

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.16 OF 2025

Khurshed Rustom Engineer

...Applicant

Versus

Ajita Ranjit Madhavji & Ors.

...Respondents

Mr. Pradeep Thorat a/w Mr. Vivek Khemka and Mr. Rushabh Thacker i/by V.V. Khemkar and Rushabh Thacker, Advocate for Applicant.

Mr. Viren Asar a/w Mr. Saiyed Sahil, Ahuramazda Postwalla, Dharshanadivya Subramanian i/by Saiyed Sahil, Advocate for Respondents (Original Petitioner) Ajita Madhavji & Ors.

CORAM: MADHAV J. JAMDAR, J.

DATED : 24 February 2025

JUDGMENT:

1. Heard Mr. Pradeep Thorat, learned Counsel for the Applicant and Mr. Viren Asar, learned Counsel for the Respondents.

Challenge:

2. By the present Writ Petition, challenge is to the legality and validity of the Judgment and Decree dated 20th February 2019 passed by the learned Judge, Small Causes Court, Mumbai in R.A.E. Suit No.1038/1876 of 1998 as well as the Judgment and Decree dated 23rd October 2024 passed by the learned Appellate

Bench of Small Causes Court, Mumbai in Appeal No.150 of 2019. Both the learned Courts have passed concurrent decree on the ground of acquisition of an alternate premises and on the ground of bonafide requirement.

Submissions of the Applicant:

3. Mr. Thorat, learned Counsel for the Applicant raised the following contentions :-

i. Every time written statement has been amended pointing out certain aspects and thereafter the Plaint has been amended accordingly and thus Plaintiff has not come with clean hands. He submitted that therefore both the Courts have committed error in decreeing the suit on the ground of bonafide requirement.

ii. He submitted that the Plaintiff was in possession of the residential premises in an adjoining building consisting of about 1650 sq. ft. area on tenancy basis. The Plaintiff on 29th August 2006 *inter alia* has surrendered the premises admeasuring 1650 sq. ft. in Sonawala Building, which is adjoining building on the ground that the Plaintiff and her family members did not require the said

premises. It is, therefore the submission that the suit premises are not required bonafide for the Plaintiff.

iii. It is submitted that the Plaintiff has suppressed availability of the premises on the ground floor.

iv. It is the further submission of Mr. Thorat, learned Counsel that the subsequent events which have occurred after commencement of the Maharashtra Rent Control Act (“**MRC Act, 1999**”) cannot be taken into consideration in a suit which has been filed under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (“**Bombay Rent Act, 1947**”). It is therefore his submission that the requirement which is now sought to be contended by the Plaintiff has arisen after 1999 Rent Act has come into force and therefore the said requirement cannot be considered.

v. Mr. Thorat, learned Counsel relied on two Judgments of learned Single Judge in the case of *Vishwanath Govind Lagu v. Smt. Usha Laxman Barve*¹, and *Shashikant Yeshwant Limaye &*

¹ 2005 SCC OnLine Bom 944

Anr. v. Chintaman Vinayak Kolhatkar & Ors. ² to contend that the delay in filing the Suit on the ground of acquisition of alternate premises is required to be taken into consideration while considering the grounds of eviction under Bombay Rent Act.

vi. It is further submitted that the tenancy is a joint tenancy and therefore acquisition by one member of that joint tenancy cannot be a ground for eviction. To substantiate the said contention, reliance is placed on the decision in the case of *Vamanrao Vishwanath Falke v. Anusaya Rangrao Patil & Ors.* ³.

vii. It is submitted that in the facts and circumstances of the case, the ground of acquisition is not proved as the alleged acquisition is not by the Applicant.

Submissions of Respondents:

4. On the other hand, Mr. Viren Asar, learned Counsel for the Respondent raised the following contentions :-

² 2010 SCC OnLine 914

³ 2005 SCC OnLine Bom 833

i. He submitted that as far as the contention regarding suppression is concerned, the learned Appellate Court has considered the same and recorded the finding that there is no suppression. In that regard, he has pointed out paragraph Nos. 84 to 86 of the learned Appellate Court Judgment.

ii. As far as the bonafide requirement is concerned, it is the submission of Mr. Viren Asar that the suit premises are required by the Respondent No.1 i.e. the original Plaintiff and her family members i.e. two nieces.

iii. As far as 2nd floor premises is concerned, which are in possession of Respondent No.1 i.e. the Plaintiff the said premises are required for storing old archives belonging to Hamilton Studio, which is the Company in which the Plaintiff and her father are the shareholders.

iv. He submitted that the Applicant is in possession of two premises in the suit building consisting of 1650 sq. ft. area each, one on the 2nd floor i.e. the suit premises and another on the 1st floor, regarding which eviction decree has been passed and said

Decree has been challenged before the learned Appellate Court of Small Causes and the said Appeal is pending.

v. Mr. Viren Asar, learned Counsel therefore submits that no interference in the concurrent findings recorded by both the Courts is warranted.

Points for consideration:

5. In view of rival contentions, following points arise for consideration.

I. In a Suit filed under the provisions of the Bombay Rent Act, 1947 (more particularly on the ground of bonafide requirement), whether subsequent events which have taken place after the commencement of the Maharashtra Rent Control Act, 1999 can be taken into consideration?

II. Whether the concurrent decree of eviction passed by both the Courts under Section 13(1)(g) of the Bombay Rent Act, 1947 is proper and legal?

III. Whether the concurrent decree of eviction passed by both the Courts on the ground of acquisition of alternate premises is proper and legal?

Facts:

6. Before considering the rival contentions, it is necessary to set out the factual position. Mr. Thorat, learned Counsel for the Applicant has submitted Synopsis of relevant dates and events. The same reads as under :

Sr. No.	Date	Event
1.		Applicant = Ori Deft No.1A Resp No.1 = Ori. Pltff
2.		Suit premises (“SP”) is Flat on 2 nd floor of building known as Ranjit Villa, situate at 8B, Dady Seth, 2 nd Cross Road, Chowpatty, Mumbai 400007 along with Garage
3.		Originally SP let out to Mr. Kaikushoroo Sorabji Engineer i.e. father of Defendant No.1.
4.	15/08/1974	Vide Agreement of Tenancy the tenancy of SP created in favor of (i) Mr.Kaikushroo Sorabji Engineer, (ii) Mrs. Shirin Kaikushoroo Engineer and (iii) Rustom Kaikushroo Engineer.
5.	1974	(i) Mr.Kaikushroo Sorabji Engineer, (ii) Mrs. Shirin Kaikushoroo Engineer acquired Flat No.241, 24 th floor, Jolly Maker 1-A, Cuffe Parade, Mumbai and Rustom Kaikushoroo Engineer continued to occupy SP with his wife and daughter.
6.	1989	The Plaintiff was residing with grandfather

		Laxmidas Madhavji, father Ranjit Laxmidas Madhavji, mother, Vasant, brother Pravir, sister-in-law Bindu, 2 nieces in Flat on 1 st floor, Sonawala Mansion, 8C, Day Seth, 2 nd Cross Road, Chowpatty, Mumbai. The said premises was admeasuring 1650 sq. feet with 3 Bedrooms – One bedroom occupied by grandfather, one by father and one by brother.
7.	1992	Grandfather of Plaintiff expired.
8.	1993	Plaintiff purchased Ranjit Villa building from her father Ranjit Madhavji.
9.	1993	Plaintiff acquired 3 rd floor of Ranjit Villa building admeasuring 1600 sq. feet consisting of 3 bedrooms, kitchen, 2 toilets and bathrooms. Plaintiff started residing in 3 rd floor premises in 1995.
10.	1996	Brother of Plaintiff i.e. Pravir got divorced.
11.	1997	Due to marital discord between Deft No.1 and his wife Farida, the mother of Deft No.1 i.e. Deft No.2 along with Farida acquired Flat No.403, 4 th floor, Panchvatika, Yari Road, Andheri (East), Mumbai. Since then Farida was residing in the said Flat.
12.	11/12/1998	Plaintiff filed RAE Suit No.1038/1876 of 1998 for possession of SP on following grounds – (i) Deft Nos.1 & 2 have unlawfully inducted Deft No.3 who is staying with Deft No.1 in SP, (ii) Defts are not observing terms of tenancy, (iii) Defts have acquired suitable alternate residential premises at Cuffe Parade and Versova and (iv) Pltff Bonafide requires SP for residential accommodation of her family.
13.	28/06/1999	Deft No.1 filed Written Statement and denied claim of Plaintiff – The Agreement of Tenancy was executed in 1974 because father and mother wanted to shift to premises at Cuffe Parade - Cuffe Parade premises owned by Mr. Kaikushoroo Engineer – Deft No.3 is legally wedded wife of Deft No.1. – Denied other grounds of eviction
14.	25/02/2005	Plaintiff amended the Complaint in RAE Suit

		No.1038/1876 of 1998 and added Paragraph No.2A and impleaded Deft No.2A (1st Amendment)
15.	29/08/2006	Father of Plaintiff surrendered tenancy of 1 st floor premises adm. 1650 sq. feet situated at Sonawala Mansion – Agreement of surrender states that they do not require the said premises
16.	04/07/2007	Plaintiff amended Plaintiff and added Paragraph Nos.3A to 3G and Paragraph Nos.7A to 7C – On date of suit requirement was of 5 bedrooms – Plaintiff acquired 3 rd floor premises and started residing there in 1995 – Plaintiff is qualified in Reiki and she conducts classes 3 times a month in 3 rd floor premises – Plaintiff now requires SP to accommodate her brother and his two grown up daughters Jashoda and Vaishnavi – Niece Vaishnavi has purchased Tata Indica car and hence garage is required – (2nd Amendment)
17.	18/08/2007	Deft No.1 filed Additional Written Statement – Plaintiff has acquired premises adm. 1650 sq. feet on ground floor consisting of 3 bedrooms – On date of suit Plaintiff was in possession of two flat i.e. 1 st Floor of Sonawala Mansion and 3 rd floor of Ranjit Villa - Plaintiff has Garage adm. 300 sq feet across road - Plaintiff has adequate premises for conducting Reiki classes -
18.	01/03/2011	Plaintiff amended Plaintiff and added Paragraph Nos.3H to 3P – Deft No.1A also impleaded as wife of Deft No.1 – Plaintiff acquired ground floor of Ranjit Villa on 30/12/2004 after demise of the Tenant – Father of Plaintiff surrendered tenancy of Flat on 1 st floor of Sonawala building on 29/08/2006 and shifted to Ground floor premises which comprises of 5 rooms, kitchen and two toilet blocks – Father has purchased Flat for brother Pravir in Navi Mumbai and he is staying there – Plaintiff and her father are shareholders in Company known as Hamilton Studios Pvt. Ltd. which is situated at Ground floor, NTC House, Ballard Pier, Mumbai – Hamilton Studios received notice dated 02/04/1976 of termination of tenancy from NTC

		– Order of eviction dated 28/05/2003 passed against Hamilton Studios – Appeal pending before Principal Judge, City Civil Court at Mumbai – SP is now required to store, preserve and maintain archives of Hamilton Studio Pvt. Ltd. – One room and toilet block of ground floor premises is used to store goods of Hamilton Studio – Deft No.1 has sold his Car in August, 2008 and since then Garage is used for storage (3rd Amendment)
19.	27/06/2011	Deft No.1A filed Written Statement -Denied additional requirement of Pltff -
20.	14/07/2013	Plaintiff amended Plaintiff and added Paragraph No.9A seeking mesne profits
21.	2013	Mother of Plaintiff expired - She was occupying one bedroom on ground floor
22.	23/07/2014	Deft No.1A filed Written Statement and denied the claim of Mesne profits
23.	20/02/2019	By Judgment and Decree Small Causes Court at Mumbai decreed RAE Suit No.1038/1876 of 1998 – Trial Court answered issues of breach of tenancy, non user and subletting against Plaintiff – Trial Court passed decree on ground of acquisition of alternate premises and Bonafide requirement – Trial Court held that as on date of filing of Suit the requirement of Plaintiff was not Bonafide
24.		Deft No.1A filed Appeal No.150 of 2019
25.	04/10/2024	Father of Plaintiff expired – He was occupying one bedroom on ground floor.
26.	23/10/2024	By Judgment and Decree Appellate Bench of Small Causes Court at Mumbai dismissed Appeal No.150 of 2019. - Appellate Court held that Deft No.1A has no right to file the Appeal as she is not legally wedded wife of Deft No.1 - Appellate Court held that no hardship will be caused to Deft No.1A because she is also occupying Flat on 1 st Floor which was let out to Mrs. Rhoda Gandhi.
25.		Hence the present Civil Revision Application

POINT NO.I :-

In a Suit filed under the provisions of the Bombay Rent Act, 1947 (more particularly on the ground of bonafide requirement), whether subsequent events which have taken place after the commencement of the Maharashtra Rent Control Act, 1999 can be taken into consideration?

7. Mr. Thorat, learned Counsel, as far as the contention regarding bonafide requirement is concerned raised the contention that the Plaintiff has amended the plaint on several occasions after coming into force of the MRC Act, 1999 and the said amendments cannot be considered for granting decree of bonafide requirement in a Suit filed in the year 1998 under the provisions of the Bombay Rent Act, 1947. To substantiate the said contention, Mr. Thorat, learned Counsel, has relied on the decision in the case of *Mrs. R.E. Fanibunda v. M/s Nicholas of India Ltd. & Ors.*⁴.

8. A learned Single Judge in the said decision in *Mrs. R. E. Fanibunda* (supra) in paragraph 15 has held that the subsequent events which have arisen after the MRC Act, 1999 has come into force

⁴ 2003(3) ALL MR 967

cannot be considered in a suit which has been filed under the Bombay Rent Act, 1947. The relevant portion of paragraph 15 reads as follows:-

“15. ... The Apex Court, relying on Privy Council decision, then went on to observe that- as a rule, relief not founded on the pleadings should not be granted. The Apex Court has observed that subsequent events, which are factual events, cannot be taken cognizance of, unless brought to the notice of the Court in accordance with the established rules of procedure which if done, would have afforded the other side an opportunity of meeting the case. On this count alone, the subsequent events of two daughters (twins) having acquired qualification, or are in the process of starting business in Amarchand Mansion, cannot be taken cognizance of. Even if this Court were to find that the said subsequent events will have impact on the rights and obligations of the parties, the same will have to be properly tried and proved by adducing evidence. Besides, to my mind, these subsequent events have admittedly arisen after the Act of 1999 has come into force. No doubt, Writ Petition has been saved inspite of repeal of 1947 Act and introduction of 1999 Act; but nevertheless, the event of Petitioner's daughters having graduated and are in the process of setting up business, has occurred after the introduction of Act of 1999. In that sense, the rights and obligations arising out of the said events, would be after the repeal of 1947 Act, which happened on 31st March, 2000. Rights which have accrued after 31st March, 2000, cannot be said to have been saved, but the rights which have crystallized on or before 31st March, 2000 alone are saved and can be pursued in the present Writ Petition. In that sense, the subsequent events of daughters having acquired

qualification are in the process of starting business in the premises of Amarchand Mansion having occurred after 31st March, 2000, the same cannot be taken cognizance in the present Writ Petition. Even for this reason, the said subsequent evens, will be of no avail.”

(Emphasis added)

Thus, what the learned Single Judge has held that by repeal of the Bombay Rent Act, 1947, by MRC Act, 1999 rights which have accrued after 31st March, 2000, cannot be said to have been saved, but the rights which have crystallized on or before 31st March, 2000 alone are saved.

9. In the context of the above reasoning of the learned Single Judge, it is necessary to consider provisions of Section 13(i)(g) of the Bombay Rent Act, 1947 and Section 16(1)(g) of the MRC Act, 1999.

i. Section 13(i)(g) of the Bombay Rent Act, 1947 is as follows:

“13. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act [but subject to the provisions of sections 15 and 15A,] **a landlord shall be entitled to recover possession of any premises if the Court is satisfied -**

...

...

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held [or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;”

ii. Section 16 (1)(g) of the MRC Act reads as under:-

“ 16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

...

...

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust or

...”

(Emphasis added)

Thus, it is clear that the provisions of Section 13(1)(g) of the Bombay Rent Act, 1947 and Section 16(1)(g) of the MRC Act, 1999 are identical. It is important to note that under both the Acts, the ground of eviction of reasonably and bonafide requirement is the same i.e. the premises are reasonably and bonafide required by

the landlord for occupation by himself or by any person for whose benefit the premises are held. One more significant aspect is that the suit filed under the provisions of the Bombay Rent Act, 1947 as well as MRC Act, 1999 lies in the same Court.

10. In view of above, it is significant to note what the Supreme Court has said about the subsequent events. The Supreme Court in the case of *Gaya Prasad v. Pradeep Srivastava*⁵, has held that the subsequent events to overshadow 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 have been completely eclipsed by such subsequent events. The relevant portion in said decision is in paragraph Nos. 13 to 15, which reads as under:

“13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770] which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be

⁵ (2001) 2 SCC 604

taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

“We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

14. The next three-Judge Bench of this Court, which approved and followed the above decision, in *Hasmat Rai v. Raghunath Prasad* [(1981) 3 SCC 103] has taken care to emphasise that *the subsequent events should have “wholly satisfied” the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)*

“Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.”

(emphasis supplied)

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

(Emphasis added)

Thus, the following principles which emerge from the decision of the Supreme Court regarding subsequent events, more particularly in the context of suit filed for bonafide requirement under Rent Act, are very important and significant :-

- i. For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

ii. Where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime the events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.

iii. The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

iv. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action

is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

Thus, if these principles are applied to the suits which have been filed under the Bombay Rent Act, 1947 and continued in view of Section 58 of the MRC Act, 1999, then it is very clear that cause of action remains the same in the suit which has been filed under the Bombay Rent Act, 1947 and by subsequent events what is considered is whether the same exists or completely eclipses.

11. It is also significant to note Section 58 of the MRC Act, 1999 regarding repeal and saving, which reads as under :-

“58. Repeal and saving

(1) On the commencement of this Act, the following laws, that is to say,—

(a) **the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947** (Bom. LVII of 1947);

(b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954; **shall stand repealed.**

(2) Notwithstanding such repeal,—

(a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.”

(Emphasis added)

Thus, Section 58 specifically provides that notwithstanding, inter alia, repeal of Bombay Rent Act, 1947, all applications, suits and other proceedings under Bombay Rent Act, 1947 pending, on the date of commencement of the MRC Act, 1999 before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Bombay Rent Act, 1947 so repealed, as if the said Bombay Rent Act, 1947 had

continued in force and the MRC Act, 1999 has not been passed. It is also provided that the provisions for appeal under the Bombay Rent Act, 1947 so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder. In any case, Section 58 regarding repeal which saves suit or proceedings filed under the Bombay Rent Act, 1947 and pending on the date of commencement of the MRC Act, 1999 do not prescribe any prohibition. The cause of action for filing the Suit arises in such a situation when the suit was filed i.e. when Bombay Rent Act, 1947 was in force and only subsequent events concerning same are brought on record and the same are considered by the Trial Court or learned Appellate Court or even by the High Court, as the case may be, just to ascertain whether the bonafide requirement as pleaded is completely eclipsed or even by subsequent event the same continues.

12. It is required to be noted that in this Court, Writ Petitions / Civil Revision Applications are pending for final hearing at least since about 1995. The Suits in those cases were filed about 10-20 years earlier i.e. filed in the year 1980. If the law laid down in ***R. E. Fanibunda*** (supra) is made applicable to those proceedings, then

subsequent events which have taken place after MRC Act, 1999 has come into force the same cannot be taken into consideration. The same will be contrary to the law laid down in ***Gaya Prasad*** (supra).

13. With respect, the learned Single Judge in ***M/s R.E. Fanibunda*** (supra) has overlooked that the provisions of Section 13(1)(g) of the Bombay Rent Act, 1947 and 16(1)(g) of the MRC Act, 1999 are the same and also overlooked Section 58 of the MRC Act, 1999 regarding repeal and saving. The learned Single Judge has also overlooked that the suit filed under the provisions of the Bombay Rent Act, 1947 as well as MRC Act, 1999 lies in the same Court. The observations of the Supreme Court in the case of ***Gaya Prasad*** (supra) are applicable when the Court is considering subsequent events. Thus, there is no substance in the said contention of Mr. Thorat, learned Counsel for the Applicant.

POINT NO.II :-

Whether the concurrent decree of eviction passed by both the Courts under Section 13(1)(g) of the Bombay Rent Act, 1947 is proper and legal?

14. The factual position narrated earlier shows that the Suit bearing R.A.E. Suit No. 1038/1876 of 1998 has been filed on 11th December 1998 *inter alia* on the ground of bonafide requirement as well as acquisition of alternate residential premises. The Plaint has been amended in the year 2005 to bring on record death of Defendant No.2 and impleading Defendant No.2A as heir of deceased Defendant No.2. The father of the Plaintiff surrendered tenancy of 1st floor premises admeasuring 1650 sq. ft. area situate at Sonawala Mansion by Agreement of Surrender dated 29th August 2006. Thereafter the Plaint has been amended on 4th July 2007. The said fact was brought on record by filing additional written statement dated 18th August 2007.

15. It is the submission of Mr. Thorat, learned Counsel for the Applicant that the fact that the father of the Plaintiff has surrendered the premises admeasuring 1650 sq. ft. in the adjoining Sonawala Mansion building shows that the Plaintiff has no need of the suit premises. However, it is required to be noted that the said premises at Sonawala Mansion was the tenanted premises of the grandfather of the Plaintiff. The said surrender deed has been executed by six heirs and legal representatives of deceased original

tenant i.e. the Plaintiff's father and other legal heirs of the Plaintiff's grandfather. The position on record do not show that the Plaintiff's father is the only heir and legal representative of deceased tenant i.e. her deceased grandfather. Thus, the surrender of said premises has no bearing on the bonafide requirement of the suit premises. The Plaintiff's father was not the exclusive tenant of the said premises at Sonawala building and in any case, the said premises was tenanted premises. Thus, on the basis of the same, it cannot be said that the landlord has not come with the clean hands. In any case, the learned Appellate Court has considered the said aspect elaborately and held that these developments are subsequent to the filing of the Plaint and therefore, it cannot be said that the Plaintiff has come in the Court with unclean hands.

16. The factual position on record shows that the Plaintiff is in possession of 3rd floor premises consisting of 1650 sq. ft. area and ground floor premises admeasuring 1650 sq. ft. area. It has also come on record that as far as said Hamilton Studios Pvt. Ltd. where the Plaintiff and her father were the shareholders was occupying the premises owned by National Textile Corporation ("**NTC**"). The said NTC has initiated eviction proceeding against said Company and

eviction Order has already been passed under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the appeal filed before the City Civil Court, Mumbai has also been dismissed and the same is challenged by way of Writ Petition, which is pending in this Court. It has also come on record that in the ground floor premises some of the archives of said Hamilton Studios Pvt. Ltd. has been stored and said ground floor premises will be required for the said purpose. The Plaintiff is in possession of residential premises on 3rd floor consisting of 1650 sq. ft.

17. Both the Courts have concurrently held that the Suit premises are required for bonafide requirement of occupation by the Plaintiff and her two nieces. Nothing has been pointed out to indicate that the said requirement is not reasonable and bonafide requirement.

18. Apart from that, it is to be noted that the present Applicant i.e. Defendant No.1A is in possession of two premises in the suit building i.e. on 1st floor 1650 sq. ft. and on 2nd floor 1650 sq. ft. i.e. the suit premises. It is admitted position that the Applicant's family consist of only 1 person i.e. the Applicant. The Applicant is in possession of 2 premises in the suit building consisting of 1650 sq. ft. each one on 1st floor and another on the 2nd floor.

19. It has also come on record that as far as the premises on 1st floor is concerned, the eviction decree has already been passed and the said eviction decree has been challenged by the Applicant and the Appeal is pending before the learned Appellate Court.

20. At this stage, it is required to be noted that Mr. Thorat on instructions of the Applicant has submitted that the Applicant is ready and willing to surrender one premises out of two i.e. either 1st floor premises or 2nd floor premises i.e. suit premises. Learned Counsel for the Respondent, after taking instructions, has stated that the Respondent is not ready to accept the said suggestion and his instructions are that either of these premises will be offered on enhanced rent and the same will be subject to the result of the Appeal pending before the learned Appellate Court concerning premises on the 1st floor. Mr. Thorat, learned Counsel for the Applicant submitted that that the said proposal cannot be accepted as it means the Applicant will be handing over possession of one premises and then again facing eviction proceeding with respect to the premises, which is the subject matter of the pending proceedings before the Appellate Court. In any case, the factual position on record shows that the Applicant is in possession of two premises each admeasuring 1650 sq. ft.

21. Thus, taking into consideration overall view of the matter, the decree which has been passed by the learned Trial Court as confirmed by the learned Appellate Court regarding bonafide requirement is the decree passed on the basis of evidence on record and in the facts and circumstances of this case, no interference in the impugned decrees is warranted as far as the ground of bonafide requirement is concerned. However, it is clarified that when the Appellate Court considers in a different proceedings, confirmation of eviction decree passed with respect to 1st floor tenanted premises occupied by the Applicant as Tenant, at that time, the learned Appellate Court will have to take into consideration the decree passed with respect to the suit premises i.e. 2nd floor premises and that the same has been confirmed upto this Court.

POINT NO.III

Whether the concurrent decree of eviction passed by both the Courts on the ground of acquisition of alternate premises is proper and legal?

22. As far as the ground of acquisition of alternate premises is concerned, it is the submission of Mr. Thorat, learned Counsel for the Applicant that the landlord has to take action without any delay and

for that purpose, he relied on the Judgment in the case of *Vishwanath Govind Lagu* (supra) and *Shashikant Yeshwant Limaye* (supra). However, it is required to be noted that in both these Judgments what has been held is that the delay is one of the factor required to be taken into consideration. It is an admitted position that the Suit has been filed on 11th December 1998 regarding acquisition of another premises at Cuffe Parade, which has been acquired on 15th August 1974. Mr. Asar, learned Counsel for the Respondent fairly admitted that the said acquisition in the year 1974 cannot be the subject matter of the suit which has been filed on 11th December 1998, however, he states that subsequently the said premises has been sold and the consideration received has been divided between the Defendant No.1 and Defendant No. 2A. He submits that the said factor be taken into consideration for considering bonafide requirement and hardship. Thus, the decree passed on the ground of acquisition of alternate premises as far as said Cuffe Parade premises is concerned, is required to be quashed and set aside.

23. Apart from that, it is required to be noted that the decree has also been passed on the ground of acquisition of the premises at Versova, Mumbai, however, the position on record shows that the said premises has been acquired by Defendant No. 3 i.e. first wife of

Defendant No.1 and also the mother of Defendant No.1 i.e. Defendant No.2. The said flat at Versova is 650 sq. ft. In the facts and circumstances of this case, the decree also cannot be passed on the ground of acquisition of said Versova flat. In any case, said acquisition is by Defendant No.3 i.e. first wife of Defendant No.1 and by the mother of Defendant No.1.

Conclusions:

24. As it is held that the Plaintiff has failed to prove the ground of acquisition of alternate premises and accordingly the concurrent decree passed by the learned Trial Court as confirmed by the learned Appellate Court on the said ground is quashed and set aside. However, as the Plaintiff has proved ground of bonafide requirement the decree of eviction passed by the learned Trial Court as confirmed by the learned Appellate Court is maintained on that ground.

25. Accordingly, the Civil Revision Application is dismissed, however, with no order as to costs.

26. Mr. Thorat, learned Counsel seeks stay of this order for the purpose of approaching Supreme Court. In the facts and circumstances of this case, the eviction decree shall not be executed upto 30th June 2025.

[MADHAV J. JAMDAR, J.]