



IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT
AURANGABAD

CIVIL REVISION APPLICATION NO. 51 OF 2024

Rambhau Baburao Mhaske
Age 50 years, Occu. Business,
Deceased Through L.Rs.

1]-A Sachin Rambhau (Ramnath) Mhaske
Age : 40 years, Occu. Business,
R/o. 11/12, Vinayak Nagar,
Ahmednagar, Dist. Ahmednagar.

2] Smt. Sugandhabai Shankarrao Mhaske,
Deceased through her LR –
Shri. Rambhau Baburao Mhaske

3] Kalavati Shankarrao Mhaske
Deceased Through her LR –
Rambhau Baburao Mhaske.

All through : Power of Attorney Holder
Shri. Haribhau Baburao Dolse, Age 45 years,

R/o Dattatraya Myana Wada
Bagadpatti. Ahmednagar

.. Applicants
(Original Defendant
Nos.3, 1 and 2)

Versus

Dattatraya Sadashiv Sadare,
Age 55 years, Occu. Business,
R/O 583, Tofkhana,
Ahmednagar-414 001
Deceased through L.Rs.

1-a) Pradeep Dattatraya Sadare
Age 45 years Occu. Business,

1-b) Asha Dattatraya Sadare,
Age 41 years, Occu. Service,

1-c) Hemant Dattatraya Sadare,
Age 38 years, Occu. Service,

1-d) Seema Dattatraya Sadare,
Age 35 years, Occu. Nil,

All R/o. Bharad Galli,
At and Dist. Ahmednagar ..

Respondents
(Heirs of Original plaintiffs)

Shri. Sanket S. Kulkarni h/f. Shri. S. D. Kulkarni, Advocate for the Applicants.

Shri. V. P. Latange, Advocate for Respondent Nos.1-a to 1-d

CORAM : SHAILESH P. BRAHME, J.
DATE : 09th JANUARY 2026

JUDGMENT :

. Heard both sides finally.

2. Applicants are assailing judgment and decree passed by the lower Appellate Court in R.C.A. No. 166 of 1997 reversing decree passed by the Trial Court in R.C.S. No. 768 of 1989 and counter claim. Applicants are original defendants and the respondent is original plaintiff. The controversy pertains to eviction under the Bombay Rent Act (for the sake of brevity and convenience hereinafter referred as to the 'Act'). Parties are referred to by their original status in the suit.

3. The suit was filed for eviction on the ground of default, *bona-*

fide requirement and subletting. Plaintiff is the owner of a shop at ground floor admeasuring 30 x 40 feet, which is part of CTS No. 5767/1 situated at Chitale Road, within municipal limits of Ahmednagar. It was let out to defendant Nos. 1 and 2 for Rs. 55/- per month for running a flour mill. It is contended that from March 1983 they stopped using the premises and the business and inducted defendant No. 3 as sub-tenant without consent of the landlord. The defendant No. 3 is stated to have been running a grocery shop. It is further contended that plaintiff required the premises for the business of his son as well as for expansion of the shop. It is further stated that the defendants committed default from 01.02.1988 to 31.07.1989 and the notice of demand was issued on 25.08.1989, which was not complied with.

4. The suit is contested by the defendant No. 3. The allegations of subletting, *bona-fide* requirement and default are denied. The defendant No. 3 is stated to have taken the premises on rent of Rs. 50/- per month from the plaintiff in the month of October – November 1978. The defendant No. 1 and 2 are stated to have no concern with the tenancy. A counter claim is made by the defendant No. 3 against the plaintiff seeking perpetual injunction restraining the plaintiff from obstructing him in carrying out the repairs. Counter claim is contested by the plaintiff by filing written statement to it. The defendant Nos. 1 and 2 did not file written statement.

5. Plaintiff examined three witnesses including himself. The defendants examined only one witness, their attorney. The trial

Court dismissed the suit and decreed the counter claim. The decree of trial Court is reversed by the lower Appellate Court.

6. Learned counsel for the defendants Mr. Sanket S. Kulkarni submits that there was no notice issued to the defendant No. 3 and there is non compliance of Sec. 12(2) of the Act. No decree can be passed on the ground of default. It is submitted that the suit was not maintainable against the defendant No. 3, who was the contesting party. He was not treated to be the tenant and no jurisdiction would confer upon the Trial Court. The plaint is defective. It is further submitted that lower Appellate Court committed grave error of jurisdiction in not framing separate points for determination for hardship and not conducting independent inquiry. It is further submitted that decree passed on the ground of *bona-fide* requirement is unsustainable because plaintiff suppressed material facts regarding availability of alternate shop and the need was not *bona-fide* one.

7. It is further submitted by the defendants that the lower Appellate Court committed grave error of jurisdiction in half-heartedly dealing with the findings recorded by the Trial Court. The findings recorded for upholding the claim of the respondent for *bona-fide* requirement and hardship are perverse and patently illegal. It is further submitted that the status of the defendant no.3 needs to be determined. It is further submitted that in pursuance of the orders passed by this Court, the defendants have deposited rent in this Court punctually. The suit is liable to be dismissed on all

counts.

8. Per contra, Mr. Vijay Latange, learned counsel appearing for the respondent-plaintiff submits that the demand notice was valid and no steps were taken by defendant no.3 either getting the rent fixed or punctually depositing the arrears in the Courts below. No protection is available to the defendants under Section 11 Sub-Section 3 of the Act. The decree on the ground of default is rightly passed. It is further submitted that both the Courts below have independently dealt with issue of ground of *bona-fide* requirement and hardship. The defendants have failed to plead and prove efforts taken by them to secure alternate accommodation and are therefore liable for eviction. It is submitted that the evidence of the attorney was not admissible and the defendants did not step into the witness box. The examination-in-chief of the defendant's witness discloses some alternate occupation available to the defendant no.3 which belies his theory. It is further submitted that plea regarding maintainability and the jurisdiction of the Court was not raised by the defendants in the Courts below. It is submitted that the lower Appellate Court has rightly passed decree of eviction. There is no perversity or patent illegality in the impugned judgment.

9. I have considered rival submissions of the parties. I have gone through original record with the assistance of both the learned counsels. Defendant no.3 is in possession of the demised premises. He was dispossessed by the plaintiff. Contempt Petition No.146 of 1992 was referred. By the intervention of the High Court, the

defendant no.3 was reinducted into a constructed room measuring 12 feet x 10 feet. In the Trial Court, issue no.7 was framed for the ground *bona-fide* requirement and issue no.8 was framed for comparative hardship. In the lower Appellate Court, though point no.3 for determination pertaining to *bona-fide* requirement was framed but no separate point was framed pertaining to comparative hardship. The defendants did not step into the witness box. Defendant no.3 examined his attorney Mr. Haribhau Baburao Dolse. In this backdrop, I propose to examine the grounds of eviction and the submissions of the parties in foregoing paragraphs.

Subletting and status of defendant no.3

10. The defendant nos.1 and 2 did not file written statement who were the tenants according to the plaintiff and to whom the premises was given on rent for running flour mill. They are stated to have sublet it to the defendant no.3 from March 1983. The defendant no.3 claims to be the tenant since 1978 and paying rent of Rs.50/- per month to the plaintiff. The Trial Court framed issue nos.2 and 3 in respect of the issue of subletting and issue no.11 was framed regarding tenancy of the defendant no.3. It has come on record that rent was received by the plaintiff through money orders Exhibit-62 to Exhibit-67 from defendant no.3 and receipts were executed by him acknowledging payment of rent. The rent was accepted by the plaintiff without any demur. Considering the receipts from Exhibit-62 to Exhibit-69, defendant no.3 was treated to be a tenant by the conduct. Hence, issue no.11 was answered in favour of the defendants.

11. In the lower Appellate Court, point no.2 was framed which is castigated to be inconsistent by learned counsel for the applicants. The said point is answered by holding that no case of subletting is made out and defendant no.3 is treated as a tenant. The findings of the Trial Court are upheld. There are concurrent findings of facts in respect of subletting and the status of defendant no.3. Both the Courts below have given reasons for the findings. No case is made out to cause any interference in the findings. The suit of the plaintiff fails on the ground of subletting.

12. My attention is adverted to the plaint by Mr. Kulkarni, learned counsel to show that defendant no.3 is pleaded to be either sub-lessee or the trespasser. The evidence on record unequivocally indicates that defendant no.3 was a tenant. The conduct of the parties corroborates the concurrent findings of facts and the suit is not to be decided merely on the pleadings of the plaint. The past conduct and the subsequent conduct are relevant. The defendant no.3 has to be held to be a tenant.

Default

13. I have gone through the demand notice dated 25.08.1989 at Exhibit-56. It was addressed to defendant nos.1 and 2. A copy of the same was sent to the defendant no.3 which is not actually addressed to him. It is a mandatory requirement under Section 12(2) to serve a notice on the tenant calling upon him to pay the arrears. It was the defendant no.3 who was the tenant and he should have been given notice before proceeding against him for eviction on the ground of

default. The findings recorded by the lower Appellate Court in paragraph 18 to 20 are totally unsustainable. The decree of eviction on the ground of default is liable to be quashed.

14. My attention is adverted by Mr. Kulkarni, learned counsel to law laid down in **Hari Pandurang Patil vs. Anupsing Mahendrasing Shikh and Ors.** in **Writ Petition No.1781 of 1991** dated 18.02.2010 which is rightly cited by him.

Bonafide requirement and hardship

15. The lower Appellate Court did not frame any independent issue regarding comparative hardship as contemplated by Section 13(2) of the Act as against that Trial Court framed issues for *bona-fide* requirement as well as comparative hardship. By assigning reasons those were decided against the plaintiff. While assigning reasons for point no.3, the lower Appellate Court devoted paragraph 23 for deciding the issue of hardship by elaborate reasons. It is held that the plaintiff has made out a case for eviction on *bona-fide* requirement and more hardship would be caused to him. It is not a case that no enquiry was conducted and no reasons are assigned by the lower Appellate Court for the issue under Sections 12(2) and 13(2) of the Act. I am of the considered view that an in-depth enquiry has been conducted by the lower Appellate Court while deciding the issue of hardship.

16. Learned counsel for the applicants has relied on the judgment of **Vasant Mahadeo Gujar and Ors. vs. Baitulla Ismail Shaikh and Ors** in **Civil Revision Application No. 770 of 2013 and connected matters**

in which concurrent findings of facts were quashed by the High Court as no enquiry was conducted by the Courts below under Section 16(2) of New Rent Act. That is distinguishable factor from the case at hand. Hence the judgment would not enure to the benefit of the defendants.

17. A similar situation arises in the next judgment cited by the applicant, **Bismilla Bee vs. Anwar** in **Civil Revision Application No.244 of 2007** dated 14.12.2009. In that case also, it was held that in the absence of any evidence on record and discussion by Courts below, the decree for eviction was liable to be quashed. I have gone through paragraph 14 and 17 of the judgment. The facts are distinguishable. In the case at hand, the plaintiff has produced evidence on count of *bona-fide* requirement as well as hardship. The defendant no.3 did not adduce admissible evidence because attorney was examined on behalf of defendant no.3. The lower Appellate Court conducted due enquiry in deciding issue of hardship in favour of the plaintiff. Cited judgment will not help the defendants.

18. Next judgment is that of **Jain Supari Centre and Ors. vs. Rameshlal Motilal Hasoriya and Ors** in **Writ Petition No.3134 of 2022** dated 27.07.2022. I have gone through paragraph 21 and 22. This judgment also will not help the defendants as the facts are distinguishable and independent enquiry has already been made in the present matter.

19. Respondent – original plaintiff adduced oral evidence of himself and two witnesses. The defendants did not step into the

witness box. Defendant no.3 adduced oral evidence of attorney. His examination in chief opens with statement that defendant no.2 ventures in the business of pilgrim tourism and was unable to attend the Court. This is damaging because it shows that defendant no.1 is not dependent on the grocery business which is tried to be projected by him. The attorney appears to be the nephew of the defendant no.3. He cannot replaced defendant no.3. He can only act as a witness. The failure of defendant no.3 in stepping into the witness box leads to adverse inference. The patch-up work of deposition of his witness is feable. A useful reference can be made to the judgment of Supreme Court in Janki Vasudeo Bhojwani & Anr. vs. Indusind Bank Ltd. reported in 2005 (1) Mh.LJ. 1170.

20. The learned counsel for the applicants has submitted that the plaintiff suppressed availability of shop in the adjacent area and it has been brought on record in the cross-examination that the adjacent shop belonging to him was let out to the tenant. The lower Appellate Court dealt with this aspect of the matter. The findings of the Trial Court are reversed after taking into account all aspects of the matter on the issue of *bona-fide* requirement. The view taken by the Appellate Court is reasonable and plausible because the reliance is placed on the judgment of the Supreme Court in holding that the landlord is the best judge to decide his needs. His son is in the business and wants to have more premises to expand the same cannot be disputed. It is the choice of the landlord to select the premises for expanding the business. If the plaintiff feels that the shop which was let out to the tenant was not convenient then the

choice needs to be respected by the Courts. I am of the considered view that the requirement is not fanciful or unreasonable. The findings of the Appellate Court needs to be confirmed.

21. My attention is adverted to paragraph 16 of the written statement of defendant no.3 as well as deposition of DW-1. Neither there is any pleading nor any evidence on record on the part of the defendant no.3 that any attempts were made to secure alternate accommodation. Reliance is placed on the judgments of Suhasini Atmaram Parab and Others vs. B. H. Khatu and Others reported in 2003 (1) Bom.C.R. 733, Chotumal Bahiramal Sindho (since deceased) through his L.Rs. vs. Baburao Vinayak Mohadkar (since deceased) through his L.Rs. reported in 2009 BCI 7 to buttress that tenant cannot remain idle without making any effort in securing the alternate premises. The learned Single Judge *inter alia* relied upon the judgment of the Supreme Court to lay down that the tenant is under obligation to establish that sincere efforts are made to secure alternate accommodation and he is unable to get it. I propose to follow the principles which are rightly cited by Mr. Latange, learned counsel for the respondents.

22. Further reliance is placed on the judgment of learned Single Judge in Rafiq Ahmed Qureshi vs. Iqbal Khan and Ors. reported in 2011 BCI 362. It's paragraph 12 is as follows :

“12. The Courts also held that petitioner/landlord requires the suit premises *bona-fide* for his business as he is running the said business. The appellate Court has held that the place where the business is carried out is more suitable for transportation business and the said business is flourishing

in that area and the plaintiff carries his ancestral business of silk cloth. Whether the business can be flourished or not is not the requirement under the statute. The requirement under the statute is *bona-fide* need of the landlord and the same has been established. It is settled law that the landlord is the best judge of the premises he requires for the business and the tenant can not dictate the terms. The only question that would remain is of the hardship. The tenant has not stepped into the witness box to prove the aspect of hardship. If the hardship is equal to the landlord and the tenant then the rule is a decree of eviction. In the present case in absence of any evidence or proof on the part of the tenant about the hardship being caused the landlord would be entitled for decree of eviction.”

In the case at hand also, defendant no.3 did not step into the witness box. The ratio is squarely applicable to the case. I, therefore, hold that defendants are liable for the eviction on the ground of *bona-fide* requirement and hardship.

Maintainability of the suit or the jurisdiction of the Trial Court

23. Applicants have raised objection regarding maintainability of the suit in view of Section 28 of the Act. My attention is adverted to the plaint to make out a case that defendant no.3 was not accepted to be the tenant by the plaintiff. There was no relationship of landlord and tenant between them and therefore Trial Court had no jurisdiction. Reliance is also placed on the judgment of Supreme Court in the matter of Laxmidas Morarji (Dead) by Lrs vs. Behrose Darab Madan in Civil Appeal Nos.5786 and 5787 of 2002 dated 18.09.2009.

24. Defendant no.3 did not raise the plea in the written statement. No issue was framed by the Trial Court as well as no point

for determination was framed before the lower Appellate Court. The issue which is sought to be canvassed was not taken up and dealt with by the Courts below. I have entertained the plea albeit it is being raised for the first time in the High Court considering that it goes to the root of the matter. This Court cannot be oblivious of the fact that defendant no.3 very specifically has taken a plea that in fact he was the tenant and not defendant nos. 1 and 2. His tenancy commenced in 1978 and he was paying Rs.50/- per month.

25. The Trial Court framed issue no.11 in pursuance of such a pleadings. While answering issue no.3, it was held that defendant no.3 was not subtenant and while answering issue no.11, categorical findings have been recorded that defendant no.3 is the tenant of the plaintiff. The lower Appellate Court confirmed the findings. Therefore, the pleadings in the plaint that defendant no.3 was subtenant has been superseded by the conduct of the plaintiff and the material placed on record. There exists relationship of landlord and tenant. The Civil Court gets jurisdiction under Section 28 of the Act and no fault can be found in entertaining the suit.

26. In the matter of Laxmi Moraraji cited supra before the Supreme Court, the appellant was original landlord who had filed suit for eviction in the Court of small causes at Bombay against the trustee and executors of the will of the original deceased tenant. The defendant no.5 was impleaded as a tenant to avoid the technical objection. The suit was dismissed for not serving her notice demanding rent. It was held that she was residing with the deceased

tenant as a member of her family and she was entitled to claim tenancy right under Section 5(11)(c)(i) of the Act. The decree is confirmed up to Supreme Court. Following are the relevant observations of paragraph 20 and 21.

“20. The Rent Control Act is a special enactment conferring certain special rights and imposing certain special obligations upon landlords and tenants. The Rent Control Act imposes restrictions on the right of landlord to evict his tenants on the grounds other than what is specified in the Statute. This Court in the case of *Om Prakash Gupta v. Rattan Singh and Ors.* MANU/SC/0375/1962MANU/SC/0375/1962 : (1964) 1 SCR 259, has observed, that, ordinarily, it is for the civil courts to determine whether and if so, what jural relationship exists between the litigating parties. The Tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the limits of the Statute creating them. But within the provisions of the Act, they are Tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings, like a separate application in execution proceedings. The Court has further observed, that, therefore, there is no substance in the contention that as soon as the appellant denies the relationship of landlord and tenant, the jurisdiction of the authorities under the Act is completely ousted. A landlord must be very ill-advised to start proceedings under the Act, if there is no relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the civil courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of the premises in an urban area, the provisions of the Act are attracted. Mere denial of relationship of landlord and tenant cannot oust the jurisdiction unless it is specifically provided in the Statute. If the Rent Controller finds that the opposite party is not a tenant of the landlord, he must dismiss the landlord's application for eviction, but if he finds that such a plea by the opposite party is not true and that the opposite party is a tenant of the landlord, then, if the ground of eviction is proved, he must order eviction of the tenant.

21. Section 28 of the Bombay Rent Act deals with the jurisdiction of the Courts, to decide on issues arising out of the Act. In a suit relating to possession of the premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the courts specified in Section 28. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 and no other. In all such suits or proceedings the courts specified in Section 28 also have the jurisdiction to decide all claims of questions arising out of the Act or any of its provisions. In the instant case, the suit premises is situate within the jurisdiction of Greater Bombay. In view of Section 28 of the Act, the Court of Small Causes, Bombay, will have jurisdiction. The appellants have filed a suit for eviction. The suit is maintainable provided that a landlord-tenant relationship is established. However, it is clear from the pleadings of the appellants that they do not consider respondent No. 5 as a tenant. In furtherance of this stand, the appellants have gone on to adduce evidence to prove that respondent does not qualify the conditions to be deemed as tenant under the Bombay Rent Act. In the light of the principles stated by this Court in *Om Prakash Gupta's* case (1964) 1 SCC 259, the inevitable conclusion is that Small Causes Court at Bombay had no jurisdiction to entertain the suit filed by the owners of the suit premises.”

27. It has been laid down in above extracts that if the rent controller finds that if the opposite party is a tenant of the landlord and if any ground of eviction is proved then the order of eviction is necessary to be passed. It is the discretion of the rent controller to find out whether there exists relationship of landlord and tenant. In the matter before Supreme Court, plaintiff did not recognize defendant no.5 as a tenant but she was successful to make out a case under Section 5(11)(c)(i) of the Act to claim tenancy right under the Act. Therefore, in the case at hand, the Trial Court as well as

Appellate court concurrently held that there is existence of landlord-tenant relationship between the parties. In that view of the matter, the submissions of the applicant cannot be countenanced and the judgment cited will not help them.

28. For the reasons stated hereinabove, I am of the considered view that applicants are entitled to get decree of eviction on the ground of bonafide requirement and comparative hardship. I do not find any perversity or illegality in respect of the findings recorded by the lower Appellate Court in respect of counterclaim. No submissions have been advanced in that regard by the applicant. Hence I pass following order :

ORDER

- a. Civil Revision Application is dismissed.
- b. The judgment and decree dated 30.08.2001 passed in RCS No. 768 of 1989 shall stand modified to the extent that respondent is entitled to have decree of eviction of the suit premises from the appellant no.3 on the ground of bonafide requirement.
- c. Save and except above modification, the decree stands confirmed.
- d. The amount deposited by the applicants in this Court with accrued interest shall be disbursed to the respondent-landlord.

(SHAILESH P. BRAHME J.)