



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 59 OF 2026

Rajeshwar Hariharrao Hatiambire (palamkar)

VERSUS

Devrao Tukaram Deshmukh And Others

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Mr. S. G. Magre, Advocate for the Petitioner

Mr. S. S. Gangakhedkar, Advocate for Respondent Nos. 1 to 5

CORAM : SHAILESH P BRAHME, J

DATE : MARCH 04, 2026

PC :

1. Heard learned Counsels for both sides.
2. Being aggrieved by the concurrent findings of fact recorded in granting decree of eviction on the ground of default, the tenant has approached this Court in the present Revision Application.
3. The controversy pertains to multistory building located at plot No. 118, Gut No. 230 situated at Chaitanyanagar Road, Nanded, which is owned by the Respondent. It was let out to the Applicant for running a hostel. The Respondent solicited decree of eviction by filing Special Civil Suit No. 18/2017 on the ground of default as well as bona fide requirement. The suit was contested by the Applicant by filing written statement. Applicant failed to cross-examine the Plaintiff's witness PW 1. No evidence was led by the Applicant – Defendant. Trial Court passed decree of eviction

on the ground of bona fide requirement on 13.04.2023. Being aggrieved, RCA No. 151/2024 was preferred. It was dismissed by lower Appellate Court on 19.01.2026.

4. Learned Counsel for the Applicant submits that judgment and decree passed by the Courts below is against principles of natural justice and without extending any opportunity of hearing, evidence of the Applicant was foreclosed on 11.10.2022. It is submitted that both Courts below committed error of jurisdiction in granting decree on the ground of bona fide requirement when issue of comparative hardship has not been dealt with independently as is contemplated by Section 16(2) of the Maharashtra Rent Control Act, 1999 (for short '**the Act**'). Trial Court even did not frame independent issue regarding the hardship, which is mandatory. It is further submitted that Trial Court committed undue haste in deciding the suit especially when the lawyer representing the Applicant was ill and Applicant could not adduce evidence on record.

5. Learned Counsel for the Applicant further submits that finding of the lower Appellate Court that the hostel has been closed is perverse because Applicant was armed with list of the students who were inmates. It is further submitted that more than 100 students are lodging in the hostel in question and as against that the claim for entire building by Respondent – Landlord is unreasonable. A partial decree could have been passed in

favour of the Respondent. It is further submitted that Applicant has punctually deposited interim rent of Rs.15,000/- per month and the receipt to that effect has been placed on record.

6. Per contra, learned Counsel for Respondents supports the judgment passed by the Courts below. It is submitted that after 11.10.2022, the judgment was pronounced by Trial Court on 13.04.2023 and during interregnum, the lawyer representing the Applicant was attending the dates. No attempt has been made by the lawyer seeking setting aside the order of foreclosing evidence. It is submitted that in the lower Appellate Court only applications Exhibits 33 and 34 were submitted, which were belated. It is vehemently submitted that the ground of illness of the lawyer was not disclosed anywhere and especially in the application for condonation of delay. It is submitted that the matter was being conducted by the Applicant in most cavalier manner. A copy of the order dated 28.01.2026 passed below Exhibit 37 has been placed on record to buttress that hostel is not in operation.

7. I have considered the rival submissions of the parties. Respondent solicited the decree on the ground of default and bona fide requirement. The judgment of the Trial Court reflects that no issue was formulated for the hardship as contemplated by Section 16(2) of the Act. Both parties were being represented by the lawyers in the Trial Court as well

as in the lower Appellate Court. Respondent adduced evidence of the landlord PW 1. The Trial Court does not deal with the aspect of hardship but Appellate Court dealt with that aspect of the matter. In this backdrop, this Court has to deal with the submissions of the parties.

8. My attention is adverted to the roznama, which is part of the paper book. It reflects that on 16.08.2022 Exhibit 26 affidavit of Rajendra in lieu of examination-in-chief was placed on record. The matter was adjourned to 15.09.2022. On 15.09.2022 the advocates of both sides were present. No cross-examination was conducted but the matter was adjourned to 11.10.2022. On 11.10.2022 again Advocate for Respondent was present but Advocate for the Applicant was absent. The evidence of the Applicant Defendant was foreclosed by passing order below Exhibit 1. It further reveals from the roznama that on 20.10.2022, 17.11.2022, 10.01.2023, 15.02.2023, 06.03.2023 Advocate representing the Applicant was present but no endeavour was made for recalling the order passed below Exhibit 1 dated 11.10.2022. Neither any attempt was made to recall the witness PW 1 for conducting cross-examination. Thereafter, the judgment was pronounced on 13.03.2023. Applicant had ample opportunity and he was being represented by a lawyer who could have taken remedial measures in Trial Court.

9. Interestingly, the grounds of Appeal memo in RCA no.

151/2024 do not spell out anything regarding opportunity of hearing or violation of principles of natural justice. The grievance that the date of 11.10.2022 was not fixed for leading evidence of the Applicant/Defendant but still the evidence was foreclosed was not agitated in Appeal. Appeal memo is further silent regarding illness of the lawyer or his incapacity to conduct the matter. There was delay in preferring Appeal and application for condonation of delay bearing MCA No.18/2024 was required to be filed. It was condoned. However, application for condonation of delay also does not reflect any ground pertaining to the illness of the lawyer or not extending any opportunity to lead evidence. In such scenario, I am of the considered view that the ground regarding violation of principles of natural justice or the manner in which Trial Court proceeded with the matter has no substance. I find that Appellate Court rightly dealt with that aspect of the matter.

10. The eviction is solicited by Respondent landlord for utilizing premises for running a gymnasium by his unemployed son. The oral evidence on record went unchallenged. No evidence was led by the Applicant. I have already observed that the Applicant had opportunity of not only conducting the cross-examination but even leading oral evidence. No specific issue was framed by the Trial Court in respect of comparative hardship. No specific finding has been recorded for it as contemplated by

Section 16(2) of the Act. Appellate Court has dealt with this aspect of the matter as well as the eventuality of remanding the matter for retrial. Both points are answered against Applicant. In normal course, the finding of bona fide requirement without there being any findings of comparative hardship would be inconsequential. However, the facts of the case at hand are very peculiar. It is the claim of the Respondent that the hostel in question was closed down. The photographs are produced on record to support the contention.

11. Appellate Court has recorded finding that the hostel in question was in closed condition. My attention is adverted to the order passed below Exhibit 37 by the lower Appellate Court. It was application seeking stay to the execution, which is rejected by reasoned order on 28.01.2026. It has been categorically recorded by Appellate Court that the hostel in question appeared to be in closed condition. The finding of fact recorded by Appellate Court cannot be said to be perverse or illegal.

12. It is submitted by learned Counsel for Applicant that it would be upon competent authority to pass appropriate order regarding closing down of the hostel and Applicant cannot on his own volition close it. The purport of words would be the students were not lodging in the hostel. My attention is also adverted to the order dated 09.02.2024 passed below Exhibit 10. It was application moved by the Respondent for re-issuing

possession warrant. The stay granted by the Appellate Court was vacated and the decree was sought to be executed. Application was allowed vide order dated 09.02.2024 granting permission to break open the lock and to take possession. Even permission was also granted to seek police aid. These are the exceptional circumstances for which this Court is not inclined to interfere with the decree passed by the Courts below.

13. Applicant did not lead evidence. The approach of the Applicant is very cavalier. It is incomprehensible as to when more than 100 students are inmates and lodging in the hostel, still there was casualness on the part of the Applicant in prosecuting the matter. There is reason to infer that the students might have been boarding in the hostel. There is no point and purpose in relegating the matter to the Trial Court for recording the finding on hardship. If the subject matter for which it is let out, has not been put to use for the hostel, decree of eviction on the ground of bona fide requirement cannot be faulted.

14. This Court has inherent limitations in exercising jurisdiction under Section 115 of the Code of Civil Procedure. No case is made out to call for interference in the impugned judgment and decree. I find that there is not merit in the revision application and the same is rejected.

15. After pronouncement of the order, learned Counsel appearing

for the Applicant prays for extension of protection, which is available till 19.03.2026.

16. The above request is opposed by learned Counsel for Respondents.

17. Initially, the decree passed by Trial Court was stayed by the lower Appellate Court. The interim stay was vacated when matter was before lower Appellate Court. However, the Applicant is still in possession of the demised property. Time of two months was given for him to handover the possession. Applicant is desirous to approach Hon'ble Apex Court. It would be interest of justice to grant protection for further four weeks.

18. The protection granted by lower Appellate Court for handing over possession shall be continued till 15.04.2026 on condition that Applicant shall deposit further Rs.15,000/- before Executing Court within a period of two weeks from today.

19. Interim protection granted by this Court shall stands vacated without reference to this Court after 15.04.2026. Needless to mention that amount deposited by Applicant – Tenant before Executing Court shall be disbursed to the Respondents – Landlord.

(SHAILESH P. BRAHME, J.)

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