet Mart in a small room admeasuring 9'x13', the petitioner tenant is occupying larger area of 14'3"x20'. I say that, I could not start Hotel till this date because the said premises has not fallen vacant. I say that with the passage of time members of family have increased and the children have now grown up, so also the financial liabilities have increased. I say that to meet the increasing burden I have started catering business which is the part of my Sweet mart business, as I could not have sit idle and wait for possession of the suit premises.

5. It is well known fact that, the catering business is a seasonal occupation. I supply food

according to the orders placed by the customers and the food has to be served at the given address. Therefore, I say that, the need for expansion of Swastik Sweet Mart and starting of hotel subsists, as is our main business. I can conveniently use the premises for supply of necessary food items and for that the space of the suit shop is convenient.

6. I further say that, the advertisement displayed on the roof of the house and that the publication in the local newspaper does not wipe out our need for the suit shops. I further state that I am in acute need of the suit shop as I could more successfully take further my business from there, which is admittedly a market place.

7. I further state that, during the pendency of the present litigation, one of our sisters unfortunately became widow on 8.12.2011, therefore she had to re-join in plaintiff's family and she need support. Another sister namely Kiran is also constrained to re-join her parental house along with her son, as her husband has deserted her. Therefore, both the sisters with the child are living in the rooms situated in the northern portion of suit shop with plaintiff no.

2's family.

8. The plaintiffs have additional responsibility to maintain their both sisters and children in addition to their own family needs, for which they need more space of business to earn more income. As such in the limited income from the available space of the Swastik Sweet Mart and the Lodge, the plaintiffs are unable to fulfil increasing need of the family.

9. I further state that, the death of the plaintiff No. 1 pending appeal added more misery to the plaintiff's family. The family of the deceased plaintiff no. 1 needs financial as well as psychological support. Therefore, the need of the plaintiffs for vacant possession of suit shop is urgent and bona fide so that, the whole family could be supported. The plaintiffs will be able to run the hotel, lodge as well as cut piece business from the same premises.

s) The tenant has preferred Civil Application 812/2022 seeking rejection of the affidavit or in the alternate, for permission to cross-examine the deponent.

3) While I have carefully scrutinized the pleadings

and evidence on record with the assistance of the learned counsel Dr. Anjan De and learned senior counsel Mr. C.S. Kaptan, considering the scope and ambit of writ jurisdiction, it is not necessary to reproduce in minute detail the pleadings and the evidence, which shall however be discussed to the extent necessary in the context of the rival submissions.

4) The broad case of the landlord and the rebuttal and the findings recorded by the courts below may be noted.

a) The landlords constitute Joint Hindu Family. The suit shop from which tenant Mr. Ashok running “Ashok General Stores”, admeasures 240 Square Meters in area.

b) Plaintiffs 1 to 3 – landlords are the sons of late Mr. Gokuldas Adatiya and plaintiff 4 M/s. Jayabai is the widow. Mr. Kishor unfortunately expired during the pendency of the litigation and his legal heirs are brought on record.

c) The suit shop was let out by late Mr. Gokuldas

to the father of the tenant in 1970. The adjacent shop is occupied by tenant Mr. Shrikumar.

d) The suit shop is needed by the plaintiffs for the business needs of plaintiffs 1 to 3 – landlords. The landlords set up Sayli Ladies Articles shop in nearby premises three years prior to the institution of the suit. Earlier, the landlords were running a hotel which is closed down. In the suit building, the landlords are also operating Vaishnavi Guest House.

e) The father of the plaintiffs/landlords Mr. Gokuldas Adatiya was engaged in hotel and sweet mart business from tenanted premises located near Nagina Masjid in Pusad town. The said premises were purchased by Mrs. Shardaben Shaha. Mr. Gokuldas expired in 1994 and the hotel and sweet mart business was continued by the plaintiffs and at a later stage on 16.6.1997, portion of the said building was purchased by plaintiff 2 Sanjay, construction was effected and Sayli Ladies Articles shop was set up in March 1998 with the financial assistance of the Pusad Urban Co-

operative Bank Limited. However, due to business exigencies and loss suffered, Sayli Ladies Articles shop was closed down and in order to discharge the loan liability, the premises were sold by plaintiff 2 Mr. Sanjay to Mr. Balasaheb Barde on 1.6.2006.

f) Plaintiffs/landlords intend to set up sweet mart and hotel business in the suit shop. Plaintiff Mr. Kirit has the necessary experience and expertise and the suit shop is suitable and convenient in view of its location and the east-west road on the southern side and the south-north road on the western side. Several other advantages of the location of the suit shop in the context of the bona fide need are pleaded. In view of the amendment to the written statement, the plaintiffs aver that on 15.4.2014, Nazul plot 6172/21, admeasuring 127.18 Square Meters is purchased. The plaintiffs however, deny the averment in the amended written statement that all the plaintiffs have shifted to the construction effected on the said plot 6172/21. Plaintiffs state that apart from the fact that all 14 rooms of the Vaishnavi Guest House are in use, the sweet mart and hotel

business cannot be carried out from the rooms which are situated on the first floor. Plaintiffs assert that Mr. Sanjay and his family are residing in the suit building alongwith the widowed sister and the other sister Ms. Kiran. The rooms situated on the northern side of the suit building are not vacant and are occupied by Mr. Sanjay and the sisters, is the averment. It is then pleaded that Mr. Kirit and his family are residing in the residential house constructed on nazul plot 6172/21.

5) The written statement as amended generally denies the averments in the plaint. The tenant emphasizes that the need as pleaded is not bona fide inasmuch as it is not conceivable that the plaintiffs, having closed down the business of hotel at an earlier point in time, are seriously intending to set up similar business in the suit shop. The tenant further contends that such business can be set up in the rooms occupied by Vaishnavi Guest House and it is not necessary to seek the vacant possession of the suit shop.

5.1) The tenant then avers that plaintiff Mr. Sanjay

is running Sweet Mart and Hotel from main road, Pusad and there is no need to set up another sweet mart.

5.2) The tenant asserts that rentals are increasing exponentially in Pusad. Since the tenant is in occupation since 1968, agreed rent is less than the market rent and therefore, the only intention of the plaintiffs is to secure possession of the suit shop and to let out the suit shop at higher rent.

5.3) The tenant asserts that during the pendency of the litigation, plot 6172/21 is purchased and residential house is constructed thereon. It is further averred that the plaintiffs have purchased open plots elsewhere. The tenant emphasizes that the fourteen room which are located on the first floor and from which the Vaishnavi Guest House is operational, are not fully utilized. The tenant further averred that the second floor of the suit building which was earlier used for residential purpose is entirely vacant and therefore, purported need of the plaintiffs no longer subsists.

6) **JUDGMENT OF THE TRIAL COURT**

a) The trial Court decreed the suit by judgment and decree dated 28.8.2007, which was upheld in appeal. In Second Appeal, the High Court remanded the matter for fresh decision on additional issue which arose in view of the sale by the landlord/s of Sayali Ladies Articles shop. The trial Court framed an additional issue. The tenant approached the High Court with the contention that the entire matter be considered afresh. The High Court held that the issue of bona fide requirement shall have to be decided in the light of answer to the additional issue.

b) The trial Court gave due consideration to the six witnesses examined on behalf of the plaintiff and the testimony of the tenant. The case of the landlord/s was that Sayali Ladies Article shop was sold for repayment of the bank loan. It was landlord Mr. Sanjay who deposed on the said aspect. Mr. Sanjay deposed before the trial Court that for purchasing the plot, in the year 1997, loan of Rs. 1,50,000/- was availed, and cash credit limit of Rs. 80,000/- was further availed for

starting Sayli Ladies Article shop. While the first loan of Rs. 1.50,000/- was repaid from the earnings of Vaishnavi Guest House and some help from relatives, on 6.12.2001 he again availed financial assistance of Rs. 5,00,000/- which he failed to repay. Since the debt was mounting day by day, he had no option but to sell the premises of Sayali Ladies Articles shop which he sold to Mr. Balasaheb Barde – PW 6 for Rs. 5,25,000/-.

c) The learned trial Judge accepted the testimony of Mr. Sanjay and gave due consideration to the loan account extracts which were proved and admitted in evidence. The learned trial Judge then addressed the issue of bona fide need. The learned judge found from the evidence on record that the landlords constitute joint family of which the numbers were increasing and the existing business did not ensure gainful employment or sufficient income for the members of the family. The learned trial Judge found the need to expand the business bona fide. The learned trial Judge considered the submission of the tenant that on the first floor of the suit building, the landlord is running

Vaishnavi Guest House and that the proposed sweet mart and hotel business can be started from the rooms situated on the first floor or on the terrace. The learned Judge found no substance in the suggestion of the tenant and while there is no specific observation, the text and tenor of the discussion is that the plaintiff is the best judge of the convenience and suitability of the business premises.

d) The learned trial Judge answered the issue of comparative hardship in favour of the landlord. The learned Judge reasons that once the landlord demands the possession of the rented premises, it is the duty of the tenant to make efforts to search for alternate accommodation. The learned Judge referred to the evidence on record suggesting availability of several premises in close vicinity and found that the tenant did not make any effort to secure any of the premises available in the vicinity. The learned trial Judge finally noted the sound financial status of the defendant and concluded that it would be the plaintiff who shall suffer greater hardship if the relief of possession is refused.

7) **JUDGMENT OF THE APPELLATE COURT**

a) Pursuant to the order of remand of the High Court, pleadings were amended and additional evidence adduced. In view of the contention of the tenant that acquisition by the landlords of property bearing plot 6172/21, admeasuring 127.18 Square Meters at Pusad obliterates the need, an additional point arising from such contention was framed.

b) The learned appellate Judge confirmed the finding of the learned trial Judge that the landlord did prove that Sayali Ladies Articles shop was sold in view of the mounting debt. The learned appellate Judge noted that on the very day of the execution of the sale deed dated 1.6.2006, the landlord/s deposited Rs. 4,00,000/- (Rupees Four Lakh) towards outstanding loan. The learned appellate Judge recorded a finding that the landlords do not have any commercial property other than Vaishnavi Guest House. Further, the learned appellate Judge rightly noted that the tenant cannot suggest much less dictate to the landlord as to how and where he should set up the business. This

observation came in the context of the submission of the tenant that the sweet mart shop and hotel could as well be started in any of the 14 rooms occupied by Vaishnavi Guest House located on the first floor of the suit building.

c) The learned appellate Judge then addressed the submission of the tenant that in view of the acquisition of plot 6172/21 by the landlord/s and the construction made thereon, the bona fide need did not subsist. During the course of evidence, it is brought on record that plaintiff 3 Mr. Kirit started residing along with his family in the newly constructed house. However, the landlords contended that some members of the joint family continue to reside in the suit building premises on the northern side of the suit shop. Per contra, the tenant contended that no member of the joint family is residing in the suit building, and therefore, the rooms which the family members earlier occupied have become available for the plaintiff to start the proposed business.

e) The learned appellate Judge considered the

evidence on the said aspect threadbare, found the evidence of the landlord/s credible, noted that the testimony of landlord Mr. Sanjay and Mr. Nuruddin Akbarali Hirani, is not shaken and landlord Mr. Sanjay is not effectively cross-examined, and finally found that the witness examined by the tenant Mr. Om Pathak, who deposed before the Court that two sisters of the landlords Ms. Vidya and Ms. Kiran are residing at Chintawar-wada, other sister Ms. Aruna is residing with her husband and families of Mr. Kishor and Mr. Sanjay are residing in Jadhav layout, Pusad to be beyond pleadings and even otherwise unbelievable.

f) On the aspect of comparative hardship, the learned appellate Judge found;

i) The tenant did not make any effort to secure alternate accommodation;

ii) The tenant purchased new properties during the pendency of the litigation and his financial position is sound.

iii) The tenant neither pleaded nor proved that alternate accommodation in the nearby vicinity is not available. Indeed, the tenant admitted that shops are available on rent and for sale in Hirani

complex and Kapre complex which are situated in the vicinity.

iv) Tenant further admitted that the owners of Bikaner Sweet Mart have also constructed one complex near the suit shop where shops are available.

g) The learned appellate Judge found on the basis of the evidence on record, inter alia the admission of the tenant that he did not make any effort to secure alternate accommodation and held that the issue of comparative hardship will have to be answered in favour of the landlord/s.

8. It can thus be seen that both the Courts below have concurrently found in favour of the landlord/s on the aspect of bona fide need. The sale of the premises in which Sayali Ladies Articles shop was located is duly considered by the Courts below and a finding of fact is recorded that the sale in 2006 was in view of the mounting bank loan and did not reflect adversely on the bona fide need pleaded. Answering the additional point framed in view of the amendment and

the additional evidence adduced, the learned appellate Judge has recorded a finding of fact that the acquisition of plot 6172/21 and the construction of residential house did not suggest that the bona fide need did not subsist. The learned appellate Judge did not find substance in the submission of the tenant that two rooms which are on the northern side of the suit shop have become available for utilization by the landlord/s since the members of the family of the landlord shifted elsewhere.

9. **SUBMISSIONS:**

Written submissions are placed on record by the parties, lastly on 4.5.2023. The submissions which are canvassed by Dr. Anjan De and the learned senior counsel Mr. C.S. Kaptan are on the lines of the written submissions placed on record after the conclusion of the oral arguments.

a) Dr. Anjan De would strenuously urge that due to several reasons, *inter alia* events which occurred during the pendency of the litigation, the purported bona fide need of the landlord did not survive. Dr. Anjan De would submit that

the three brothers Mr. Kishor, Mr. Sanjay and Mr. Kirit claimed to be independent in business and it was Mr. Kishor, who was managing the Vaishnavi Guest House. It is submitted that in view of the death of Mr. Kishor, and the reluctance or unwillingness of the other family members to operate Vaishnavi Guest House, all the fourteen rooms, situated on the first floor/s of the suit building are available for use as sweet mart and hotel.

b) Mr. Anjan De submits that landlord Mr. Kirit was examined as PW 4 on 15.2.2007 and after the amendment to the pleadings, he has not stepped into the witness box. The events on record would suggest that Mr. Kirit shifted to the new house constructed on plot 6172/21 along with his family in 2014. Mr. Kirit is not in need of the suit shop in possession of petitioner Mr. Ashok since he is engaged in the business of Gujrati Caterers from his new residence, as is brought on record in the present petition.

c) Mr. Anjan De emphasizes that the purported need of landlord Mr. Sanjay is considered by the learned

Appellate Judge in the absence of foundational pleadings.

d) Mr. Anjan De submits that while PW 1 Mr. Sanjay has deposed that plaintiff 3 will carry on business of hotel, Sayli Ladies Articles shop which was set up in 1997 was closed down on 1.6.2006. In the context of the purported need, the closure of Sayli Ladies Articl's shop assumes significance.

e) Dr. Anjan De submits that it has come in evidence that the family of Mr. Kirit and Mr. Kishor have shifted from the suit building and two rooms on the top floor are vacant, and there is no explanation why the top floor rooms cannot satisfy the need of the landlord/s.

f) In the context of the pleadings that Mr. Sanjay and his widowed sister and Mr. Kiran were residing in the suit house on the north, it is submitted that out of the six sisters, only Mrs. Aruna is examined as PW 2 and she admits that sisters had executed relinquishment deeds and were residing with their in-laws.

g) Mr. Anjan De would submit that the learned Appellate Judge failed to appreciate that the acquisition of plot 6172/21 and the construction of the residential house thereon eclipsed the need of the landlord inasmuch as the family members who occupied the two rooms on the northern side of the suit shop, shifted their residence to the newly acquired premises. Dr. Anjan De further submits that PW 3 – landlord Mr. Kirit has started catering business from the newly constructed house which impacts the purported need of landlord. Mr. Anjan De would submit that the learned Appellate Judge committed a grave error in disbelieving the evidence of witness Mr. Om Pathak. Mr. Anjan De submits that if the deposition of Ms. Aruna, who is the sister of the landlords and Mr. Om Pathak are considered holistically, it is clear that the learned Appellate Judge committed an error in holding that some members of the family of the landlord/s continue to occupy the rooms in the suit building.

h) Mr. Anjan De would submit that the landlords

suppressed material facts and deserve to be non-suited on that ground alone. The suppression is of the availability of alternate premises, is the submission.

i) Mr. Anjan De would then submit that the Courts below erred in holding that greater hardship shall be caused to the landlord if eviction is denied. It is also submitted that the issues of bona fide need and comparative hardship have been considered in a composite manner which is impermissible.

j) In rebuttal learned senior counsel Mr. C.S. Kaptan would invite my attention to several decisions which enunciate that the limited scope of writ jurisdiction precludes the High Court from disturbing a finding of fact unless the finding of fact is demonstrably perverse. In writ jurisdiction, the High Court is not expected to review or re-appreciate the evidence on record and must be slow to substitute its findings for those recorded by the fact finding Courts, even if findings recorded by the Courts below are erroneous, is the submission.

k) Mr. C.S. Kaptan would submit that while subsequent events can indeed be considered, it is not every subsequent event which is material, and the tenant who draws support from the occurrence of subsequent event is obligated to demonstrate that the need of the landlord stands completely eclipsed.

l) Mr. C.S. Kaptan submits that the well entrenched position of law is that the landlord is the best judge of his need and unless the need is whimsical, neither the tenant nor the Courts can compel the landlord to arrange his affairs in a particular manner.

m) Mr. C.S. Kaptan would submit that there is more than ample evidence on record that the joint family needs the suit shop for starting the sweet mart and hotel business. Mr. C.S. Kaptan submits that apart from the fact that the rooms on the first and the second floor are not suitable, it is the unfettered choice of the landlord to start the business from premises which the landlord considers most

suitable. Mr. C.S. Kaptan would submit that the tenant has not established that the two room on the northern side of the suit shop are vacant. No cogent evidence is adduced to show that all the family members of the landlord/s have shifted from the said room to the newly constructed premises. Even if it is assumed *arguendo*, that two rooms on the northern side of the shop became available during the pendency of the lis, the said rooms are not comparable to the suit shop and this aspect and the special features and the convenience factor attached with suit shop are duly considered by the learned appellate Judge, is the submission.

10. Mr. C.S. Kaptan would submit that it is the burden of the tenant to prove that he would suffer more hardship than the landlord if the eviction is ordered. It is submitted that there is overwhelming evidence on record to show that despite the availability of several commercial premises in the vicinity, the tenant made no effort to secure alternate accommodation, as is also admission of the tenant. It is further submitted that the tenant is a man of means and the acquisition of several properties and agricultural field by the

tenant are brought on record. The submission is that the findings concurrently recorded by the Courts below on the issue of comparative hardship is consistent with the evidence on record.

11. In support of the submissions canvased, learned counsel Dr. Anjan De relies on the following decisions:

i) Hasmat Rai vs. Raghuinath Prasad, 1981 LawSuit(SC) 279;

ii) M Laxmi and Co. vs. Anant R. Deshpande, 1972 LawSuit(SC) 425;

iii) S P Chengalvaraya Naidu vs. Jagannath, 1993 LawSuit(SC)908;

iv) Adil Jamshed Frenchman:Adil Jamshed Frenchman:Adil Jamshed Frenchman:Adil Jamshed Frenchman vs. Sardar Dastur School Trust, 2005 LawSuit (SC) 253;

v) Pasupuleti Venkateswarlu Vs. Motor and General Traders [Overruled by : Kishan Vs. Manoj Kumar – 1998 LawSuit (SC) 195)] 1975 LawSuit(SC)122;

vi) C. Venkata Swamy vs. H.N. Shivanna (D) by L.R.and Another Ect. 2017DGLS(SC) 1268;

vii) Hindustan Petroleum Corporation Ltd...vs..Dilbahar Singh, 2014 LawSuit(SC)719;

viii) Tarachand Hassaram Shamdasani..vs.. Durgashankar G. Shroff, 2002 LawSuit(Bom) 1427;

ix) Shrichand s/o. Rochaldas Khemani and another vs. Abdul Razzak s/o. Abdul Ajim (LPA 460/2011);

x) Gajanan s/o. Devidas Wankhare;Ashok s/o. Vinayuak Deshmukh vs. Mohd. Jamil Mohd. Amad;Ramkrishna s/o. Eknathrao Nikhar, 2016 LawSuit(Bom) 2319;

xi) Vasant Mahadeo Gujar..vs.. Baitulla Ismail Shaikh & another, 2015 LawSuit(Bom) 1485;

xii) Shaha Ratansi Khimji & Sons...vs..Proposed Kumbhar Sons Hotel P. Ltd & Ors, 2014 LawSuit (SC) 566;

xiii) M M Quasim vs. Manohar Lal Sharma, 1981 LawSuit(SC) 234;

xiv) Dwarkadevi wd/o. Jagdishprasad Choudhary vs. narsingdas s/o. Rampratap Sharma, 1981 LawSuit(Bom)7;

xv) Jamshid Ahmad Khan Majidkhan vs. Additional Collector, Amravati, 2009 LawSuit(Bom)1818;

xv) Mohd Shakil Mohd Yunus..vs..Chandrabali Ramai Gupta, 2014 LawSuit (Bom) 852;

xvi) State of Himachal Pradesh vs. Jai Lal, 1999 LawSuit(SC) 952;

xvii) C Venkata Swamy vs. H N Shivanna(D) & Anr Etc, 2017 LawSuit(SC) 1231;

xviii) Phiroze Bamanji Desai..vs.. Chandrakant M Patel, 1974 LawSuit(SC)24;

xix) Gaya Prasad vs. Pradeep Shrivastava, 2001 LawSuit(SC)224;

xx) Smt. Krishnabai Ganpatrao Deshmukh..vs.. Appasaheb Tuljaramrao Nimbalkar and others, AIR 1979, SCC 1880.

12. Learned senior counsel Mr. C.S. Kaptan draws support from the following decisions:

i) Meenal Eknath Kshirsagar (Mrs..vs.. Traders & Agencies and Another, (1996)5 SCC 344;

ii) Prativa Devi (Smt) vs. T.V. Krishnan, (1996)5 SCC 353;

iii) Dinesh Kumar vs. Yusuf Ali, (2010) 12 SCC 740;

iv) Nana s/o. Kisanrao Thokade...vs.. Prabhakar s/o. Ambadas Gosavi, 2014(6) Mh.L.J. 563;

v) Anil Bajaj and another ..vs.. Vinod Ahuja, (2014) 15 SCC 610;

vi) Rasiklal s/o. Revchand Shah and others..vs..Paraskumar s/o. Balchand Thole and another, 2015(1) Mh.L.J. 382;

vii) Nilkanthrao Raghunathji Chute.. Vs. Dattatraya Narayanrao Balakhe, 2019(3) Mh.L.J. 874;

viii) Shiv Sarup Gupta Vs. Dr. maheshchand Gupta, (1999)6 SCC 222;

ix) Ramkubai (Smt)..vs.. Hajarimal Dhokachand Chandak, (1999)6, SCC 540;

x) D. Sasikumar Vs. Soundarajan, (2019) 9 SCC 282;

xi) Kamleshwar Prasad Vs. Pradumanju Agrawal, (1997)4 SCC 413;

xii) Gaya Prasad Vs. Pradeep Shrivastav, (2001)2 SCC 604;

xiii) M.L. Prabhakar vs. Rajiv Singal, (2001)2 SCC 355;

xiv) Chandrashekher S. Gadgil vs. Rameshprasad Shukla, 2018, SCC Online Bom 547;

xv) Mohanlal Chandulal Agrawal vs. Navalkishor Kulwal, 2016(1) Mh.L.J. 735;

xvi) Shamshad Ahemad and others vs. Tilak Raj Bajaj and others, (2008)9 SCC 1;

xvii) Deepak Tandon and another vs. Rajeshkumar Gupta, (2019)5 SCC 537;

xviii) Raghvendrakumar Vs. Firm Prem Macxhinery, (2000)1 SCC 679.

xvix) Sub Divisional Officer, Telegraphs, Parbhani vs. Kesharbai w/o.Bhaskar Vahule and another, 2014(6) 569;

xx) Orissa State Financial Corporation and another..vs.. Hotel Jogendra, (1996)5 SCC 357;

xxi) M.C. Mehta..vs.. Union of India and Others, (1999)6 SCC 237.

13. DISCUSSION:

(i) In the context of the painstaking endeavour of Dr. Anjan De to pick holes in the findings recorded by the Courts below, it is apposite to be conscious of the limitations of writ jurisdiction. In writ jurisdiction, the High Court is

precluded from re-appreciating the evidence on record. The position of law which is well entrenched is that an error within jurisdiction is not susceptible to correction in writ jurisdiction and a finding of fact binds the High Court unless the finding of fact is demonstrably perverse or is the result of gross error in application of the principles of law. In ***Jamshid Ahamad Khan and Others vs. Tilak Raj Bajaj and others, (2008)9 SCC 1***, the Apex Court aptly summarizes the legal position thus:

“32. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of Error. It can neither review nor re-appreciate, nor reweigh the evidence upon which determination of a subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior Tribunals within the limits of law”.

ii) The submissions canvassed by Dr. Anjan De and the learned senior counsel Mr. C.S. Kaptan may now be

considered on the touchstone of law declared by the Apex Court in the decision *supra*.

iii) Dr. Anjan De submits that the need of the landlords is not bona fide in view of the availability of alternate space on the first floor of the suit building which houses the Vaishnavi Guest House. The submission is that the business of Vaishnavi Guest House is virtually closed and all the fourteen rooms, on the first floor are available to the landlord/s for starting the Sweet Mart and Hotel. It is further submitted that the Sweet Mart and Hotel can as well be set up in the rooms available on the second floor. It is emphasized that plaintiff 1 landlord Mr. Kishor having expired during the pendency of the litigation, no other family member is interested in continuing with the business of Vaishnavi Guest House. The landlords have categorically denied that Vaishnavi Guest House has shut shop. The Courts below have concurrently recorded a finding that the said business which is located on the first floor of the suit building is continuing. The Courts below have further held, and rightly so, that, assuming any space to be available on the first floor,

it is entirely the prerogative of the landlord to select or choose the place of business. I do not find any error in the said view. Judicial notice can be taken that starting a sweet mart and hotel on the rooms which may be available on the first floor of the building is not a commercially and practically prudent decision. The landlord has adduced evidence explaining how and why the suit shop is most suitable and convenient for starting the business of sweet mart and hotel. Neither the tenant nor the Court can dictate to the landlord as to the manner in which the business shall be conducted. [(See – Meenal Eknath Kshirsagar (Mrs) vs. Traders & Agencies and Another, (1996)5 SCC 344)]. The landlord is undoubtedly the best judge of his need.

iv) In *Anil Bajaj and another vs. Vinod Ahuja*, (2014)15 SCC 610 the Apex Court considered the submission of the tenant that the landlord has several other shops from which he is carrying on different businesses and further that the landlord has other premises from which the business proposed can be effectively carried out. Rejecting the said submission, the Apex Court observed thus:

“It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business”.

v) Dr. Anjan De is right in submitting that the need of the landlord must be bona fide and that eviction cannot be ordered on the basis of mere desire. Bona fide need is a reasonable requirement which is not a ruse to seek eviction with the motive of leasing out the premises on higher rent. Apart from the fact that Section 17 of the Maharashtra Rent Act protects the interest of the tenant who is made to vacate the premises by unscrupulous or greedy landlord, there is no material on record to even remotely suggest that the bonafide need pleaded is not genuine.

vi) Dr. Anjan De would submit that it is not in dispute that the landlord did sell the premises in which the shop Sayli Ladies Articles functioning. The learned Appellate Judge has considered the entire evidence on record,

particularly, the date of the execution of the sale deed in 2006 and the deposit of substantial amount in the loan account and the extract of the bank statements and a finding of fact is recorded that the said premises was sold to fully or partly discharge the bank liability. I do not see any error much less perversity in the said finding.

vii) Dr. Anjan De was at pains to submit that there are two rooms available which are situated on the ground floor on the northern side of the suit shop since the members of the family of the landlord/s had shifted elsewhere. Apart from the fact that there is no evidence on record which is adduced by the tenant to dilute much less neutralize the evidence adduced by the landlord which is to the effect that the suit shop has certain special features which makes it eminently suitable for starting sweet mart and hotel business, illustratively the existence of bhatti (oven) and the staircase which connects the suit shop to the Vaishnavi Guest House situated on the first floor, the learned Appellate Judge has after appreciating the evidence on record, recorded a finding that the tenant has not established that the two rooms on the

northern side are as a fact vacant and available. Dr. Anjan De made a strenuous effort to assail the finding of fact recorded by the learned Appellate Judge that the tenant failed to establish that the two rooms, occupied by the family members of the landlord/s are vacant and available. Dr. Anjan De would submit that out of the six sisters only Ms. Aruna is examined and she states that all the sisters relinquished their right in the suit property and were staying with their in laws. Dr. Anjan De would further submit that the tenant examined Mr. Om Pathak who deposed that two sisters Ms. Vidya and Kiran are residing at Chintawar-wada and Ms. Aruna is residing with her husband at Nayak Chowk and the families of Mr. Kishor and Mr Sanjay are residing in the residential house situated in Jadhav layout. The evidence of Mr. Om Pathak is disbelieved by the learned Appellate Judge, who observes thus:

34. The defendant's other witness Om Pathak, Solemnly affirmed that the plaintiff's sister namely Vidhya and Kiran have been residing in one place which is known as Chintawar-Wada. The another sister namely Aruna is residing with her husband by purchasing house in the Naik Chowk. The plaintiffs were residing at the back side of the suit shop which were the rooms for residence and presently plaintiffs No.1 & 2 are residing in the Jadhav Lay-out, Pusad and

plaintiff No.3 is residing in separate house. It is here material to note that, these facts such as the existence of Chintawar-Wada and the residence of two sisters of plaintiffs in the said Wada and the plaintiffs No.1 & 2's residence in separate two storied building in Jadhav Lay-Out, are the facts which have not been pleaded by the defendant. I am of opinion that, these facts are material facts, which can be said to be essential to be the pat of pleadings. These facts cannot be said to be simply explanatory or evidentiary facts. Therefore, these facts cannot be considered to be the evidence as these facts are beyond the pleadings.

35. *Further, although it is assumed that this witness knows all these things and stated those before the Court, then his credibility is required to be tested on the basis of cross-examination. During cross-examination, he stated that he is not aware that whether towers western side of his house there are houses of Sanjay Bajaj, Ashok Gangwani and Jogi Pedhewala. He further stated that he never went in the lane of Bayas Patsanstha. He further stated that, he is not aware in respect of the southern side of Bayas Patsanstha and the situation of the shops of Gattani Jeweler and Hirani Dresses. He is not aware whether towards southern side of Bayas Patsanstha, the shops of Harjeevan Tailor, Denim Hub, Indore Sadi Sale, Dulhan Kangan House, are situated or not.*
36. *From these answers given by this witness, it is difficult to reply upon the version of this witness as regards to his knowledge of residence of two sisters of plaintiffs in the Chintawar- Wada and the residence of plaintiffs and other sisters at various other places, when he is not aware of the nearby locations from his house.*
37. *During further cross-examination this witness*

stated that, he and his family members never residence in the Chintawar- Wada. He is not aware as to who are the tenants residing in the Chintawar-Wada. He knows Vidhya and Kiran by face only and he is not related with them by any way. He is not having close relations either with defendant or his son. He is also not having any commercial relations with defendant and his son. The defendant is not friend of his father. Neither he nor his father have any obligations of defendant. His house is not adjacent to the defendant's house. He is not concerned with the shop owner namely Anil Ahale, the defendant in another suit. The Chintawar-Wada at the distance of around 1000 to 1500 feet from his house. There is difference of many year between himself and defendant, as well as there is many years difference amongst plaintiff and himself. He has no relations with plaintiffs.

38. *That is the total evidence of this witness. The person who is not aware of nearby locations from his house, the person who is not related with either plaintiffs or defendant by any way, the person who resides at long distance from the Chintawar- Warda, the person who does not know as to who are the tenants of the Chintawar-Wada; whether can be said to be reliable to draw the inference that plaintiffs and their sisters are residing at various different places. The answer will come in negative. I am of opinion that the evidence of this witness cannot be relied upon for deciding the different residential places of plaintiffs and their sisters.*

I do not see any serious error in the appreciation of evidence, and in exercise of writ jurisdiction, assuming there is an error committed by the learned Appellate Judge, the error is within the jurisdiction and not susceptible to

correction in writ jurisdiction.

viii) Plaintiff 2 – landlord Mr. Sanjay Adtiya is examined in appeal and he deposed before the appellate Court that while a residential houses constructed on plot 6172/21, it is only the family of plaintiff 3 - landlord Mr. Kirit which has shifted and Mr. Sanjay, the family of Mr Kishor, widowed sister and Ms. Kiran and her son continue to reside in the room situated on the northern side of the suit shop. In the elaborate cross-examination, other than giving suggestion that no member of the family resides in the suit building, which suggestion is denied, there is no attempt made to discredit Mr. Sanjay, who has categorically deposed that his family members continue to reside in the suit building.

ix) Considering the evidence on record, I am not persuaded to accept the submission of Dr. Anjan De that the finding of fact which is recorded on the aspect of the residence of some of the family members in the rooms situated in the suit building is illegal much less perverse.

x) Dr. Anjan De has pressed in service several decisions to buttress the submission that till the lis continues, the High Court is not powerless to mould the relief in view of the subsequent events. Mr. Anjan De would rely on (i) *Hasmat Rai vs. Raghunath Prasad*, 1981 LawSuit(SC) 279, (ii) *M Laxmi and Co. vs. Anant R. Deshpande*, 1972 LawSuit(SC) 425, (iii) *Pasupuleti Venkateswarlu Vs. Motor and General Traders [Overruled by : Kishan Vs. Manoj Kumar – 1998 LawSuit (SC) 195]* 1975 LawSuit(SC)122, (iv) *Adil Jamshed Frenchman:Adil Jamshed Frenchman:Adil Jamshed Frenchman:Adil Jamshed Frenchman vs. Sardar Dastur School Trust*, 2005 LawSuit (SC) 253.

I am respectfully bound by the law laid down by the Apex Court. It is well settled that the subsequent events can be, and must be considered. However, equally well settled is the law that it is not every subsequent event which turns the case on its head. Subsequent events will have to be considered and relief moulded, if the subsequent events completely eclipse or obliterate the need of the landlord.

Nothing is static in life. With the passage of 23 years from the date of institution of the lis, there would inevitably be certain changes in the circumstances. Events would occur in the natural course. In my considered view, there is nothing on record to suggest that the need of the landlord stood eclipsed or obliterated due to subsequent events.

xi) Dr. Anjan De would submit that during the pendency of the lis Mr. Kirit has set up a catering business which he is running from newly constructed residential house. Photographs are placed on record to buttress the said submission. Counter affidavit is filed on behalf of the landlord. I am not inclined to delve deeper. Assuming that Mr. Kirit has started catering business and he is operating from the newly constructed residential house, it is not for the tenant to suggest nor for the Court to endorse, that the bona fide need does not subsist any longer.

xii) One event which has occurred during the pendency of the lis is the sale of the premises in which Sayli Ladies Articles shop was located. As discussed supra, the said

sale is duly considered by the learned Appellate Judge, who has held that it was in view of the mounting debt that the landlord/s sold the said premises in the year 2006.

xiii) The subsequent event of acquisition by the landlords of plot 6172/21 and the construction of residential house has no impact on the bona fide need pleaded.

14. The learned senior counsel Mr. C.S. Kaptan would invite my attention to the decision of the Apex Court in *D. Sasikumar Vs. Soundarajan, (2019) 9 SCC 282* which holds that once landlord established bona fide requirement on the date of institution of the lease, the need subsists irrespective of delay in adjudication and it is impermissible to deny relief to the landlord on the ground of delay as the tenant shall be encouraged to protract litigation. *Kamleshwar Prasad Vs. Pradumanju Agrawal, (1997)4 SCC 413* is pressed in service to buttress the submission that the crucial date for existence of the bona fide need is the date of filing of eviction application. Similar is the articulation of the Apex Court in *Gaya Prasad vs. Pradeep Shrivastava, 2001*

LawSuit(SC)224 which holds that subsequent developments during pendency of the proceedings occurring due to the slow pace of the litigation cannot be taken advantage by tenant unless the nature and dimension of the subsequent events is such that the need is completely eclipsed or lost significance.

In my considered view, no subsequent event occurred which has fundamentally impacted the bona fide need much less eclipse or obliterated the bona fide need completely.

15. Dr. Anjan De has cited several decisions to buttress the submission that the landlord not having disclosed the sale of premises in which Sayli Ladies Articles shop was located and the acquisition of the residential plot on which construction is effected, the landlord must be non-suited. Dr. Anjan De submits that suppression of the said facts borders on fraud which disentitles the landlord/s from relief. Reliance is placed on ***S P Chengalvaraya Naidu vs. Jagannath, 1993 LawSuit(SC)908*** and ***Tarachand Hassaram Shamdassani..vs.. Durgashankar G. Shroff, 2002***

LawSuit(Bom) 1427 which is rendered by a learned Single Judge of this Court. In rebuttal Mr. C.S. Kaptan would submit that the alleged suppression of acquisition of residential property is of no significance, and in any event, the entire material was before the learned Appellate Judge and is on record in the present petition. Mr. C.S. Kaptan would invite my attention to the following observations of the Apex Court in ***M.L. Prabhakar vs. Rajiv Singal, (2001)2 SCC 355***.

“5.It has been urged that there was suppression on the part of the landlord inasmuch as he did not disclose the premises which were available at 16/57 Gali No. 1, Joshi Road as well as the premises which are available at Basant Road, Pahar Ganj. On the other hand on behalf of the Respondent Dr. Singhvi has submitted that the only requirement is to disclose such accommodation as is suitable for residence of the landlord. Dr. Singhvi submitted that if there is no other residential accommodation which is suitable then there is no duty to disclose. Dr. Singhvi relied upon the authority in the case of Ram Narain Arora vs. Asha Rani and Ors, wherein it has been held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is inter-mixed with the question regarding bonafide requirement. It is held that whether the landlord has any other reasonably suitable residential accommodation is a defence for the tenant. It is held that whether the other accommodation is more suitable than the suit premises would not solely depend upon

pleadings and non-disclosure by the landlord. It was held that the landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. In this case even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused. The parties have squarely dealt with this question”.

I am inclined to agree with Mr. C.S. Kaptan on both counts. I am satisfied that the acquisition of the residential property is of no relevance and further that the tenant is not put to any prejudice whatsoever since the entire material was before the learned Appellate Judge and has been considered.

16. Mr. Anjan De would then severely criticize the finding recorded by the Courts below on the aspect of comparative hardship. Mr. Anjan De would submit that the issue of bona fide need and the issue of comparative hardship cannot be considered in composite manner. Mr. Anjan De would further submit that even *de hors* the said principle, the concurrent findings are not sustainable. Reliance is placed

on the decision of a learned Single Judge of this Court in ***Vasant Mahadeo Gujar..vs.. Baitulla Ismail Shaikh & another, 2015 LawSuit(Bom) 1485.***

Per contra, Mr. C.S. Kaptan would rely on the decision of this Court in ***Nana s/o. Kisanrao Thokade...vs.. Prabhakar s/o. Ambadas Gosavi, 2014(6) Mh.L.J. 563*** and ***Rasiklal s/o. Revchand Shah and others..vs..Paraskumar s/o. Balchand Thole and another, 2015(1) Mh.L.J. 382*** in support of the submission that the burden is on the tenant to prove that greater hardship shall be caused to him if eviction is ordered. ***Nilkanthrao Raghunathji Chute.. Vs. Dattatraya Narayanrao Balakhe, 2019(3) Mh.L.J. 874*** is cited in support of the submission that mere adverse effect on the business of the tenant cannot be a deciding factor. ***Shiv Sarup Gupta Vs. Dr. Maheshchand Gupta, (1999)6 SCC 222*** is relied on in support of the submission that the landlord cannot be forced to occupy less suitable premises just to protect the interest of the tenant.

I have given anxious consideration to the rival submissions on the aspect of comparative hardship. The submission canvassed by Dr. Anjan De that the Courts have

considered the issue of bona fide need and comparative hardship in a composite manner must be rejected inasmuch as the Courts have duly considered the aspect of bona fide need and then have ventured to weigh the comparative hardship. I am further inclined to confirm the concurrent findings recorded by the Courts below that it would be the landlord who would suffer more hardship if eviction is denied. The tenant admittedly made no effort to secure the alternate accommodation despite institution of the lis. It has come in evidence that several commercial properties in the vicinity were available on rent and for sale and the tenant made no effort to secure such accommodation. It has further come on record that the tenant is extremely well to do. Considering the evidence on record, the finding concurrently recorded that the issue of comparative hardship must be answered in favour of the landlord/s is unexceptionable. In any event, the finding does not suffer from any gross error much less perversity as would impel me to interfere in writ jurisdiction.

17. Before parting with the judgment, I must observe that due to certain difficulties and circumstances inter alia

the fact that substantial part of the record of the instant petition and few other matters was misplaced and could be located only after passage of long time, both the learned counsel were advised that the matter can be fixed for rehearing and in response, both the learned counsel stated that they have no objection if the judgment is delivered. Further, both the learned counsel placed summary of submissions and bullet points on record on 4.5.2023 which have been duly considered.

18. In conclusion, and in view of the discussion supra, I am not inclined to interfere in writ jurisdiction and the petition merits dismissal, and is accordingly dismissed. Civil Application 497/2022 and Civil Application 812/2022 are disposed of in view of the findings recorded supra.

However, in the interest of justice, I direct that the possession of the tenant shall not be disturbed for nine months in order to enable him to secure alternate accommodation and to facilitate smooth transition.

Judge