

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8011 OF 2005

Ambassador Hotel,
owned by their Proprietors
M/s. Narang Hotels Pvt. Ltd. Having
its address at Churchgate, Veer Nariman
Road, Mumbai 400 023.

...Petitioner

V/s.

Mrs. Suchita R. Shahani,
Indian Inhabitant of Bombay,
residing at Sita Kunj, 164, Maharshi Karve Road,
Churchgate Reclamation, Opp. Band Stand,
Bombay

...Respondent.

Mr. Piyush Raheja a/w. Mr. A. Z. Mookitkar i/b Mr. Pankaj Parsurampuria
for the Petitioner.

Mr. R. V. Govilkar, Senior Advocate i/b Mr. Sandeep Bhagwat for
Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 18th DECEMBER, 2023.

PRONOUNCED ON : 9th JANUARY, 2024

JUDGMENT :

1. Rule was issued on 3rd July, 2006. By the present petition filed under Article 227 of the Constitution of India the concurrent findings of the Trial Court and the Appellate Court evicting the Petitioners from the suit premises is under challenge. For the sake of convenience the parties are referred to by their status before the trial Court.

2. Briefly stated the facts of the case are that the suit premises is Flat No.2 on the ground floor of the building known as “Anand Niwas” situated at ‘A’ Road, Churchgate, Bombay 400 023. By virtue of tenancy agreement dated 18 November 1954, the suit premises was let out to the defendant on the terms and conditions contained therein. Subsequently legal notice dated 7th May 1986 was issued terminating the tenancy on the ground that there is breach of clause (1) of the tenancy agreement in paying rent and all the future increases in municipal or other rates and taxes levied and the arrears of such increases by the Society amounts to Rs.13,430/- i.e. Rs.790/-p.m. for December 1984, Rs. 9,480/- for the year 1985 and Rs.3,160/- upto April 1986. By communication dated 5th June 1986, the defendant stated that every month rent was being paid inclusive of permitted increases amounting to Rs.645/- p.m, however since January, 1985 the plaintiff has refused to accept the same, that the plaintiff has falsely and dishonestly claimed rent of Rs.790/- p.m. and that it appears that the Society is levying non occupancy charges and sinking fund and repair charges which is sought to be claimed as rent although such amount is not payable by the defendant. There was no tender of the amount demanded. By rejoinder dated 16th June, 1986, the Plaintiff stated that the original rent was Rs. 325/- p.m. and as Defendant agreed to pay non occupancy charges

and other charges leviable by Society, the rent paid was Rs. 465/- p.m. till 1st January, 1981, thereafter the rent paid was Rs. 645/- p.m. and thereafter Defendant was liable to pay from December, 1984 Rs 790/- p. m.

3. As the Defendant did not vacate the suit premises, the plaintiff filed R.A.E. & R. Suit No. 1026/3130 of 1986 for eviction initially on ground of arrears of rent. It was pleaded that as per Clause 2 (1) of the tenancy agreement, the Defendant had agreed to pay the reserved rent and other future increase in Municipal or other rates and taxes levied and that the Defendant is in arrears of rent of Rs.13,430/- from December, 1984 to April, 1986 @ Rs.790/- p.m. The ground of bonafide requirement was incorporated subsequently by way of amendment pleading that the suit premises was reasonably and *bona fide* required for the occupation of Plaintiff and her daughter. It was pleaded that presently the Plaintiff is residing with her father and she has no premises of her own to reside in the city of Mumbai or anywhere else. That, the plaintiff is getting old and wants to get her daughter married and the Plaintiff's daughter and the Plaintiff have decided that after marriage also both will stay together so that the daughter can take care of the Plaintiff. That, the plaintiff cannot stay with her father as her father now does not want to keep her as there is a generation gap between the plaintiff and father. It was also pleaded that no

hardship will be caused to the defendant as defendant is financially sound and has acquired suitable residential accommodation at “Sharda Building”, Churchgate, ‘A’ Road, Mumbai. That, the defendant has plenty of premises where they can accommodate their servants and defendant has got several five star hotels in Mumbai. It was also pleaded that the premises were originally taken by Narang Hotels (P) Ltd which is dissolved and at present another Company’s servants are occupying the suit premises and as such there is illegal sub-letting and the premises is not being used for the purpose for which the same is let out vis the residence of their Directors and Executives.

4. The Suit was resisted by the defendant by filing its written statement dated 27 February 1987. It was contended that the notice dated 7th May 1986 purporting to be under Section 12(3)(a) of Bombay Rents, Hotel and Lodging House Rates Control 1947(Bombay Rent Act) is bad in law. It was contended that the demand of the plaintiff is in respect of the items not falling within the definition of term “Rent” under the Bombay Rent Act and that it was also denied that the rent amount is Rs. 790/- p.m. It was contended that the plaintiff seeks to recover from the defendant non occupancy charges, sinking fund etc which is not recoverable under the Rent Act. It was contended that even after filing of the Suit, the defendant has

tendered the monthly rent of Rs.645/- under their letter dated 22nd December 1986 after debiting the society charges paid by them. An additional written statement came to be filed on 6th April 1995 questioning the locus of the plaintiff as during this time original plaintiff has expired and the daughter of the original plaintiff was brought on record as the legal heir. A further written statement dated 13th August 1998 was filed by the defendant to the amended plaint denying the requirement pleaded by the Plaintiff.

5. The Trial Court framed and answered the issues as follows:

SR. NO.	ISSUES	FINDINGS
1	Whether the suit is maintainable ?	Yes.
2.	Whether the plaintiff prove that the defendant has committed default in payment of monthly rent for more than six months and as such become willful defaulter ?	Yes.
3.	Whether the defendants were and are ready and willing to pay the monthly rent ?	No.
4.	Whether the plaintiff prove that defendants have committed the breach of terms and conditions of the tenancy agreement as alleged ?	No.
5.	What is due from the defendants to the plaintiff ?	Nothing is due from defendants to the plaintiff.
6.	Does the plaintiff prove that she	Yes.

	requires the suit premises bonafide and reasonably for her own use and occupation ?	
--	---	--

6. Plaintiff examined herself and the defendant examined its employees viz Executive Engineer of the Defendant as DW-1, Chef as DW-2 and Assistant Manager of Food and Beverage Department as DW-3. The Trial Court by judgment dated 9th October, 2001 decreed the suit on the ground of arrears of rent and bonafide requirement as against which Appeal No.73/2002 was filed which came to be rejected by judgment of the appellate Court dated 28th September 2005.

7. Heard Mr. Piyush Raheja, learned counsel appearing for the petitioner and Mr. Govilkar, learned Senior Advocate for Respondent No.1.

8. Mr. Raheja, learned counsel for the petitioner points out the findings of the trial Court on the issue of arrears of rent and submits that there was no basis to arrive at a finding that the defendant was liable to pay from December 1984 at Rs.790/- p.m. especially when in response to the demand notice the same was specifically disputed. He submits that after holding that in normal course the provisions of Section 12(3)(b) of the Rent Act will be attracted, the trial Court has, by relying on the tenancy agreement misinterpreted clause (1) of the agreement and held that the defendant was paying rent of Rs.790/- p.m. which includes the basic rent of

Rs.325/- p.m. plus increases in taxes and levies and non occupancy and other charges etc. from time to time. He would submit that the provisions of Section 12(3)(b) would be applicable in the present case and not Section 12(3)(a). He submits that the admitted position is that the arrears of rent were deposited on the first date of hearing of the Suit within time and was thereafter regularly deposited rent in the Court and the Trial Court has held that if provisions of Section 12(3)(b) of the Bombay Rent Act are applied, provision have been complied with and the suit cannot be decreed on ground of arrears of rent.

9. As regards reasonable and *bona fide* requirement, he submits that the apprehension of objection to her residence by the brother as the current residence is owned by the Plaintiff's brother, is falsified by the factual position that the Plaintiff, her daughter and her son in law are residing together in the current residence. He further submits that the same apprehension would arise even in respect of suit premises as the same is co-owned by the Plaintiff. He further submits that during the pendency of the proceedings, the Plaintiff's daughter Devika got married and as such the requirement no longer exists. He would submit that in the present petition an additional affidavit has been filed as the Petitioner has recently come to know that the plaintiff's brother had instituted a Suit for eviction against one

other tenant on the ground of *bona fide* requirement of residence of the Plaintiff which has been decreed and the fact has been suppressed by the Plaintiff. He would further point out that the acquisition of an alternate premises has not been held to be an alternate suitable accommodation within the meaning of Section 13(1)(l) of the Bombay Rent Act. Applying the same analogy he would submit that the said acquisition cannot be considered even for the purpose of considering comparative hardship. In support of his submissions he relied upon the following decisions:

1. *Gulabbai vs. Nalin Narsi Vohra and Ors., (1991) 3 Supreme Court Cases 483;*

2. *Kedar Nath Agrawal (Dead) and Ors. Vs. Dhanraji Devi (Dead) by Lrs. And Ors., Civil Appeal No.41 of 2000, The Supreme Court of India;*

3. *Ibrahim Abdulrahim Shaikh (Dead) by Lrs. vs. Krishnamorari Sripatlal Agarwal, (1995) 1 Supreme Court Cases 265*

10. *Per contra*, Mr. Govilkar, learned Senior Advocate for the respondent submits that upon the death of original plaintiff, present respondent being the daughter of original plaintiff has acquired ownership rights of her mother in the suit premises. He further submits that the suit was filed in the year 1986 and the position in the year 2023 cannot be the same. He submits that the management of the Petitioner did not step in the witness box and evidence was led by its three employees. He submits that

hardship pleaded was that the premises is required for accommodating cooks of the hotel, absent which there would be loss of business. He submits that admittedly there are no efforts made by the defendant for acquiring alternate premises. He submits that after the receipt of demand notice, defendant had neither paid the admitted amount of arrears of rent nor filed an application under Section 11(3) of Rent Act and as such is liable for eviction. He submits that the assumption was that rent was being paid, however, there is no record of continuous payment. He would submit that the settled position is that any mistake in demanding the excess amount will not invalidate the notice. In support of his submissions he relied upon the following decisions:

- 1. Lalji Lachhmandas vs. Amiruddin, 1998(3) Mh. L. J., 237;*
- 2. Pratapsingh Mohansingh Pardeshi (deceased) through LRS. vs. Laxmikant Revachand Bhojwani and Anr., 1994(3) Bom. C.R. 188;*
- 3. Tarabai Makbulkhan Bargir vs. Tarabai Dashrath Shinde, 2005(1) RCR 21;*
- 4. Shashikant Govind Kulkarni and Ors. vs. Mahalaxmi Co-op. Bank Ltd. , 2001(1) Mh. L. J. 131;*
- 5. Jitender Kumar Jain & Ors. vs. J. K. Horticultural Produce Marketing & Processing Corporation Ltd., 2005(1) R.C. R. 310;*
- 6. R. K. Khanna vs. Janak Raj Singh, 1991 (2) R. C. R. (380);*
- 7. Meenal Eknatji Kshirsagar vs. Traders and Agencies and Anr., 1997(1) Mh. L. J. 121;*

8. Manikchand vs. Vijay Kumar , 1997 (1) R.C.R. 13 and

9. D. Sasi Kumar v/s. Soundararajan, (2019) 9 S. C. C. 282

11. Considered the submissions and perused the record.
12. The suit has been decreed on the ground of arrears of rent and reasonable and *bona fide* requirement of the plaintiff. On the aspect of arrears of rent, the submissions of the learned counsel for the parties centered around the provisions of Section 12(3)(a) and (b) of the Bombay Rent Act. Two fold submissions were raised by Mr. Raheja firstly that the Trial Court mis-interpreted Clause 1(2) of the Tenancy Agreement as the demand for the Society's non occupancy charges, sinking fund etc., does not amount to standard rent or permitted increases and secondly that as dispute was raised, Section 12(3)(a) had no application and Section 12(3)(b) applied of which there was compliance. Before proceeding further it would be beneficial to refer to provisions of Section 12 pre-1987 amendment which reads thus:-

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

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of

the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court such rent and permitted increases till the suit is finally decided and also pay costs of the suit as directed by the Court,

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

Explanation-I- In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub section 3 of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by this Court.

Explanation II For the purposes of sub-section (2), reference to “standard rent” and to “permitted increases” shall include reference to “interim standard rent” and “interim permitted increase” specified under sub-section (3) or (4) of section 11.

Explanation III For the purposes of this section, where a tenant has deducted any amount from the rent due to the landlord under section 173C of the Bombay Municipal Corporation Act for recovery of any water tax or charges paid by him to the Commissioner, the tenant shall be deemed to have paid the rent to the extent of deduction so made by him.”

13. Section 12 of the Bombay Rent Act prohibits the landlord from recovering possession of any premises as long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. In case of dispute as to standard rent and permitted increases, the tenant is deemed to be ready and willing to pay such amount, if before expiry of period of one month after demand notice, he makes an application under Section 11(3) and thereafter pays or tenders the amount as specified by the Court. Section 12(3)(a) applies in case of failure to pay the arrears of six months within one month of receipt of demand notice if there is no dispute as regards standard rent or permitted increases. Section 12(3)(b) provides that in other cases the decree of eviction shall not be passed if on the first date of hearing of the Suit the tenant pays or tenders in Court the standard rent or permitted increases and thereafter continues to pay the same regularly.

14. Relying upon the decision of Apex Court in the case of **Ibrahim Abdulrahim Shaikh Vs Krishna Morari Sripatlal Agarwal** (supra), Mr.

Raheja contends that the Apex Court has held that only the dispute about standard rent is to be raised within one month and it is not necessary that the application for determination of standard rent must be filed within period of one month. The submission cannot be accepted. In **Ibrahim Abdul Rehim Shaikh** (supra), the Apex Court only laid down that after an application for standard rent is made, it is not necessary for the tenant to further make an application under Section 11(3) for fixation of interim rent within one month. In **Harbanslal Jagmohandas Vs Prabhudas reported in AIR 1976 Supreme Court 205**, the Apex Court has held that the tenant can claim protection from operation of Section 12(3)(a) of the Act only if the tenant makes an application within one month of service of notice terminating the tenancy by raising a dispute as to standard rent. Admittedly, in the present case, the application for fixing of standard rent was made in the year 1988 whereas the demand notice was issued on 7th May, 1986. The decision of **Ibrahim Abdul Rehim Shaikh** (supra) does not assist the case of the Petitioner.

15. In the present case, in the response to the demand notice, the Defendant by its reply dated 5th June, 1986 disputed the rent amount of Rs. 790/- and has stated that the amount includes the occupancy charges and sinking fund levied by the Society which was not payable by the Defendant.

It is also stated that the Defendant has been regularly paying Rs 645/ per month (inclusive of permitted increases) which the Plaintiff has refused to accept since January, 1985. The admitted position is that the undisputed amount of Rs.645/- p.m. month was not paid since January, 1985. As the demand was made for sum of Rs.790/- p.m, which according to the Defendant was excessive, it was incumbent on the Defendant to at least tender the arrears of undisputed amount of Rs.645/- p.m within a period of one month to avoid eviction under Section 12. In ***Chaganlal vs Narayan Jagannath reported in 1983 MHLJ 251***, Division Bench held in paragraph No.12 thus:

“The normal rule is that a notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding any fault. A notice under section 12(2) of the Bombay Rent Act is a communication between the landlord and the tenant and both the parties know the rights and liabilities about the payment of rent. Hence any mistake in making a demand for the larger amount would not render the notice invalid. Any mistake as regards quantum of rent would not make the notice bad. It is possible that in a particular case the landlord may make a false and untenable demand of a certain amount along with a claim about which there would be no dispute. In such a case the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time when the suit is decided the claim is proved to be false the tenant obviously would be protected as he had made the payment of the amount that was actually due but he will not be able to resist the same if within one month from the notice, he had not paid even the amount to which the landlord was entitled. Even in such a

case the tenant is under an obligation to remit within the prescribed time the permissible amount payable by him. Of course he will have to take the risk if ultimately the Court finds that such payment would not cover all the arrears. In case of such a finding the landlord would be entitled for a decree for possession. There would not be such a decree if the payment was sufficient to clear' of all the arrears which were payable to the landlord. Everything, thus, will depend upon the facts of each case but primarily one has to proceed on the basis that the notice should be construed liberally and not with a view to find fault with it."

16. Despite accepting that the undisputed rent amount of Rs. 645/- per month was not paid since January, 1985, the Defendant neither tendered the arrears of rent, not even the undisputed amount nor filed an application for standard rent within a period of one month. The Trial Court considered the documentary evidence, i.e. the rejoinder dated 16th June, 1986 to the reply to the demand notice which rejoinder specified that the original rent was Rs. 325/- p.m. and because of increases, the Defendant started paying rent @ Rs. 465/- p.m. till first November, 1981, thereafter @ Rs. 645/- p.m. upto November, 1984 @ Rs. 790/- p.m. and has come to a finding that the Defendant had paid the rent upto November, 1984 at Rs. 790/- p.m. month and the demand for rent was as per the agreed rate of monthly rent of Rs. 790/- and there was no excessive rent demanded. The findings of the Trial Court based on oral and documentary evidence on record do not suffer from any perversity.

17. The Appellate Court considered the deposition of the Plaintiff that the rent of Rs.790/- p.m. included the permitted increases and that the premises were let out on monthly rent of Rs.325/- which increased from time to time. The Appellate Court relied upon the decision in the case of *Tarabai Makbulkhan Bargir Vs. Tarabai Dashrath Shinde, Writ Petition No.2021 of 1992 (Bombay High Court)* and the decision in the case of *Shashikant Govind Kulkarni and Ors. vs. Mahalaxmi Co-op Bank Ltd., 2001(1) Mh. L. J. 131* wherein it was held that even if demand is excessive, it is duty of the tenant to offer at least agreed rent within period of one month from receipt of the suit notice or at least raise dispute regarding standard rent to save himself from rigors of Section 12(3)(a) of the Rent Act and when this is not done he is liable for eviction. Considering the material on record and the findings of the Trial Court and Appellate Court, the provisions of Section 12(3)(a) of the Rent Act were rightly applied in the present case.

18. As regards reasonable and *bona fide* requirement, the admitted position is that the current residence of the Plaintiff is owned by her brother. It does not make any difference whether the suit premises is owned or co-owned by the Plaintiff as it cannot be disputed that the suit premises belonged to the Plaintiff's mother and the Plaintiff's mother has nominated

the Plaintiff in respect of the suit premises. At the time of institution of the suit in the year 2001, the requirement was that the Plaintiff wants her daughter to get married and it was decided that even after marriage, the Plaintiff and her daughter will reside together. The desire of the plaintiff to reside in her own premises vis-a-vis premises belonging to her brother, along with her daughter and son-in-law cannot be stated to be unreasonable and can only be termed as genuine, honest, reasonable and *bona fide* requirement. It is not necessary for the Plaintiff to wait for an action of eviction to be taken by her brother and it is sufficient to plead and establish her requirement to reside in her own premises. It is settled that the landlord is the best Judge of his requirement and it is not for the Court or anyone to dictate as to the manner in which he should reside or the premises in which he should continue to reside. It will be profitable to refer to the decision of the Apex Court in ***Shiv Sarup Gupta vs Maheshchand Gupta (1989) 6 SCC 222***, where the Apex Court held thus:

“The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of

landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the armchair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

19. The Trial Court rightly held that the desire of the plaintiff to reside in her own house at the verge of retirement from the employment cannot be said to be unreasonable and malafide requirement.

20. The subsequent event of marriage of the plaintiff's daughter does not alter the situation. As held in the case of **Gaya Prasad Vs Pradeep**

Srivastava reported in (2001) 2 SCC 604 that the subsequent event which overshadows the genuineness of the need must be of such a nature and of such a dimension that the need propounded by the petitioning party should be completely eclipsed by the subsequent event. There is no quarrel with the proposition of law laid down in **Gulabbai vs Nalin Narsi Vohra and Others** (supra) and **Kedar Nath Agrawal (Dead) and Ors Vs Dhanraji Devi (Dead) By Lrs and Ors** (supra). In the instant case, in the plaint itself it was pleaded that it was decided by the plaintiff and her daughter that even after marriage they will be staying together and it is now established that the plaintiff along with her daughter and son-in-law are staying in her brother's residence. As such the subsequent event of the marriage of the Plaintiff's daughter does not eclipse the need pleaded. Further the requirement pleaded was not only for the Plaintiff's daughter but for the Plaintiff herself as well.

21. As regards the contention raised in the additional affidavit that the plaintiff's brother has filed proceedings against some other tenants for eviction for the purpose of settling her sister cannot be considered as the same was not part of the proceedings. In any event, if any such proceedings had been filed, the same has not been filed by the plaintiff but by her brother. Even if other premises as claimed by the plaintiff's brother is claimed for securing shelter for the plaintiff, the plaintiff's desire to reside in

her own house cannot be termed to be unreasonable requirement. The Trial Court has rightly observed that even if the current residence is in the best locality i.e. Marine Lines, the fact remains that it is the tenanted premises given by her brother to her father.

22. On the issue of comparative hardship, the suit premises is being used for accommodating the cooks of the Defendant and it has come on record that the Defendants have acquired premises for their office on the ground floor of Sharda Building on ownership basis and tenanted flats on 2nd and 3rd floor and subsequently flat nos. 2, 3 and 5 have been acquired on ownership basis. The hardship pleaded by the Defendant is that the cooks who are residing in the suit premises are required for attending the hotel at any time and in case of emergency the presence of cook in hotel is required at any time. The trial Court rightly observed that as the suit premises are being used by the cooks at the most defendants would suffer financially and would not amount to hardship as the cooks can be accommodated elsewhere. Against the Plaintiff's desire to reside in her ownership premises along with her daughter and son-in-law, the loss of business pleaded by Defendant as hardship tilts the scales in favour of the Plaintiff. Admittedly, the Plaintiff does not own any other premises whereas the Defendant has not only bought several flats for its employees but is also financially capable

to acquire other premises for its employees. In my view, as the hardship pleaded by Defendant is of accommodating its employees, the issue of comparative hardship must be answered against the Defendant.

23. Even on issue of comparative financial capabilities, the scales of comparative hardship will tilt in favour of the Plaintiff. The Appellate Court considered that the plaintiff has no other premises and as against this the defendant has acquired another suitable premises and had also acquired number of premises to accommodate their employees and answered the issue in favour of the plaintiff. DW-3 has deposed that she searched for alternate accommodation by making calls to Estate Brokers, however there is no result. The Appellate Court has rightly held that the statement is without any particulars. This Court in the case of **Suhasini Atmaram Parab vs B.H. Khatu & Ors** reported in **2003 (1) Bom CR 733** has held in paragraph 5 as under:

“5..... On the other hand, the tenant has not only to plead but, also prove the fact that it is impossible to get any other alternative accommodation in the city. If the tenant fails to do so, the issue will have to be answered against the tenant..... The Court has to take into account all the attending circumstances and if the tenant has failed to plead and prove the fact that it is impossible to get alternate accommodation in the same locality or for that matter, in the same city, then the issue will have to be answered against the tenant. Besides, the respondent No. 1 tenant was obliged to establish that during the long drawn pendency of litigation just as this case since 1973, he made sincere attempt to

secure alternative accommodation and was unable to get it. In other words, the tenant cannot remain idle, awaiting for the result of the suit. In the case of Narayan Patil (supra) this Court has observed that the landlord cannot be forced to live in an inhuman condition only because the tenant may suffer decree of eviction. In that case, the Court took into account that even after the decree was passed by the trial Court and, five years had lapsed thereafter, by no stretch of imagination can it be said that such time was not sufficient for the tenant to secure alternative accommodation further when hardship was to be caused to both then there can be no reason why the landlord should be deprived of the decree.”

24. From the evidence of DW-3, it is evident that the Defendant has failed to establish and prove that it is impossible to get any other alternative premises. This aspect assumes further importance as the judgment of the the Appellate Court records that in the evidence it has been admitted that Defendants have purchased Flat No 2, Flat No 3 and Flat No 5 in Sharada Building for their employees. It therefore cannot be accepted that the tenant could not have acquired alternate premises despite best efforts.

25. Much has been sought to be canvassed by the learned counsel appearing for the petitioner on the issue framed by the Appellate Court as regards the acquisition of suitable alternate accommodation that the Appellate Court in answering the issue has held that even though three flats were purchased, it cannot be said to be alternate suitable accommodation

within the meaning of Section 13(1)(1) of the Rent Act. The provisions of Section 13(1)(1) applies to a case where landlord seeks to recover possession from the tenant on the ground that the tenant has acquired vacant possession or has been allotted a suitable residence. However, the Appellate Court has rightly considered that issue is relevant for considering the hardship which is going to be caused to the defendant and answered the issue in the landlord's favour.

26. The Appellate Court has rightly confirmed the findings of the Trial Court. Under Article 227 of Constitution of India, this Court will correct errors of jurisdiction committed by the fact finding Court where the orders are passed without jurisdiction or in excess of jurisdiction. Having gone through the records and proceedings, in my view, there is no perversity or jurisdictional error in ordering eviction of the Defendant from the suit premises on ground of arrears of rent and bonafide requirement. Hence, no case is made out to interfere with the concurrent findings of the Trial Court and the Appellate Court.

27. Having regard to the above, the petition is dismissed. Rule stands discharged. The Applicant is given time of two months to vacate the suit premises.

(SHARMILA U. DESHMUKH, J.)