



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

CIVIL REVISION APPLICATION NO. 141 OF 2018

APPLICANT : Anilkumar S/o. Bhaskarrao Walokar,  
(Ori. Plaintiff) Aged about Years, Occ. Business,  
R/o. Sunil Niwas, Chitar Oli,  
Nagpur.

//VERSUS//

NON-APPLICANT : 1. Sheshrao S/o. Ganpatrao Dhabade,  
(Ori. Defendant) Aged about 60 Years, Occ. Business,  
having their place of business in the  
shop block on the ground floor of the  
building bearing Municipal  
Corporation House No.307, NIT  
Plot No.71, Ward No.30, Bhavsar  
Chowk, Central Avenue Road,  
Nagpur.

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Mr. R.M. Sharma, Advocate for the Applicant.

Mr. M.D. Samel, Advocate for the Non-applicant.

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CORAM : G. A. SANAP, J.

RESERVED ON : 25<sup>th</sup> OCTOBER, 2024.

PRONOUNCED ON : 18<sup>th</sup> FEBRUARY, 2025.

JUDGMENT

. In this revision application, challenge is to the judgment and order dated 25<sup>th</sup> September, 2018, passed by the learned District Judge-3, Nagpur, whereby the learned Judge

dismissed the appeal filed by the applicant/original plaintiff against the judgment and decree passed by the learned 2<sup>nd</sup> Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No.165/2012 dated 18<sup>th</sup> July, 2017. The learned Judge of the Small Causes Court, Nagpur, *vide* order dated 18<sup>th</sup> July, 2017, had dismissed the suit filed by the applicant/plaintiff for possession of the tenanted premises in possession of the non-applicant/defendant on the ground of reasonable and *bona fide* requirement.

02]           The facts are as follows:

In this judgment the parties shall be referred by their nomenclature in the plaint. The applicant shall be referred as the plaintiff, and the non-applicant shall be referred as the defendant. The premises, admeasuring about 130 sq. ft., situated on the ground floor of the Municipal Corporation House No.307, NIT Plot No.71, Ward No.30, Bhavsar Chowk, Central Avenue Road, Nagpur, shall hereinafter be referred to as the “suit premises”. The defendant was inducted in the suit premises way back in 1990 as a tenant. The suit premises is a shop. The defendant has been doing the business of selling the Cardboard from the suit premises. It is the case of the plaintiff that the suit premises consist of ground plus one floor. On the first floor of the suit premises, there is a lodge

known as Vishranti having nine rooms. The said lodge is run by the sister-in-law of the plaintiff. The plaintiff and other members of the family, including the sister-in-law, are residing jointly. It is stated that, in order to complement to the business of the lodge, the plaintiff wants to start the business of the restaurant on the ground floor. On the ground floor, one shop in the line of the suit premises facing the road is in possession of the plaintiff. The plaintiff needs 1000 to 1100 sq. ft. area for starting the restaurant. The plaintiff has no premises in his possession to start his restaurant business. The suit premises are required reasonably and *bona fide* by the plaintiff for starting his restaurant business. The defendant was requested by the plaintiff to vacate the suit premises. The defendant did not pay any heed. It is submitted that the plaintiff would suffer greater hardship, if a decree is not passed in his favour. On the other hand, it is contended that the defendant would not suffer any hardship, because the commercial premises are easily available in the locality. On these averments, the plaintiff prayed for a decree.

03]           The defendant resisted the claim. The defendant has admitted that he is the tenant of the suit premises. However, the defendant has denied the claim of the plaintiff with regard to the

requirement of the premises for starting the restaurant business. It is contended that the plaintiff is having sufficient premises in the suit premises as well as in other buildings in the vicinity owned by the family. The plaintiff can very-well start his business there. The requirement is not reasonable and *bona fide*. The defendant has no alternative premises for doing his business. His livelihood depends upon the income from the business carried on from the suit premises. The plaintiff is financially well off. He is in the business of jewellery. If the decree for eviction is passed, then he would come on the street. He has no alternative premises. He would suffer greater hardship in case a decree for possession is passed.

04]       The parties adduced the evidence to support their rival contentions. The learned 2<sup>nd</sup> Additional Judge, Small Causes Court, Nagpur, dismissed the suit holding that the plaintiff has failed to prove his requirement of the premises. The plaintiff filed the appeal against this judgment and decree. The learned District Judge-3, Nagpur, has recorded a finding on the issue of reasonable and *bona fide* requirement in favour of the plaintiff. However, the learned District Judge on the point of hardship has recorded a finding that the defendant/tenant would suffer greater hardship in case a decree for possession is passed. The learned District Judge,

by holding that the decree for possession would cause greater hardship to the defendant/tenant, dismissed the suit. The plaintiff has challenged the finding recorded by the learned District Judge on the point of hardship by filing this revision application. The defendant has also filed the counterclaim and challenged the finding on the point of reasonable and *bona fide* requirement recorded against him.

05] I have heard Mr. R.M. Sharma, learned advocate for the applicant/plaintiff and Mr. M.D. Samel, learned advocate for the non-applicant/defendant. Perused the record and proceedings.

06] Learned advocate for the plaintiff submitted that the learned District Judge has failed to properly appreciate the evidence adduced by the plaintiff on the point of hardship. Learned advocate submitted that the defendant in his cross-examination has categorically admitted that from 24<sup>th</sup> April, 2012, he has not searched the alternative accommodation. Learned advocate submitted that the learned District Judge has only taken into consideration further part of the cross-examination where the suggestion put to the defendant with regard to the efforts to search for alternative accommodation was denied. Learned advocate

submitted that the learned District Judge has recorded the finding on the issue of hardship against the plaintiff by ignoring this categorical admission. It is submitted that the finding recorded by the learned District Judge ignoring the admission is perverse and it needs to be corrected. Learned advocate submitted that the tenant has to plead and prove that, after the filing of the suit for recovery of possession on the ground of requirement, he has made efforts to find out the alternative premises. Learned advocate submitted that this finding needs to be corrected. Learned advocate further submitted that other observations made by the learned District Judge with regard to the affluent status and financial position of the plaintiff, could not be taken into consideration while deciding the hardship. Similarly, the other source of livelihood through the jewellery shop could not have been taken into consideration by the learned Judge, while recording the finding on the issue of hardship against the plaintiff. Learned advocate, in order to seek support to his submission, has relied upon the following decisions:

- 1. Shamshad Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased) thr. L.Rs. & Ors. [(2008) 9 SCC 1].*
- 2. Gaur Chandra Basu and Anr. Vs. Ruchira Ashok Sonde & Anr. [(2002) SCC OnLine Bom 808].*
- 3. Bhimanagouda Basanagouda Patil Vs. Mohd. Gudusaheb*

*[(2003) 3 SCC 101].*

*4. Uday Shankar Upadhyay & Ors. Vs. Naveen Maheshwari [(2010) 1 SCC 503].*

*5. Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222].*

07]            Learned advocate for the defendant submitted that the finding recorded by the learned Judge on the issue of *bona fide* requirement in favour of the plaintiff is contrary to the evidence on record. There is ample accommodation available at the disposal of the plaintiff. He has admitted that, during the pendency of the suit, he has recovered possession of the premises in the building, which is in front of the suit premises. Learned advocate took me through the record and pointed out that in the suit building, ample space is available at the disposal of the plaintiff to start his business. The mezzanine floor is admeasuring about 600 sq. ft. The mezzanine floor is just below Vishranti Lodge, and the same can be used for starting the restaurant. The requirement is not reasonable and *bona fide*. It is actuated with malice. The requirement put-forth is nothing but a ground created at the whims and fancies of the plaintiff/landlord. It is submitted that, therefore, the finding recorded by the learned District Judge against the defendant on the point of *bona fide* requirement needs to be set aside.

08] As far as the comparative hardship is concerned, learned advocate submitted that the income from the suit premises is the only source of livelihood of the defendant. If the decree for eviction is passed, then he would come on the street. The defendant has established the goodwill of his business carried on from the suit premises. It is submitted that the defendant has pleaded as well as proved that he is unable to find out the alternative premises in the locality. It is submitted that, on this point, the learned Judge has properly appreciated the evidence and attending circumstances. It is further submitted that, if the decree for eviction is passed against the defendant, then he would suffer greater hardship. Learned advocate submitted that the admission sought to be capitalised by the plaintiff was given under the misconception. His evidence in totality has to be considered. It is submitted that the finding recorded by the learned Judge on the point of hardship does not warrant interference in the revisional jurisdiction.

09] At the outset, it would be necessary to consider the law laid down by the Hon'ble Apex Court. The Hon'ble Apex Court in the case of ***Uday Shankar Upadhyay & Ors.*** (supra) has held that if the landlord is able to prove his *bona fide* need of the premises,

then it is not for the court to say that he should shift to the first floor or any higher floor. It is well-known that the shops and businesses are usually conducted on the ground floor, because the customers can reach there easily. The Court cannot dictate the landlord which floor he should use for his business; that is for the landlord himself to decide.

10] The Hon'ble Apex Court in the case of ***Shiv Sarup Gupta*** (supra) has held as follows:

*“Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards, then in the matter of choosing out of more than one accommodation available to the landlord, the subjective choice of the landlord shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his need. It is held that, in short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”*

11] In the backdrop of the above-stated legal position, the finding recorded by the learned District Judge on the point of reasonable and *bona fide* requirement of the plaintiff needs to be

appreciated. The learned Judge of the Small Causes Court did not accept the claim of the plaintiff. However, the learned District Judge, on re-appreciation of the evidence in appeal, recorded a finding that the requirement of the plaintiff was reasonable and *bona fide*. It has come on record that, on the ground floor of the building, there are shops. On the first floor, there is a lodge run by the sister-in-law of the plaintiff. There are more than one co-owner of the property. Below the lodge, there is a mezzanine floor admeasuring about 600 sq. ft. In his evidence, the plaintiff has stated that this mezzanine floor is proposed to be used to accommodate the kitchen for the restaurant. The mezzanine floor cannot be used for running a restaurant, inasmuch as it has no entrance from the front side of the building. The area of the mezzanine floor is too short to start the restaurant and accommodate the kitchen. The plaintiff has deposed that, on the front side of the building, there are three shops. Out of three shops, one shop is in possession of the plaintiff.

12] It is undisputed that the suit filed against the tenants of the adjoining shop was also dismissed. However, in the appeal on the ground of *bona fide* requirement, the finding has been recorded in favour of the plaintiff/landlord. It needs to be

mentioned at this stage that the tenant of the adjoining shop has not filed counterclaim in Civil Revision Application No.140/2018, filed by the plaintiff/landlord against the tenant. The plaintiff/landlord has challenged the finding recorded on the issue of hardship against him by filing Revision Application No.140/2018. It is to be noted that the finding on the issue of *bona fide* requirement has been recorded in favour of the plaintiff. It needs to be stated that the *bona fide* requirement pleaded by the landlord needs to be considered objectively. The need of the landlord must be reasonable and *bona fide*. The requirement and *bona fide* requirement and mere desire are two distinct things. The desire is an outcome of whims and fancies. The requirement can be said to be natural, real, sincere, and honest, if it is reasonable and *bona fide*. If it is a mere desire, then it could not be said to be reasonable and *bona fide*. The landlord has the freedom to choose the premises for doing the business of restaurant. The tenant occupies the premises pursuant to the privity of contract. The parties are bound by the terms and conditions of the contract. The Maharashtra Rent Control Act, 1999 (for short, “the Maharashtra Rent Control Act”) provides numerous grounds for eviction of the tenant. While considering the ground of reasonable and *bona fide* requirement of the landlord, the Court has to bear-in-mind the

facts and circumstances of each and every case. There cannot be a straight jacket formula to arrive at a conclusion on the issue of reasonable and *bona fide* requirement. The reasonable and *bona fide* requirement pleaded by the landlord has to be addressed objectively on the basis of the evidence on record.

13] In this case, it has come on record that the tenant from the adjoining building has vacated the tenanted premises. However, it shows that those premises are residential premises. The eviction of the tenant from the residential premises cannot be made use of by the tenant to defend the requirement of the landlord of the premises for starting the business. The residential premises cannot be converted into commercial use. It has come on record that, on the backside of the building, there are shops. It has come on record that the plaintiff has also initiated proceedings for eviction of those tenants. It is the case of the plaintiff that the premises from the building facing the road are suitable for restaurant. The learned District Judge, on minute scrutiny and appreciation of the evidence, has accepted the case of the plaintiff and rejected the defence of the defendant. The freedom of the landlord to start the business from his own property cannot be questioned. He has the right to start the business from his own

property. The need of the premises to start the business by the landlord must be reasonable and *bona fide*. If it is found that the requirement is not genuine, then the attempt made by the landlord to evict the tenant under the guise of starting his business needs to be nipped in the bud. In this case, the evidence adduced by the plaintiff is sufficient to prove that his requirement is reasonable and *bona fide*. There is already a lodge having nine rooms on the first floor of the building. It is stated that for the occupants of the lodge, the restaurant on the ground floor is necessary. The occupants of the lodge are also facing inconvenience for want of boarding facility.

14] The plaintiff was subjected to searching cross-examination. Perusal of his cross-examination would show that he did not conceal anything from the Court. He has stated about his jewellery business and the separate premises for the jewellery business. It has come on record in his cross-examination that he is financially well off. It is submitted that the plaintiff, being financially well off, is not required to start any other business. In my view, this submission cannot be accepted. His need of the premises vis-a-vis the business proposed to be started by him needs consideration. The evidence on record is sufficient to prove that

the need of the premises *put forth* by the plaintiff is genuine. At this stage, it would be necessary to make a mention of one of the safeguards provided to the tenant who has suffered the decree under Section 16(1)(g) of the Maharashtra Rent Control Act. In this context, it would be appropriate to make a reference to Section 18 which provides the protection to the tenant. As per this section, a tenant, who has been evicted pursuant to the decree under Section 16(1)(g), can be directed to be put into the possession of the said premises, if the landlord does not occupy the premises within a period of one month from the date of the recovery of the possession or the premises are re-let within one year of the date of the recovery of the possession. The complete mechanism is provided in this regard under Section 18 of the Maharashtra Rent Control Act. In my view, therefore, the finding recorded by the learned District Judge on the point of reasonable and *bona fide* requirement does not warrant interference. It is based on proper appreciation of the evidence. The finding recorded by the learned District Judge on the point of reasonable and *bona fide* requirement is consistent with the settled legal position as enunciated hereinabove. Therefore, the counterclaim filed by the defendant goes.

15]       The next important issue is pertaining to the comparative hardship. In this context, sub-section (2) of Section 16 of the Maharashtra Rent Control Act needs consideration. Sub-section 2 of Section 16 mandates that no decree for eviction shall be passed on the ground of requirement, if the Court is satisfied that, having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. In short, it states that if the decree results in greater hardship than by refusing to pass it, then the decree on the ground of requirement shall not be passed. The availability of other reasonable accommodation is the most important factor while deciding the comparative hardship.

16]       It is submitted that the defendant, after filing of the suit, did not search for the alternative accommodation. Learned advocate for the plaintiff took me through the evidence as well as the finding recorded by the learned Judge. The plaintiff has stated that he has no alternative accommodation for starting the restaurant business, and therefore the premises are required by him. The finding recorded by the learned District Judge on the point of his requirement of the premises in his favour has attained finality.

The defendant/tenant has denied the claim. It is contended by the defendant that he has no alternative premises and therefore he would suffer greater hardship, if the decree for eviction is passed. Learned advocate took me through the cross-examination of the defendant and pointed out that he has admitted that he had not searched for the alternative accommodation since 24<sup>th</sup> April, 2012. The suit was filed in 2012. It is seen from further part of the cross-examination that the defendant has denied that he did not make attempts to find out the reasonable alternative accommodation. The learned District Judge seems to have overlooked this vital and important admission. The learned Judge has given undue importance to the other part of his cross-examination. He was asked in his cross-examination whether he has searched for alternative accommodation. He answered the said question in the affirmative and denied the suggestion that he is deposing falsely on that count. It is to be noted that, in view of this candid admission, it was not necessary to ask any further question of the defendant in the cross-examination. However, the advocate for the plaintiff took the risk. This seems to be a mistake on the part of the advocate. However, on account of this mistake, the vital admission given by the defendant that he did not search for the alternative accommodation from 24<sup>th</sup> April, 2012, is a very clear and

unambiguous admission. It can be made use of against the defendant. The learned Judge, as can be seen from the analysis of the evidence, has completely missed this part of the evidence. The finding on this issue has been recorded, ignoring this vital admission. In my view, this is contrary to the record. This finding is required to be corrected.

17] The Hon'ble Apex Court in the case of ***Shamshad Ahmad & Ors.*** (supra) has held as follows:

*“50. Regarding comparative hardship, nothing has been stated by the tenant as to whether any attempt has been made by him to get alternative accommodation and he failed to get such accommodation. In the circumstances, in our opinion, the appellate authority was right in observing that there was no evidence to show that no shop was available to the tenant. It is quite possible, as noted by the appellate authority, that the tenant might have to pay more rent. But that would not preclude the landlords from getting possession of the suit shop once they had proved genuine need of the property.”*

18] The Co-ordinate Bench of the Bombay High Court at Principal Seat in the case of ***Gaur Chandra Basu & Anr.*** (supra) has held as follows:

*“12. From the evidence it is obvious that no positive evidence has been adduced by the defendants that getting alternative premises in the same locality or the same city was impossible. If that be so, then applying the principle enunciated by the Apex*

*Court in (1979) 1 SCC 273 : A.I.R. 1979 S.C. 272 in the case of (Ms. Bega Begum v. Abdul Ahad Khan (dead) by L.Rs.), the Court will have to answer the issue of comparative hardship against the petitioners-tenants and in favour of the respondent-plaintiff landlady.”*

19] In my view, the above-stated settled legal position seems to have been glossed over by the learned Judge. The admission given by the defendant, as stated-above, is sufficient to crystallize this issue. The tenant has to plead and prove that despite efforts, the alternative premises are not available. Perusal of the evidence would show that the defendant in his examination-in-chief has stated that he has tried his level best to search the alternative accommodation, but he could not get the same. The defendant was required to adduce the sufficient evidence to elaborate this aspect. A bald statement of this kind would not be sufficient to accept the contention. The defendant could have provided the particulars as to the place where he searched for the alternative premises. He was required to provide the details of the locality, the rent, etc. His evidence is silent. In his cross-examination, he has given admission contrary to what was stated in the examination-in-chief. The admission cannot be discarded. The admission is the best evidence. In order to wriggle out of the admission, it must be proved that it was given on account of some

misconception or confusion. It could have been explained by conducting re-examination. In my view, therefore, the settled legal position is against the defendant. The defendant has failed to prove that he made search of the alternative premises, and he could not get the same.

20] The learned Judge, while recording the finding on the issue of hardship against the plaintiff, has observed that the plaintiff is having a jewellery shop, and starting the business of restaurant from the suit premises would help him to earn more. It is observed that for earning his bread and butter, the business of the restaurant is not must. His survival does not depend on the said business. The learned Judge has observed that additional income from the restaurant business would bring luxury to the plaintiff, whereas the defendant/tenant would struggle for earning his bread and butter from the new premises. It is also observed that, if the defendant is required to vacate the suit premises, then he would lose his goodwill and may not get a lucrative business at another premises in a different area. In my view, these observations are contrary to the settled legal principles.

21] The Hon'ble Apex Court in the case ***Bhimanagouda***

***Basanagouda Patil*** (supra) has held that the finding of comparative hardship cannot be recorded in favour of the tenant only on the basis of the affluence of the parties. If this is the correct approach, then an affluent landlord can never get possession of his premises even if he proves all his *bona fide* needs.

22] In my view, in the backdrop of this settled legal position, the observations made by the learned Judge on this point cannot be sustained. The learned Judge has failed to properly appreciate this aspect. In view of this, I conclude that the finding recorded by the learned Judge on the point of comparative hardship is required to be set aside. The defendant has failed to adduce the evidence and prove that he searched for the alternative accommodation and he could not get the same. Considering the non-availability of the premises with the plaintiff for starting his restaurant business, his case that he requires the premises reasonably and *bona fide* for starting his restaurant business deserves acceptance. In the facts and circumstances, no greater hardship would be caused to the defendant in case the decree for eviction is passed. If the decree for eviction is not passed, then the plaintiff would not be able to start his restaurant business, despite proving his requirement being reasonable and *bona fide*. As such,

the revision application deserves to be allowed. The counterclaim deserves to be rejected. Accordingly, the suit filed by the plaintiff deserves to be decreed. Hence, the following order:

### ORDER

- i] The revision application is **allowed**.
- ii] The counterclaim filed by the defendant is rejected.
- iii] The suit is decreed with costs throughout.
- iv] The defendant shall deliver the vacant and peaceful possession of the suit premises to the plaintiff.
- v] The tenancy of the defendant has been determined/terminated by the decree of this Court. If the defendant fails to vacate the premises, then he shall pay the mesne profits from the date of this order.
- vii] The revision application stands disposed of in the aforesaid terms.

(G. A. SANAP, J.)