



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

WRIT PETITION NO. 114/2024

1. Harikisan s/o Asaramji Chandak (Dead)
Through his legal heirs-

1.a Uttam s/o Harikisan Chandak,
Aged adult, Occu-Business,

1.b Jagdish s/o Harikisan Chandak,
Aged adult, Occu-Business,

1.c Hukum s/o Harikisan Chandak,
Aged adult, Occu-Business,

1.d Surendra s/o Harikisan Chandak,
Aged adult, Occu-Business,

All 1.a to 1.d, R/o Shanimandir Ward,
Near Pratap Bhavan, Arvi, Dist. Wardha.

1.e Sau. Malti w/o Prakashchand Gandhi,
Aged adult, Occu-Household,
R/o Shrikrushna Lay-out, Tilak Ward,
Near Bajaj Servicing Centre, Warora,
Tah. Warora, Dist. Chandrapur.

1.f Sau. Shantabai w/o Rameshchand Rathi,
Aged adult, Occu-Household,
R/o Borgaon (Ijara), Tah. Arni,
Dist. Yavatmal.

... Petitioners

[Petition No.1.a for he himself & Power of Attorney of Petitioner No.1.d to 1.f]

Versus

Parshwanath Digamber Jain Deosthan Sanstha
Registered Public Trust having Reg. No.197/W
through its Joint Secretary-
Shri Kailas Mahendrakumar Singhai,
R/o Arvi, Tah -Arvi,
Dist. Wardha

.. Respondent

Mr. N.G.Jetha, Advocate for the petitioner/s.
Mr. M.A.Deo, Advocate and Mr. A.S.Dhore, Advocate for the respondent.

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 07/10/2025.

ORAL JUDGEMENT

1. **Rule.** Rule returnable forthwith. With the consent of both parties, the petition is taken up for final disposal at the admission stage.

2. The petitioner is assailing the judgment and decree in Regular Civil Appeal No.190/2016 passed by Adhoc District Judge, Wardha dated 30.09.2023, whereby the learned Appellate Court set aside the order passed in Regular Civil Suit No.46/2010 by the learned Civil Judge, Senior Division, Arvi. The Appellate Court allowed the appeal partly and directed that possession of the shop property, measuring 15 x 12 feet situated at north-west corner of Walisaheb Ward, demand house no.412, be handed over to the plaintiff within a period of 30 days from the date of the order.

FACTUAL MATRIX OF THE CASE

3. Respondent herein, being the original plaintiff, is a registered Public Charitable Trust and owns a house bearing No.412, constructed with bricks and mud, as per description of the property mentioned in the plaint. The suit property had been given on rent

to the defendant approximately 39 years prior to the filing of the suit in 2010, at a monthly rent of Rs. 251/-. The suit property is an old and in dilapidated condition, and the respondent (plaintiff) intends to demolish and reconstruct the same. The property is required for *bona fide* personal occupation. The respondent-plaintiff issued a notice to the petitioner, demanding vacant possession of the suit property and terminating the tenancy with effect from 31st October, 2010. Although the notice was duly served on the petitioner, the same was not replied. The petitioner neither delivered vacant possession of the suit property nor paid outstanding rent amount. Consequently, the respondent-plaintiff filed a suit for ejectment, possession and recovery of rent and damages before the learned Civil Judge, Junior Division, Arvi. After service of the suit summons, the petitioner-defendant appeared and filed a written statement and resisted the claim of the plaintiff. In his written statement, the petitioner did not dispute the ownership of the plaintiff over the suit property, but denied that property was in dilapidated condition.

On the contrary, the petitioner averred that the suit property is in good and habitable condition and is not required for the *bona fide* occupation of the respondent-plaintiff. It was further averred that if the suit were decreed, it would cause undue hardship to the petitioner. The petitioner also contended that the

suit was filed by the plaintiff out of personal grudge with a view to evict him from the property and, therefore, prayed for dismissal of the suit.

Both the parties led evidence in support of their contentions. After considering the evidence, the learned Civil Judge Junior Division, Arvi, dismissed the suit by judgment and order dated 19.10.2016. Being aggrieved and dissatisfied with the judgment and order, the respondent-original plaintiff preferred Regular Civil Appeal No.190/2016 before the District Court at Wardha. The learned Adhoc District Judge, Wardha, after considering the evidence and contentions raised by both the parties, allowed the appeal partly and directed the petitioner-defendant to handover the possession of the suit shop within a period of 30 days from the date of the order. Being aggrieved by the decision, the petitioner has preferred the present writ petition.

4. The learned counsel for the petitioner submitted that the Appellate Court committed a manifest error on the face of the record. It was argued that the Appellate Court committed grave error in giving affirmative finding on the point no.1. On the contrary, the Appellate Court ought to have given negative finding on the point no.1. The learned counsel for the petitioner further submitted that the respondent-plaintiff failed to prove that the property is reasonably required for the personal occupation and that

it is in a dilapidated condition.

5. The learned counsel further argued that the Appellate Court wrongly considered the respondent's case while applying Section 16(1)(n) of Maharashtra Rent Control Act. The learned Counsel submitted that without any pleadings from the parties, the Appellate Court altered nature of the plaint which is impermissible and exceeded its jurisdiction. He further argued that the findings recorded by the Appellate Court were based on its own assumptions and presumptions and were made without application of logical mind. He further argued that without there being any pleading in the plaint, the Appellate Court ought not to have allowed the appeal and submitted that the order of the Appellate Court is liable to be set aside and the order passed by the Trial Court be confirmed. In support of his contentions, learned counsel for the petitioner relied upon the following judgments:

(i) ***Union of India Vs. Ibrahim Uddin and Anr*** in Civil Appeal No.1374/2008 (Supreme Court) dated 17.07.2012.

“26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

28. *It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).*

33. *It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide: State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1794; State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi, AIR 2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285; and Sant Lal Gupta & Ors. v. Modern Cooperative Group Housing*

Society Limited & Ors., (2010) 13 SCC 336).

69. To sum up: In view of the above discussion, we reach the following conclusion:

(i) The first appellate court as well as the High Court committed grave error in shifting the burden of proof on the Union of India, appellant/defendant No.1, though it could have been exclusively on the plaintiff/respondent No.1 to prove his case.

(ii) There is nothing on record to prove the grant/gift by the Maratha Government in favour of ancestors of plaintiff/respondent No.1 in the year 1800.

(iii) Plaintiff/Respondent No.1 miserably failed to prove the pedigree produced by him.

(iv) The alleged partition in the year 1819 among the ancestors of plaintiff/respondent No.1 even if had taken place, cannot be a proof of title of the plaintiff/respondent No.1 over the suit property as the pedigree has not been proved. Presumption under Section 90 of the Evidence Act in respect of 30 years old document coming from proper custody relates to the signature, execution and attestation of a document i.e. to its genuineness but it does not give rise to presumption of correctness of every statement contained in it. The contents of the document are true or it had been acted upon have to be proved like any other fact. More so, in case the Will is ignored, there is nothing on record to show as how the plaintiff/respondent no. 1 could claim the title.

(v) The rent note produced by the appellant/defendant No.1 before the court below does not prove anything in favour of the plaintiff/respondent. The same being a vague document is incapable of furnishing any information and, thus, is liable to be rejected. The said document does not make it clear as who has executed it and in whose favour the same stood executed. It does not bear any date as it cannot be ascertained when it was executed. The lease deed cannot be executed without the signature/thumb impression of the lessee. The said lease does not contain any signature/thumb impression of any lessee and also the tenure of the lease has not been mentioned therein. The

rent has been mentioned as Rs.22/- without giving any detail as to whether it was per day, fortnightly, monthly, quarterly or yearly or for ever. More so, there is no reference to the said rent note in the pleadings contained in the plaint, therefore, it is just to be ignored.

(vi) Had there been any Will in existence and not available with the plaintiff/respondent No.1 for any reason whatsoever at the time of institution of the suit, the plaintiff/respondent No.1 could have definitely mentioned that Will had been executed in his favour by his maternal grand-father which could not be traced. Therefore, the application under Order XLI Rule 27 CPC was liable to be rejected. Even otherwise, the Will in absence of any pleading either in the plaint or first appeal could not be taken on record. More so, the Will was not proved in accordance with law i.e. Section 68 of the Evidence Act.

(vii) The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.

(viii) The first appellate court committed a grave error in deciding the application under Order XLI Rule 27 CPC much prior to the hearing of the appeal. Thus, the order allowing the said application is liable to be ignored as the same had been passed in gross violation of the statutory requirement.

(ix) The documents produced by the Union of India have not been properly appreciated by the first appellate court and the High Court.

(x) The courts below further committed an error holding that in case the document is taken on record, the document as well as the content thereof would be deemed to have been proved.

(xi) The appellate courts have also wrongly rejected the

certified copies of the documents prepared by the Cantonment Board which were admissible in evidence.

(xii) The High Court committed a grave error in not addressing itself to the substantial questions of law framed at the time of admission of the appeal and it ought to have decided the same or after discussing the same a finding could have been recorded that none of them was substantial question of law.

(xiii) The suit was barred by the proviso to Section 34 of the Specific Relief Act, for the reason that plaintiff/respondent No.1, admittedly, had not been in possession and he did not ask for restoration of possession or any other consequential relief.

(xiv) The first appellate court as well as the High Court recorded a finding that the Union of India failed to prove its title over the suit land. The said courts did not realise that this was not the issue to be determined, rather the issue had been as to whether the plaintiff/respondent No.1 was the owner of the suit land.

(xv) The first appellate court has not decided the issue of admission of documents in correct perspective and recorded a perverse finding.

(xvi) Question of filing a document in rebuttal of a Will could not arise. The other party has to admit or deny the document as required under Order XII CPC. There could be no Will in favour of the Union of India by the predecessors of the plaintiff, on the basis of which it could also claim title.

(xvii) The courts below had wrongly drawn adverse inference against the appellant/defendant No.1 for not producing the documents as there was no direction of the court to produce the same. Neither the plaintiff/respondent No.1 had ever made any application in this respect nor he filed any application under Order XI CPC submitting any interrogation or for inspection or production of document.

(xviii) The appellate courts have decided the appeals in unwarranted manner in complete derogation of the

statutory requirements. Provisions of CPC and Evidence Act have been flagrantly violated”.

(ii) Shriram Chits (India) Private Limited Vs. Raghachand Associates :2024 (5) Mh.L.J. (S.C.) 741:

“23. In this background, we must consider the plea of Sri Shailesh Madiyal that the complainant has not pleaded nor proved that the service was obtained for earning his livelihood through the means of self-employment. His argument relates to the third part of the definition of consumer. The question of inquiring into the third part will only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that the service obtained was for a commercial purpose. Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment. In the facts of this case, the OP has merely pleaded in its version that the service was obtained for a commercial purpose. No evidence has been led to probabilise its case other than merely restating its claim on affidavit. It is now well too settled that a plea without proof and proof without plea is no evidence in the eyes of law”.

(iii) Ujwala w/o Sheshraoji Guddhe vs. Prakash s/o Govindrao Dharmadhikari and others: 2025 (1) Mh.L.J. 751:

“16. The learned advocate Mr. U.A. Gosavi for the plaintiff and other defendants submitted that the defendant no.4 in her written statement stated that, she had nothing to say about the property situated at Nagpur which is clear admission and, therefore, the burden of proof does not lie upon the plaintiff to prove that suit property at Nagpur was purchased by using the sale proceeds of the ancestral property of their joint family. This argument is not legal and acceptable because in the written statement of defendant no.4 in para no.4 it is denied that it is joint family property. The tenor of cross-examination of the plaintiff also shows that nature of the property at Nagpur that it was purchased out of sale proceeds of joint family property is challenged and denied. The admission must be

clear and conclusive as held by Hon'ble Supreme Court in the precedential law of Chikkam Koreswara Rao vs. Chikkam Subbarao and others, MANU/SC/0347/1970 : AIR 1971 SC 1542. As per Section 31 of the Indian Evidence Act, 1872 an admission is not conclusive proof. The Section 58 of the said Act provides that an admitted fact need not be proved, but proviso of Section 58 provides that even though the fact is admitted, court may, in its discretion, require that facts admitted to be proved, otherwise than by such admissions. In this case, it is bounden duty of plaintiff to prove that ancestral property was in existence and it was sold with the help of its sale proceeds suit property at Nagpur was purchased. The burden lies upon the plaintiff to prove that the suit property was purchased by him after sale of the ancestral property. In this regard, the plaintiff's mere pleading and oral evidences are not sufficient as it lacks material corroboration of alleged sale deed of ancestral property. It is against the principle of civil trial "that first plead and then prove". Thus, best possible evidence of sale deed of alleged ancestral property is not produced by the plaintiff. Therefore, legitimate adverse inference can be drawn against the plaintiff that there is no such evidence in existence, hence it is not produced on record as per Section 114 illustration (g) of the Indian Evidence Act, 1872. It is settled law that the plaintiff must stand on his own feet and cannot take disadvantage of weakness of the defence of the defendants. Though defendant no.4 stated in her written statement that she has no concern with the suit property at Nagpur, it is not conclusive admission as she had denied the nature of suit property that it is not purchased out of funds of sale of property of joint family".

(iv) Gulam Ali Ismail Khan (died) thr. His L.Rs. And others vs. Shaikh Kalimulla s/o Sk.Barkatulla: 2025 (1) Mh.L.J. 421

"37. Perusal of the pleadings in the plaint and the contents of the evidence affidavit of the General Power of Attorney of the Plaintiff, makes it clear that certain statements in the evidence affidavit were not supported by the pleadings in the plaint. It is needless to state that no evidence can be led in the absence of foundational pleadings".

(v). Remedios Fernandes (since deceased) thr. Monika Cunha E. Fernandes and others vs. Dr. Alfred Costa and Ors.: 2025 (1) Mh.L.J. 20:

“74. The second substantial question of law also does not arise in view of the above reasoning in the context of the judgments and decrees in the 1954 and 1962 suits. In any case, a plea based on Article 2177 of the Portuguese Civil Code cannot be raised for the first time in a Second Appeal to question the Agreement dated 04.02.1921 or the Sale Deed dated 21.11.1921. Such a question will involve disputed facts for which the foundation of pleadings is a must. Secondly, there would be the issue of limitation because almost 70 to 80 years (by now 100 years) have elapsed since the execution of the Agreement dated 04.02.1921 and the Sale Deed dated 21.11.1921. After acknowledging in the 1954 suit that the plaintiffs' parents had indeed acquired half of the right to the property described under no.8327 by virtue of its purchase, it is no longer open to the defendants to raise such an issue at the second appellate stage.

75. Besides, the evidence on record shows that even the other half of the property described under no.8327 was acquired by the plaintiffs' parents through Court Auction Purchase. Thus, the entire property was acquired by the plaintiffs' parents through a Sale Deed and Court Auction Purchase. The issue of there being allegedly no partition in metes and bounds or the applicability of Article 2177 of the Portuguese Civil Code, therefore, fades into insignificance. Based upon such a plea no case is made out to interfere with the impugned judgment and decree made by the First Appellate Court”.

6. After considering various authorities cited by the learned counsel, I am of the view that, in light of the issues involved in the present writ petition and facts of the case, the said case laws are not applicable to the present petition.

7. Per contra, the learned counsel for the respondent, submitted that the learned Appellate Court considered the matter in

accordance with the evidence led by the plaintiff. He invited this Court's attention to the evidence adduced by the parties which was duly considered by the Appellate Court. He further submitted that it is an admitted fact that the building is over 100 years old and is in a dilapidated condition. He submitted that, at the time when the Civil Suit was filed in 2010 thirty nine years had already elapsed since the tenancy had commenced. It further emerged from the evidence of the witnesses that the construction of the building was of mud and bricks and that the tenant has already sub-letted the shop premises to his son, who owns a shop nearby. Once the tenant is not using the said premises coupled with the fact that the structure is over 100 years old, the learned counsel for respondent supported the order passed by the Appellate Court. He further submitted that the pleadings in the plaint taken as a whole support the Appellate Court's decision. In support of his submissions, he relied upon the following judgments in support of his claim:

(i) Suhasini Atmaram Parab and Ors. vs. B.H. Khatu and Ors. : 2003(1)

Bom.C.R.733:

"5. Having considered the rival submissions, we will first advert to the settled legal position as to how the issue of comparative hardship should be and ought to be examined by the Court. That has been enunciated in the decision of the Apex Court in AIR 1979 Supreme Court 272 [1979]2SCR1 in the case of (Bega Begum v. Abdulahad Khan). The Apex Court has observed that it is no doubt true that the tenant will have to be ousted from the demised premises if the decree for eviction is passed but, such an event would happen, whenever a decree for

eviction is passed and was fully in contemplation of the legislature. But, that by itself would not be a valid ground for refusing the decree for eviction. The Apex Court has further observed that each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiff to prove that lesser disadvantage will be suffered by the defendants and that they were remediable. But, it is enough for the plaintiff to plead and prove that besides the suit premises, he has no other accommodation of his own to meet his requirement which is set up in support of the ground of reasonable and bona fide requirement. On the other hand, the tenant has not only to plead but, also prove the fact that it is impossible to get any other alternative accommodation in the city. If the tenant fails to do so, the issue will have to be answered against the tenant. (Also see Dr. Ranbir Singh, : 19956SCC580. No doubt, while considering comparative hardship, the Court may also take into account the financial position of the parties. In the present case, the finding of fact reached by the trial Court was that both the parties were financially on the same footing. The Appellate Court has however, observed that the defendant No. 2 was financially not sound. But, financial constraint cannot be the only basis on which the issue can be answered. The Court has to take into account all the attending circumstances and if the tenant has failed to plead and prove the fact that it is impossible to get alternate accommodation in the same locality or for that matter, in the same city, then the issue will have to be answered against the tenant. Besides, the respondent No. 1 tenant was obliged to establish that during the long drawn pendency of litigation just as this case since 1973, he made sincere attempt to secure alternative accommodation and was unable to get it. See Nana Kamble's, case 1987 Bom.R.C. 390; (Kumidini Bagade), 1983 Bom.R.C. 390 as well as (Narayan Patil, 1989 Mh.R.C.J. 290). In other words, the tenant cannot remain idle, awaiting for the result of the suit. In the case of Narayan Patil (supra) this Court has observed that the landlord cannot be forced to live in an inhuman condition only because the tenant may suffer decree of eviction. In that case, the Court took into account that even after the decree was passed by the trial Court and, five years had lapsed thereafter, by no stretch of imagination can it be said that such time was not sufficient for the tenant to

secure alternative accommodation further when hardship was to be caused to both then there can be no reason why the landlord should be deprived of the decree.

7. On the basis of these pleadings, the matter went for trial. The plaintiff examined himself and has deposed that the present premises in his occupation consisted of only two room admeasuring 9 x 12 sq.ft. which were absolutely inadequate as his family consisted of himself, his wife, two sons and one daughter. His eldest son Bapu was 22 years while daughter Sunita was 18 years and younger son Sushil was 16 years. All of them were residing with him at the relevant time. Besides this, he has clearly deposed that he does not have any other premises except the suit premises. The plaintiff was cross-examined on behalf of respondent No. 1 but, there is no challenge to the statement made in the chief by the plaintiff regarding hardship. The inevitable consequence is that the case of plaintiff relating to his hardship has gone unchallenged. On the other hand, defendant No. 2 entered the witness box and has deposed that he was getting Rs. 500/- per month and does not own any residential premises in his name. What is relevant to note is that he has deposed that after service of the writ of summons, he tried to find out alternative premises but he could not secure one. He has deposed that the deposit to be paid for securing alternative premises was far beyond his control. Besides, he has deposed that if he is asked to vacate the suit premises, he will not be able to secure another residential premises. During cross-examination of this defendant, he was confronted with his case that he tried to secure alternate premises. A further suggestion was put to him that he was in a position to secure alternative accommodation which he has of course denied. What is pertinent to note is that the defendant No. 2 in support of his case that after the service of the writ of summons, he tried to find out alternate premises but, could not secure one, has not adduced any positive evidence in that behalf. Therefore, the fact that it was not possible for respondent No. 1-defendant No. 2 to secure alternative premises in the same locality or in the city has not been proved. If that be so, applying the principle enunciated by the Apex Court in Bega Begum's case, the issue will have to be answered against the tenant.

8. *To get over the above position, it is contended on behalf of the respondent No. 1 that because of his financial constraints, even if accommodation could have been secured, it was not possible for him to fulfil the demands of high deposit or purchasing premises on ownership basis. In the present case undisputedly, the respondent No. 1 was inducted in the said premises on leave and licence basis only for 11 months by Ganpat Naik without the permission of the petitioner's predecessor. This fact has been brought on record during the cross-examination of the defendant No. 2 so as to contend that the respondent No. 1 was fully aware that he has got entry in the suit premises only for a temporary period and therefore it will not be open for him to take the excuse of financial constraint to disrobe the landlord of the relief of possession. As observed earlier, no evidence has been brought on record to the effect that for all these years, respondent No. 1 has made any efforts to secure alternative accommodation and that inspite of his best efforts, he could not secure any accommodation in the locality or in the city. Merely, taking plea of financial constraint would be of no avail to respondent No. 1. It is well-settled 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. In the present case, both the Court have found as of fact that the landlord was badly in need of additional premises. Even the respondent No. 1 has not challenged the evidence of hardship of the plaintiff. Moreover, it is not in dispute that at the relevant time, both his sons were grown up and were of marriageable age. It is stated across the bar which fact is also conceded by Counsel for the respondents on instructions from the respondent No. 1 who is present in Court that both the sons have been married and are staying with their respective spouses and other family members in the same premises consisting of two rooms admeasuring 9 x 12 feet only. If that be so, merely because, respondent No. 1 has financial difficulty, it cannot be a ground to deny the relief of possession to the landlord and to force him to stay in inhuman conditions.*

9. *In the circumstances, I have no hesitation in taking the view that the Appellate Court has not applied the correct tests in deciding the issue of comparative hardship”.*

(ii) Goverdhandas Mulchand Agrawal and Ors. vs. Bherulal Uderam Bagade and Ors.: 2005 (Supp.) Bom.C.R. 643 :

“29. It is also necessary to note that while setting out the need for business premises and testing the reasonableness thereof, it is not necessary for the landlord to plead and prove that he has the necessary knowhow or expertise as well as financial capability to conduct the business. It is ultimately the aspect of need which is relevant. It should not be a mere wish or desire. Similarly, it is well settled that merely because a litigation is pending for considerable length of time, it should not necessarily be considered that the need and requirement pleaded has either been lost or rendered redundant and unnecessary. It has to be judicially accepted that litigation in Indian Courts takes considerable length of time. Merely because it consumes lot of time, it does not mean that the suits filed by landlords for possession on the ground of reasonable and bona fide requirement ought to be thrown out straight away at the stage where the present matter has reached. It will not be proper if I refuse to scrutinize judgments rendered by the Courts below in my jurisdiction under Article 227 of the Constitution of India merely on the ground that more than 17 years have elapsed after the date of delivery of appellate judgment. It would not be just and fair to deprive the petitioners of adjudication on merits because, the petition is pending in this Court for no fault on their part. Initially, that petition was filed before the main seat i.e. Bombay Bench of this Court. Later on, upon jurisdiction of the district being transferred and vesting in Aurangabad Bench, the petition was transferred from Bombay to Aurangabad. Before this Bench, it has remained pending. It has not been either withdrawn nor any direction is sought that the petition ought to be disposed of without any adjudication on merits as it has become infructuous. Even before me apart from oral submission of Shri P.M. Shah, learned Senior Counsel, nothing has been produced on behalf of the respondents which would indicate that the petitioners requirement and need does not service any longer. On the other hand, Shri Agrawal reiterates the said requirement. He submits that it subsists even today. Hence, in peculiar facts and circumstances of this case, it is not possible to

accept the contentions of Shri Shah that the petition ought not to be adjudicated on merits. I find much substance in the contentions of Shri Agrawal that petition having been admitted and kept pending for 17 long years, fairness and justice requires that it be disposed of on merits.

42. In the light of conclusion reached by me namely; that the petitioners have proved that their requirement is bona fide as well as reasonable, then all that is left now is the issue of comparative hardship. The law on this point is well settled. Comparative hardship is an aspect which has to be tested on the degree of necessity. Burden is on the tenant. Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada, AIR 2003 S.C. 2713, in paras 9, 10 and 11 of this decision, this is what is stated :--

9. The family, the business background of the parties, the availability of accommodation with either parties or in the township, the extent of direness or pressing nature of the need for eviction as against the direness of need or urge of the tenant to continue to occupy or cling to the tenancy premises, with reasons therefore, assume relevance. The Court may keep in view how the things would take shape in a reasonably foreseeable future in either event. The conduct of the parties, their mutual relationship may also be relevant. In spite of the availability of ground for eviction being legally sustainable, for the purpose of deciding the issue as to comparative hardship, the Court may take into consideration availability of such other premises with the landlord, which though not necessarily alternative to the suit premises, may still be available to accommodate the proven requirement of the landlord. The fact that the tenant could have had shifted to other premises or has missed the opportunity of availing occupation of other premises or is likely to part with possession over other premises whereto his business can be or could have been shifted are all relevant factors for the purpose of Section 13(2) though may not be relevant for the purpose of Section 13(1)(g). These are illustrative factors, incapable of being listed fully and precisely, which enter into the thinking process leading to formulation of opinion on comparative hardship.

10. The provisions of the Act do not bar a partial eviction

being ordered rather contemplate a *partial eviction specifically - which would of course depend on answer to the question whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of comparative hardship. If the Court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the Court may order partial eviction so that the requirement of the landlord is satisfied and the tenant is also not deprived of his running business activity. Inasmuch as Section 13(2) entails the consequence of the landlord being denied decree of eviction, wholly or partly, in spite of his having proved reasonable and bona fide requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds under Section 13(2) of the Act is on the tenant. It is expected of the parties to raise necessary pleadings, and the Court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the Court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.*

11. The Act does not lay down any guidelines or relevant factors based *whereon the question of comparative hardship is to be decided. A slight indication is given in the first para of Section 13(2) that regard must be had to (i) all the circumstances of the case, (ii) including the question whether other reasonable accommodation is available for the landlord or the tenant. The expression 'other reasonable accommodation' as employed here does not mean an accommodation suitable in all respects as the suit accommodation is. The Legislature has chosen it appropriate to leave the determination of issue on sound discretion of the Court*".

(iii) Parashram Tuljaram Belhekar and others v. Tejmal @ Kankamal Mulchand Jain : 2007 (Supp.) Bom.C.R. 811:

“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 & Others... v. B.H Khatu & Others](#)) 9 2003 (1) Bom.C.R. 733: 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. Besides, the tenant had demised and the respondents had not raised any plea to explain as to how they will be put to greater hardship as compared to the landlord. The Appellate Court was much impressed only with the submission made across the Bar, in this context, though, there was no amendment application filed by the respondents. The Appellate Court should have approached the issue of comparative hardship from the stand point of the view of the subsequent developments. The bona fide requirement of the landlord had still been in existence. His son was unemployed even at the time when the appeal was decided. As against this, two sons of the deceased tenant were gainfully self-employed and are residing separately. His daughters are married and the old aged widow was hardly in a position to do any business. Then she was aged about 62 years and now she is aged about 79 years. There was no documentary evidence before the Appellate Court to support the inference that she continued the business of herbal medicines etc. Needless to say, the Appellate Court approached the issue regarding comparative hardship by assuming that it was for the landlord to prove that the hardship which will be caused to the tenant could be of lesser degree than his own. Since the burden of proof was on the tenant, the approach of the Appellate Court is clearly erroneous and hence, the finding on the relevant issue is against the settled principles of law and needs to be corrected. I have no hesitation in holding, therefore, that the comparative hardship was more to the landlord and the respondents failed to discharge the burden to prove that they would be

put to greater hardship as compared to that of the landlord”.

(iv) *Ajitnath Jain Shwetambar Mandir Trust through its member/Managing trustee Shri Sunil Kumar Bimalchand Jain Vs. Dnyaneshwar Gulabrao Kalamkar : 2014 SCC Online Bom 1192:*

“ 7. It is to be noted that the landlord was a trust suing through its trustee and under provisions of Section 16(1)(g) of the said Act, where the landlord is a trustee of a public charitable trust and the premises are required for occupation for the purposes of trust, proceedings can be initiated under the said clause. The respondent in his written statement specifically denied that there was any need of the plaintiff trust to build any community hall or temple. The claim therefore as made was opposed. The trial Court after considering the case of the plaintiff under provisions of Section 16(1)(g) of the said Act proceeded to pass a decree for eviction on the said ground. The lower appellate Court, however, has reversed the said finding on the ground that as the trust required a premises for construction of community hall and temple, it ought to have invoked provisions of Section 16(1)(i) of the said Act.

8. It is necessary to note that insofar as provisions of Section 16(1)(g) of the said Act are concerned, when the same are invoked by a public charitable trust on the ground that it requires the premises for occupation for the purposes of trust, there is no need to show reasonable and bona fide need as contemplated by the first portion of clause (g) of Section 16(1) of the said Act. This issue is no longer res integra in view of the decision of this Court in the case of Bandu Ravji Nikam v. Acharyaratna Deshbushan Shikshan Prasarak Mandal, Kolhapur, reported in (2003) 3 Mah LJ 472, where in it has been observed thus:—

“4. As rightly contended by the respondent, since the respondent is a public charitable trust, the requirement of pleading as well as proof to establish the ground under section 13(1)(g) of the Act would be different than the one required by any other

landlord which is not a public charitable trust.”

9. It is, therefore, clear that the requirement of pleading and proof is slightly different when the landlord is a trustee of a public charitable trust. The only requirement is that the trust is required to show that the premises are required for the purposes for which trust is formed. In para no. 3 of the plaint, it has been specifically stated that the premises were required for the bona fide use and purpose for which the trust was created.

10. Insofar as the need of the trust for building a community hall and temple is concerned, it is not necessary, that wherever any demolition of the tenanted premises and construction thereafter is involved, the landlord would be required to invoke provisions of Section 16(1)(i) of the said Act. If a trustee of a public trust demonstrates that the tenanted premises are required for the purposes of the trust, even if such purpose would involve demolition of premises and construction of new premises, that would not take the case of trust out of the purview of provisions of Section 16(1)(g) of the said Act. In the case of Kunhamma alias Lakshmi Ammas Children v. Akkali Purushothaman, reported in (2007) 11 SCC 181, the Supreme Court held that merely because the existing premises were required to be demolished, the said aspect would not take out the case of the landlord from the purview of his bona fide need.

11. Insofar as provisions of Section 16(1)(i) of the said Act are concerned, the same contemplate reasonable and bona fide requirement of the landlord for immediate purpose of demolishing the premises with a view to erect a new building. When aforesaid provisions are compared with provisions of Section 16(1)(g) of the said Act, it is clear that insofar as a public charitable trust is concerned, it is not required to prove reasonable or bona fide need, but, it has only to prove that the premises are required for occupation for the purposes of the trust. Therefore, merely because the tenanted premises were required for the purposes of the trust for constructing a community hall and temple, the same would not have the effect on the case of such trust falling

under provisions of Section 16(1)(i) of the said Act. The lower appellate Court, therefore, mis-directed itself by invoking the provisions of Section 16(1)(i) of the said Act”

8. I have gone through the paper book of the writ petition as well as judgments relied upon by the respective parties.

9. Section 16(1)(n) of the Maharashtra Control Act reads as under:-

“16. When landlord may recover possession.— (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied—

(n) that the premises have not been used, without reasonable cause for the purpose for which they were let for for a continuous period of six months immediately preceding the date of the suit”.

10. The petitioner-defendant has specifically argued that as regards the averments in the plaint are concerned and the contention that the issue to that effect are not framed by the Appellate Court and, therefore, on that ground, he prayed for allowing the petition. In fact, as per the pleadings of the parties, the plaintiff has specifically averred in the plaint that the suit property was in a dilapidated condition. It needs to be taken into consideration that the defendant was not occupying the said premises as it has come in the evidence that the original tenant was

not using the said premises prior to 10 years of filing the suit. In view of these facts, the plaintiff has rightly established that the property is old and requires reconstruction. It has further come in the evidence that during the pendency of the appeal, the power of attorney holder, who is son of the defendant is running a business and in view of Section 16 (1)(n) of the Rent Control Act, the landlord may recover possession of property if premises have not been used without any reasonable cause for six months immediately preceding the date of suit. The witnesses of the defendant has also admitted the same that the original tenant was not using the said premises and more particularly, during the pendency of the proceedings, the original defendant died.

11. The Appellate Court has considered the aspect of the matter that the portion of disputed property towards North-West side and adjacent wall had collapsed. It was specifically averred in the plaint that the suit property was constructed of bricks and mud with a tin roof and it is a fact which was not disputed by the defendant. Admittedly, the suit property had been constructed in bricks and mud. Admittedly, the suit property was given on rent prior to 10 years prior to the filing of the suit. Considering that the construction is over 100 years old, as admitted by the witnesses and established by the evidence led by the plaintiff, the Appellate Court rightly took this fact into account.

12. In view of the foregoing discussion, I find that the Appellate Court has not committed any error in allowing the appeal partly, and its order does not warrant interference under Article 227 of the Constitution of India. Accordingly, I pass the following order:

Order

Writ petition is dismissed. There shall be no order as to costs.

(Siddheshwar S. Thombre, J)

13. At this stage, learned counsel for the plaintiff-respondent prayed for interim relief for a period of four weeks, which was not opposed by the counsel for the petitioner. The period of 30 days granted by the learned Appellate Court for vacating the shop premises is hereby provided to the petitioner from today. Upon the lapse of this period of 30 days, the interim relief shall stand automatically vacated without further reference to this Court.

(Siddheshwar S. Thombre, J)