



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

**CIVIL REVISION APPLICATION NO. 100 OF 2023**

Anandkumar S/o. Shrinathdas Gupta,  
Age : 72 years, Occ. : Nil,  
R/o. : Rajendra Prasad Road,  
New Jalna, Tq. and Dist. Jalna

**... APPLICANT**  
(Ori. Defendant)

**VERSUS**

Satishkumar S/o. Mangilal Sethiya,  
Age : 51 years, Occ. : Business,  
R/o. : Nehru Road, New Jalna,  
Tq. and Dist. Jalna

**... RESPONDENT**  
(Ori. Plaintiff)

...  
Mr. Sushant V. Dixit – Advocate for Applicant  
Mr. A.S. Bajaj – Advocate for Respondent  
....

**CORAM : SANDIPKUMAR C. MORE, J.**  
**RESERVED ON : 5<sup>th</sup> April, 2024**  
**PRONOUNCED ON : 12<sup>th</sup> June, 2024**

**JUDGMENT :**

1. The present applicant who is original defendant in Regular Civil Suit No. 92 of 2014 has challenged the judgment and decree dated 17.03.2023 passed by the learned Principal District Judge, Jalna (***“the First Appellate Court”*** for short) in Regular Civil Appeal No. 157 of 2018, whereby the eviction order against the present applicant has been passed, by setting aside the judgment and decree passed by the learned 3<sup>rd</sup> Joint Civil Judge, Junior Division, Jalna ( ***“the learned Trial Court”*** for short).

2. **Brief facts of the present application is as under :**

*Pooja Kale*

The applicant is the tenant in suit house bearing No. Municipal Plate No. 1-20-10, CTS No. 966, admeasuring 113.7 Sq. Meter situated at Rajendra Prasad Road, New Jalna, Tq. and Dist. Jalna. The present respondent is original plaintiff and landlord, who filed the aforesaid Regular Civil Suit No. 92 of 2014 for eviction of the applicant – tenant on the ground of default in-payment of rent as well as bona fide and reasonable requirement. According to the respondent – landlord, the applicant – tenant had agreed to pay rent of the suit house of Rs. 550/- per month, but the applicant – tenant was not paying the rent regularly and, therefore, he was in arrears of rent from 01.09.2002 till 30.09.2013 i.e. for the period of 49 months, amounting to Rs.26,950/-. Accordingly, the respondent – plaintiff issued legal notice dated 14.09.2013 demanding the aforesaid arrears of rent. Though the applicant – tenant on receipt of said notice paid the amount of Rs.26,950/-, but according to the respondent – landlord entire arrears of rent were not paid and, therefore, the applicant – tenant became willful defaulter and liable to be evicted under Section 15 of the Maharashtra Rent Control Act, 1999. In addition, the respondent – landlord also claimed eviction of the applicant – tenant from the suit premises on the ground of bona fide requirement of the same for his own use and occupation. According to the respondent – landlord some dispute arose among the ladies in the family and, therefore, he required the suit premises for his own use and occupation.

3. On the contrary, the applicant – tenant resisted the suit by filing written statement at Exhibit – 12 and came with the case that, the respondent – plaintiff was not collecting the rent and when the respondent and his mother refused to accept the rent, he had sent the rent amount by cheque issued in the name of mother of respondent but it was refused. The applicant – tenant also contended that, he tried to sent the rent amount to the respondent – landlord from time to time through various modes, but the respondent – landlord did not accept the same. In respect of requirement of the suit premises on the ground of bona fide use, the tenant denied the said aspect and claimed that the respondent – landlord owned and possessed several other properties in Jalna city, which can be used to satisfy his bona fide needs. As such, he claimed dismissal of suit. The learned Trial Court after conducting the trial, dismissed the suit of the respondent – landlord by giving negative finding on the aspect of willful default as well as bona fide requirement. However, learned First Appellate Court in the aforesaid appeal though kept the negative finding on the aspect of willful default as it is but evicted the applicant – tenant on the ground of bona fide requirement of respondent – landlord in respect of the suit premises. Hence, this appeal.

4. Learned Counsel for applicant – tenant vehemently argued that, the learned First Appellate Court though negated the contention of respondent – landlord about the willful default on the part of the

applicant – tenant in respect of payment, but wrongly observed that the respondent – landlord established his claim of possession of the suit house on the ground of bona fide requirement. According to him, there is no whisper in pleading of respondent – landlord as to what was the nature of dispute between the ladies of his family. He pointed out that, even in the notice sent by the respondent – landlord nothing is mentioned about the aforesaid so called disputes between the ladies. According to him, the learned First Appellate Court erred in evicting the applicant – tenant from the suit premises, when it had come on record that the respondent – landlord owns and possessed so many other properties. According to him, it was for the respondent – landlord to show that, how those other properties were not suitable for his own use. As such, he prayed for setting aside the decree of eviction against the applicant – tenant passed by the learned First Appellate Court. In support of his arguments, he also relied on following judgments :

- (i) Bombay High Court bench at Bombay in the case of **Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh and Anr.**, reported in *2015(5) ABR 415*
- (ii) This Court in the case of **M/s. Vivek Trimbakrao Paturkar Vs. Sow. Sulochanabai w/o. Gangadharrao Wattamwar** in *Civil Revision Application No. 91 of 2021* decided on 04.03.2022
- (iii) Bombay High Court bench at Bombay in the case of

**Tarachand Hassaram Shamdasani Vs.**  
**Durgashankar G. Shroff and Ors.**, reported in 2004  
(*Supp.*) *Bom.C.R.* 333

5. On the contrary, learned Counsel for respondent - landlord supported the judgment of the learned First Appellate Court and contended that, though the applicant - tenant contended that the plaint is silent in respect of nature of ladies as alleged by the respondent - landlord, but it was not disputed by applicant - tenant during the cross - examination of respondent - landlord. According to him, the applicant - tenant is having his own property as described in paragraph No.4 of the plaint, which can be used by him. He further submitted that, even if the respondent - landlord is having other premises but neither the tenant nor the Court can dictate the landlord as to how he should use his properties. He pointed out that, since the applicant - tenant did not lead any evidence as to how there will be greater hardship to him, the aspect of comparative hardship needs to be decided against him. As such, he prayed dismissal of the Civil Revision Application. He also placed reliance on the following judgments :

- (a) This Court in the case of **Rameshwar Nanakram Prajapal Vs. Sundrabai Keru Ghadage** in *W.P. No. 250 of 1992* decided on 18.06.2012
- (b) Bombay High Court bench at Bombay in the case of **Sharadabai Anandrao Durgule Vs. Ramchandra**

**Pol and Ors.**, in *W.P. No. 5426 of 1991* decided on 03.12.2008

- (c) Bombay High Court bench at Bombay in the case of **Sudha Sumant Barve Vs. Ranjana Ramesh Padhye** in *W.P. No. 5202 of 2002* decided on 10.05.2013
- (d) Hon'ble Supreme Court in the case of **Prativa Devi (Smt.) Vs. T.V. Krishnan** reported in *(1996) 5 SCC 353*
- (e) This Court in the case of **Sunil Mulchand Jain Vs. Smt. Purnima Prakash Kulkarni** in *Civil Revision Application No. 168 of 2011* decided on 20.10.2011
- (f) Hon'ble Supreme Court in the case of **Dhannalal Vs. Kalawatibai and Ors.**, reported in *(2002) 6 SCC 16*
- (g) Hon'ble Supreme Court in the case of **India Umbrella Manufacturing Co. and Ors. Vs. Bhagabandei Agarwalla (Dead) Through L.Rs. Savitri Agarwalla (Smt) and Ors.**, reported in *(2004) 3 SCC 178*
- (h) This Court in the case of **Rafiq Ahmed Qureshi S/o. Bashir Ahmed Vs. Iqbal Khan S/o. Hashmat Ali Khan and Ors.**, in *W.P. No. 4722 of 2011* decided on 20.09.2011
- (i) Hon'ble Supreme Court in the case of **Rajinder Pershad (Dead) by L.Rs. Vs. Darshan Devi (Smt)** reported in *(2001) 7 SCC 69*

6. Heard rival submissions and also perused entire material on record.

7. It is significant to note that, the respondent - landlord had claimed eviction of applicant - tenant on the ground of willful default and bona fide requirement, but both the Courts below have given negative finding on the aspect of willful default. As such, there is no need to discuss the evidence in respect of such aspect. The learned First Appellate Court has granted the eviction of applicant - tenant only on the ground of bona fide requirement. On going through the judgment of the learned Trial Court, it is evident that the learned Trial Court has refused to grant eviction decree against the applicant - tenant on the aspect of bona fide requirement mainly by observing that, the respondent - landlord could not establish as to what was the nature of alleged dispute among the ladies in his family. It is also observed that, even there were some quarrel as alleged by the respondent - landlord but such quarrels are common in almost all Indian families. Further, it appears that the learned Trial Court refused the decree of eviction by observing that, the respondent - landlord is having so many other properties as mentioned in paragraph No.50 of the judgment, which are sufficient to satisfy his alleged bona fide need of accommodation. Further, it is also observed by the learned Trial Court that, though the respondent - landlord contended that the applicant - tenant is having other properties, but failed to adduce

satisfactory documentary evidence to that effect supported by the pleading. However, learned First Appellate Court mainly observed that, the tenant or the Court cannot dictate as to how the landlord should use his premises, as he is the best judge of his bona fide need.

8. Admittedly, it is not mentioned by the respondent – landlord in his plaint as to what was the nature of dispute between the ladies of his family which obviously, between his mother and his wife. Further, the learned Counsel for applicant – tenant also pointed out that, the respondent – landlord in his cross-examination has admitted about the existence of his so many other properties, which were suppressed by him in the pleading. He relied upon the decision in **Vasant Mahadeo Gujar** (*supra*) wherein it is observed that, when the plaintiff suppressed the facts of having several properties owned by him then it cannot be held that, his bona fide requirement is reasonable. It is further observed that, the landlord is duty bound to make disclosure of his another properties in his pleadings and unless such disclosure is made, no decree of eviction under Section 16 (1) (g) can be granted. Similar observation is made by this Court in judgment in the case of **M/s. Vivek Trimbakrao Paturkar** (*supra*) about the non-disclosure of other properties and thereby refusing passed the eviction decree on the ground of bona fide requirement of the landlord. Further, the learned Counsel also relied upon the judgment in case of **Tarachand Hassaram Shamdasani** (*supra*) wherein it is observed as follows :

*8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.*

Thus, from the observations of this Court in the aforesaid cases it is evident that, if the landlord has suppressed the fact of having so many other properties by non-disclosure in the pleadings, no eviction decree can be passed against him.

9. However, learned Counsel for respondent – landlord vehemently argued that, even if the disclosure of other properties are not made still the bona fide requirement of the landlord can be established in the light of observations of this Court as well as Hon’ble Apex Court. According to him, this Court in the case of **Rameshwar Nanakram Prajapal** (*supra*) has referred the observation of Hon’ble Apex Court in the case of **Prativa Devi (Smt)** (*supra*) as follows :

*It is well settled law that the landlord is the best Judge of his residential requirement and has a complete freedom in the matter. It is no concern of the Courts to indicate to the landlord how and in what manner he should live or to*

*prescribe for him a residential standard of their own. The High Court was not justified in giving such a gratuitous advice to her which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property.*

10. Further, this Court in the case of **Sharadabai Anandrao Durgule** (*supra*) has made following observation :

*As noted in Motor Cycle House and Metro Cottage Industries, Pune (supra) that once the landlord has placed on the record the material evidence to support his bona fide and reasonable need and as it is proved, the question of hardship normally tilts in favour of the landlord. In the present case, it is in favour of the landlord.*

In the case of **Sudha Sumant Barve** (*supra*) this Court has made following observation :

32. *By now it is settled principle of law that neither the tenant nor the Court can dictate the landlord as to what is bona fide and reasonable need. It is equally settled that landlord is the best Judge of his requirement.*

Reliance in this respect could be placed on the judgment of the Apex Court in the case of *Meenal E. Kshrisagar v. Traders and Agencies*, 1997 (1) Mh.L.J. (S.C.) 121. It will be relevant to refer to the following observations of the Apex Court :

*"As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord*

*desires to beneficially enjoy his own property and when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises."*

In the case of **Prativa Devi** (*supra*) Hon'ble Apex Court has made following observation :

*The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.*

Further, in the case of **Mulchand Jain** (*supra*), this Court has made following observation :

*Yet, in another decision in the case of Yogesh Dattaram Pathak Vs. Shrikrishna Shriram Joshi [2003 Bom.R.C. 433], this Court has taken a view that if the tenant has not pleaded or led evidence showing that it is not possible to secure similar accommodation, in that case, question of comparative hardship has to be decided against the tenant.*

11. On going through the aforesaid observations it can be seen that, the requirement of suit premises by the landlord for his own bona fide

use can be established even if the landlord is having other properties. It is now settled that, neither the tenant nor the Court can dictate as to what is bona fide need since the landlord is the best judge of his requirement. Further, it is evident that the issue of comparative hardship can be decided against the tenant, if the tenant had not pleaded or led the evidence showing that it is not possible for him to secure similar accommodation. In the instant case, it is not the case of applicant – tenant that, it is impossible for him to secure similar accommodation in Jalna city, like the suit premises. Moreover, he has admitted that, he owns another premises in Jalna city which according to him is given on rent to some other person. That apart, but there is no evidence on record to show that, the applicant – tenant had in fact made any attempt to search any another suitable accommodation in Jalna city. In the light of judgments relied by the respondent – landlord as mentioned above, the applicant – tenant cannot retained the possession of the suit house by merely pointing out the fact that, the respondent – landlord is having other premises. Even otherwise also it has come on record that, other premises of the respondent – landlord are commercial in nature and not suitable for residential use. Therefore, finding of the learned First Appellate Court in favour of respondent – landlord that the suit house is required for his own use, appears proper and reasonable.

12. Learned Counsel for applicant – tenant also tried to argue that

the suit premises owned by respondent – landlord as well as his mother, but his mother is not party to the litigation and, therefore, it cannot be ascertained that mother of landlord is also willing to evict the applicant – tenant. On this aspect the learned Counsel for respondent – landlord heavily relied on observation of the Hon’ble Apex Court in the case of **Dhannalal** (*supra*) wherein following :

*16. It is well settled by at least three decision of this Court, namely, Sri Ram Pasricha v. Jagannath [(1977) 2 SCC 814] and Pal Singh v. Sunder Singh [(1989) 1 SCC 444] that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit.*

13. Further, in the case of **India Umbrella Manufacturing Company** (*supra*) the Hon’ble Apex Court has made following observations :

*One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement.*

On going through the aforesaid observations, it can be seen that one of the co-owners can file suit for ejectment of the tenant in his own right and the tenant is prohibited to question of maintainability of

suit on the ground of non-joinder of party. Further, it can be seen that, the consent of such co-owners as assumed to be taken unless it is shown by the tenant that the other co-owners are also agreeable to eject the tenant and that the suit was filed in spite of their disagreement. In the instant case, the applicant – tenant did not bring any evidence on record to show that, the mother of respondent – landlord had in fact in disagreement to file such suit of eviction against him. Therefore, I find no force in such submission of learned Counsel for applicant – tenant that, the suit is bad for non-joinder of the parties.

14. Considering all these aspects and in the light of observations of this Court as well as Hon'ble Apex Court in the judgments relied upon by the respondent – landlord, the judgment and decree passed by the learned First Appellate Court in Regular Civil Appeal No. 157 of 2018 appears proper. Therefore, the present Civil Revision Application filed by the present applicant – tenant is dismissed.

15. The Civil Revision Application is disposed of accordingly.

**[ SANDIPKUMAR C. MORE ]**  
**JUDGE**

16. After pronouncement of the judgment, learned Counsel for applicant – tenant submits that, the applicant – tenant wants to challenge the judgment passed by this Court before the superior

authority. The learned Counsel for respondent – landlord strongly opposed the request, since the matter is decided on merit. However, interim relief in favour of the applicant – tenant was in force during the pendency of this application. In view of the same, it stands continued till further period of four weeks only.

**[ SANDIPKUMAR C. MORE ]**  
**JUDGE**