



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

WRIT PETITION NO.3326 OF 2023

PETITIONER :- Sanjay Nemichand Jain,
Age 55 years, Occ.- Business,
R/o C/o Jain Travels, Plot No.21, Surendra
Nagar, Nagpur.

..VERSUS..

RESPONDENT :- Shri Rajendra Tyagi Babulal Samudre,
Age 61 years, Occ.- Landlord/Private
R/o Plot No.21, Central Railway Co-Operative
Housing Society Layout, Surendra Nagar,
Nagpur.

Mr. P.P. Kotwal, Advocate for Petitioner.
Mr. R.R. Rathod, Advocate for Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **10/11/2025**

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.

2. This petition is filed by the original tenant being aggrieved by a decree for eviction passed against him under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. The petitioner had initially filed a suit for perpetual injunction against the respondent/landlord seeking a decree for perpetual injunction

against forcible dispossession. In the said suit, the respondent/landlord filed a counter claim for eviction on the ground of bonafide need.

3. The respondent contended that he was in need of the suit shop in order to start a beauty parlour for his daughter. The respondent/landlord has stated that he was earning his livelihood by driving an auto rickshaw, but due to his advancing age, it has become difficult for him to continue earning a living by driving an auto rickshaw. He has stated that, he is blessed with three daughters and does not have a son. It is stated that since the suit property is situated in a market area, it will be suitable for his daughter to start the business of a beauty parlour. It will be pertinent to mention that, there are pleadings in the counter claim that the tenancy agreement was to be renewed in the year 2011. The defendant has pleaded that when he had approached the plaintiff /tenant for execution of a fresh agreement in the year 2011, the plaintiff/tenant told him a tenancy agreement was already executed in the year 2004 and therefore, there was no need to execute new agreement. This 2004 agreement is a forged document, according to defendant.

4. The plaintiff filed a written statement opposing the counter claim denying the case of bonafide need as set up by the

defendant/landlord. It is stated that, the respondent/landlord, wanted to evict the plaintiff/tenant from the suit property and therefore, a false case of bonafide need was set up.

5. The learned trial Court recorded the evidence of the respective parties and after hearing final arguments, held that the respondent/landlord had failed to make out case of bonafide need. The learned trial Court has recorded a finding that the counter claim for eviction was filed against the plaintiff/tenant only because he had refused to execute a fresh agreement in the year 2011. The learned trial Court has also observed that the pleadings in the counter claim did not indicate as to why the defendant/landlord was not interested in utilizing the other shops which are owned by him in the same building for the purpose of so called need and why he singled out the plaintiff's shop for the purpose of satisfying the alleged need to start a beauty parlour. The learned trial Court has also referred to complaints made by the defendant/landlord to different authorities against the petitioner/tenant. Based on the evidence on record, the learned trial Court has recorded that the counter claim for eviction was filed only because the plaintiff/tenant refused to execute a fresh agreement of leave and license in the year 2011.

6. Being aggrieved by the aforesaid decree dismissing the counter claim for eviction, the respondent/landlord filed appeal before the learned District Court. The learned District Court has allowed the counter claim and accordingly passed a decree for eviction against the plaintiff/tenant on the ground of bonafide need.

7. Perusal of the judgment by the learned Appellate Court will demonstrate that, the learned First Appellate Court has recorded the evidence of defendant and his daughter who was examined in support of the case of bonafide need. The learned First Appellate Court has recorded that the other three shop blocks were already in possession of the other tenants. As regards the decision of the respondent/landlord to choose the shop occupied by the plaintiff, the learned First Appellate Court has referred to the deposition of the defendant's daughter, who stated that since they did not perceive the plaintiff to be a good person, they considered the plaintiff's shop for starting the parlour and therefore, decided to evict the plaintiff on the ground of bona fide need of starting the business. The learned First Appellate Court has accordingly reversed the findings on bonafide need passed by the learned trial Court.

8. The counter claim for eviction on account of bonafide need is filed on 09.11.2012. The landlord has pleaded that he was in need of shop for starting business of beauty parlour for his daughter. He has pleaded about the need of his daughter and has also examined her as a witness. The evidence of the daughter will demonstrate that she has taken training and done some courses for running of beauty parlour. The daughter has stated that she was a need of shop for starting a beauty parlour. During the course of her cross-examination, it is suggested that further construction could be made in order to satisfy the alleged need. Likewise, the cross-examination further suggests that the veracity of the certificates produced on record by the daughter was sought to be questioned. Perusal of the findings recorded by the learned First Appellate Court will demonstrate that the learned First Appellate Court has dealt with the issue of bonafide need properly in the light of legal position that the bonafide need will not be a hard pressed need but merely a reasonable need.

9. The defendant/landlord has entered the witness box and has deposed about the said need. The daughter has also examined by the landlord in support of her testimony. The documents with respect to training and qualifications are exhibited during evidence

of the daughter. She has also deposed that since she did not have any place of business, she was required to attend the customers at their residential houses. The evidence on record would clearly suggest that a case of bonafide need was made out by the defendant/landlord.

10. As regards the contention of Mr. Kotwal, learned Advocate for the petitioner/tenant that counter claim for eviction was filed only because the respondent/landlord did not consider the petitioner/tenant to be a person of good character and also on a ground that he did not agree to execute a fresh agreement in the year 2011, the said contention can not be accepted in the facts of the present case. The explanation for choosing the plaintiff's shop, out of the four tenants, is that the landlord did not consider the petitioner to be a person of good character. The landlord also had a grievance against the petitioner of forging rent agreement of the year 2004. It appears that in the year 2011, the landlord approached all the tenants for execution of fresh leave and license agreements. The present petitioner refused to execute fresh agreement. Mr. Kotwal, contends that only because the petitioner refused to execute fresh agreement, the landlord initially tried to evict him forcibly and thereafter filed a counter claim seeking eviction on account of

alleged bonafide need. He contends that had the petitioner executed a fresh agreement of license in the year 2011, the landlord would not have filed proceeding of eviction against him.

11. The learned First Appellate Court has dealt with the contention and has held that the case of bonafide need was duly proved. It must also be mentioned that the counter claim for eviction is filed in the month of November, 2012 there is a time period around one and half years in between. The findings recorded by the learned First Appellate Court are based on appreciation of evidence on record. In the considered opinion of this Court, the view taken by the learned First Appellate Court is a possible view which does not warrant any interference in exercise of writ jurisdiction of this Court and also in exercise of supervisory jurisdiction.

12. As regards the issue of comparative hardship and partial eviction, question of partial eviction will not arise to the suit property comprises of a shop block admeasuring 22ft. X 9 ft. As regards the comparative hardship, the case of the petitioner/tenant was that the landlord has sufficient property to satisfy the alleged need and could have made further construction on the plot on which the suit property was situated. Perusal of the judgment of the

learned First Appellate Court will demonstrate that the tenant has also alternate premises from where he can continue with his business. This, finding recorded by the learned First Appellate Court is not assailed before this Court during the course of arguments.

13. In view of the above, since the alternative accommodation is available to the tenant, the issue of comparative hardship will also have to be answered in favour of the landlord. The tenant cannot compel to make additional construction rather than seeking decree for eviction against a tenant occupying existing shop to satisfy the need. In view of the above, the issue of comparative hardship also deserves to be answered in favour of the respondent/landlord.

14. In view of the reasons recorded above, in the considered opinion of this Court, the petitioner has failed to make out any case for interference. Writ petition stands **dismissed** with no order as to costs.

15. At this stage, Mr. Kotwal, learned Advocate for the petitioner, requests that the execution of the decree for eviction be deferred for a period of six weeks to enable the petitioner to approach the Hon'ble Supreme Court. Mr. Mohit Sharma, learned

Advocate for the respondent, strongly opposes the request, pointing out that the petitioner is in arrears of rent since April, 2021. In view of the aforesaid, the request for deferment of execution of the decree is rejected.

(ROHIT W. JOSHI, J.)

C.L. Dhakate