2024 INSC 71

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1543 OF 2016

BAITULLA ISMAIL SHAIKH
AND ANR. ...APPELLANT(S)

VERSUS

KHATIJA ISMAIL PANHALKAR
AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1544 OF 2016

J U D G M E N T

ANIRUDDHA BOSE, J.

The appellants before us are landlords and they assail a judgment delivered by a Single Judge of the Bombay High Court on 04.08.2015 exercising his revisional jurisdiction invalidating eviction decrees against two tenants in respect of two portions of the same building. The building in question carries House No.86 as per the municipal records, comprised in C.S. No. 111/b as per city survey records, located at Dr. Sobane Road in

Mahabaleshwar, District-Satara within the State of Maharashtra. The Civil Appeal No. 1543 of 2016 arises out of Civil Suit No. 136 of 2010 and the tenant/defendant in that suit is one Khatija Ismail Panhalkar. In this suit, two of his sons have also been impleaded as defendants. The premises involved in these proceedings comprise of two blocks within the aforesaid building. One block comprises of 10'×4' structure made of 'ita and tin shed'. Civil Appeal No. 1544 of 2016 arises out of Civil Suit No. 137 of 2010 and the tenant whose eviction is sought for in this suit is one Vasant Mahadeo Gujar (since deceased). Before us, his legal representatives have contested the appeal. The property from which the appellants want them to be evicted comprises of two rooms comprising of an area of 10'×12', which appears to be located in the middle of the said building. The two rooms, at the material point of time, were being used for residential purpose. The appellants purchased the subject-premises in the year 1992 from its erstwhile owner. Both the tenants were inducted by the erstwhile owner of the building in question.

2. On 23.01.2002, a demolition notice was issued by the Mahabaleshwar Giristhan Municipal Council for a part of the subject-building. This notice constituted one of the grounds on

which the appellants wanted to evict the respondents under the Maharashtra Rent Control Act, 1999 ("the 1999 Act"). This notice was followed by three subsequent notices by the said Municipal Council on 03.12.2005, 13.07.2009 and 05.07.2010, almost on similar terms. The suit, however, was founded on, inter-alia, the notice dated 23.01.2002. This notice is of relevance so far as these appeals are concerned and we quote below the text thereof:-

"ANNEXURE P- 1

MAHABALESHWAR GIRISTHAN MUNICIPAL COUNCIL, MAHABALESHWAR, DIST. SATARA- 412806

Municipal office no. 60220 *Chief officer no. 60673*

President office no. 60232 *Chief officer res. No 60671*

V.S. NO. 15/527 *Date; 23-1-2002*

Notice

You are do hereby informed that on inspection of the property comprised in C.S. no. 111-b, house no. 86-b situated within the municipal council, as on today that is 22-1-2002 it is found that the wall from the eastern side is swollen and there are cracks. It is also found that the wooden pillars, wood is damaged and ceiling also has turned out of shape. Due to this the danger to the house is apprehended. There is risk to the persons residing in the house as well as the persons coming and going. At anytime thre is possibility of collapsing the said dangerous building due to which there is possibility of fatalities and the financial loss. Hence vide this notice it is to inform you to demolish the said dangerous portion immediately on receipt of this notice otherwise if any fatality occurs or the financial loss occurs due to the said house then municipal council will not be responsible and the entire responsibility will lie in your part. And please note the same.

Sd/-
Chief officer
Mahabaleshwar Giristhan
Municipal council

To,
Baitulla lsmail sheikh and C.K. Aris.
Vasant Mahadev Gujar
Khatija lsmail Panhalkar"

3. Notices for eviction were subsequently sent to the tenants in each appeal and both these notices are dated 04.02.2002. So far as the notice to the respondents in Civil Appeal No. 1543 of 2016 is concerned, the delivery of vacant possession was asked for on five main grounds. The first one was default in payment of rent. The next ground was erection of a permanent structure by the tenant without permission of the landlord. The third point was subletting and it was also stated in that notice that the landlords had decided to construct a building thereon for residential purpose as also for operating a hotel. Under Section 16(1)(i) of the 1999 Act, the erection of a new building could come within "reasonable and bona fide" requirement of landlord, subject to satisfaction of certain other stipulated conditions. The municipality's demolition notice was also cited as a ground for eviction. We shall reproduce provisions of Sections 15 and 16 of the said enactment in subsequent paragraphs of this judgment. In the eviction notice to the respondent in Civil Appeal No. 1544

of 2016, the grounds cited were, inter-alia, issue of the demolition notice by the municipality, default in payment of rent and also necessity of the tenanted portion for construction of a new building upon demolishing the structures on the land.

4. As the eviction notices did not yield any result, the two suits were instituted on the same date, i.e. 07.08.2002. These suits appear to have had been tried simultaneously and they were decreed by the Trial Court, which was sustained by the Appellate Court. In the Civil Revision Petition, the tenants succeeded as the judgment and decree were set aside.

5. In course of the proceeding before the Trial Court, a Commissioner was appointed. He was an architect. His opinion, however, was not accepted by the Trial Court. He had given his opinion that a portion referred to as "C" in his report was dangerous and was required to be demolished. This portion, however, was in possession of the plaintiffs only, but adjacent to the suit property (in Civil Appeal No. 1543 of 2016). Though his report dated 08.12.2008 carries the caption of suit no. (239 of 2002) 136 of 2010, the report was examined by the Trial Court in connection with both the suits. His report on the necessity of urgent demolition of the tenanted portions was not fully

conclusive but his view was that the entire building was about 97 years old and life of the building was over. His opinion has been referred to and dealt with by the Trial Court in the following terms:-

> *"16) In this respect I have perused evidence of D.W.1 Vivek and his commission report at Exh.122. It is pertinent to note that in the commission report Exh.122, the commissioner has given actual position of every room situated in C.T.S.No.111/B. In his conclusion he has opined that, the building is approximately 96 to 97 years old and the life of building is over. Considering all the material he opined that the portion shown as 'C' in the map is dangerous and is required to be demolished. It is important to note that, said portion shown as 'C' is the room which is in possession of plaintiffs and adjacent to suit property. The commissioner has also filed number of photographs showing the position of property at Exh. 135 to Exh. 148. Further, if D.W.1 Vivek's deposition is perused it is clear that he has supported his commission report. In cross examination, he admitted that, if the cementing strength of soi! used for construction is gone then there may be cracks to the wall ·and to reconstruct the said wall the previous wall is required to be demolished, further, if the base of construction is not strong then new construction can also collapse. He further admitted that, if the portion shown by red ink in the map i.e. 'C' is demolished the entire roof on the property is also required to be removed and if said roof is removed it will create danger to the roof of the property on the western side and ta the roof on 'B' portion.* ***Further, if total evidence of D.W.1 Vivek is considered it cannot be said that, he had opined that, suit property is in dilapidated condition though he had admitted that the life of suit property is over****."*
>
> **(Emphasis supplied)**

6. It would be evident from this part of the judgment of the Trial Court that there was no specific finding that the portions in respect of which the respondents have tenancy required immediate demolition. It was a portion of the premises in

possession of the landlords which, in the opinion of the Commissioner was dangerous. The Trial Court proceeded on the basis that it could not sit in appeal over the decision of Municipal Council requiring demolition. On plaintiffs' plea of default, the Trial Court rejected that contention holding that the tenants were ready and willing to pay the rent of the suit property and during the pendency of the suit, they had deposited the rent. The Trial Court also rejected the landlord's contention that the subject-property was sublet or permanent structure was made without consent of the landlord. The Trial Court, however, opined that the landlord was the best judge of his own requirement and on that basis the issue of *bona fide* need was decided in favour of the appellants.

7. The Appellate Court sustained the judgment and decree on the ground of *bona fide* need as also necessity to effect demolition of the subject-building. In addition, it overturned the Trial Court's finding on there being no default in payment of rent on the ground that the provisions of Section 15(3) of the 1999 Act could not support the tenant's case. On the question of permanent structure having been made by the respondent in Civil Appeal No.

1543 of 2016 without permission of the landlord and question of sub-letting, the Trial Court's decision was sustained.

8. The Revisional Court on analysing the provisions of Sections 15 and 16 of the said Statute set aside the judgment and decree and allowed the revision applications of the tenants.

9. The provisions of Sections 15 and 16 of the 1999 Act stipulate:-

> *"15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.*
>
> *(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.*
>
> *(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.*
>
> *(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.*

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

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-

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;

Explanation.- For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation.- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

(c) that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of section 280 or of section 281 of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or

(d) that the tenant has given notice to quit and in consequence of that notice,the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or

(e) that the tenant has,-

(i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State,

unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

(j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the

demolition thereof and erection or raising of a floor or floors on such terrace;

Explanation.-For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servants quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

(k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

(l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

(m) that the rent charged by the tenant for the premises or any part thereof which are sublet is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or

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

(2) No decree for eviction shall be passed on the ground specified in clause (g) of subsection (1), 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.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

Explanation. - For the purposes of clause (g) of sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

(3) A landlord shall not be entitled to recover possession of any premises under the provisions of clause (g) of sub-section (1), if the premises are let to the Central Government

in a cantonment area, and such premises are being used for residence by members of the armed forces of the Union. or their families.

(4) The court may pass the decree on the ground specified in clause (h) or (i) of subsection (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repair or erection.

(5) Notwithstanding anything contained in any other law for the time being in force, an assignment of a decree for eviction obtained on the grounds specified in clauses (g), (h), (i) and (j) of sub-section (1) shall be unlawful.

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded. extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

(7) Where the possession of premises is recovered on the ground specified under clause (g), (h), (i) or (j) of sub-section (1) and the premises are transferred by the landlord, or by operation of law before the tenant or tenants are placed in occupation, then such transfer shall be subject to the rights and interests of such tenants.

(8) For the purposes of clause (m) of sub-section (1), the standard rent or permitted increase in respect of the part sub-let shall be the amounts bearing such proportion to the standard rent or permitted increases in respect of the premises as may be reasonable having regard to the extent of the part sub-let and other relevant considerations.

(9) Notwithstanding anything contained in this Act, where the premises let to any person include-

(i) the terrace or part thereof; or

(ii) any one or more of the following structures, that is to say, tower-rooms, sitting-outrooms, ornamental structures, architectural features, landings, attics on the terrace of a building, or one or more rooms of whatsoever description on such terrace (such room or rooms being in the aggregate of an area not more than one-sixth of the total area of the terrace); or

(iii) the terrace or part thereof and any such structure,

and the court is satisfied that the terrace or structure or terrace including structure, as aforesaid, are required by the landlord for the purpose of demolition and erection or raising of a floor or floors on such terrace, the landlord shall be

entitled to recover possession of the terrace including such tower-rooms, sitting-out-rooms, ornamental structures, architectural features, landings, attics or rooms, the court may make such reduction, if any, in the rent as it may deem just.

(10) A suit for eviction on the grounds specified in clause (h), (i), (i) or (k) of sub-section (1) may be filed by the landlord jointly against all the tenants occupying the premises sought to be demolished."

10. The eviction proceeding was instituted in the suit giving rise to Civil Appeal No.1543 of 2016 against the appellants, inter-alia, on the grounds of having made construction of permanent nature by extending the area of the shop premises, without the landlords' consent, causing permanent damage to the property in question, causing nuisance and annoyance to the adjoining area and neighbouring occupiers as also inducting a relative as sub-tenant. It was pleaded by the appellants that because of rusting of beams holding the tenanted structure, the roof of the rented property was damaged as a result of which it had become dangerous for the occupation of human beings. Demolition notice issued by Mahabaleshwar Giristhan Municipal Council to the landlords dated 23.01.2002 was relied upon in the plaint in this regard. So far as the suit forming the basis of Civil Appeal No.1544 of 2016 is concerned, the grounds for eviction were default in the payment of rent, demolition notice having been

issued by the Municipal Council on 23.01.2002, as also for necessity of having the premises for the purpose of carrying out construction for residential purpose and hotel. This requirement, the appellant argued, constituted *bona fide* requirement by the landlord. On the finding of the Appellate Court that there was default in payment of rent, the High Court held:-

> *"12(c) The Appeal Court has committed an error of law, apparent on face of record in interpreting Section 15 of the Rent Act, in the manner it has. The interpretation is contrary to both, the text as well as the rulings of this Court on the subject. This is a case where ·rents were regularly offered and dispatched by way of money orders. The rents were, however, refused by the landlords. In such circumstances, there is no obligation upon the tenants to comply with conditions prescribed in Section 15(3) of the Rent Act. It is always open to a tenant to establish and prove that the tenant was always ready and willing to pay rent and therefore, there was no cause of action to even initiate proceedings for eviction under Section 15(1) of the Rent Act. Besides, a careful perusal of the impugned orders would indicate that concurrently the two Courts have accepted that there was no default in payment of rents. There is, in any case, ample evidence on record to establish that there was no default in payment of rent;"*

11. The Revisional Court examining the question of reasonable and *bona fide* requirement of the landlords found eviction was sought for demolishing the suit premises and erecting a new building thereon. In the opinion of the High Court, it was incumbent on the part of the fact finding fora to come to a finding on that question and record satisfaction as required under sub-sections (4), (5), (6) and (7) of Section 16 of the 1999 Act. We have

quoted above Section 16 of the 1999 Act. The High Court appears to have connected the claim based on reasonable and *bona fide* requirement to Sections 16 (1)(h) and (i) of the said statute. Though these two provisions apply in different contexts, sub-section (4) thereof requires the Court to carry out an exercise to determine which part of the rented-out premises ought to be vacated for carrying out the work of repair or erection. The first two fora did not address this question, which is a statutory requirement. A three-Judge Bench of this Court, in the case of **P. ORR & Sons (P) Ltd. -vs- Associated Publishers (Madras) Ltd.** [(1991) 1 SCC 301] dealing with a provision similar to Section 16(1)(i) contained in the rent legislation for the State of Tamil Nadu, Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 opined that the condition of building had to be considered for determining the legitimacy of the demand for timely demolition by reason of extent of damage to the structure, apart from considering other factors. It was also pointed out in this judgment that there was no necessity of the building being in crumbling condition to invoke the said provision. This view was echoed in a Constitution Bench judgment of this Court in the case of **Vijay Singh and Others -vs- Vijayalakshmi Ammal** [(1996) 6 SCC

475]. But these authorities do not clash with the reasoning of the High Court anchored on Section 16(4) of the 1999 Act. That provision lays down an entirely different test, and that is to ascertain if part-demolition could save the tenant's interest. Dealing with claim based on Section 16(1)(h) and (i) of the 1999 Act, the statutory mandate for the Court is to test the question of part vacating. Neither the Trial Court nor the Appellate Court chose to analyse this requirement before directing eviction. This provision becomes relevant as the initial demolition notice identifies a part of the premises requiring demolition and the Commissioner's report is also on that line. Sub-section (2) of Section 16 relates to reasonable and *bona fide* need in terms of Section 16(1)(g) and if the requirement is in the aforesaid terms, then the Court has to be satisfied having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant. This provision essentially incorporates the principle of "comparative hardship", as such a test has come to be known in tenancy jurisprudence. We have been taken through the judgments of the Trial Court and the Appellate Court on this point. The Appellate Court came to the finding that balance on

this point tilts in favour of the landlord. The High Court rejected this finding, holding:-

> *"54] However, the respondent-landlords, have not at all been candid with the Court insofar as the pleadings are concerned. In the course of evidence, it has come on record that the respondent-landlords have, besides the suit premises several other premises, which are being used by them for purposes of commerce as well as residence. Some of the premises, may have been acquired post the institution of the suit including in particular, the premises acquired by one of the sons of Baitullah Shaikh. Nevertheless, there were no disclosures volunteered in the course of examination-in-chief. Even if, the premises subsequently acquired are left out of consideration, there was a duty upon the respondent-landlords to fully and candidly make disclosure about the premises in their occupation, both for the purposes of residence as well as commerce and thereafter to explain, howsoever briefly, the subsistence of the need in respect of suit premises. The respondent-landlords have completely failed in this aspect. Such non-disclosure is a relevant consideration in the context of determining both the reasonability as well as bona fides.*
> *55] The tenants have managed to bring on record the material in the context of occupation and control of several premises by the respondent-landlords. Looking to the conduct of the respondent-*
>
> > *landlords, there is no certainty as to whether the premises in respect of which the tenants have obtained and produced documents, are only premises which are in the occupation or control of the respondent-landlords or whether there are some others as well.*
> >
> > *However, even on basis of the existing material on record, there was no question of making any decree under Section 16(1) (g) of the Rent Act."*

We affirm the view taken by the High Court that there was no satisfaction in the manner contemplated in Section 16 (2) of the 1999 Act as far as *bona fide* need in terms of Section 16(1)(g) was concerned. In the impugned judgment, the High Court has dealt

with in detail the list of properties which were with the landlords and on that basis gave its own finding in that regard. We do not find any perversity in such view taken by the High Court.

12. Sub-section (6) of Section 16 also mandates satisfaction of the conditions stipulated in sub-clauses (a) to (d) thereof. Sub-clause (d) in particular, contemplates the landlord to give undertaking in terms of paragraphs (i), (ii), (iv) and (v) of that sub-clause, while dealing with landlord's eviction claim based on Section 16(1)(i) of the said statute. These are all mandatory requirements and we cannot find any flaw with the judgment of the High Court to the extent it rejects the claim of the landlord for non-compliance of the aforesaid provisions.

13. Section 16(1)(k) of the said Act permits recovery of possession of tenanted premises on the ground that the premises are required for immediate purpose of demolition ordered by any municipal or other competent authority. In the present case, the respective suits were instituted seeking recovery of possession, inter-alia, under this provision. We have already referred to the demolition notice issued by the municipal authority. The High Court opined that it was necessary to satisfy itself that the suit premises were required for immediate purpose of demolition.

Contention of the appellants is that the Statute does not require the Court to come to a satisfaction on this point. In the event a tenant questions immediacy of demolition, then the proper course for him would be to question legality of the said notice. Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("1965 Act") to which the High Court has also referred to, stipulates:-

> *"195. (1) If it shall at any time appear to the Chief Officer that any building or other structure or anything affixed to such building or structure is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or structure or any other structure or place in the neighbourhood thereof, the Chief Officer may, by written notice, require the owner or occupier of such building or structure to pull down, secure, remove or repair such building, structure or thing or do one or more such things and to prevent all causes of danger therefrom.*
>
> *(2) The Chief Officer may also, if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to put down, secure, remove or repair the said building, structure or thing, to set up a proper and sufficient board or fence for the protection of passers by and other persons.*
>
> *(3) If it appears to the Chief Officer that the danger from a building, structure or thing which is ruinous or about to fall is of hourly imminence he shall, before giving notice as aforesaid or before the period of notice expires, fence of, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.*
>
> *(4) Any expenses incurred by the Chief Officer under sub-section (3) shall be paid by the owner or occupier of the structure and shall be recoverable in the same manner as an amount due on account of a property tax."*

14. The High Court found fault with the demolition notice as it carried no reference to the said provision (Section 195 of the 1965 Act). This flaw, by itself would not make the notice unenforceable. Omission to label a notice with the provision under which it is issued would not make it nugatory, if substance thereof is clearly conveyed. But the High Court also found:-

> *"76…Further, the notice is not directly in the context of suit premises occupied by the tenants, but rather pertains to certain portions of House No.86B. The notice, does not require demolition of the entire House No.86B, but rather requires removal of portions thereof, including in particular eastern wall, rafters and roofing. On basis of such notice, it is difficult to sustain an eviction order under Section 16(1)(k) of the Rent Act, particularly where no satisfaction whatsoever has been recorded by the two Courts on the aspect of 'immediate purpose of demolition', which satisfaction, was required to be recorded, both in terms of the context of Section 16(1)(k) of the Rent Act as also the decision of this Court in case of M.L Sonavane (supra).*
>
> *77] There is yet another significant aspect in the context of order of eviction under Section 16(1)(k) of the Rent Act. On 6 August 2002, the tenants lodged the complaint to the Municipal Authorities that the landlord Baitulla Shaikh was deliberately indulging in weakening of the walls of the portion of House N0.86, in his possession, with the objective of weakening the entire structure. Based upon such complaint, on 29 August 2002, an inspection was held by the Municipal Authority. Upon finding some merit in the complaint of the tenants, the decision was taken to issue appropriate notice to the landlords Baitulla Shaikh and C.K. Aris, Hamid. Pursuant to such decision, the Municipal Authority, by notice dated 29 August 2002, notified the landlords that during inspection it was revealed that the landlords are illegally and unauthorisedly weakening the walls of House No. 86 and that in future, if the wall collapses and causes loss to the life and property of the tenants, then, it is the landlords, who will be entirely responsible for the same. The documents like compliant of the tenants, inspection report as well as notice dated 29 August 2002 have been proved in the course of evidence and have been marked as Exhibits 223, 224 and 225. This*

vital material has been completely ignored by the two Courts. Exclusion of relevant and vital material, is also a species of perversity in the record of any finding of fact. The Court Commissioner was also appointed and even the Report of the Court Commissioner does not make out the case that the premises were required for immediate purpose of demolition. The evidence of the Municipal Engineers as well as the Court Commissioner, at the highest indicates that certain portions of House No.86 are in need of repairs. But the evidence does not make out any case that the suit premises were required for the immediate purpose of demolition. By virtually ignoring such material, the two Courts have proceeded to make a decree of eviction under Section 16(1)(k) of the Rent Act. This is an exercise in excess of jurisdiction. There is both illegality as well as material irregularity in the record of findings of fact, inasmuch as the Courts have failed to ask itself correct question in the context of 'immediate purpose' and further failed to consider relevant circumstances, rather the two Courts have allowed themselves to be persuaded by irrelevant circumstances."

(quoted verbatim from the paperbook)

15. Scope of Section 195 of the 1965 Act has been examined by the Bombay High Court in its judgment in the case of **M.L. Sonavane -vs- C.G. Sonar** [1981 (1) All India Rent Control Journal 466]. It is recorded in this judgment:-

"25. The more pertinent question however, is, whether the satisfaction of a local authority can be a substitute for the satisfaction of a court. The court must be satisfied as the section says of two things. It must be satisfied that a decree for possession has to be passed against a tenant and secondly, "premises are required for the immediate purposes of demolition." Unless the court is satisfied about the existence of both these things, it would be difficult to see how a court can pass a decree for eviction against a tenant. The satisfaction must relate to the requirement of passing a decree for possession against the tenant, and the immediate necessity of demolition. The satisfaction of the court is not a substitute for the satisfaction of the local authority. Nor is it that the court must itself inquire that the premises are in such a ruinous condition that they are required to be demolished. That satisfaction is relegated to the local authority. But, even apart from that satisfaction, an area of

satisfaction is still reserved for the court by the terms of the section, which deals with that satisfaction with regard to the passing of a decree for possession against the tenant, such satisfaction has also to be with regard to the immediate purpose of demolition. It is there and under those circumstances that the subsequent events and actions enter into the considerations of the court. If the court is satisfied on a consideration of the subsequent events that the premises are not required "for the immediate purposes of demolition," then, notwithstanding the order passed, upon a bona fide exercise of the power by the local authority, the court may still refuse to pass a decree. To my mind, that is the decision and principle laid down in 72 Bombay Law Reporter 569 and the judgment of Justice Patel referred earlier."

16. After holding that the satisfaction contemplated in the aforesaid provision is that of the local authority in a suit for eviction, it has been held that an area of satisfaction is still reserved for the Court. Court has to examine if there is immediacy of the need for demolition. Broadly, the same view has been taken by the Bombay High Court in a later judgment, in the case of **Manohar Prabhumal Rajpal -vs- Satara City Municipal Corporation, Satara and Another** [(1993) 1 All India Rent Control Journal 81]. In this judgment, the Court dealt with an eviction suit filed under the provisions of Section 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("1947 Act"). The said provision is near identical to the provisions of Section 16(1)(k) of the Rent Control Act, 1999. While analysing the said provision of the 1947 Act, the High Court had held that

the Trial Court while examining a plea for decree under similar statutory provision cannot sit in appeal over the decision of the local authority once the latter had exercised its power after taking into relevant factors into consideration. In our opinion, these two decisions lay down the correct principles of law for construing the provisions of Section 16(1)(k) of the 1999 Act. We accept the appellant's argument that the Court trying an eviction proceeding under the aforesaid provision has very limited role in determining as to whether demolition is really necessary or not, but it does not automatically follow therefrom that the Court would mechanically adopt the view of municipal authority of there being urgent need of demolition. The conditions under which a landlord can bring an eviction action under clauses (i) and (k) of Section 16(1) are different in their operations. In respect of an eviction proceeding founded on the former provision, it contemplates a lesser degree of immediacy or urgency, as held in the Constitution Bench judgment which we have referred to above. But the latter provision requires a greater degree of urgency and it is within the jurisdiction of the Court to test this factor, as held in the cases of **M.L. Sonvane** (supra) and **Manohar P. Rampal** (supra). Both the fact finding fora failed on this count.

17. On behalf of the appellants, it was brought to our notice that after the first demolition notice on 23.01.2002, three other notices were issued. Obviously the two fact finding Courts did not consider these notices as they did not form part of cause of action and it also does not appear that the said facts were admitted to be brought on the record by way of amendment of plaint or otherwise. These notices would run their own course and we also do not want to take cognizance of these subsequent notices as it would be up to the authorities to take such steps as may be permissible in law in respect of the subsequent notices. The tenants shall also be entitled to question the legality thereof, if so advised.

18. We are conscious that the Revisional Court was examining a judgment and decree already tested by the Appellate Forum and on facts, decree was made. Ordinarily the Revisional Court ought not to interfere with findings on fact. But in the judgment under appeal, we find that the Revisional Court has fitted the facts with the legal provisions and found that there was mismatch on the basis of which the judgment and decree were set aside. We have been taken through the judgment of the Revisional Court and do

not find any flaw that needs re-appreciation. We accordingly dismiss both the appeals.

19. Pending application(s), if any, shall stand disposed of.

.....J.
(ANIRUDDHA BOSE)

.....J.
(BELA M. TRIVEDI)

New Delhi;
30th January, 2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 770 OF 2013

Vasant Mahadeo Gujar .. Applicant
vs.
Baitulla Ismail Shaikh & anr. .. Respondents

WITH

CIVIL APPLICATION NO. 210 OF 2015

Vasant Mahadeo Gujar .. Applicant
vs.
Baitulla Ismail Shaikh & anr. .. Respondents

WITH

CIVIL APPLICATION NO. 352 OF 2014

Baitulla Ismail Shaikh & anr. .. Applicants
In the matter between
Vasant Mahadeo Gujar .. Applicant
vs.
Baitulla Ismail Shaikh & anr. .. Respondents

AND

CIVIL REVISION APPLICATION NO. 167 OF 2014

Smt. Khatija Ismail Panhalkar & ors. .. Applicants
vs.
Baitulla Ismail Shaikh & anr. .. Respondents

WITH

CIVIL APPLICATION NO. 211 OF 2015

Smt. Khatija Ismail Panhalkar & ors. .. Applicants
vs.
Baitulla Ismail Shaikh & anr. .. Respondents

WITH

CIVIL APPLICATION NO. 353 OF 2014

Baitulla Ismail Shaikh & anr. .. Applicants

In the matter between

Smt. Khatija Ismail Panhalkar & ors. .. Applicants

vs.

Baitulla Ismail Shaikh & anr. .. Respondents

Mr. V.S. Talkute a/w. Mr. S.R. Morey for the Applicant in CRA No. 770 of 2013 CAC No. 210 of 2015.

Mr. P.B. Shah and K.P. Shah i/b Diamondwala & Co. for the Respondents in CRA No. 770 of 2013, CAC No. 210 of 2015 and for the Applicants in CAC No.352 of 2014.

Mr. Uday Warunjikar for the Applicants in CRA No. 167 of 2014 and CAC No. 211 of 2015.

Mr. A.V. Anturkar, Sr. Advocate i/b Mr. Sandeep M. Phatak for the Respondents in CRA No. 167 of 2014 and CAC No. 211 of 2015 and for the Applicants in CAC No. 353 of 2014.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 22 June 2015.

Date of Pronouncing the Judgment : 04 August 2015

JUDGMENT :-

1] Rule and interim relief was granted in these Civil Revision Applications by speaking order dated 4 February 2014. As against the same, the respondent-landlords preferred Special Leave Petitions before the Apex Court, which were dismissed on 2 May 2014. However, the Apex Court requested this Court to dispose of the

pending Civil Revision Applications expeditiously. It is in these circumstances, that two Civil Revision Applications were taken up for final disposal.

2] The learned counsel for the parties requested that these two Civil Revision Applications be disposed of by common judgment and order. Even otherwise, the respondent-landlords in the two Civil Revision Applications are one and same. The tenants who have instituted these Civil Revision Applications occupy parts of the same House No.86. The impugned orders proceed on basis of substantially similar facts and reasoning. After certain stage, common evidence came to be recorded in the two matters. For all these reasons, it would indeed be appropriate if these two Civil Revision Applications are disposed of by this common judgment and order.

3] The Civil Revision Application No. 770 of 2013 is instituted by Vasant M. Gujar (Gujar). This concern two rooms, together ad-measuring about 240 sq.ft. in House No. 86, Dr. Sabane Road, Mahabaleshwar (suit premises No.1), of which the respondents are the landlords. The suit premises No.1 were let out by one Mr. Bhise,

the previous owner since last several decades. The suit premises are being used by the tenant Gujar for residential purposes.

4] The Civil Revision Application No. 167 of 2014 has been instituted by Smt. Khatija Panhalkar and others (Panhalkar). This concerns road facing premises ad-measuring about 40 sq.ft., again being part of House No. 86, Dr. Sabane Road, Mahabaleshwar (suit premises No.2) of which, the very same respondents as in Civil Revision Application No. 770 of 2013 are landlords. The suit premises No.2 are being used by the tenant Panhalkar for sale of handicrafts, Mahabaleshwar sticks etc. last several decades.

5] At least two portions of House No.86 of which the suit premises form a part, are in possession of the landlords. One of the portion is immediately adjacent to suit premises No.1 and the same was used for residential purposes. The second is immediately adjacent to suit premises No.2 and is used by the landlords for commercial purposes. There is reference to yet another portion/shed in the occupation of tenant Gujar. However, no proceedings are initiated in respect of the said portion/shed and accordingly it is

clarified that the present proceedings do not concern with such portion/shed.

6] The landlords instituted Regular Civil Suit No. 137 of 2010 (old Regular Civil Suit No. 241 of 2002) against the tenant Gujar seeking eviction from the suit premises No.1 on the grounds of default in payment of rent, reasonable and *bona fide* requirement and that the premises are required for immediate purpose of demolition ordered by municipal authorities. These are grounds contemplated by Sections 15, 16(1)(g) and 16(1)(k) of the Maharashtra Rent Control Act, 1999 (Rent Act).

7] The landlords also instituted Regular Civil Suit No. 136 of 2010 (old Regular Civil Suit No. 239 of 2002) against the tenant Panhalkar for eviction on the same grounds. There was however, an additional ground that the tenant Panhalkar had without the landlords' consent in writing erected upon the suit premises No.2 a permanent structure. This is a ground contemplated by Section 16(1)(b) of the Rent Act.

8] The two suits were taken up for consideration together by the Civil Judge, Junior Division at Mahabaleshwar (Trial Court). The examination-in-chief was recorded separately in the two cases to begin with. However, after some stage, at the request of the parties, common evidence was recorded. Even the cross-examination of Baitulla Shaikh is common in both cases. The Trial Court, by judgment and order dated 4 July 2011 decreed two suits on the ground of reasonable and *bona fide* requirement as also on the ground that the suit premises are required for immediate purpose of demolition ordered by the Municipal Authorities. However, decree of eviction on other grounds was declined.

9] The tenants appealed to the District Court (Appeal Court). The landlords instituted cross-objections seeking decree of eviction on the remaining grounds as well. The Appeal Court by its judgment and order dated 4 July 2013 has dismissed the tenants' appeal and allowed the landlords cross-objections. Hence, the present Civil Revision Applications, by the tenants.

10] In the suit against the tenant Gujar, it appears that the landlords had raised the ground that the tenant Gujar had acquired

an alternate suitable accommodation in Namdeo Cooperative Housing Society. Under the Rent Act, the acquisition of alternate premises is not a ground for eviction. The Trial Court is not clear whether eviction was made on this ground. However, it does appear that this aspect was taken into consideration by the Trial Court in dealing with the issue of comparative hardship. The Appeal Court has, however, not adverted to this aspect at all.

11] In the appeals, both the tenants had taken out applications under Order 41 Rule 27 of the Code of Civil Procedure (1908) seeking leave to produce additional evidence. The Appeal Court, in making the impugned judgment and decree dated 4 July 2013, has not dealt with or disposed of the said applications. The arguments before the Appeal Court had concluded on 15 January 2013 and the impugned judgment and decree was made on 4 July 2013.

12] In the aforesaid circumstances, Mr. Talkute and Mr.Warunjikar, learned counsel for the tenants, in support of both the Civil Revision Applications, have urged the following :

(a) There is failure to exercise jurisdiction by not even adverting to, much less deciding the applications under Order 41 Rule 27 of the CPC;

(b) The delay of more than six months in pronouncing the impugned judgment and decree, after the conclusion of arguments is contrary to the provisions contained in Order 20 Rule 1 of CPC, as interpreted by the Apex Court and this Court in its several rulings, on the subject;

(c) The Appeal Court has committed an error of law, apparent on face of record in interpreting Section 15 of the Rent Act, in the manner it has. The interpretation is contrary to both, the text as well as the rulings of this Court on the subject. This is a case where rents were regularly offered and dispatched by way of money orders. The rents were, however, refused by the landlords. In such circumstances, there is no obligation upon the tenants to comply with conditions prescribed in Section 15(3) of the Rent Act. It is always open to a tenant to establish and prove that the tenant was always ready and willing to pay rent and therefore, there was no cause of action to even initiate proceedings for eviction under Section 15(1) of the Rent Act. Besides, a careful perusal of the impugned orders would indicate that concurrently the two Courts have accepted that there was no default in payment of

rents. There is, in any case, ample evidence on record to establish that there was no default in payment of rent;

(d) From the notice purporting to determine tenancy, pleadings as well as depositions, it is apparent that eviction was applied for in order to demolish the suit premises and to erect thereupon a new building. The ground for eviction was therefore, relatable to Section 16(1)(i) of the Rent Act and not to Section 16(1)(g) thereof. Accordingly, it was incumbent to record satisfaction and secure compliances of the conditions specified in sub-sections (4),(5), (6) and (7) of Section 16 of the Rent Act before any decree under Section 16(1)(i) of the Rent Act is made. There being no consideration whatsoever of the provisions in the sub-sections, the impugned judgment and decrees are in excess of jurisdiction or in any case vitiated by illegality or material irregularities;

(e) There was a blatant suppression of material particulars with regard to several premises owned and occupied by the landlords. Therefore, applying the principles laid down by this Court in case of ***Tarachand Hassaram Shamdasani Vs.***

Durgashankar G. Shrof*[1]*, as well as other rulings, no decree of eviction on the ground of reasonable and *bona fide* requirement, could ever have been made. Even otherwise, the two Courts have neither applied the true and correct tests in such matters nor has relevant evidence on record been considered. Even the aspect of comparative hardship has not been adverted to independently;

(f) There was no case made out for eviction under Section 16(1)(k) of the Rent Act. There is material on record which establishes that the landlords were intentionally and maliciously damaging the suit premises with the sole object of inviting demolition notices. There is no satisfaction recorded that the suit premises were required for '*immediate purpose of demolition*'. In any case, the demolition notices, on basis of which the suits came to be instituted did not relate to the entire suit premises. There is clear misinterpretation of the provisions contained in Section 16(1)(k) of the Rent Act.

(g) There is no case made out to evict the tenant Panhalkar under Section 16(1)(b) of the Rent Act. The Trial Court had

1 2004(Suppl) Bom.C.R.333

rightly declined the eviction on this ground. The finding of the Appeal Court is vitiated by clear perversity. The explanation to Section 16(1)(b) of the Rent Act has been completely ignored.

(h) In general, for the aforesaid reasons, the learned counsel for the tenants submitted that the impugned judgment and decrees are in excess of jurisdiction and in any case, vitiated by illegality and material irregularities.

13] Mr. P.B. Shah and Mr. A.V. Anturkar, learned counsel for the landlords, separately advanced submissions in support of the impugned judgments and decrees. They submitted that there are concurrent findings recorded by the two Courts which are borne from the material on record. There is accordingly, no warrant to interfere with the same in the exercise of limited revisional jurisdiction.

14] The learned counsel for the landlords further submitted that on the basis of evidence led by the tenants, it is apparent that there were defaults in payment of rents. The tenants neither raised any dispute with regard to the standard rent nor did they avail the option under Section 15(3) of the Rent Act. Accordingly, the Appeal

Court was right in directing eviction under Section 15 of the Rent Act.

15] The learned counsel for the landlords further submitted that in this case, Municipal Authorities had issued no less than four notices for demolition of House No.86, of which the suit premises were only a part. The allegations of malice or *mala fide* were vaguely made and the same was rightly rejected by the Appeal Court. Accordingly, they submitted that the ground as contemplated by Section 16(1)(k) of the Rent Act was clearly made out.

16] As regards the ground of reasonable and *bona fide* requirement, Mr. Anturkar, appearing for the landlords in Civil Revision Application No. 167 of 2014 conceded that the pleadings did make out a case under Section 16(1)(i) of the Rent Act and therefore, no decree of eviction could be made without securing compliances under sub-sections (4),(5),(6) & (7) of Section 16 of the Rent Act. However, Mr. Shah, learned counsel appearing in Civil Revision Application No. 770 of 2013 for the very same landlords joined issue and submitted that notwithstanding such pleadings, a decree of eviction on the grounds of reasonable and *bona fide*

requirement can always be made under Section 16(1)(g) of the Rent Act. In this regard, Mr. Shah placed reliance upon the decision of the Apex Court in case of ***Ramniklal P. Mehta vs. Indradaman A. Sheth***[2] and of this Court in case of ***Sharadchandra V. Chitnis Vs. Mrs. Neela Ashok Korde & anr.***[3]

17] Finally, Mr. Anturkar submitted that the material on record clearly bears out that the tenant Panhalkar had carried out construction of permanent nature and therefore, the decree under Section 16(1)(b) of the Rent Act, as made by the Appeal Court, was in perfect order.

18] The learned counsel for both the parties made reference to certain decisions of the Apex Court as well as this Court to which reference shall be made in the course of this common judgment and order.

19] The rival contentions now fall for my determination.

2 AIR 1964 SC 1676
3 2008(4) MAH.L.J. 873

Non consideration of the Applications under Order 41, Rule 27 of the CPC

20] There is nothing in the record and at least none was demonstrated by the learned counsel appearing for the landlords that the tenants' applications under Order 41 Rule 27 of the CPC were considered and disposed of by the Appeal Court at the stage of making the impugned orders. This clearly, amounts to failure to exercise jurisdiction.

21] In case of ***Eastern Equipment & Sales Limited vs. ING Yash Kumar Khanna***[4], the Apex Court has observed thus:

> *5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been taken by the appellate court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure.*
>
> 6. *In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the appellate court as well as by the High Court, we set aside the order of the High Court as well as of the appellate court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits*

4 (2008) 12 Supreme Court Cases 739

> *within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.*
>
> 7. *The view that we have expressed can be supported by a decision of this Court in Jaipur Development Authority v. Kailashwati Devi - (1997) (7) SCC 297."*

22] Similarly, in case of ***Muzaffar Ali vs. Dasaram***[5], the Apex Court remanded the matter for reconsideration of the Second Appeal, where the second Appellate Court had failed to consider the reasons assigned by the first Appellate Court for rejection of an application under Order 41 Rule 27 of the CPC. In paragraphs 3 and 4, the Apex Court observed thus:

> *3. It is true that the first appellate court, while deciding the first appeal, had given reasons for rejection of the said application but the ground for such rejection was, as noted hereinabove, not considered by the High Court. That being the position, we set aside the judgment of the High Court and direct it to decide the appeal afresh on merits and in accordance with law along with the application under Order 41 Rule 27 CPC and the reasons given by the first appellate court for its rejection.*
>
> 4. *The High Court is now requested to decide the second appeal along with the application under Order 41 Rule 27 CPC on merits within a period of three months from the date of supply of a copy of this order. While deciding the same, the High Court shall also consider the reasons for rejection of the application under Order 41 Rule 27 CPC given by the appellate court.*

5 (2009) 2 SCC 654

23] In the aforesaid circumstances, this would call for remand to the Appeal Court. However, the suits in the present case were instituted in the year 2002. As discussed hereinafter, the tenants have made out a case to upset the eviction orders upon other substantive grounds. Remand, in the circumstances, would only prolong the life of the litigation. Accordingly, no remand is ordered upon this ground.

Delay of more than six months in making the impugned orders dated 4 July 2013

24] The record reveals that oral arguments before the Trial Court concluded on 15 January 2013. Thereafter, Roznama reveals that the matters were adjourned at least on five to six occasions for '*reply*'. The significance of such adjournments or for that matter '*reply*' after conclusion of final arguments in the appeal, is by no means discernible. However, abruptly, on 4 July 2013, the impugned orders came to be pronounced. There is no record of any reply as such, being filed by any of the parties on any of the adjourned dates. In effect, there is delay of over six months in making the impugned orders, after the conclusion of the arguments. The record also indicates that all the parties had filed written notes of arguments on record.

25] The learned counsel for the tenants submitted that the delay constitutes breach of principles laid down in the Order 20 Rule 1 of the CPC and the impugned orders deserve to be set aside on the grounds of delay alone. On the other hand learned counsel for the landlords submitted that this was the case where notes of written arguments had been filed before the Appeal Court and therefore, the impugned orders are not vitiated on this score.

26] In the case of ***R.C. Sharma Vs. Union of India***[6], the Apex Court made strong observations in the context of delay in delivery of judgment after conclusion of arguments. In the said case, the Apex Court observed observed thus:

> *Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments.*

27] In the case of ***Anil Rai vs. State of Bihar***[7], the Apex Court again made strong observations and went on to suggest that the

6 1976(3) SCC 574
7 (2001) 7 SCC 318

delay in delivery of judgments after the conclusion of arguments, might by itself, constitute a ground for setting aside such orders and a remand for re-hearing. The Division Bench of this Court in case of of ***Debang R. Vora vs. Union of India***[8]***,*** in fact set aside the order made by CEGAT on the ground of delay alone and remanded the matter for fresh consideration. The Division Bench of this Court in case of ***Pradeep K.R. Sangodker Vs. State of Goa and The District Consumer Dispute Rederssal Forum***[9]***,*** upon analysis of several rulings on this subject, issued directions to judicial as well as quasi judicial authorities in the State of Goa to deliver judgments within a period of three months from the date of conclusion of arguments. The contention that written arguments were on record and therefore, delay did not matter was rejected in case of ***R.C. Sharma (supra)*** by observing that it is not unlikely that such points which the litigant considers important may have escaped notice

28] Applying the aforesaid principles to the facts and circumstances of the present case, it shall have to be held that the delay in pronouncement of the impugned order by the Appeal Court is indeed inordinate and unexplained. However, as noted earlier, the

8 2004 (2) Mh.L.J. 208
9 Writ Petition No. 281 of 2006 decided on 24.08.2006 : (MANU/MH/1246/2006

learned counsel for the landlords do not seek a remand. There are other substantial grounds to upset the impugned orders. This is also not a case where any of the parties had moved this Court complaining about the delay in pronouncement of the impugned order and applied for withdrawal of the case from the Bench or sought a fresh hearing. Upon cumulative consideration of all these circumstances, it would not be appropriate to set aside the impugned judgments and decrees and remand the matter for fresh consideration on the ground of delay between conclusion of arguments and pronouncement of judgment.

Default in payment of rents (Section 15 of the Rent Act)

29] The landlords, in their notice dated 4 February 2002 issued under Section 15 (2) of the Rent Act, alleged that the tenants have not bothered to pay any rents to the landlords from the year 1992. Demand was made of arrears in an amount of Rs.3400/- from the tenant Gujar. Similarly, notice dated 31 May 2002 was issued to the tenant Panhalkar quantifying arrears in an amount of Rs.2312/-. There are allegations/pleadings in the respective plaints are also to the same effect.

30] The tenants' defence, both in their replies to the notices as well as in written statement was that rents in respect of suit premises were regularly sent to the landlords, *inter alia,* by means of money orders. However, the same were refused, which refusal is evident from the postal records. In such circumstances, the tenants contended that they have always been ready and willing to pay the rents and therefore, in terms of Section 15(1) of the Rent Act, there arises no question of making any decree of eviction on the ground of non-payment of rent. As a matter of abundant caution, the tenants even deposited the arrears / rents deposited before the Trial Court. However, it is common ground that such deposit is well beyond the period of ninety days from the date of service of summons in the suit.

31] The Trial Court, upon appreciation of the material on record, in the form of both oral as well as documentary evidence recorded conclusion that there was no default on the part of the tenants in payment of rents. No decree of eviction was, therefore, made by the Trial Court on this ground. The reasoning of the Trial Court is contained in paragraph '*13*' of the judgment and decree dated 4 July 2011 (in case of Vasant Gujar) and the same reads thus:

13] In this regard, I have perused Section 15 of the Maharashtra Rent Control Act. It gives three-fold protection to tenant in clause (1), (2) and (3) respectively. As per Section 15(1) of the Maharashtra Rent Control Act, if the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases then the landlord is not entitle to recover the possession of tenanted premises. In present case, admittedly, the rent of suit property is not paid to the plaintiffs but, we have to see whether the defendant was and is ready and willing to pay rent ? In this respect, it is pertinent to note that, D.W.1 Mahesh had deposed that, since 9/1/1992 defendant is sending the rent to plaintiff by money order and plaintiff had refused the same. He has filed receipts of money order, said are at Exh.257 to 296. I have perused said money order receipts. On perusal of said receipts it reveals that, receipts at Exh. 295 and 296 are accepted but the plaintiff had refused other money orders of the rent. Therefore, in my opinion, if the plaintiff is refusing the rent and thereafter coming before the court on the ground of default then he can not be allowed to do so and to take benefit of his own wrong. It is clear that, the defendant had sent the rent by money order but the plaintiff had refused it. Further, plaintiffs had not proved that, they had made the demand of rent to the defendant and defendant refused to pay the rent. On the contrary, as stated above, it is the plaintiff who had refused to accept the rent, therefore, in my opinion, the act of defendant of sending the rent to plaintiff by money order clearly shows that, the defendant was ready and willing to pay the rent of suit property. Further, during the pendency of suit the defendant had also deposited the amount of rent in the court which shows that, the defendant is ready and willing to pay the rent. Therefore, as defendant is ready and willing to pay the rent, in my opinion, clause no.2 and 3 of Section 15 of the Maharashtra Rent Control Act will not be applicable to the present case."

(emphasis supplied)

32] The reasoning of the Trial Court in declining a decree of eviction on the ground of default in payment of rents in case of the

tenant Panhalkar is almost identical to the aforesaid, except that the reasoning contained in paragraph 25 of the judgment and decree dated 4 July 2011.

33] The Appeal Court has, however, reversed the Trial Court and made a decree of eviction on the ground of default in payment of rents. The reasoning of the Appeal Court, which is contained in paragraphs 31 to 34 of the impugned judgment and decree dated 4 July 2013 (identical reasoning in the two cases), reads thus :

> *31] It is the defence that the defendants had endeavoured to pay the arrears of rent by Money Order, but it was refused by the landlords. According to D.W. 2 Ibrahim, the plaintiff as has refused to accept the amount of Money Order, the ground under Section 15 of the Act is not open. Exhs.295 and 296 are the receipts of Money Orders, having endorsement of refusal by the addressee.*
>
> *32] The documentary evidence reveals that first time, the defendant has deposited the amount of rent on 4-10-2004, then on 24th June 2005. He has time and again deposited the rent, but one fact is clear that no rent was paid before 7-10-1992, though the plaintiffs have purchased the suit property on 9th January, 1992. For around nine months, the defendant did not pay the rent, much less in time. He filed his written statement on 21-11-2002 by alleging that entire arrears were paid. The statutory period of 90 days comes to an end on 9-12-2002. the defendant has been served with suit summons on 9-9-2002. Thus, it was obligatory on his part, especially when the plaintiffs are accusing him to be defaulter, to deposit the entire arrears together with statutory interest.*

33] It is the defence that the defendant has endeavoured to pay rent through Demand Draft, but it was also refused. On this point, evidence of Vijay Kadam, the Manager of Mahabaleshwar Urban Cooperative Bank, is to be viewed. The said witness does not know, who applied for the Demand Draft and in favour of whom it was issued. Thus, Exh. 415 is just a Challan for issuance of Demand Draft. No further details have been dispelled by his evidence. The defendant has just placed on record photo-copy of said Challan, which is not admissible. Though assumed that the defendant has deposited the arrears of rent, it is inclusive of 9% interest. Arrears of 13 years rent comes to Rs.7450/- and 9% interest comes to Rs.4023/- total Rs.11,473/- has been deposited vide Exh.34 on 2nd September, 2004. This is in contravention of Sub-section (3) of Section 15 of the Act.

34] On going through the impugned Judgment, the learned trial Court has emphasised the factum of refusal, however, has failed to consider whether even after service of summons, the defendant has failed to deposit the arrears. All three clauses of Section 15, are parallel to each other. The plaintiffs have purchased the suit premises in January, 1992. Since then, the defendants did not pay the rent to them, at least up to August, 1992. This material aspect of this matter is not aptly considered by the trial Court. What is material is the date of demand and deposit of amount of rent. Even after service of Notice, dated 4-2-2002, amount was not paid. Thus, mere offering the amount does not work. Thus, the claim of plaintiffs falls under Sub-section (3) of Section 15 of the Act and the defendants are guilty of non-compliance thereof.

For these reasons, I endorse my finding against Point No. 4 in the affirmative."

(emphasis supplied)

34] In order to appreciate the reasoning of the Appeal Court, reference is necessary to the text of Section 15 of the Rent Act, which reads thus:

> 15. ***No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.*** *- (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.*
>
> *(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882).*
>
> *(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.*
>
> *(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.*

35] Section 15(1) of the Rent Act, in terms provides that a landlord shall not be entitled to eviction of a tenant, so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are

consistent with the provisions of this Act. Clause 15(3) of the Rent Act, however, is a legislative injunction to the Courts from making a decree of eviction on the ground of default in payment of rent and permitted increases, if , within a period of ninety days from the date of service of summons in the suit, the tenant pays or tenders in Court the standard rent and permitted increases then due together with simple interest at the prescribed rates and thereafter, continues to pay or tenders the same till the suit is finally decided and also pays cost of the suit as directed by the Court.

36] The Appeal Court has made a decree of eviction by merely recording that the applicants failed to comply with the provisions of Section 15(3), in as much as arrears of rent, permitted increases together with interest, were not deposited in the Court within ninety days from the date of service of summons in the suit. There is no consideration whatsoever of the tenants' plea that the tenants had paid or in any case were ready and willing to pay rents and permitted increases to the landlords, but it was the landlords who had refused to accept the same.

37] From the scheme of Section 15 of the Rent Act, it is clear that benefit under Section 15(3) of the Rent Act can be availed of by a tenant, even if such tenant is admittedly, in default. From the tenor of Section 15(3) of the Rent Act, it does appear that no Court can make a decree of eviction on the grounds of default, where such tenant deposits within ninety days, arrears of rent, permitted increases and complies with other prescribed requirements. This, however, does not mean and imply that resort to benefit under Section 15(3) of the Rent Act is only mode available to a tenant to avoid a decree of eviction on the ground of default. The tenant, can always establish that he has paid or was always ready and willing to pay the rent and the permitted increases to the landlord and on such basis avoid a decree of eviction. In fact, Section 15(1) of the Rent Act, in terms provides that a landlord shall not be entitled to a decree of eviction so long as the tenant pays or is ready and willing to pay the standard rent, permitted increases and observes other terms and conditions of the tenancy, so far as they may consistent with the provisions of the Rent Act.

38] The reasoning of the Appeal Court, in fact, constitutes an error of law apparent on face of record. The Appeal Court does not appear

to have reversed the findings of the fact in the context of payment or dispatch of money orders by the tenants and their refusal by the landlords. The Appeal Court, however, makes decree of eviction on the ground of non-compliance with the provisions contained in Section 15(3) of the Rent Act. There is no consideration whatsoever to the pleas of the tenants that rents were indeed tendered regularly and punctually to the landlords, by means of money orders and the same were refused by the landlords. The Appeal Court has held that '*all three clauses of Section 15 are parallel to each other*'. This is an error of law apparent on face of record. Even where, there is no compliance with the provisions contained in Section 15(3) of the Rent Act, it is always open to a tenant to establish the factum of payment or the factum of readiness and willingness of payment of rent. If such factum is indeed established, the landlords cannot secure a decree of eviction on the ground of default in payment of rents. This proposition which emerges upon the plain reading of the provisions in Section 15 of the Rent Act, as also from the authorities on the subject, has been ignored by the Appeal Court. The finding on this aspect is therefore, vitiated by error of law apparent on face of record.

39] In case of ***Suka Ishram Chaudhari vs. Jamnabai R. Gujarathi & ors.***[10], the tenant had sent the rent amount to the landlord through money order, but the landlord refused to accept the same. Upon receipt of statutory notice under Section 12(2) of the Bombay Rents, Hotel and Lodging Houses Rates Control, 1947 Act (1947 Act), the tenant failed to avail the benefit under Section 12(3)(a) of the 1947 Act and pay arrears and permitted increased within one month from the date of receipt of notice. Accordingly, the issue arose as to whether a decree of eviction could be made as there was no compliance with the conditions prescribed under Section 12(3)(a) of the 1947 Act. The learned Single Judge of this Court (R.R. Bhole, J.) held that no decree of eviction would be made as long as the tenant was ready and willing to pay the rent. The relevant observations are contained in paragraphs 5, 6 and 7, which reads thus:

> 5. *Section 12 of the Rent Act provides for ejectment of the tenant by the landlord. It is divided into four clauses. The first clause prohibits a landlord from recovering possession of any premises so long as tenant pays and is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of the Rent Act. Therefore, as long as the tenant is ready and willing to pay and as long as he observes the conditions of tenancy, landlord cannot recover possession of the premises. The second clause directs the landlord to give a notice before a*

10 AIR 1972 Bom 273

suit on the ground of non-payment of rent is filed. A landlord under this clause cannot file a suit until expiration of one month next after the notice of the demand of standard rent. The third clause deals with two kinds of arrears, Sub-clause (a) deals with a tenant who is in arrears for a period of six months or more; sub-clause (b) deals with a tenant, who is in arrears for less than six months and sub-clause (c) provides that if a tenant raises a dispute regarding the amount of standard rent or permitted increases he is allowed to raise that dispute; and if the tenant makes the payment of which he is arrears within one month of the notice, then the landlord cannot recover possession of the premises. But if he does not raise any dispute and if he neglects to pay until expiration of the period of one month after the notice then the Court has no other alternative but to pass a decree for eviction. So far as sub-clause (b) is concerned the tenant is asked to pay the arrears on the first date of the hearing of the suit or before such other date as the Court may fix and if he continues to pay rent regularly in Court, then no decree can be passed against him but if after notice and after filing of the suit he neither pays the arrears on the first date of the hearing of the suit nor before such other date as the Court may fix, then a decree for eviction shall have to be passed. We are not concerned with the fourth clause because that clause merely deals with disbursement of the amount paid by the tenant in Court.

6. *Now, therefore, under Section 12 of the Rent Act this Court has to see whether the tenant was ready and willing to pay rent; whether the landlord had given him necessary notice; whether in this case, which is governed by Section 12(3)(a), the tenant is in arrears of rent for a period of six months or more and whether the tenant has neglected to make payment of the same. We have seen that the respondent had been refusing to accept rent sent to him by money orders. The arrears of rent according to the notice given by the landlord is for a period from 1-11-64 to 1-5-65. The question, in view of the fact that the tenant had sent rent by money orders and is whether the tenant was still in arrears of rent. If the landlord had accepted rent, the tenant would certainly not have been in arrears and there could not have been any cause of action for*

> *the notice to be served by the landlord on the tenant. Because the landlord had been refusing to accept rent for the period for which he was said to be in arrears the cause of action arose. In my view the landlord cannot take advantage of his conduct in not accepting rent sent by the tenant and then give a notice saying that the tenant is in arrears of rent for more than six months. The intention of the legislature when enacting Rent Act could not have been to protect the landlord who refuses to accept rent and after six months turns round to say that the tenant is in arrears of rent for a period of six months or more. In my view, therefore the facts and circumstances of the instant case show that the petitioner - tenant was ready and willing to pay rent. The facts also show that the tenant was not in arrears of rent voluntarily. It is because of the conduct of the landlord that he fell in arrears at all. If that is so, then, in my view, the view of the learned Assistant Judge in inferring that the petitioner can be evicted under Section 12(3)(a) of the Rent Act is erroneous. On the other hand the inference and the legal effect of these proved facts is that the tenant cannot be evicted because he was neither in arrears of rent nor can be said to be not ready and willing to pay rent.*
>
> *7. I am supported in this view of mine by a judgment of Chandachud J. while deciding Civil Revision Application No. 1450 of 1961 on 16th April 1964. He had before him facts similar to the facts of the instant case and he has taken the same view as I am now taking.*
>
> *(emphasis supplied)*

40] In case of ***Abdul Gani Dinali Mom. V. Mohamed Yusuf Mohamed Isak***[11]***,*** another learned Single Judge of this Court (Jahagirdar J.), disagreed with the view of Bhole, J. in ***Suka Ishram Chaudhari (supra).*** Therefore, a reference was made to the Division Bench in case of ***Sitram Maruti Nagpure vs. Fakirchand P. Dhase***[12].

11 80 BLR 646
12 2008(1) Mh.LJ. 610

The Division Bench held that the view taken by Bhole, J. in case of ***Suka Ishram Chaudhari (supra)***, is correct and the view taken by the Jahagirdar, J., in case of ***Abdul Gani (supra)*** is overruled. The relevant observations are contained in paragraphs 14, 15 and 16, which read thus:

> 14. *After having heard the learned Counsel for both sides in the above and after perusal of all the aforesaid judgments, it is very clear that Section 12 makes it abundantly clear that if tenant pays or ready or willing to pay standard rent or permitted increases, then no ejectment will be made. To put it in other words, the landlord will be entitled to recover possession of the premises only if the tenant fails to pay the standard rent and permitted increases. In fact the said Section 12 clearly contemplates in a negative manner that no suit for recovery of possession shall be instituted by the landlord unless the landlord satisfies that the tenant was not ready and willing to tender and had not paid the standard rent and permitted increases for over a period of six months and in the event, the tenant was not ready and willing to tender standard rent and permitted increases, and that he has been in arrears of over a period of six months, then the landlord has to issue notice terminating the tenancy and demand the standard rent and permitted increases within a month after service of the notice. Even Section 12(3)(a) makes it clear that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of period of one month after the notice as referred in Sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession. By way of explanation, in the said section, it is provided that in any case where there is dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in Sub-section (2), he makes an*

application to the Court under Sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court. To put it in other words, the explanation is with regard to the procedure, when there is a dispute with regard to the standard rent. Where there is no dispute with regard to the standard rent, the tenant has to show that he was always ready and willing to tender rent and he must not be in arrears for more than six months and in the event, the tenant was in arrears for more than six months, the landlord has the right to serve notice of termination and demand rent and permitted increases, and if the tenant does not pay the same within one month, in such a case, the landlord will be entitled for a decree of eviction.

15. *In view of the clear explanation of Section 12, if the tenant raises a dispute with regard to the standard rent and permitted increases, he has to approach the Court within a period of one month from the notice of termination and make deposit within a period of one month in the Court. On the contrary, if there is no dispute, the tenant must show his readiness and willingness to pay rent and permitted increases and must keep regularly tendering the same, even by money order and no landlord can take advantage, neither by refusing to accept the same nor say that the tenant had not paid the rent or tendered the rent. This fact has been rightly pointed out by the Hon'ble Supreme Court in the case of Priya Ghosh and Ors. v. Bajranglal Singhania and Anr. and it is held that the landlord will be easily able to trap the tenant by refusing to accept and turn round and to file a suit against the tenant. That is why, the Hon'ble Supreme Court has clearly observed that the law has to be construed in a fair manner and it is not intended to trap the tenant into a situation so that the landlord can evict the tenant.*

16. Under the aforesaid facts and circumstances of the case, we are clearly of the view that the view taken by Bhole, J. is correct and the view taken by Jahagirdar, J. is over-ruled and the same does not lay down the correct law.

(emphasis supplied)

41] The reasoning of the Appeal Court in the present case is directly contrary to the law laid down by Bhole, J., in case of ***Suka Ishram Chaudhari (supra),*** which is held as the correct view by the Division Bench in case of ***Sitaram Nagpure (supra)***.

42] The learned counsel for the respondents, however, submitted that there is no material on record in support of the applicants' plea that rents were regularly and punctually sent to the landlord by money order and that the same were refused by the landlord. In this regard, Mr. Anturkar, learned senior counsel appearing for the respondent-landlords in Civil Revision Application No. 167 of 2014, on the basis of the documents evidencing money orders attempted to demonstrate that there were certain unexplained gaps in the despatch of money orders. Mr. Anturkar and Mr. Shah also submitted that since the plea of refusal of money orders was denied by the respondent-landlords, the applicants had to examine the postman in order to establish refusal. In absence of the evidence of postman, failure to accept the rents cannot be said to be proved and therefore, the Appeal Court justify in making the decree on the ground of default in payment of making rents.

43] It is not possible to accept the aforesaid contentions of the learned counsel for the respondent-landlords. The Trial Court on the basis of material on record, has recorded findings of fact that rents were regularly and punctually sent by the applicants to the respondent-landlords through money orders and that the same were refused by the respondent-landlords. In record of such finding, the Trial Court has adverted to the material on record in the form of money order despatches, the endorsement made thereon as well as the payment made thereby. The payments, relate not to some limited period but to over a substantial length of time, i.e. from January 1992 to February/May 2002. There is material on record, which establishes that the rents were paid and in any case, over considerable period of time, were being accepted on yearly basis. The Trial Court has also given due credence to the oral testimony, *inter alia,* the deposition and cross-examination of the respondent-landlords. On basis of all such materials, the findings of fact as to absence of any default on the part of the applicants came to be recorded by the Trial Court. There is absolute no perversity in the record of such findings. The Appeal Court has in fact, not even disturbed such findings. The Appeal Court, has merely criticized the Trial Court for having '*emphasized the factum of refusal*' but failed to

consider whether even after the service of summons the applicants had failed to deposit arrears. Thus, the decree made by the Appeal Court, is not on the basis of any default on the part of the applicants in making payment of rents, but rather the decree is made on the ground of failure on the part of the applicants to deposit the arrears of rent within ninety days from the receipt of summons in the suit. The Appeal Court in terms states that the decree is made, because the claim of respondents (plaintiffs) fall under sub-section (3) of Section 15 of the Rent Act and '*the defendants are guilty of non compliance thereof*'. As noticed earlier, such reasoning is contrary to scheme of Section 15 of the Rent Act, as also the decisions in case of ***Suka Ishram Chaudhari (supra)*** and ***Sitaram Nagpure (supra).***

44] The decision in case of ***Suka Ishram Chaudhari (supra)*** was followed by the another learned Single Judge of this Court in case of ***Madhukar Vaidya vs. Narayan H. Surve***[13]**.** In the said case, it was observed thus:-

> 7. ……. *It would be relevant to point out that this Court in Suka Ishram's, case was fully conscious of the said legal position which is reiterated by the Apex Court in Harbanslal's case. This Court in Suka Ishram's case at page 222 has referred to the broad principles that would cover the cases under Section 12(3)(a) of the Bombay Rent Act, nevertheless, in the facts of that case, which in my view are*

13 2000 (102(3)) BOMLR 276

> *similar to the one in the present case, proceeded to hold that the tenant cannot be evicted under Section 12(3)(a) of the Bombay Rent Act. As aforesaid, it cannot be said that the respondent-tenant was a wilful defaulter prior to the issuance of the suit notice or had failed and neglected to pay the rent regularly. On the other hand, what appears from the record is that the petitioner-landlord obviously wanted to create an evidence against the respondent-tenant to maintain the suit for eviction on the ground of arrears of rent and therefore refused to accept the money orders (Exhibits 36, 37 and 38) sent by the respondent. The Courts below have therefore rightly held that the petitioner-landlord had an oblique motive in refusing to accept the money orders sent just before the issuance of the suit notice and if the petitioner had accepted the said money orders, in which case, there would have been no cause of action for the petitioner to issue the suit notice or to institute the suit on the ground of default. The Courts below have consistently held that the respondent has not neglected to pay the rent, which was the prerequisite for applying Section 12(3)(a) of the Bombay Rent Act. I am in full agreement with the concurrent finding of fact as well as the conclusions reached by the Courts below.*

45] Similarly, in case of ***Kamlabai B. Kabade vs. Laxmibai J. Jagtap and ors.***[14], this Court has held that refusal of rent sent by money order constitutes deemed acceptance of rent. In such a situation, there would be no cause of action either to issue notice or to institute a suit on the ground of default.

46] The failure to examine postman, in facts and circumstances of the present, is by no means sufficient to upset the concurrent findings that rents were indeed sent by money order and refused by

14 2001(2) MH.L.J. 905

the respondent-landlords. There are records of money order dispatches over considerable period. The amounts dispatched and the endorsement thereon are substantially clear. The deposition on behalf of the applicants as well as respondent-landlords, does substantially establish that consequent upon purchase of suit premises by the respondent-landlords some time in the year 1992, rents have been dispatched by the applicants by way of money orders and same have been refused by the respondent-landlords. In such circumstances, there is no question of ignoring all such materials and relying upon a singular and bald assertion on the part of the respondent-landlords that the rents dispatched by money orders were never refused by them. Any conclusion that rents were not refused, in the facts and circumstances of the present case, would be contrary to the weight of evidence on record. The Appeal Court, therefore, has exceeded its jurisdiction or in any case, committed an error of law apparent on face of record.

Reasonable and Bona fide Requirement (Section 16(1)(g) of the Rent Act)

47] In the notice preceding the institution of suits for eviction, *inter alia,* on the ground that the suit premises are required by the

respondent-landlord reasonably and *bona fide* for occupation by himself or by any person for whose benefit the premises are held, the Applicants have set out the case that Baitulla Shaikh (plaintiff No.1) has two sons Irfan B. Shaikh and Haroon B. Shaikh. That both are aged 23 and 24 years respectively and are degree holders. Similarly, Shri. C.K. Aris, Hamid (plaintiff No.2), apart from the suit premises, has no other premises in Mahabaleshwar. Therefore, it was stated that the respondent-landlords proposed to demolish the suit premises and in their place construct a building for residence as well as hotel business. The necessary plan in this regard has also been approved by the Municipal Authorities and in the open space appurtenant, pits have been dug and construction work commenced. The allegations in the plaint, are also to this identical effect.

48] Section 16(1)(g) of the Rent Act entitles the landlord to recover possession of the tenanted premises, if the same are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held. Section 16(1)(i) further provides that where premises are reasonably and *bona fide* required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose

of erecting new building on the premises sought to be demolished, then subject to certain conditions set out in sub-sections (4),(5),(6) and (7) of Section 16 of the Rent Act, the Court may make a decree of eviction.

49] In the context of decree of eviction under Section 16(1)(i), sub-section (4) of Section 16 of the Rent Act provides that a Court may pass the decree only in respect of a part of the premises which in its opinion is necessary to vacate for carrying out the work of erection of new building. Sub-section (5) of Section 16 of the Rent Act renders unlawful, assignment of any decree of eviction obtained on the grounds specified in Section 16(1)(i) of the Rent Act. Sub section (6) of the Section 16 provides that no decree of eviction on grounds specified in Section 16(1)(i) of the Rent Act shall be made, unless the Court is satisfied that necessary funds for purpose of the erection of new building are available with the landlord, the plans and estimates of the new building have been properly prepared, that the new building contained residential tenements not less than the number of existing tenements which are sought to be demolished, the landlord has given the necessary undertakings prescribed under clause (d) of sub-clause (6) of Section 16 of the Rent Act. The

undertaking makes reference to the amendment and time schedule in which the erection of new building will commence and conclude. Sub-section (7) of Section 16 of the said provides that where possession of premises is recovered under Section 16(1)(i) of the Rent Act and the premises are transferred by the landlord, or by operation of law before the tenant or tenants are placed in occupation, then such transfer shall be subject to the rights and interests of such tenants.

50] Mr. Talkute relying upon the statements in notice dated 4 February 2002, the plaint as also the deposition of the landlords submitted that the respondent-landlords intended to seek eviction under Section 16(1)(i) and not Section 16(1)(g) of the Rent Act. If this be so, Mr Talkute submitted that the conditions prescribed in sub-sections (4) to (7) of Section 16 of the Rent Act had to be complied with. In absence of any such compliance, no decree of eviction would ever been made against the applicants.

51] In fact, Mr. Anturkar, learned senior counsel appearing for the respondent-landlords in Civil Revision Application No. 167 of 2014 fairly conceded to the aforesaid position, in the light of the

averments in the legal notice, plaint and the deposition. However, Mr. Shah, who appears for the same respondent-landlords in Civil Revision Application No. 770 of 2013, submitted that notwithstanding the statements/averments in the notice, plaint and deposition, a decree of eviction was perfectly competent under Section 16(1)(g) of the Rent Act. In this regard, Mr. Shah placed reliance upon the decision of the Apex Court in case of ***Ramniklal P. Mehta (supra)*** and ***Sharadchandra Chitnis (supra),*** which according to him, have taken the view that where the possession of the tenanted premises is required reasonably and *bona fide* for the personal occupation of the landlord or members of the landlord's family, eviction decree can be made despite the proposal being for demolition of the suit premises and the erection of a new building thereon.

52] The aforesaid issue does not call for any decision in the facts and circumstances of the present case. This is because, the respondent-landlords, in the present case, have not made out any case for decree of eviction on the ground that the suit premises are reasonably and *bona fide* required by them or any persons for whose benefit the premises are held by them.

53] In notice as well as suit seeking eviction upon the grounds contemplated by Section 16(1) (g) of the Rent Act, the respondent-landlords have averred that the suit premises are required for the purposes of residence as well as hotel business of the two sons Irfan B. Shaikh and Haroon B. Shaikh as well as as Shri. C.K. Aris Hamid (plaintiff No.2). The pleadings, are by no means clear and categorical. However, in such matters, the pleadings, particularly in the context of reasonable and *bona fide* requirement are requiring to be liberally considered, as such the contentions of Mr. Talkute and Mr.Warunjikar that the landlords' plea be rejected on grounds of vagueness in the pleadings, cannot be accepted.

54] However, the respondent-landlords, have not at all been candid with the Court insofar as the pleadings are concerned. In the course of evidence, it has come on record that the respondent-landlords have, besides the suit premises several other premises, which are being used by them for purposes of commerce as well as residence. Some of the premises, may have been acquired post the institution of the suit including in particular, the premises acquired by one of the sons of Baitullah Shaikh. Nevertheless, there were no disclosures volunteered in the course of examination-in-chief. Even

if, the premises subsequently acquired are left out of consideration, there was a duty upon the respondent-landlords to fully and candidly make disclosure about the premises in their occupation, both for the purposes of residence as well as commerce and thereafter to explain, howsoever briefly, the subsistence of the need in respect of suit premises. The respondent-landlords have completely failed in this aspect. Such non-disclosure is a relevant consideration in the context of determining both the reasonability as well as *bona fides*.

55] The tenants have managed to bring on record the material in the context of occupation and control of several premises by the respondent-landlords. Looking to the conduct of the respondent-landlords, there is no certainty as to whether the premises in respect of which the tenants have obtained and produced documents, are only premises which are in the occupation of control of the respondent-landlords or whether there are some others as well. However, even on basis of the existing material on record, there was no question of making any decree under Section 16(1) (g) of the Rent Act.

56] There is record that the property in C.T.S. No. 137, 137/1, 137/2 and 137/3 at Dr. Sabane Road, Mahabaleshwar, Satara is in the occupation of the respondent-landlords. Upon the said property, the respondent-landlords, operate '*Hotel Blue Star*'. Incidentally, Dr.Sabane Road, Mahabaleshwar, is the very road upon which the suit premises are situated. In the plaint, there was no reference in respect of this property. There are documents which establish that this property is in the occupation of the respondent-landlords. There are admissions in this regard as well. Mr. Shah contended that failure to disclose is not fatal, if it is established that a decree for eviction can be sustained even if disclosure were to be made. That is not a situation in the present case. Apart from this property, there are several other properties in the occupation or control of the respondent-landlords. The landlords have hotel business under the name and style of '*Hotel Blue Star*'. There are other businesses like STD Booth, sale of handicrafts, Lucky Restaurant carried out by the landlords at Mahabaleshwar itself. There was no disclosures in regard to the premises and the businesses. Such disclosures were necessary, if the requirement of the suit premises is to be regarded as reasonable and *bona fide.*

57] There is again, the property at School Mohalla in CTS No. 252, Mahabaleshwar, Satara. The ownership of this property by Shaikh Baitulla is not really in dispute. There is material in the form of documents as well as admissions. The belated explanation is that the property is ancestral property belonging to the joint family. This by itself, is no excuse for non-disclosure. There is again reference to the property at CTS No. 399 near Nagarpalika Society. This property as also Municipal House No. 11 CTS No. 558 comprising six rooms with Toilet bathroom have nexus with the two sons of Mr. Baitulla Shaikh. The belated explanations that one of the properties is in the name of Irfan's wife or that one of the properties has already been rented out, again, afford no excuse for non-disclosure. The respondent-landlords i.e., Baitulla Shaikh himself resides at 23/B, Nagarpalika Society since last several years, though the explanation is that the said property belongs to his mother-in-law. There is also reference to a flat in Pune, which, however, in the facts and circumstances of the present case, is really irrelevant. Nevertheless, from the material on record, it is apparent that the landlords have in their occupation several properties and carry on several businesses and these facts were suppressed by the landlords in their plaints seeking eviction on the ground of reasonable and *bona fide*

requirement. The belated explanation that some of the properties are taken on rent or rented, that some of the properties are not in the names of the landlords or that some of the properties are joint family properties, hardly inspire any confidence. In any case, the reasons, do not apply to all the properties in regard to which, the material has been produced on record by the applicants. It was the duty of the landlords to have made disclosure in their pleadings and thereafter, offered explanation, howsoever brief, as to how despite the occupation of all such properties, need in respect of the suit premises subsists and is further *bona fide* and reasonable. Such pleading or disclosure, would have enabled the applicants to meet the case set out by the landlords. In absence of such disclosures on vital and relevant matters, no decree of eviction under Section 16(1)(g) of the Rent Act is sustainable.

58] In case of ***Tarachand Hassaram Shamdasani (supra),*** the learned Single Judge of this Court has held that it is obligatory for the landlord to disclose in the pleadings and in his evidence that the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that in spite of

those acquisitions, ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke the ground of reasonable and *bona fide* requirement and would succeed in establishing that the need is indeed *bona fide* and reasonable. In the said case also, there were no disclosures and the material with regard to ownership of other premises came on record only during the course of cross-examination. This was possible because the tenants through their efforts managed to obtain information. This Court, upset the concurrent findings as to *bona fide* and reasonable requirement, where the landlord has suppressed such material particulars. The relevant observations are contained in paragraphs, 7,8 and 9, extract of which reads thus:

> *7. .....That building can be used for residence. These facts were indeed relevant for deciding the issue of bonafide and reasonableness of the requirement of the Plaintiff, but were not disclosed either in the pleadings or atleast in the examination-in-chief when the Plaintiff entered the witness box. However, were elicited only during the cross examination conducted by the Defendant-tenant. This was possible only because all these details were within the knowledge of the Defendant-tenant. In spite of such overwhelming evidence on record, the Courts below have proceeded to answer the issue of bonafide and reasonable requirement in favour of the Respondent landlord. That cannot be countenanced, to say the least.*
>
> *8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that*

he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisitions and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bonafide and reasonable.

9. I have no hesitation in taking the view that in the fact situation of the present case the Plaintiffs has failed to plead and also depose in his evidence (examination-in-chief) about the ownership of other premises capable of being used for the requirement pressed into service in the subject suit. Besides, he has failed to disclose and explain that even the other premises were not sufficient to satisfy the requirement pressed into service in the suit against the tenant. Only when the landlord pleads and proves all these material facts that the Court would be able to adjudicate fully, completely and effectually as to whether the requirement pressed into service by the landlord in the suit so filed is bonafide and reasonable. As mentioned earlier, it is well settled that the landlord is not only required to establish his need to be bonafide but also to be reasonable. If the landlord fails to plead or establish either of this ingredient then the ground under Section 13(1)(g) of the Act for eviction is unavailable to the landlord. Inherent in this test is that if the landlord has failed to disclose relevant materials in the pleading and in his evidence (examination-in-chief), dejure, the landlord has not approached the court with clean hands. In such a case, it will be the duty of the court to non-suit the landlord with regard to this ground. It will be useful to place reliance on the enunciation of the Apex court in the case of S.P. Chengalvaraya Naidu's case (supra). The Apex Court has observed that duty is cast upon the Plaintiff to disclose all the facts, it is the duty of the Plaintiff to come to Court with true case and prove it by true evidence. The Apex Court has further observed that deliberate deception with the desire of securing something by taking unfair advantage of another, it is a deception in order to gain by another's loss, it is a cheating intended to get an advantage. Further, in Paragraph 6 it has observed that, non disclosure

> *of all the material and relevant facts at the trial tantamount to playing fraud on the Court. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. Withholding of any vital document in this case information, in order to gain advantage on the other side then he would be guilty of fraud on the Court as well as on the opposite party. Such a person can be summarily thrown out at any stage of the litigation. If this principle is to be applied to the facts of the present case, I have no manner of doubt that the Respondent-Landlord will have to be non suited on this ground. Because, it is a case of non disclosure of material facts and information, therefore, one of approaching the Court with unclean hands. And as observed by the Apex Court tantamount to playing fraud on the court as well as the opposite side. In this case sheerly because the Petitioner tenant was vigilant enough, could muster the necessary information to confront the Respondent landlord regarding his need being not bonafide and reasonable.*
>
> *(emphasis supplied)*

59] In case of ***Narendra Gulabrao Zade vs. Shiocharan Ghashiram Gupta since deceased through Lrs. Smt. Radhabai Shivcharan Gupta & anr.***[15]***,*** in the context of the necessity of disclosure by the landlord, this Court has made following observations:

> *9. The application as filed by the petitioner before the Rent Controller does not contain a reference to other house belonging to him and situated at Rajapeth i.e. within the Municipal limits. The law requires the petitioner to prove his bonafide need and for that to approach the Court of law with clean hands. The petitioner could have explained inadequacy or other lacunae in Rajapeth accommodation to justify his preference of ground floor in occupation of the tenant. Had there been such a case and pleading, the respondent – tenant*

15 2011 (1) Mh.L.J. 839

would have then got an opportunity of cross examination and then bonafides or otherwise of the need of the landlord could have been judicially appreciated. Unfortunately, such a course of action is not possible here. The respondent – tenant has through cross examination of the petitioner placed on record only the suppression of availability of other house at Rajapeth with further fact that proceedings for eviction of Mohan Singh Thakur therefrom were actually initiated and later on compromised when Mohan Singh Thakur agreed to increase the rent. Thus, this material brought on record by the tenant is sufficient to substantiate that there is no bonafide need of the landlord. Subsequent utilization of premises vacated by Shri Mohan Singh Thakur for establishing a business again raises several questions and as this fact is not on record, the same cannot be considered here.

10. The reliance upon the judgment delivered by me and reported in the case of Murlimanohar vs. Prabha Bhattacharya, (supra) in this situation is misconceived. There, the landlady and her sisters qualified gynecologists were seeking eviction of tenant to start maternity home and hospital. The tenant was urging that they can have their complex and in that complex, the tenant also can be accommodated. The evidence which has come on record there has been appreciated and such insistence on the part of the tenant was found to be unjustified. This Court has found that in such situation, the landlord is the best judge of his need. The judgment, therefore, has no application in present facts. The landlord can claim to be a best judge of his need after he fairly discloses all options available to him and shows some reason for choosing particular option i.e. premises. It is this election, effected by him after full knowledge and appreciation, which cannot be interfered with judicially. Here, the premises at Rajapeth were suppressed and hence it cannot be said that the landlord has judged his need bonafide in accordance with law. In this situation, I find that the petitioner – landlord can initiate fresh proceedings in accordance with law.

(emphasis supplied)

60] The two Courts have returned findings on the aspect of reasonable and *bona fide* requirement in quite of perfunctory manner. The two Courts, have permitted themselves to be particularly influenced by the circumstances that the landlord Baitulla Shaikh resides in the house, which is owned by his mother-in-law. Although, the same might have been a relevant factor, it is to be noted that the need pleaded by Baitulla Shaikh for purposes of residence, was not his own, but rather the need pleaded was that of his two sons. In fact, the pleadings with regard to need for residence are sketchy. Though, it is held that the pleadings in the matter of reasonable and *bona fide* requirement have to be considered liberally, there are really, in this case, no pleadings worth the name in the context of personal residential requirement of Baitulla Shaikh. Therefore, the Courts were clearly in error in laying undue emphasis upon the circumstances that the house in which the Baitulla Shaikh resides for number of years is in the name of his mother-in-law. There was no case pleaded by Baitulla Shaikh that he is put to any inconvenience on this ground. In fact, Baitulla Shaikh chose to suppress any details about the factum of his residence.

61] The two Courts have further held that the landlord, is the final arbiter in the matter of his need and it is neither for the Courts, much less the tenant to dictate any terms. There can be no quarrel with the proposition *per se.* However, the intention of the legislature is surely not to vest in a landlord some sort of unfettered discretion in the matter. The Apex Court, in the case of ***M.M. Quasim Vs. Manohar Lal Sharma***[16]***,*** at paragraph 19, has observed thus:

> 19. .....*This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to pro comparative hardship vide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison de'etre of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the*

16 (1981) 2 SCC 36

landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life shelter and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In 'The Sociology of Law', edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under:

> *"The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory comparative hardship of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it".*
>
> *(emphasis supplied)*

62] In Civil Revision Application No. 770 of 2013, the Courts have held against the applicant on the ground that the applicant had acquired two rooms at Namdev Cooperative Housing Society and that PW-4, one Mukund, had stated that permission for constructing a second floor can be granted by the Society. Apart from the

circumstance that the acquisition of alternate premises is no longer ground under the Rent Act for eviction of a tenant, even if we proceed on the basis that such a circumstance can legitimately be taken into account in the matter of determination of comparative hardship, the material on record indicates that the suit premises at Namdeo Cooperative Housing Society are occupied by one of the two married sons of the applicant. Besides, the two rooms in Namdeo Cooperative Housing Society are not on ownership basis but taken on rent from the municipality. The tenant Gujar has further deposed that in the suit premises, which comprises two rooms ad-measuring 10 x 12 feet each, the said applicant resides alongwith his parents, two sons and two daughters. The two daughters are married, but often visit the suit premises. One of the sons is married and has shifted to two room at Namdeo Cooperative Housing Society. All such relevant materials have been totally ignored by the two Courts.

63] The Trial Court, in the present case has considered the issue of *bona fide* requirement and comparative hardship in a composite manner rather than consider the two aspects separately. The Trial Court, failed to appreciate that to begin with, it has to be determined

whether the landlords have made out a case that the suit premises are required by them reasonably and *bona fide*. Upon record of satisfaction in this regard, the Trial Court should have then adverted to the predicates of Section 16(2) of the Rent Act, which mandate that no decree of eviction shall be passed on the grounds specified in Section 16(1)(g) of the Rent Act, if the Court is satisfied that having regard to all the circumstances of the case, including the question whether reasonable accommodation is acquired by landlord, greater hardship would be caused by passing a decree than by refusing to pass it. There is accordingly, clear failure to exercise jurisdiction under Section 16(2) of the Rent Act, by confusing and mixing of two issues of reasonable and *bona fide* requirement and comparative hardship into one. The entire reasoning of two Courts is that the landlords are the best judges and the final arbiters in matters of reasonable and *bona fide* requirement and further that since the tenant Gujar has two rooms in Namdev Cooperative Housing Society, the respondent-landlords will suffer greater hardship. The landlords are hoteliers having Hotels like Blue Star and Lucky Restaurant at Mahabaleshwar itself. The landlords and their family members are engaged in several businesses like STD Booth, sale of handicrafts etc.. One of the landlords has been the President of Municipal

Council of Mahabaleshwar. The record indicates that the family members of one of the landlords have served in Municipal Council in some capacities or the other. In contrast, the tenant Gujar, who resides in suit premises No.1 , is engaged in sale of '*Panipuri*' and other road side snacks. The tenant Panhalkar is engaged in sale of handicraft items through suit premises No.2 which ad-measure around 40 sq.ft. Both the tenants have deposed that despite best efforts, it is not possible for them to acquire other premises. There are several premises in the occupation of the landlords which the landlords did not even bother to disclose in the plaints. In these circumstances, even if the issue of comparative hardship was required to be decided, the same would have to be answered in favour of the tenants. In any case, by ignoring of such relevant and vital material on record, the Courts could not have answered such issue in favour of the landlords.

64] This Court in case of ***BismilL Bee w/o. SK. Chand and Khajamiyan S/o. Sk. Chand Vs. anwar S.o. Mohd. Akhtar***[17], has held that the provisions of Section 16(2) of the Rent Act, cast a statutory duty upon the Court to make an enquiry to the extent of need of the landlord, even if such need is found to be reasonable and

17 2010(1) ALL MR 889

bona fide. The right of the landlord to seek eviction on one hand and the protection granted to the tenant on the ground of comparative hardship on the other hand, can be balanced by the Court by making enquiry into the extent of need of landlord and even passing a decree for partial eviction from the suit premises, to meet the ends of justice. Such an exercise is required to be carried out by the Court irrespective of the fact whether party demands it or not. If such exercise is not carried out by the Court, then certainly it would result not only in failure to jurisdiction, but also failure to perform statutory and mandatory duty, resulting in failure of justice. Further, Section 16(2) of the Rent Act mandates that the Court is to have '*regard to all circumstance of the case*'. It further proceeds to state that this would include the question whether other reasonable accommodation is available for the landlord or the tenant. In this context, it is necessary, for the Court to be alive to the financial status of both the landlord as well as the tenant. The Court is also expected to be alive to the situation regards scarcity of accommodation at a particular place. In the present case, the two Courts have failed to undertake any such exercise and the impugned orders consequently are unsustainable.

The premises required for immediate purpose of demolition ordered by Municipal Authorities (Section 16(1)(k) of the Rent Act)

65] The Trial Court as well as the Appeal Court have upheld the plea for eviction on the ground contemplated by Section 16(1)(k) of the Rent Act. There is, however, variance in the reasoning adopted by the Trial Court and Appeal Court.

66] Section 16(1)(k) of the Rent Act reads thus:

> *16(1)(k) - that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority;*

67] The Trial Court, as reflected in the judgment and decree dated 4 July 2011, had framed the following issue in the context of grounds for eviction under Section 16(1)(k) of the Rent Act.

> *(2) Whether the plaintiffs are entitled for possession on the ground that suit property is in dilapidated condition and ordered to be demolished by the local authority as being dangerous for human habitation ?*

68] From the manner in which the issue was cast by the Trial Court as also the discussion in the judgments and decrees made by the Trial Court and the Appeal Court, it is clear that both the Courts have not even adverted to the aspect of as to whether the suit

premises were required for '*immediate purpose of demolition*' as contemplated by Section 16(1)(k) of the Rent Act. The italicised expression, is not without a purpose or a mere surplasage. Before, any decree of eviction can be made under Section 16(1)(k) of the Rent Act, the Court has to satisfy itself that the suit premises are required for the '*immediate purpose of demolition*'. In the absence of even the consideration of this aspect of immediacy, much less record of any satisfaction in that regard, there is clear failure to exercise jurisdiction. This position is no longer *res integra.*

69] The Apex Court, in case of ***P.O.P.R. and Sons (P) Ltd. vs. Associates Publishers (Madras) Limited***[18], has held that the expression '*immediate purpose*' in Section 14(1)(b) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 (Tamilnadu Act) relates to directness rather than speed, although the absence of the latter negatives the former. This expression denotes connection and timely action, but not instant action, yet delayed action is a sign of remoteness of purpose. The expression must be understood as required in direct connection and timely purpose and not just some secondary, remote or premature purpose. The legislative intent is that the purpose should be immediate or direct and not mediate,

18 (1991) 1 SCC 301

remote, not direct or secondary. The Apex Court, in the context of Section 14(1)(b) of the Tamilnadu Act as also observed that the Court does not normally sit in judgment over the appreciation of evidence and findings of fact rendered by authorities empowered under a statute. However, if the authority has acted in excess of its jurisdiction, asked itself wrong questions or misunderstood or misapplied the law, failed to consider the relevant circumstances, allowed itself to be persuaded by irrelevant circumstances, then the findings are liable to be reversed as perverse by a Court exercising judicial review. Any repository of power must act, in accordance with the law and on basis of relevant evidence. The authorities must act by reason and justice, not by private opinion.

70] The learned Single Judge of this Court in case of ***Mrs. Piadad Fernander vs. K.M. Ramesh and ors.***[19]***,*** in the context of provisions contained in Section 13(1)(hhh) of the 1947 Act have held that satisfaction regards immediacy is not a mere formality. The Court must apply its mind to all facts and circumstances of the case including the order of demolition and then come to the conclusion one way or the other. The earlier decision of this court in Civil Revision Application Nos. 1734 to 1748 of 1965 decided on 14

19 AIR 1970 Bombay 376

August 1967 (Bom.) was referred to and relied upon to hold that the expression '*immediate*' must be given its due weight in the context. Mr. Justice Patel , in the decision rendered on 14 August 1967, has observed thus:

> *"In my view, the word 'immediate' in the above clause has been used by the legislature with some intent. If the legislature wanted to provide that the landlords should be entitled to recover possession for the purpose of demolition of the property ordered by the Corporation there should have been no necessity of using the word 'immediate' and even the meaning it would have borne would be the same which Mr. Dhanuka wants me to give to the above clause. It must be remembered in this connection that between the issuing of the notices by the Municipal Corporation for demolition of the premises and the filing of a suit many things might intervene and though at one time the Corporation might have thought that a building was in such a ruinous condition that it must be ordered to be demolished, the same state of affairs might not continue to exist after the lapse of a few years. The word 'immediate' must be given its due effect in the context."*

71] This Court, again in the context of Section 13(1)(hhh) of the 1947 Act, in case of ***M.L. Sonavane vs. C.G. Sonar***[20], has held that before any order of eviction under Section 13(1)(hhh) of the 1947 Act can be made, the Court must be satisfied upon two aspects. It must be satisfied that a decree for possession has to be passed against the a tenant and secondly, "*premises are required for the*

20 1981 Bom.R.C. 128

immediate purposes of demolition". Unless the Court is satisfied about the existence of both these things, it would be difficult to see how a Court can pass a decree for eviction against a tenant. The satisfaction must relate to the requirement of passing a decree for possession against the tenant, and the immediate necessity of demolition. The satisfaction of the Court is not a substitute for the satisfaction of the local authority. Nor is it that Court must itself enquire that the premises are in such a ruinous condition that they are required to be demolished. That satisfaction is relegated to the local authority. But, even apart from that satisfaction is still reserved for the Court by the terms of the section, which deals with that satisfaction with regard to the passing of a decree for possession against the tenant, and the immediate purpose of demolition. If the Court is satisfied, on a consideration of the subsequent events that the premises are not required '*for the immediate purpose of demolition',* then, notwithstanding the order passed upon a *bona fide* exercise of the power by the local authority, the Court may still refuse to pass a decree.

72] Finally, in case of ***Manohar P. Rajpal vs. Satara City Municipal Corporation, Satara and anr.***[21], which was relied upon

21 AIR 1992 Bom.R.C. 220

by both the Trial Court as well as Appeal Court, this Court has held that it is open to the Rent Court, before making an order of eviction under Section 13(1)(hhh) of 1947 Act to examine whether the order made by the local authority is based upon relevant considerations and not irrelevant ones. Further, some enquiry is also warranted in the context of expression '*immediate purpose*' since the expression is not a mere surplusage and the same has to be considered having regard to various circumstances, including subsequent events.

73] Now if the impugned judgments and decrees made by the Trial Court and the Appeal Court are perused, it is clear that there is no serious investigation as to whether the notice dated 23 January 2002, upon which the landlords have founded their cause of action to seek eviction under Section 16(1)(k) of the Rent Act was issued on basis of relevant considerations and after eschewing irrelevant ones. Further there is no discussion at all on the issue of '*immediate purpose of demolition*'. As held in case of ***M.L. Sonavane (supra),*** the record of satisfaction on the aforesaid twin aspects is necessary before any eviction order can be made on basis of provisions *pari materia* to Section 16 (1)(k) of the Rent Act. Therefore, in the absence of even adverting to the significant aspect of '*immediate*

purpose of demolition' , the impugned judgments and decrees cannot be sustained.

74] The notice dated 23 January 2002, which as noted earlier, was foundation of the institution of the suits by the landlords states that inspection was carried out on 22 January 2002 and therein it was revealed that the eastern wall of House No. 86B is bloated and there are cracks therein. Similarly, wooden rafters have decayed and the roof destabilized. This condition, poses danger to the persons residing in the house as also passers by. The notice finally directs the landlords to remove the dangerous part of the house and warns that the Municipal Authority will not be responsible for any untoward instances, including loss and life or property.

75] In the context of the provisions contained in Section 16(1)(k) of the Rent Act as also the ruling in case of ***Manohar Rajpal (supra),*** the correct question to be posed would be whether demolition of the suit premises has indeed been ordered by the Municipal Authorities and further, whether such orders are based upon relevant considerations and not irrelevant ones. Some enquiry

is also warranted in the context of the expression '*immediate purpose*' employed in Section 16(1)(k) of the Rent Act. Apart from the decision of the Apex Court in case of ***P.O.P.R. & Sons (P) Ltd. (supra),*** this Court in case of ***M.L. Sonawane (supra)***, has held that the word '*immediate*' is not a surplusage and the same must be construed having regard to the circumstances.

76] In the notice dated 23 January 2002, there is no reference to the same being issued under Section 195 of the Maharashtra Municipalities Act, 1965 (1965 Act), which is the law, which governs the Municipal Authorities at Mahabaleshwar. This is significant because there is a statutory appeal against the notice under Section 195 of the 1965 Act, which opportunity was denied to the tenants. Further, the notice is not directly in the context of suit premises occupied by the tenants, but rather pertains to certain portions of House No.86B. The notice, does not require demolition of the entire House No.86B, but rather requires removal of portions thereof, including in particular eastern wall, rafters and roofing. On basis of such notice, it is difficult to sustain an eviction order under Section 16(1)(k) of the Rent Act, particularly where no satisfaction whatsoever has been recorded by the two Courts on the aspect of

'*immediate purpose of demolition',* which satisfaction, was required to be recorded, both in terms of the context of Section 16(1)(k) of the Rent Act as also the decision of this Court in case of ***M.L. Sonavane (supra).***

77] There is yet another significant aspect in the context of order of eviction under Section 16(1)(k) of the Rent Act. On 6 August 2002, the tenants lodged the complaint to the Municipal Authorities that the landlord Baitulla Shaikh was deliberately indulging in weakening of the walls of the portion of House NO.86, in his possession, with the objective of weakening the entire structure. Based upon such complaint, on 29 August 2002, an inspection was held by the Municipal Authority. Upon finding some merit in the complaint of the tenants, the decision was taken to issue appropriate notice to the landlords Baitulla Shaikh and C.K. Aris, Hamid. Pursuant to such decision, the Municipal Authority, by notice dated 29 August 2002, notified the landlords that during inspection it was revealed that the landlords are illegally and unauthorisedly weakening the walls of House No. 86 and that in future, if the wall collapses and causes loss to the life and property of the tenants, then, it is the landlords, who will be entirely responsible for the

same. The documents like compliant of the tenants, inspection report as well as notice dated 29 August 2002 have been proved in the course of evidence and have been marked as Exhibits 223, 224 and 225. This vital material has been completely ignored by the two Courts. Exclusion of relevant and vital material, is also a species of perversity in the record of any finding of fact. The Court Commissioner was also appointed and even the Report of the Court Commissioner does not make out the case that the premises were required for immediate purpose of demolition. The evidence of the Municipal Engineers as well as the Court Commissioner, at the highest indicates that certain portions of House No.86 are in need of repairs. But the evidence does not make out any case that the suit premises were required for the immediate purpose of demolition. By virtually ignoring such material, the two Courts have proceeded to make a decree of eviction under Section 16(1)(k) of the Rent Act. This is an exercise in excess of jurisdiction. There is both illegality as well as material irregularity in the record of findings of fact, inasmuch as the Courts have failed to ask itself correct question in the context of '*immediate purpose*' and further failed to consider relevant circumstances, rather the two Courts have allowed themselves to be persuaded by irrelevant circumstances.

78] The learned counsel for the landlords, however, attempted to make reference to certain subsequent notices issued by the Municipal Authority during pendency of proceedings. One such notice is dated 3 December 2005. Again, this notice makes no reference to the Section 195 of the 1965 Act. Copy of this notice was marked to Shri. Dastagir Dange and Shri. Sanjay Shinde, who were stated to be the complainants. There is no question of placing any reliance of such notice dated 3 December 2005, because the Municipal Authority, by subsequent communication dated 16 December 2005 (Exhibit-299) informed the tenants that further enquiries were conducted in the context of complaint made by Shri.Dattatray Deshmukh, which were the basis for issuance of notice dated 23 January 2002 and it was revealed that the complaint made by Shri. Dattatray Deshmukh was false. There is record of letter dated 14 November 2005 addressed by Shri. Dattatray Deshmukh stating that he had never made any complaint. The communication dated 16 December 2005 has been marked (as Exhibit-299) in the record.

79] The learned counsel for the landlords also made reference to notice dated 16 July 2009 (Exhibit-196). This is a notice which makes reference to Section 195 of the 1965 Act. As against this notice, the appeal has been instituted by the tenants and the same is pending consideration. That apart, even this notice directs the demolition of eastern wall and states that the Municipal Authorities will not be responsible for loss of life or property. What needs to be emphasized is that even this notice dated 16 July 2009 does not require demolition of the suit premises, but only the eastern wall of House No.86. Then again, this notice makes reference to the Court Commissioner Report, without really considering the contents of said Report.

80] Upon cumulative consideration all the aforesaid circumstances as well as law on the subject, the eviction under Section 16 (1)(k) of the Rent Act is unsustainable. The Courts have not even adverted to, much less recorded any satisfaction on the aspect of '*immediate purpose of demolition*'. This is an essential pre-requisite before any eviction order can be made under Section 16(1)(k) of the Rent Act, as held by this Court in case of ***M.L. Sonavane (supra).*** Further, the Courts have not even adverted to the issue as to whether notice

dated 23 January 2002 as also the subsequent notices indeed required the demolition of the entire House No. 86 or for that matter the entire suit premises. The Courts have also not eschewed the irrelevant considerations or taken into account relevant considerations. In particular, the Courts have totally ignored notice dated 29 August 2002 (Exhibit-155) issued by the Municipal Authority to the landlords in the context of deliberate damage to the walls by the landlords, in order to prejudice the tenants. The notice dated 29 August 2002 issued by the Municipal Authority is backed by the documents at Exhibit-223 and 224 in the form of complaints and notings in pursuance of inspection of House No. 86. The Courts have also failed to take into consideration the communication dated 16 December 2005 (Exhibit-299) which accepts that Shri. Dattatray Deshmukh upon whose complaint, the notice dated 23 January 2002 was issued, had made no complaint at all in the matter. The Court Commissioner's Report and evidence as also the Municipal Engineer's evidence has not been adverted to by the two Courts in proper perspective. Therefore, applying the principles set out in case of ***M.L. Sonavane (supra)*** and ***Manohar Rajpal (supra),*** it is not possible to sustain eviction under Section 16(1)(k) of the Rent Act.

Permanent construction without landlords' written consent (Section 16(1)(b) of the Rent Act)

81] The landlords' had alleged that the tenant Panhalkar has carried out a permanent construction on the suit premises No.2 without landlords' written consent and therefore, the ground for eviction under Section 16(1)(b) of the Rent Act was made out, in so far as the tenant Panhalkar is concerned. The Trial Court had in fact held that the ground under Section 16(1)(b) of the Rent Act was not made out by the landlords and therefore, declined to make decree of eviction under Section 16(1)(b) of the Rent Act. The Appeal Court has, however, reversed the Trial Court by mainly relying upon the Report of the Commissioner at Exhibit-122, which, according to the Appeal Court, discloses that the tenant Panhalkar has erected a shed on the front side of suit premises No.2 by implanting iron pole in cement and concrete. The finding of the Appeal Court is vitiated by perversity as well as non-application of mind.

82] In the plaint instituted against the tenant Panhalkar, the allegation is that the tenant Panhalkar, in front of suit premises No.2 has erected that a shed on platform (Otta) and that erection of such

shed constitutes a permanent construction as envisaged by Section 16(1)(b) of the Rent Act.

83] The material on record, as analysed by the Trial Court clearly reveals that the suit premises No.2, which are adjacent to almost similar premises in the occupation of the landlords are used for the purposes of sale of some handicrafts, Mahabaleshwar sticks etc. During the tourist season, all such shops, erects temporary structures to cover the small space between the actual shop and the road. There is absolutely no element of any permanence in so far as the erection of such temporary shed/covering is concerned. The explanation to Section 16(1)(b), which has not even been adverted to by the Appeal Court provides that the expression '*permanent structure*' does not include the carrying out of any work with the permission wherever necessary, of the Municipal Authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a fall ceiling, installation of air-conditioners, an exhaust outlet or a smoke-chimney. There must be an element of permanency in the structure, because a temporary structure of the nature described in

the evidence adduced by the tenants, is not within the contemplation of Section 16(1)(b) of the Rent Act.

84] In the present case, upon small space between the suit premises No.2 and the road a temporary shed is put up. This shed, is similar to the sheds erected by other shops on the same street. The shed is basically some sort of protection to the customers from the rains. There is neither any element of permanency, nor any question of intention to put up any permanent structure upon the suit premises. In these circumstances, there was absolutely no warrant for the Appeal Court to reverse the Trial Court and make a decree under Section 16(1)(b) of the Rent Act.

Miscellaneous Applications in these Civil Revision Applications

85] The tenants, by Civil Application Nos. 210 and 211 of 2015, have applied for leave to produce additional evidence in these Civil Revision Applications. Mainly, the tenants wish to bring on record the details with regard to further and other premises acquired by or in possession of the landlords and their children. This is in the context of challenge to decrees of eviction on the grounds of

reasonable and *bona fide* requirement. Since it is held that the landlords were not entitled to any decrees upon such ground, there is no necessity to permit any further material / evidence in this regard. Accordingly, Civil Application Nos. 210 and 211 of 2015 are disposed of.

86] The landlords have taken out Civil Application Nos. 352 and 353 of 2014 seeking mesne profits from the tenants. Since the eviction decrees are being set aside, there is no question of award of any mesne profits. Accordingly, Civil Application Nos. 352 and 353 of 2014 are also disposed of.

Final Order

87] For all the aforesaid reasons, Civil Revision Application Nos.770 of 2013 and 167 of 2014 are allowed and the impugned judgments and decrees dated 4 July 2011 and 4 July 2013 are set aside. Accordingly, Rule is made absolute in the two Civil Revision Applications.

88] For the reasons set out in paragraph '*85*', Civil Application Nos. 210 and 211 of 2015 taken out by the tenants seeking leave to produce additional evidence on record are disposed of.

89] As the two Civil Revision Applications have been allowed and the eviction decrees are set aside, Civil Application Nos. 352 and 353 of 2014 seeking mesne profits from the tenants do not survive and are consequently disposed of.

90] In the facts and circumstances as aforesaid, there shall be no order as to costs.

(**M.S. SONAK, J.**)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 770 OF 2013.

Mr.Vasant Mahadeo Gujar. .. Applicant
Vs.
Shri Baitulla Ismail Shaikh & anr. .. Respondents

Along with
CIVIL APPLICATION NO. 352 OF 2014

Shri Baitulla Ismail Shaikh & anr. .. Applicants
In the matter between
Mr.Vasant Mahadeo Gujar. .. Applicant
Vs.
Shri Baitulla Ismail Shaikh & anr. .. Respondents

And
CIVIL REVISION APPLICATION NO. 167 OF 2014.

Smt.Khatija Ismail Panhalkar & ors. .. Applicants
Vs.
Shri Baitulla Ismail Shaikh & anr. .. Respondents

Mr.V.S.Talkute a/w Mr.S.R.Morey, for the Applicant in CRA No.770 of 2013.
Mr.P.B.Shah a/w Mr.Vinayak Gadikar i/b Mr.K.P.Shah, for Respondent in CRA No.770 of 2013 and Applicants in CAC No.352 of 2014.
Mr.Sachi-danand Tandel a/w Mr.Siddesh Pilankar i/b Mr.Uday Warunjikar, for the Applicants in CRA No.167 of 2014.
Mr.Sandeep Pathak, for the Respondent in CRA No.167 of 2014.

CORAM: N.M.Jamdar, J.
Thursday 9 April, 2015

P.C :

Matter is part-heard and is taken up on priority basis as it is expedited by the orders of the Supreme Court.

2 After the argument of both the Applicants is over, the learned counsel for the Applicants in Civil Revision Application No.167 of 2014 tenders an additional affidavit to place on record certain developments which according to the Applicants are subsequent developments.

3 The learned counsel for the Respondents opposes. The affidavit as tendered cannot be accepted. If the Applicants wish to produce some additional material on record, they will have to take out an appropriate application. By way of indulgence, hearing of the Applications is deferred to 16 April 2015. The copy of the application shall be served on the Respondents latest by tomorrow i.e. 10 April 2015. Reply if any, to be filed before the next date.

4 If the Applicant in Civil Revision Application No.770 of 2013 wishes to file an application, he shall follow the same time-table indicated above.

(N.M.Jamdar, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 770 OF 2013

Shri Vasant Mahadeo Gujar .. Applicant
Vs.
Shri Baitulla Ismail Shaikh and another .. Respondents

WITH
CIVIL REVISION APPLICATION STAMP NO. 25301OF 2013

Smt. Khatija Ismail Panhalkar and others .. Applicants
Vs.
Shri Baitulla Ismail Shaikh and another .. Respondents

Mr.Vishwanath S.Talkute, Advocate for the Applicant in CRA/770/13.
Mr.Uday P.Warunjikar a/w Mr.Siddharth Pilankar, Advocate for Applicants in CRA St./25301 of 2013.
Mr. P.S.Dani a/w Mr.Ashrat Diamondwala and Mr.Hanza Tatli i/b Diamondwala & Co., Advocate for Respondents.

CORAM : R.G.KETKAR, J.
DATE : 04th February, 2014

P.C. :

. Heard Mr. Vishwanath S.Talkute, learned Counsel for the applicant in Civil Revision Application No. 770 of 2013 and Mr. Uday.P.Warunjikar, learned Counsel for the applicants in Civil Revision Application Stamp No. 25301 of 2013 and Mr.P.S.Dani, learned Counsel for the respondents in both Civil Revision Applications at length.

2. By these applications under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendants have

challenged the judgment and decree dated 04/07/2011 passed by the learned Civil Judge, Junior Division, Mahabaleshwar in Regular Civil Suit No. 137 of 2010 (old Regular Civil Suit No. 241 of 2002) & Regular Civil Suit No. 136 of 2010 (Old Regular Civil Suit No. 239 of 2002) as also the judgment and decree dated 04/07/2013 passed by the learned Ad-hoc District Judge-1, Satara in Regular Civil Appeal No. 218 of 2011 & Regular Civil Appeal No. 217 of 2011.

3. The learned trial Judge decreed the suit of the respondents on the ground of bonafide requirement as contemplated under section 16(1)(g) as also on the ground that premises are required for the immediate purpose of demolition ordered by the Municipal authority as contemplated under section 16(1)(k) of Maharashtra Rent Control Act, 1999 (for short 'Act'). The learned trial Judge declined to pass decree on the ground of arrears of rent as contemplated under section 15 of the Act.

4. Aggrieved by these decisions, the defendants instituted appeals. The plaintiffs preferred cross objections. By the judgment and decree dated 04/07/2013, the learned District Judge dismissed the appeals and allowed the cross objections and passed the decree under sections 16(1)(g) & 16(1)(k) as also section 15 of the Act. On the question of comparative hardship, the learned trial Judge as also the learned District Judge held that greater hardship will be caused to the plaintiffs in the event of refusal in passing the eviction decree.

While deciding the question of hardship in Regular Civil Suit No. 137 of 2010, the Courts below also noted that the defendant Vasant had acquired suitable alternate residence in Namdeo Co-operative Housing Society and that permission for construction of 2nd floor can be given.

5. In support of his application, Mr.Talkute invited my attention to the notice dated 04/02/2002 issued by the plaintiffs and in particular, paragraph 5 thereof as also the assertions made in paragraph 6 of the plaint. He also invited my attention to the discussion of the trial Court from paragraphs 25 to 28 & 36 to 39. He also invited my attention to the paragraph 17 of the learned District Court's judgment. Insofar as the ground under section 16(1)(k) of the Act is concerned, he invited my attention to the paragraph 16 of the trial Courts judgment as also the various notices issued by the Municipal Council and the inspection report. Mr.Talkute submitted that the defendants contended that plaintiffs have several other premises in their possession. However, the Courts below did not advert to the said fact. As regards the ground under section 16(1)(k) of the Act is concerned, he submitted that from the perusal of the inspection report, it would be evident that the plaintiffs were carrying out activities which were detrimental to the condition of the suit premises. He, therefore, submitted that the applications require consideration.

6. On the other hand, Mr.Dani supported the impugned

orders. He submitted that the Courts below have concurrently decreed the suit under sections 16(1)(g) & 16(1)(k) of the Act and therefore, no case is made out for invocation of powers under section 115 of C.P.C. On merits, he invited my attention to the findings recorded by the learned District Judge in paragraphs 18, 19 & 23 while considering the ground under section 16(1)(g) of the Act. He also invited my attention to paragraphs 23 & 24 of the judgment of the learned District Judge while considering the grounds under section 16(1)(k) of the Act.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. Prima facie, I find that the Courts below have not considered the aspect of availability of the various premises by plaintiffs. After perusing the inspection report as also having regard to the fact that P.W.4 was Municipal Councillor though for a limited period, prima faice, I find that the notices issued by the Municipal Council cannot be said to be in the exercise of bonafide powers. Mr.Dani submitted that the District Court passed the decree also on the ground of arrears of rent. On the other hand, Mr.Talkute and Mr.Warunjikar submitted that the learned trial Judge declined to pass the decree on the ground of arrears of rent.

8. In view thereof, a fairly arguable questions are raised in these applications. Hence, Rule. Rule on interim relief, returnable after 6 weeks. Mr. P.S.Dani waives service on behalf of the

respondents No. 1 & 2. Call for Record and Proceedings of the case.

9. In the meanwhile, subject to the applicants in both the Civil Revision Applications, neither creating third party interests nor parting with possession of the suit premises, there shall be ad-interim order in terms of prayer clause (b) on usual terms at the risk of the applicants. While confirmation of ad-interim order, the Court will consider fixation of a reasonable compensation.

(R.G.KETKAR)

gale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 770 OF 2013

Mr.Vasant Mahadeo Gujar .. Applicant
Vs.
Shri Baitulla Ismail Shaikh and others .. Respondents

Mr.V.S.Talkute, for Applicant.
Mr.Ashrat Diamondwala, for Respondents.

WITH
CIVIL REVISION APPLICATION STAMP NO.25301 OF 2013

Smt.Khatija Ismail Panhalkar and others ..Applicants
Vs.
Shri Baitulla Ismail Shaikh and others .. Respondents

Mr.Siddesh A.Pilankar i/b Mr.Uday Warunjikar, for Applicants.
Mr.Ashrat Diamondwala, for Respondents.

CORAM : R.G.KETKAR, J.
DATE : 28th October, 2013

P.C. :

. Not on board. Mentioned due to urgency. Hence taken up in the Production Board.

2. Mr.V.S.Talkute and Mr.Siddesh Pilankar state that the respondents have taken out execution proceedings and the next date before the executing Court is 29/10/2013. They further state that applicants are in possession and nobody else is in possession. They have neither created third party interests nor parted with possession.

3. In view thereof, list the applications for admission on 18/11/2013.

4. In the meantime, subject to applicants in both the applications neither creating third party interests nor parting with possession of the suit premises, the eviction decree shall not be executed.

(R.G.KETKAR)