



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

WRIT PETITION NO.7760/2023

Bharat S/o Ramkrushna Gajle and others

...Versus...

Jaiprakash S/o Khanchand Harwani

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. M.R. Deshpande, Advocate for petitioners
Mr. J.J. Chandurkar, Advocate for respondent

CORAM : ROHIT W. JOSHI, J.

DATE : 06/11/2025

1. The petition arises out of concurrent decrees passed against the present petitioners in a suit for eviction filed by the respondent. The respondent had filed a suit being Small Cause Suit No.2/2014 against the present petitioners, seeking eviction on the ground of *bona fide* need, namely, that the suit property which is a shop block admeasuring 13 X 9 sq. ft., was required by him for the purpose of office of his son who was then a student of C.A. (Finals). It was stated that the son of the respondent/landlord will need the suit premises for setting of his office. The petitioners opposed the suit contending that the son of the landlord had not cleared the C.A. examination as on the date of filing of the suit and that the need projected was not a real need but mere desire of the respondent/landlord.

2. The learned trial Court has decreed the suit answering the issue of *bona fide* need and comparative hardship in favour of the respondent/landlord. The appeal

preferred by the petitioners/tenants is also dismissed.

3. The respondent/landlord has examined himself and his son as witnesses. During the course of evidence, it has transpired that the son of the respondent/landlord could not clear the C.A. examination. However, it was stated that the son was in need of the premises for starting office since he was practicing as an accountant with different entities. The learned trial Court has accepted this evidence to hold that case of *bona fide* need was made out. As regards the issue of comparative hardship, the learned trial Court has dealt with the issue and held that although the petitioner/tenant contended that the business that he was doing from the suit shop was the only source of income of his family, the respondent/landlord was in dire need of the shop for establishing his younger son and accordingly, greater hardship would be caused to the landlord, if the decree for eviction is not passed. These findings have been confirmed by the learned first Appellate Court and accordingly, the appeal came to be dismissed.

4. Mr. Deshpande, learned Advocate for the petitioners contends that the learned Courts ought to have appreciated that the case of *bona fide* need was not proved, inasmuch as admittedly the son has not cleared the C.A. examination. He further contends that the finding on comparative hardship recorded by the learned trial Court is not just and proper. Drawing attention to the judgment delivered by the learned first Appellate Court, the learned Advocate contends that the entire aspect of comparative hardship is summed up by the learned first Appellate Court in a sentence without recording any reason for the same. The

learned Advocate has drawn attention to Section 16 (2) of the Maharashtra Rent Control Act, 1999 (for short hereinafter referred to as “MRC Act”) to contend that unless a finding with respect to comparative hardship and partial eviction is recorded by the Court, decree for eviction can never be passed in favour of the landlord even in cases where *bona fide* need is duly proved and established. In support of his contention, the learned Advocate has placed reliance on the judgment of the Hon’ble Supreme Court in the matter of *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, reported in (2003) 2 SCC 320, judgment of the Bombay High Court in the matter of *Bismilla Bee w/o Sk. Chand and another Vs. Mohd. Anwar s/o Mohd. Akhtar*, reported in 2010 (2) Mh.L.J. 829 and another unreported judgment of this Court at its Nagpur Bench in *Writ Petition No.3234/2022 (Jain Supari Centre, a Partnership Firm, through its partner Shri Shantilal Sohanlal Baid and another Vs. Shri Rameshlal Motilal Hasoriya and others, decided on 27/07/2022)*.

5. Per contra, Mr. Chandurkar, the learned Advocate for the respondent/landlord contends that the burden of proving comparative hardship and partial eviction is on the tenant. He contends that the tenant has to lead evidence in order to substantiate the said defence. He further contends that there is no pleading in the written statement on the aspect of comparative hardship and partial eviction. He, therefore, contends that in the absence of any pleadings with respect to comparative hardship, there was no need to go into the said issue at all, inasmuch as in the absence of any pleading, the tenant will not even be entitled to lead evidence on this aspect

to discharge the burden.

6. Mr. Chandurkar, learned Advocate for the respondent further contends that the petitioner/tenant has not made any attempt to look for alternate accommodation despite the suit for eviction on the ground of *bona fide* need being filed against him and therefore, even if the matter is remanded for deciding the issue of comparative hardship afresh, the same will be an empty formality, inasmuch as in the absence of any such pleading or evidence regarding attempt to search for alternate accommodation, issue of comparative hardship will have to be decided in favour of respondent/landlord and against the petitioner/tenant. He places reliance on the judgment of this Court in the matter of ***Parashram Tuljaram Belhekar since deceased through his L.Rs. Vatsalabai w/o Parashram Belhekar and others Vs. Tejmal @ Kankamal Mulchand Jain deceased by his legal heirs Shantabai Kankamal Changedia and others***, reported in ***2007 (2) Mh.L.J. 610*** in support of his contention. He has placed reliance on para 21 of the said judgment, which reads as under :-

“21. In the context, the consistent view of the Bombay High Court is that once the landlord proceeds to initiate a suit on the ground of bona fide requirement, the tenant is expected to start looking for alternative premises and to explain as to why he was unsuccessful in securing such accommodation. In case of Suhasini Atmaram Parab and others Vs. B.H. Khatu and others, 2003 Bom.R.C. 313 a Single Bench of this Court has reiterated the same view by taking survey of the case law on the point. The tenant did not elaborate his efforts regarding steps taken to search for alternative accommodation. He failed to discharge the burden to prove that comparatively he

will be put to greater hardship in case of passing the eviction decree.”

He also places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada***, reported in ***(2003) 2 SCC 320*** in support of his contention (para13).

7. As regards partial eviction, the learned Advocate contends that since the suit property comprises of a small shop block admeasuring 13 X 9 sq. ft., question of partial eviction does not arise.

8. Having perused the pleadings and evidence on record, in the considered opinion of this Court, the finding with respect to *bona fide* need cannot be disturbed. It is true that the respondent's son has not cleared the C.A. final examination. However, it is duly established and proved that the son is working as an accountant. Although the son has not cleared the final examination of C.A., he is entitled to practice as an accountant. It will be appropriate to refer to cross-examination of the petitioner/tenant, wherein it is expressly admitted that the respondent/landlord had no shop other than the suit shop for the need of his son. In the last sentence of the cross-examination, the petitioner/tenant has also admitted that the son of respondent/landlord was in need of the suit shop. The respondent/landlord has duly proved the case of *bona fide* need by entering the witness box and also examining his son for whose need the suit for eviction was filed. These findings of facts recorded concurrently are based on cogent

evidence available on record. The said findings do not warrant any interference in exercise of writ jurisdiction or supervisory jurisdiction of this Court under Article 226 and 227 of the Constitution of India.

9. As regards partial eviction, this Court is in agreement with the learned Advocate for the respondent that having regard to the dimensions of suit property, the question of partial eviction will not arise for consideration.

10. The learned Advocate for the petitioners is right in his submission that the issue of comparative hardship is not properly dealt with by the learned trial Court. He is also right in his submission that the learned first Appellate Court has not dealt with the said aspect properly and has only recorded satisfaction that issue of comparative hardship deserves to be answered in favour of the landlord without recording any reason for the same. Section 16 (2) of the MRC Act clearly supports the contention of the petitioners that unless the issues of comparative hardship and partial eviction are answered in favour of the landlord, decree for eviction on the ground of *bona fide* need cannot be passed in favour of the landlord even in cases where bona fide need is duly proved. The judgments relied upon by the learned Advocate for the petitioners clearly support his contention.

11. The judgment in the matter of ***Parashram Tuljaram Belhekar*** (supra) relied upon by the learned Advocate for the petitioner refers to earlier judgment of this Court in the matter of ***Suhasini Atmaram Parab and others Vs. B.H. Khatu and others***, reported in ***2002 (4) All M.R. 770***, where referring to several judgments on this point by the

Hon'ble Supreme Court and this Court, a learned single Judge of this Court has reiterated the said settled legal principle that the tenant must plead and also prove that it was not possible for him to secure any alternate accommodation, failing which issue of comparative hardship has to be decided against the tenant.

12. The Hon'ble Supreme Court has in the case of ***Badrinarayan Chunilal Bhutada*** (supra) held that when a suit for eviction on the ground of *bona fide* need is filed by landlord the tenant must establish by leading evidence that attempts were made by him to find out other alternate accommodation either by way of sale or on rent and unless the tenant proves the same, it must be held that burden of proving the issue of comparative hardship is not discharged by the tenant. This Court has also held that the issue of comparative hardship cannot be answered in favour of the tenant in the absence of any attempt on his part to look for alternate accommodation. Same view is taken by this Court in the matter of ***Yogesh Dattaram Pathak Vs. Shrikrishna Shriram Joshi***, reported in ***2003 (3) Mh.L.J. 684***.

13. In the case at hand, the petitioner/tenant has not pleaded that any such attempt to look for alternate accommodation was made by him. Likewise, the tenant has not brought any evidence on record in this regard. The evidence of the tenant is completely silent on this aspect.

14. In view of the aforesaid legal position, I am inclined to accept the contention of Mr. Chandurkar, learned Advocate for the respondent/landlord that in the facts of present case, ordering remand of the matter to the learned

Appellate Court to decide the issue of comparative hardship will be an empty formality. Even if the matter is remanded with directions to hold enquiry on the aspect of comparative hardship, the Courts will have to answer the issue against the petitioner/tenant since there is no pleading or proof regarding attempts to search alternate premises.

15. In view of the reasons recorded above, in the considered opinion of this Court, no case for interference is made out. The writ petition is, therefore, dismissed with no order as to costs.

16. At this stage, Mr. Deshpande, learned Advocate for the petitioners makes a request to stay effect and operation of the decree of eviction for a reasonable period so as to enable the petitioners to approach the Hon'ble Supreme Court.

17. Although the request is strongly opposed by Mr. Chandurkar, learned Advocate for the respondent on the ground that the petitioners have suffered concurrent decrees of eviction which are now confirmed by this Court, in the considered opinion of this Court, it will be appropriate to grant reasonable time to the petitioners to avail of the remedy, as they desire. The decree for eviction is suspended up to 31/01/2026.

(ROHIT W. JOSHI, J.)