

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.224 OF 2024**

Jayprakash Dnyandeo Narkar

*....Applicant
(original Defendant No.1)*

V/s.

1. Damji Ramji Shah
2. Dhirendra Babulal Shah
3. Jitendra Babulal Shah

*....Respondents
(original Plaintiffs)*

4. Ajay Dyandeo Narkar
5. Mohan Dyandeo Narkar
6. Kishore Dyandeo Narkar Alias
Kishore Dnyandeo Narkar
7. Asha Dyandev Narkar (deleted)
since deceased.

*....Respondents
(Defendant Nos.2 to 5)*

WITH

CIVIL WRIT PETITION NO.6730 OF 2024

Jayprakash Dnyandeo Narkar

*....Petitioner
(original Defendant No.1)*

V/s.

1. Damji Ramji Shah
2. Dhirendra Babulal Shah
3. Jitendra Babulal Shah

*....Respondents
(original Plaintiffs)*

4. Ajay Dyandeo Narkar
5. Mohan Dyandeo Narkar
6. Kishore Dyandeo Narkar Alias
Kishore Dnyandeo Narkar
7. Asha Dyandev Narkar (deleted)
since deceased.

*....Respondents
(Defendant Nos.2 to 5)*

**Mr. Rajiv Patil, Senior Advocate i/b. Mr. Sachin S. Punde for the
Petitioner /Applicant.**

**Dr. Abhinav Chandrachud with Ms Unnati Ghia i/b. Mr. Chandraprakash
Mishra for Respondent Nos.2 and 3.**

Mr. Karl Tamboly i/b. Mr. Lalit V. Jain for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 18 July 2024.
Judgment pronouncement on : 23 July 2024

JUDGMENT :

1) Civil Revision Application No.224 of 2024 is filed challenging the Judgment and Decree dated 9 February 2024 passed by the Appellate Bench of the Small Causes Court, Mumbai dismissing the Appeal No.301 of 2022 and confirming the Judgment and Decree dated 21 October 2022 passed by the Small Causes Court in R.A.E. Suit No.804/1624 of 1996. The R.A.E. & R. Suit No.804/1624 of 1996 was filed by Plaintiffs seeking eviction of Defendants on various grounds *inter alia* of nuisance and annoyance and *bonafide* requirement of landlords. The Small Causes Court has decreed Suit of Respondent Nos. 1 to 3/Plaintiffs and has directed Applicant and Respondent Nos. 4 to 7 (original Defendants) to vacate the suit premises and handover possession thereof to the Plaintiffs.

2) Plaintiffs had instituted another Suit bearing No. R.A.E. & R. Suit No.599/889 of 2009 against Defendants seeking their eviction in respect of very same suit premises on the ground of non-user. Said R.A.E. and R. Suit

No.599/889 of 2009 has been decreed by the Small Causes Court by Judgment and Decree dated 8 January 2024, which is subject matter of challenge in Appeal No.46 of 2024 filed before the Appellate Bench. Original Defendant No.1/Petitioner filed application for stay of the decree, which has been rejected by order dated 10 April 2024, which is subject matter of challenge in Writ Petition No.6730 of 2024.

3) Briefly stated, facts of the case are that Plaintiffs purchased various buildings including Building No.433-451 situated at Sheetal Estate, M.S. Ali Road, Grant Road, Mumbai- 400 007. Plaintiffs are owners of about 10 to 12 buildings in the compound popularly known as 'Sheetal Estate'. Defendants are tenants in respect of Shop No.2 situated in building No.433-451 in Sheetal Estate on monthly rent of Rs.916/- inclusive of permitted increases. Said Shop No.2 is the suit premises in respect of both the suits. Originally Dnyandeo Narkar was the tenant in respect of the suit premises. After death of Dnyandeo Narkar, Defendants, who are heirs of said Dnyandeo Narkar claim tenancy in respect of the suit premises. It appears that a chemist shop was being run in the suit premises by name M/s. Novelty Chemist earlier by Defendants' father -Dnyandeo Narkar and subsequently by Defendants.

4) Plaintiffs instituted R.A.E. Suit No.804/1624 of 1996 against the heirs of Dnyandeo by impleading them as Defendants seeking recovery of suit premises on the grounds of (i) annoyance and nuisance, (ii) reasonable and *bonafide* requirement of landlord, (iii) carrying out additions and alterations of permanent nature without landlord's consent and (iv) causing injury and destruction to the suit premises within the meaning of Section

108(o) of the Transfer of Property Act, 1882. During pendency of R.A.E. Suit No.804/1624 of 1996, Plaintiffs instituted one more Suit bearing R.A.E. & R. Suit No.599/889 of 2009 against Defendants seeking eviction on the ground of non-user of the suit premises.

5) It appears that during pendency of both the Suits, upper floors of the building (except ground floor) came to be demolished in pursuance of notice issued by Maharashtra Housing and Area Development Authority (MHADA) since the same was in dilapidated condition. The suit premises were not demolished on account of its location on ground floor of the building. However, it appears that on account of the condition of the building and according to the Defendants, on account of directions of MHADA, the suit premises are not actually used by the Defendants.

6) R.A.E. Suit No.804/1624 of 1996 came to be decreed by the Small Causes Court on 21 October 2022. The Small Causes Court rejected the grounds of unauthorised additions and alterations as well as causing damage /injury to the suit premises. The Small Causes Court however accepted the grounds of annoyance and nuisance as well as *bonafide* requirement of the landlord and proceeded to decree the Suit directing the Defendants to vacate the suit premises. Defendant No.1-Jayprakash Dyandeo Narkar filed Appeal No.301 of 2022 in the Appellate Bench of the Small Causes Court challenging the decree dated 21 October 2022 passed in R.A.E. Suit No. 804/1624 of 1996. The Appellate Bench has however proceeded to dismiss the appeal by Judgment and Order dated 9 February

2024, which is subject matter of challenge in the Civil Revision Application No.224 of 2024 filed by Defendant No.1-Jayprakash Dnyandeo Narkar.

7) In the meantime, R.A.E. Suit No.599/889 of 2009 also came to be decreed by the Small Causes Court on 8 January 2024 by holding that the suit premises were not used by the Defendants continuously for more than six months prior to filing of the Suit. Defendant No.1- Jayprakash Dnyandeo Narkar has filed appeal No.46 of 2024 before the Appellate Bench of the Small Causes Court, which is pending. In the said Appeal, Defendant No.1 filed application for stay of the Trial Court's decree, which has been rejected by the Appellate Bench by order dated 10 April 2024, which is the subject matter of challenge in Writ Petition No.6730 of 2024. Though the stay application is rejected by the Appellate Bench, Plaintiffs have been directed to file an undertaking for restoration of possession of the suit premises subject to other litigations and also for restoration of possession in the redeveloped premises by putting the Defendants in possession of shop of same area in the redeveloped building.

8) Mr. Patil, the learned senior advocate appearing for Applicant /Defendant No.1 in Civil Revision Application No.224 of 2024 and for Petitioner in Writ Petition No.6730 of 2024 would submit that the Small Causes Court has erred in decreeing R.A.E. Suit No. 804/1624 of 1996. That the ground of *bonafide* requirement is erroneously accepted by the Trial Court in ignorance of the fact that Plaintiffs not only possessed several premises in numerous buildings purchased by them in the complex, but it has come in evidence that the Plaintiffs have secured possession of as many

as 112 tenements on account of filing of various suits against other tenants. That Plaintiffs suppressed the position of securing possession of various premises from different tenants from the Small Causes Court. The plaint was couched as if the suit premises are the only premises of which possession could be sought for *bonfide* requirement of Plaintiffs. That Plaintiffs run a large shopping mall like store in the complex and it cannot be stated that minuscule portion admeasuring 360 sq. ft. of Defendant's shop can satisfy any need of Plaintiffs. That the Trial and the Appellate Court have failed to appreciate the concept of *bonafide* need in relation to landlord-tenant dispute and has considered the entire case in the context of commercial needs of the Plaintiffs. He would submit that the real reason why Defendants are sought to be evicted from the suit premises is the redevelopment process undertaken by Plaintiffs and *bonafide* need is merely a guise projected by the Plaintiffs for denying alternate accommodation to Defendant in the redeveloped building. He would submit that Plaintiffs have secured NOC from MHADA upon submitting an undertaking of accommodation of tenants in the redeveloped buildings and Plaintiffs are unnecessarily targeting the Defendants, when they are under obligation to give alternate premises to Defendants as well. That the entire process of redevelopment is suppressed not only from Defendants but also from the Court. That MHADA's NOC, if produced, would make the picture clear about the undertaking given by Plaintiffs to carry out redevelopment process. That having secured possession of premises from as many as 112 tenants, it cannot be stated by any stretch of imagination, that there is any *bonafide* requirement on the part of Plaintiffs in respect of the suit shop.

9) So far as the ground of nuisance is concerned, Mr. Patil would submit that disputes were going on between tenants and Plaintiffs since the year 1989 after Plaintiffs purchased the building. That after purchase of the building, Plaintiffs deliberately started harassing the tenants and merely because the tenants sought to protect their own rights against arbitrary actions of Plaintiffs, it cannot be stated that any nuisance or annoyance is caused to Plaintiffs within the meaning of Section 13(1)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**). That the demonstration against illegal actions of the landlord is a democratic right exercised by Defendants and the same cannot be construed as cause of nuisance and annoyance to the landlords. That therefore, the Trial and the Appellate Court have erred in accepting the grounds of nuisance and annoyance. He would therefore pray for allowing the Civil Revision Application by setting aside decrees of the Trial and the Appellate Court.

10) So far as the Writ Petition No.6730 of 2024 is concerned, Mr. Patil would submit that the Trial Court has committed an *ex-facie* error in decreeing the Suit on the ground of non-user. He would take me through photographs of building to demonstrate that the Defendants were left with no choice but to vacate the suit premises on account of dilapidated condition of the building. That since the entire building above ground floor is demolished, the ground floor structure has also become dilapidated. That therefore, the non-user of the premises is forced upon Defendants on account of notices issued by MHADA. The non-use is thus not voluntary and is directly attributable to the acts of Plaintiffs. That the Defendants have

sanguine hope of succeeding in the appeal and in such circumstances, the Appellate Bench ought to have allowed the application for stay. He would therefore pray for setting aside order dated 10 April 2024 passed by the Appellate Bench in the stay application.

11) *Per contra*, Dr. Chandrachud, the learned counsel for the original Plaintiffs would oppose the Revision Application as well as the Writ Petition. So far as the Revision Application is concerned, he would submit that cause of nuisance and annoyance by Defendants is conclusively proved before the Trial Court. That Plaintiffs gave detailed account of the repeated demonstrations, *morchas*, abusing, publication of news items/defamatory material, etc. against Plaintiffs by the first Defendant. That commission of these acts are not disputed by him, who actually admitted in the written statement that he committed the said acts. Relying on judgment of this Court in *Impex (India) Limited Vs. Dinashah Jal Daruwala and Others*,¹ he would submit that every act of tenant which seeks to interfere with landlord's peaceful use and occupation of his property would constitute nuisance and annoyance.

12) So far as the ground of *bonafide* requirement is concerned, Dr. Chandrachud would clarify that possession of 112 tenements is obtained only for the purpose of carrying out redevelopment process and that Plaintiffs are under obligation to grant permanent alternate accommodations to the said tenants. That therefore procuring of possession of the said 112 tenements

1. 2024 SCC OnLine Bom 999,

cannot dilute the *bonafide* requirement of Plaintiffs in respect of the suit shop, which is situated adjacent to the shop premises of Plaintiffs.

13) Dr. Chandrachud would submit that the Small Causes Court and its Appellate Bench have recorded the concurrent findings on the issues of *bonafide* requirement and nuisance /annoyance, which do not warrant any interference in revisionary jurisdiction of this Court.

14) So far as Writ Petition No.6730 of 2024 is concerned, Dr. Chandrachud would submit that the Appellate Bench has directed Plaintiffs to file undertaking for restoration of possession of the Defendants in respect of same area in the redeveloped building in the event they succeed in the appeal. That therefore, no prejudice is caused to Defendants on account of refusal of stay. Taking me through various findings of the Small Causes Court, he would submit that Defendants had stopped using suit premises, much before issuance of MHADA notice. That licenses required for running of pharmacy were not procured by the first Defendant for a long time before issuance of notices by MHADA, thereby demonstrating non-use of the premises. He would pray for dismissal of the Writ Petition.

15) Mr. Tamboly, the learned counsel appearing for Respondent No.1 would adopt the submissions of Dr. Chandrachud.

16) Rival contentions of the parties now fall for my consideration.

17) Plaintiffs' Suit has been decreed on twin grounds (i) cause of nuisance and annoyance to landlords and to other occupants and neighbours and (ii) *bonafide* requirement of landlords. The Appellate Bench has upheld the findings of the Small Causes Court on both the issues, of nuisance /annoyance as well as *bonafide* requirement of Plaintiffs. Thus, there are concurrent findings on both the issues against the Revision Applicant.

18) So far as the ground of nuisance/annoyance is concerned, Plaintiffs pleaded case in the Plaint was as under:

7. The Plaintiffs state that the Defendant No.1 who is occupying the suit premises and who is doing the business thereat under the name and style of "Novelty Chemist" does not like Plaintiffs purchasing the buildings of Sheetal Estate. The Plaintiffs state that since that day he started a sort of campaign against the Plaintiffs, Plaintiffs family members and Plaintiffs said Shop Sheetal.

8. The sole purpose of the Defendants No.1 to do the aforesaid is just to create a movement against the Plaintiffs and to become the leader of the said movement in order to enable him to negotiate with the Plaintiffs on his own terms.

xxx

11. Being aggrieved by the aforesaid denial of the Plaintiffs, the Defendants No.1 has started a campaign against the Plaintiffs and his family members. He started publishing defamatory articles against the Plaintiffs and his family members. He started making false and bogus complaint against the Plaintiffs and their family members. The said complaints also includes the complaints of the buildings, about the business about the alleged harassments to various tenants.

12. The Defendants No.1 organised morchas just in the compound of Sheetal Estate and just in front of their shop Sheetal. The Defendants No.1 in the said process formed an association under the name and style of *Brahmanwadi Bhadekaru Sangh*. The Defendant No.1 started doing all his aforesaid work under the name of aforesaid Sangh.

19) In the written statement filed by first Defendant he did not really dispute his activities as alleged in the plaint and on the contrary pleaded in paragraph 12 of the Written statement as under:

12. With reference to the paragraph 12 of the Plaint, I say that the organization of the tenants which was named as *Brahmanwadi Bhadekaru Singh* had no other alteration than to protect against the illegal activities of the Plaintiffs.

20) First Defendant thus did not dispute allegation of protests through the tenants' association and he leading the same. On the contrary, he attempted to give justifications for formation of tenants' association and for protesting against Plaintiffs. In short, there is no denial to the position that the first Defendant organized *morchas* in the compound of Sheetal Estate and also in front of Plaintiffs' shop. First Defendant also did not dispute publication of news items in the newspapers, but sought to blame Plaintiffs' conduct for the same.

21) Thus, the activities of the first Defendant of organizing *morcha* and protesting against Plaintiffs in front of their shop has been proved on account of Defendant's own admissions in the written statement. It is Mr. Patil's contention that mere holding demonstrations against illegal activities of landlord cannot constitute nuisance or annoyance. Mr. Patil has submitted that there were valid reasons for organizing demonstrations against illegal activities of Plaintiffs, who had filed various suits against tenants and made illegal construction in the compound, demolished toilets meant for shop keepers, etc. That the demonstrations and protests were organized in view of the said illegal activities of Plaintiffs, which are taken note by the newspapers on their own. I am unable to agree with the contention of Mr. Patil that the activities undertaken by the first Defendant do not constitute annoyance or

nuisance for landlords within the meaning of Section 13(1)(c) of the Bombay Rent Act. In *Impex (India) Ltd.* (supra) I had an occasion to consider the issue as to whether trespass by the tenants at landlord's property and obstructing him from using his own property causes nuisance and annoyance to landlords, who were not residing in the said property. It was contended on behalf of the landlords therein that any interference caused by tenants for use of open land belonging to them constituted nuisance and annoyance. This Court has accordingly considered various judgments on the scope of the term 'nuisance and annoyance'. This Court considered the judgment in *Gulam Husain Mirza vs. Laxmidas Premji*,² and held in paragraph 92(iv) as under:

92(iv). ...

- iv. Mr. Khambata has relied on judgment of this Court in *Gulam Husain Mirza* (supra), in which a Single Judge of this Court has dealt with validity of eviction decree passed against the tenant under Section 13(1)(c) of the Bombay Rent Act. The landlords in that case were occupants of second floor premises in the same building and the tenant occupied three rooms on the third floor and one room called the terrace room on the top floor. The landlord complained of the tenant trespassing on the entire terrace on the top floor of the building and alleged that the tenant was using the entire terrace as a part of his exclusive property by putting stones, mud, flowering plants etc. The question before the Single Judge of this Court was whether such conduct was covered by the words "nuisance" or "annoyance". This Court held in paras-13, 14, 16 and 19 as under:

13. In *Walter v. Gelfe*, 20 LJ Ch 435, Knight-Bruce V.C. observed that the nuisance is an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober simple notions among the English people. This test was approved in the case of *Tod-Heatley v. Benham*, [L.R.] 40 Ch. 80, Talbot, J. in *Gunard and Wife v. Antifyre Ltd.*, [1933] 1 K.B. 551 observed that private nuisance could be confined to that which is injurious to property. In *Read v. Lyons & Co. Ltd.*, [1945] K.B. 216, Winfield's proposition that the nuisance is the unlawful interference with a

2. 1983 SCC OnLine Bom 301

person's use of enjoyment of land, or some right over or in connection with it was cited with approval and was further affirmed in other cases, such as *Howard v. Walker*, [1947] 2 All ER 197, and *Newcastle-under Lyne Corporation v. Wolstanton Ltd.*, [1947] Ch. 92. In *Buller v. Standard Telephones and Cables Ltd.*, [1940] 1 K.B. 399 injurious encroachment by the roots of a tree going underneath a house was treated to be an actionable nuisance. In *Harrison v. Good*, LR 11 Eq. 338 Becon V.C. observed that unless the nuisance complained of is one for which an indictment would lie, or an action could be maintained, it is no nuisance within the terms of the convenient which was being considered and further found that the establishment of a national school with playground for boys in the vicinity of a residential property would not be a nuisance, though it would be an annoyance. Lindley L.J. in *Tod-Heatley v. Benham* referring to those cases thought that the term appeared to be restrictively interrupted while Bowen L.J. doubted the correctness of the interpreted. The decision of the learned Lord Justice in *Tod-Heatley v. Benhman*, goes to show that the term "annoyance" is also of very side amplitude. Cotton, Lord Justice asked now what is the meaning of annoyance? The meaning is that which annoys, that which raises objection after and unpleasant feeling. Anything which raises an objection, in the minds of reasonable men may be an annoyance within the meaning of the covenant, while Bowen Lord Justice observed that it implies more, as it seems, then nuisance and further stated that it was clear that if annoyance and nuisance were put together in a convenient of the kind which was being considered, it should mean something different from each other. The learned Lord Justice further observed:

"Any material interference with the ordinary comfort of existence; that would be a nuisance..." "Annoyance" is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but of the ordinary sensible English inhabitant of a house-if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance although it may not appear to amount to physical detriment to comfort."

14. **Therefore, whatever causes material interference with the ordinary comfort of existence would be nuisance and anything that disturbs the reasonable peace of ordinary person and leads to unpleasurable feeling, would be annoyance.** Jessel M.R. In *Watson v. Loasington College*, 25 SJ 30, said that it might perhaps be difficult to appreciate the difference between "nuisance" and "annoyance", but as both words were used, "annoyance" evidently meant something less than "nuisance", while *Tod-Heatley v. Benham* (supra), "annoyance" was treated to have a wider meaning than "nuisance".

16. Thus, the legal comprehension that encompasses these terms appears to be well-settled. Though the terms are of very wide amplitude covering variety of circumstances and cannot be fenced by any definite meaning, **whatever causes material interference with the ordinary comfort of human existence would,**

surely be the nuisance, while that which annoys, irritates or is offensive and has tendency that would evoke reasonable injection and leading to unpleasant feeling amongst persons, would be annoyance.

19. As the section itself shows, it is the conduct that thereunder comes in issue. While considering nuisance and annoyance, that conduct on behaviour complained of will have to be objectively appreciated. It may have relation either to the rights and enjoyment of the property or other rights and entitlements of persons who, as ordinary men, are entitled to have peaceful, trouble free and ordinarily comfortable situation. These entitlements are basic in human society. These are to be judged by the given standard or norms available in such society, a given conduct adversely affects such entitlement or encroaches there upon, then the conduct would be within the mischief of the clause. One must hasten to add that the phrase employed by the statute being of wider amplitude, there is always a possibility of overstraining the meaning so as to include even the trifle and trivial matters. That is why every conduct should be judged in the context, and fairly. Without being elaborate and exhaustive, it can safely be said that all that conduct which is offensive, quarrelsome or violent, unethical in just a position of peaceful, civil and by ordinary standard unethical would be within the mischief. Matters of physical assaults by one against other would attract squarely the clause so also to other types of subtle assaults that offend human senses. Such acts may affect the peace and interfere with the pleasurable enjoyment of the property and, consequently, be within them mischief. Similarly, cases where property is trespassed upon and appropriated to one's own use to the exclusion of others' entitlement would be within the mischief of nuisance. Whenever question arises under the clause, first the conduct or behaviour that is in issue should be fairly and objectively ascertained and then, secondly, its effect in relation either to the property or the persons occupying the property should be taken into account All this should be done in keeping with the social background of the given society, having norms of reasonable peace, comfort and enjoyment as well as in the light of the entitlements of the occupiers regarding the specific property. Having considered all these three aspect, if the conclusion is reached that the conduct was such which affected or tended to affect the reasonable entitlements of ordinary normal expectations of life, then all that this clause intends would be clearly answered.

Thus in *Gulam Husain Mirza*, this Court by referring to various English cases held that the term "nuisance" is of wide amplitude. **This Court therefore held that whatever causes material interference with the ordinary comfort of human existence would be nuisance and acts that disturbs the reasonable peace of ordinary person and leads to unpleasant feeling, would be annoyance.** This Court further held that cases where property is trespassed upon and appropriated to one's own use to the exclusion of others' entitlement, would be within the mischief of nuisance. This Court therefore held that the conduct of tenant in trespassing on the

entire boundaries and putting the same to his exclusive use caused nuisance and annoyance to the landlord.

(emphasis added)

22) After considering various judgments on the subject, this Court held in paragraph 93 of the judgment in ***Impex (India) Ltd.*** as under:

93. Thus, from various judgments cited on the issue of nuisance and annoyance, it can be inferred that every act of tenant which interferes with landlord's right to use or occupy his property would amount to actionable nuisance. In Gulam Husain Mirza this Court has gone to the extent of holding that every act of a tenant which disturbs the reasonable peace of ordinary person and which leads to unpleasurable feeling would constitute nuisance or annoyance. No doubt in Awabai Muncharji Cama the Single Judge of this Court (S.K. Desai, J.) has struck a sort of discordant note qua the observations in Gulam Husain Mirza, but the learned Judge himself has clarified that his observations are obiter. It therefore cannot be contended that in Awabai Mansarji Cama, S.K. Desai, J. disagreed with the view taken by Masodkar, J. in Gulam Husain Mirza. **Infact, A.M. Khanwilkar, J. has subsequently followed *Gulam Husain Mirza's* decision in *D.V. Panse*. I am therefore of the view that every act of tenant which seeks to interfere with landlord's peaceful use and occupation of his property would constitute nuisance and annoyance, especially when the landlords property adjoins that of tenanted premises.** A tenant cannot trespass upon landlord's property, obstruct him from using his own property and then contend that the same does not constitute nuisance or annoyance. A tenant has no business to interfere with landlord's use and enjoyment of his own property and if he does so, his act would be covered in the mischief of nuisance and annoyance.

(emphasis & underlining supplied)

23) Thus, in ***Gulam Husain Mirza, D.V. Panse (Major) and another V/s. Laxminarayan Khar and another,***³ and ***Impex India Ltd.*** a view has been taken that every act of tenant, which seeks to interfere with the landlord's peaceful use and occupation of the property would constitute nuisance and annoyance. In the present case, the first Defendant has admittedly organized

3. (2002) 4Mah LJ 190

morchas, demonstrations and protests in front of shop of the Plaintiffs. He has thus, interfered with landlord's peaceful use and occupation of his property. Therefore, the acts of the first Defendant do constitute nuisance and annoyance. I therefore, do not find any palpable error in the concurrent findings of facts recorded by the Small Causes Court and the Appellate Bench on the issue of nuisance and annoyance.

24) So far as the ground of *bonafide* requirement is concerned, it must be borne in mind that it is just an additional ground for seeking eviction after Plaintiffs are successful in proving the ground of nuisance and annoyance. Even the ground of *bonafide* requirement is concurrently held to be proved by the Small Causes Court and its Appellate Bench. Plaintiffs pleaded in the plaint that their shop 'Sheetal' is at M.S. Ali Road, adjacent to the suit premises. That the business of Plaintiffs was growing and they needed suit premises for expanding business activities. Both the courts below have concurrently held that the landlord is the best judge of his own requirement. The sheet anchor of the Revision Applicant is the defence that Plaintiffs obtained possession of 112 rooms from other tenants by virtue of decrees passed in Suits instituted against them. Therefore, according to the first Defendant, Plaintiffs already possessed sufficient alternate premises to satisfy their alleged requirement.

25) Mr. Patil has taken me through the evidence of PW1 to drive home the point that there are specific admissions about securing possession of 112 tenements through decrees passed in 112 suits. However, if the evidence of PW1 is carefully perused, though he has admitted receipt of possession of

112 tenanted premises, he has clarified the admission with a caveat '*it is true to say that as per said NOC-(Exh.65), I had to provide permanent alternate accommodation to the concerned tenants*'. Dr. Chandrachud has clarified that though Suits were instituted for eviction of several tenants, the tenants have agreed to surrender the premises in their occupation for the purpose of accepting the redeveloped premises. It is thus Plaintiffs' case that they are under obligation to grant alternate premises in the redeveloped buildings to the tenants from whom possessions are obtained. In fact, it is an undisputed position that all the floors except ground floor of the suit buildings have already been demolished. According to the first Defendant, such demolition is carried out for facilitating redevelopment of the building and since the building itself has been redeveloped, there is no question of any *bonafide* requirement of Plaintiffs. Even if redevelopment of the building occurs, it is not proved that Plaintiffs would receive extra area out of redevelopment process considering the obligation to provide alternate premises to numerous tenants. In my view therefore, mere proposed redevelopment of the building would not extinguish the *bonafide* requirement of the landlords. In my view therefore, no serious error can be traced in the concurrent findings of the Small Causes Court and its Appellate Bench on the issue of *bonafide* requirement as well.

26) Also of relevance is the fact that in R.A.E. & R. Suit No. 599/889 of 2009, it is proved that the Defendants were not operating Chemist Shop in the suit premises long before issuance of notices by MHADA for vacating the same.

27) Considering the overall conspectus of the case, I am of the view that no interference is warranted in the concurrent findings recorded by the Small Causes Court and its Appellate Bench in exercise of revisionary jurisdiction under Section 115 of the Code. Civil Revision Application therefore must fail.

28) So far as Writ Petition No.6730 of 2024 is concerned, the same is filed against interim order passed by the Appellate Bench refusing to stay the decree of the Trial Court directing the eviction of the Defendants on the ground of non-user. Since the decree for eviction in R.A.E. Suit No.804/1624 of 1996 is already upheld, Writ Petition No.6730 of 2024 has become academic. However, even if the order dated 10 April 2024 passed by the Appellate Bench refusing to stay the decree in R.A.E. & R. Suit No. 599/889 of 2009 was to be independently tested, I do not see any reason to interfere in the said order. Admittedly, the Defendants are not using the suit premises. In fact, Mr. Patil's contention is that the Defendants are forced not to use the suit premises on account of dilapidated condition of the building. In that view of the matter, it is incomprehensible as to why Defendants need stay of the eviction decree when the suit premises are unfit for being occupied. Interests of Defendants are duly taken care of by directions issued by the Appellate Bench to file undertaking for restoration of possession of suit premises subject to other litigation and also to restore Defendants in the redeveloped building in case they succeed in the appeal. In my view, this direction sufficiently protects the interest of the Defendants. I do not find any reason to entertain Writ Petition No.6730 of 2024, which is also liable to be dismissed.

29) Accordingly, Civil Revision Application No.224 of 2024 and Writ Petition No.6730 of 2024 are dismissed with no orders as to costs.

[SANDEEP V. MARNE, J.]

30) After the judgment is pronounced, Mr. Patil would pray for continuation of statement made on behalf of the original Plaintiffs in Writ Petition No.6730 of 2024. It appears that on 7 May 2024, a statement was made on behalf of the original Plaintiffs not to take any steps for execution of the decree. Mr. Patil has requested for continuation of the said statement for a period of 8 weeks.

31) However, as observed in the judgment, Plaintiffs are required to file an undertaking before the Appellate Bench for restoration of possession of the suit premises in the event of the Applicant/Petitioner succeeding in the appeal. In my view, the said direction of the Appellate Bench sufficiently protects the interest of the Applicant/ Petitioner. In that view of the matter, it is not necessary to continue the statement on behalf of the original Plaintiffs any further. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]