
(2014) 02 BOM CK 0025

In the Bombay High Court

Case No : Civil Revision Application No. 187 of 2013

Bharat Agencies

APPELLANT

Vs

Vallabhadas

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g),
13(2), 17, 29(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 02 BOM CK 0025

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : V.J. Dixit, Senior Counsel and L.V. Sangit, Advocate for the Appellant; P.M. Shah, Senior Counsel and S.P. Shah, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Regular Civil Suit No.259/1995 filed by respondents (original plaintiffs No.1 to 3) was dismissed by the 3rd Jt. Civil Judge, Junior Division, Dhule on 5.10.2009. The Civil Appeal 129/2009 carried to the Principal District Judge, Dhule by the respondents came to be allowed and petitioner (original defendant) - the tenant has been directed to vacate the suit premises vide orders dated 2.3.2013. Thus, this revision application has been filed by the petitioner. The suit has been decreed on the ground of reasonable and bonafide requirement of the landlord under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Bombay Rent Act" for short). (I will refer to respondent No.3 as plaintiff No.3 and the petitioner as defendant for the sake of convenience).

2. Suit premises is situate on the Agra Road in Dhule in property City Survey No.1437. On ground floor facing East, there is shop which runs 20 ft. east-west and has frontage of 12 ft. running north-south. Inside, towards west, there is yet another room of 12 ft. x 12 ft. Such premises are on rent with the defendant

where he is running shop of agricultural equipments and pesticides and insecticides in the name and style of "Bharat Agencies".

3. Suit was brought claiming that plaintiff No.3 is Electronics Engineer. When plaintiff No.3 was about to become B.E. in Electronics, plaintiffs requested defendant to vacate as he wanted to do business and defendant kept assuring that he will vacate, but did not do so. Thus, plaintiff No.3 could not start business and so, temporarily accepted service. Plaintiffs kept reminding defendant and ultimately, as plaintiff No.3 wanted to start business and also to come and take care of his old parents (plaintiff No.1), he left service and came to Dhule and in the passage of City Survey No.1437, at place where there is entry for residential portion, in a congested portion he started his business. Father of plaintiff (plaintiff No.1) had office in the interior part of the premises. Plaintiff was compelled to put small counter and started business in a small passage. He is unable to make a showroom of electronics shop and has difficulty storing electronics goods or to properly display the same. Customers do not have even proper place to stand and plaintiff is put to great inconvenience. Case of plaintiffs is that defendant was shown other premises but he kept avoiding although other premises were available. Notice was issued to defendant on 4.5.1994 and possession was demanded. Suit was then filed. (One other ground taken was of nuisance but both the Courts below have held on that count against the plaintiffs and the same is no more being agitated).

4. The defendant contested the suit and it has been claimed that the plaintiff No.3 had good job in Videocon Company and for no reasons he left the same in order to get possession of suit premises. Plaintiff has alternative convenient premises for running his business. Defendant would face great hardship as he has been running business for last 30-32 years in the suit premises. On 18.5.1997, the plaintiff had given advertisement in daily newspaper "Apla Maharashtra" for letting out on rent back side portion of C.T.S. No.1437 for coaching classes. The plaintiff could have very well run the electronics business from that premises. Plaintiff has another C.T.S. No. 1351 at Nagarpatti, but the same has been let out to one Dr. B.B. Patil in 1997. R.C.S. No.337/1994 (should be 387/1994) to get premises vacated has been filed against Dr. Patil and even that premises is available to plaintiff. Suit has been filed against Bharat Agencies, but what is Bharat Agencies is vague.

5. The parties brought on record the oral and documentary evidence in trial Court. Trial Court did not find that there was reasonable or bonafide requirement of the plaintiffs and even point of hardship was held in favour of the defendant. Appellate Court reversed the judgment, and against judgment of the appellate Court decreeing the suit, this revision is filed.

6. I have heard counsel for both sides. It has been argued by the learned counsel for petitioner (original defendant) that the defendant is an old tenant and if evicted, would suffer much more hardship than the plaintiff. The plaintiffs are in better financial condition. The learned counsel submitted that, the plaintiff had

issued advertisement on 8.5.1997 (Exhibit 78), when the suit was pending, so as to lease out portion from C.T.S. No.1437 for coaching classes. According to the learned counsel, the building concerned has the Agra Road in front and on back side of the building also there are shops and the plaintiff had offered to lease out the back side portion for coaching classes. According to the learned counsel, plaintiff could have used that portion for his electronics shop. According to the learned counsel, another three storeyed building of C.T.S. No.1351 was leased out to Dr. B.B. Patil. That premises leased out to Dr. B.B. Patil is in market place of Nagarpatti and now there was suit even against Dr. B.B. Patil for eviction. According to him, the notice was given on 10.5.1994 and suit was filed only on 6.9.1995 and if there was bonafide requirement, there was no reason for such delay.

7. It has been further argued by the learned counsel for the petitioner (defendant) that plaintiffs had brought the suit against M/s. Bharat Agencies and suit mentioned that Ashok Shankarlal Pallod is representative and partner of defendant. According to counsel, who is defendant is not clear and proper party is not before the Court. Reference was made to the observations of appellate Court, where Exhibit 29 was moved in this regard. According to the learned counsel, the findings of the District Judge are wrong that Ashok Shankarlal Pallod has admitted his tenancy rights in the suit property. It has been submitted that the claim brought by plaintiffs was merely a wish to run business in the suit premises and plaintiff can even have shop at one place as he is having at present and the display can be in the same building at some other place. According to the counsel, the suit should have been dismissed.

8. Reliance has been placed on the case of M/s. Hotel Rosalia (P.) Ltd. Vs. M/s. Metro Hotels and Others, to submit that the need claimed has to be reasonable as well as bonafide. Reliance is also placed on the case of Sitaram Narayan Shinde and Others Vs. Ibrahim Ismail Rais and Others, to argue that there has to be sufficient evidence about the need in consonance with the basic pleadings in the plaint. Learned counsel also relied on the case of Namdeo Laxman Nawale Vs. Chandrasen Khasiram Rajeshirke and Others, to submit that eviction cannot be ordered merely because the landlord desires and Court has to be satisfied regarding the ground raised by the landlord.

9. Appellate Court discussed above rulings but did not find them helpful to the defendant. Learned counsel for respondents (original plaintiffs) submitted that, the matter of Hotel Rosalia (supra) relied on by the defendant, rather shows that, when the last Court of finding of facts has accepted need of landlords, in present petition, the scope to interfere in the findings of fact is limited. According to the learned counsel for respondents, if there is jurisdictional error, it can be corrected. District Judge had the jurisdiction and so, there is no error. This petition is a revision after first appeal and not an appeal. According to him, Section 29(2) of the Bombay Rent Act has not provided further appeal after the appeal by District Judge is disposed. It has been submitted by him that, even if it

was to appear that the finding was erroneous, the same cannot be disturbed. He has, of course, argued that the findings and reasonings recorded by the District Judge are correct. It is submitted that, the landlords were asking their own property for their own use. There is no reason why the plaintiff should be forced to do business from a small congested premises in a passage when he is owner of the shop abutting the Agra Road. It is submitted by him that the plaintiff is doing business in the small passage like place of 5 ft. x 8 ft. and has been waiting to get back suit premises for the last 19 years. It is not disputed that for these so many years, plaintiff has been doing business from that congested place. Thus, according to him, the contentions of the defendant that plaintiff left service only to get back the suit premises is not acceptable. Only to get back premises one would not be doing business in a congested place for 19 years. It is submitted by the learned counsel that there are sufficient pleadings and evidence on record to accept the case of the plaintiffs. The suit shop on the Bombay Agra Road has got its own value and cannot be compared in any way with the portion from where plaintiff is doing business in the congested passage. He submitted that, the position on the back side of the building is also different and cannot be compared with the importance of shop on the Bombay Agra Road. As regards the advertisement in the newspaper (Exhibit 78), it is submitted that, the evidence shows that the concerned portion was on the back side and in the basement which had been repaired. It was not useful for business of plaintiff No.3. As regards the other premises C.T.S. No.1351 at Nagarpatti, counsel submitted that, there is nothing that plaintiffs constructed the same. Reference was made to contentions in the written statement that the same was let out to Dr. Patil in 1997. According to him, this cannot be true as the written statement itself shows that suit was brought against Dr. Patil in 1994. The learned counsel submitted that, the case which was brought against Dr. Patil was not on the ground of bonafide requirement but for other grounds like default etc. In that matter, R.C.S. No.387/1994 was filed, which was decreed in the trial Court, but dismissed in appeal and so, according to him, it cannot be said that those premises are available. The learned counsel pointed out photographs of the suit property as well as the portion where plaintiff was doing business (Exhibits 48 and 49) to demonstrate the disparity. It is submitted that, facts show that plaintiff was working and doing business in great inconvenience.

10. It is further argued by the learned counsel for respondents that the contention regarding identification of defendant has been settled by the appellate Court. It is submitted that, Ashok Shankarlal Pallod took property on rent in the name of Bharat Agencies, is apparent from the record. Tenancy rights are with Ashok. Even the present petition has been filed by Bharat Agencies through Ashok. The learned counsel referred to various rulings regarding bonafide requirement and hardship (which I will discuss later) to support his contention that the judgment passed by the District Court is required to be upheld.

11. In the matter of Hotel Rosalia Pvt. Ltd. (supra), relied on by the petitioner, to support submissions that the need claimed by the landlord has not only to be

reasonable but also bonafide and that it cannot be merely desire, while weighing the cross claims in the writ petition, this Court, in para 25, observed:-

This Court not being an Appellate Court cannot be expected to reappreciate evidence afresh. The petitioner has failed to demonstrate any error apparent on the face of record warranting exercise of writ jurisdiction under Article 227 of the Constitution of India. The powers of superintendence of this Court under Article 227 being extraordinary, is to be exercised sparingly and only in appropriate cases. In the case of India Pipe Fitting Co. Vs. Fakruddin M.A. Baker and Another, the Apex Court highlighted the limitation of the High Court while exercising power under Article 227 of the Constitution of India and observed thus :

5.The limitation of the High Court while exercising power under Article 227 of the Constitution is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. It is well settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh and Another Vs. Amarnath and Another, , where the principles have been clearly laid down as follows:

This power of superintendence conferred by Article 227 is, as pointed out by Harries C.J. in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not in correcting mere errors.

The same view was reiterated by another Constitution Bench of the Supreme Court in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, . Even recently, in AIR 1975 1297 (SC) dealing with a litigating between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows :

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that is not subject to correction by the High Court in exercise of its Jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error or fact which only a superior Court can do in exercise of its statutory power as Court of Appeal. The High Court cannot in guise of exercising its Jurisdiction under Article 227 convert itself into a Court of Appeal when the Legislature has not conferred a right of appeal and made the subordinate Court or Tribunal final on facts."

I have already held that the findings recorded by the Appeal Court on all counts are neither perverse nor are against the weight of the evidence on record nor suffer from any erroneous approach or consideration and, therefore, findings do not call for any interference.

Thus, for the reasons stated hereinabove the petition is dismissed holding it to

be without any substance. Rule is discharged with no order as to costs."

In the matter of Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, in the matter of Rent Act from Uttaranchal, in Writ Petition, High Court had reversed an order of eviction passed by the Additional District Judge and restored order of prescribed authority. Hon"ble Supreme Court observed in para 38 as under :

"38. Though powers of a High Court under Article 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law."

12. The present petition is no doubt a revision. It is arising after two Courts of facts have dealt with the matter and where law does not provide for second appeal. Here the material question is whether the first appellate Court acted in the exercise of its jurisdiction illegally or with material irregularity. In the present matter also, reappreciation of the evidence would not be permissible unless perversity amounting to illegality could be shown.

13. If the judgment dated 5.10.2009 of the 3rd Jt. Civil Judge, Junior Division is perused, he discussed the evidence that plaintiff No.3 was running his Electronics Shop in the premises of 5 1/2 ft. x 8 ft. in an inconvenient manner. He referred to plaintiff No.2 Dr. Sunil Shah having his hospital-cum-maternity home near the suit property to observe that plaintiffs were aware of the suit shop and nature of business of defendant. He noted the advertisement dated 8.5.1997 regarding Coaching Classes on the back side portion of C.T.S. No.1437 and that on that side there was Anmol Bazar and Jawahar Bazar in the basement. The Civil Judge referred to 10 rulings cited before him and wound them up in one sentence that the same were not applicable to the case in hand. He accepted the principle that landlord is the best judge of his requirement and held that plaintiff No.3 completed his B.E. Electronics in 1988, but observed that the notice to vacate was given only on 5.4.1994 and even after the notice, suit was brought late on 7.9.1995. From this, the Civil Judge concluded that there was no honest and genuine bonafide requirement of plaintiff. He referred to the construction completed by the plaintiffs on the back side portion of C.T.S. No.1437 to say that the same was shop and other premises were available to plaintiff.

As regards hardship, it was observed that, landlord had available other place and the tenant will suffer more hardship. He observed that the defendant had a 45 years goodwill in the market and so, the defendant will suffer more hardship.

14. Having heard counsel for both sides and keeping the oral and documentary evidence available on record, in view, the arguments and the judgment of the appellate Court now need to be examined.

15. A dispute has been raised that the defendant cannot be identified as the plaintiff referred to the defendant as M/s Bharat Agencies, Agra Road, Dhule and in the body of the plaintiff reference is made to Ashok Shankarlal Pallod as the representative and partner of defendant. Thus, the suit was defective in the manner in which defendant has been described.

The appellate Court considered the admissions given by the defendant Ashok Shankarlal Pallod in trial Court wherein he has admitted that in 1964, it was he who had taken the suit premises on rent from earlier landlord in the name of Bharat Agencies. The evidence of Ashok Shankarlal Pallod is that till 2006 there were three partners of Bharat Agencies and in 2006, the partnership got dissolved and other partners had no more connection with the Bharat Agencies. His evidence is that, on dissolution of the partnership M/s Bharat Agencies, the tenancy rights are with him. The appellate Court considered the evidence and has rightly come to the conclusions. The suit premises are on rent with Ashok Shankarlal Pallod who has taken the tenancy in the name of M/s Bharat Agencies.

16. Learned counsel for respondents (plaintiffs) relied on following cases :-

(1) Prativa Devi Vs. T.V. Krishnan,

(2) Chotumal Bhiramal Sindho (since deceased through his legal heirs and representatives Sudama Jodharam Hanswani and Others) Vs. Shri Baburao Vinayak Mahadkar (since deceased through L.Rs. and heirs. Shri Dattatraya Baburao Mohadkar and Others),

(3) Sharadabai Anandrao Durgule Vs. Ramchandra Manku Pol and Others,

(4) Rameshwar Nanakram Prajapal Vs. Mrs. Sundrabai Keru Ghadage,

These rulings were relied on, basically to canvass the point plaintiffs want to make that as far as regards bonafide requirement, the landlord is the best judge of his need. Learned counsel submitted that, he is aware that mere wish does not amount to bonafide requirement, but it is to be requirement which could be spelled out as reasonable and bonafide. He submitted that, it is not for the tenant to dictate that the plaintiff No.3 should have continued with his service and that the coming and starting of shop in passage is mere ruse to recover possession of suit premises. He is submitting that the plaintiff No.3 is doing business in this fashion for last about 19 years and that speaks for itself. The counsel relied on the case of Smt. Ramkubai Since Deceased by Lrs. and Others Vs. Hajarimal Dhokalchand Chandak and Others, to submit that section 17 of the Bombay Rent Act takes care to protect interest of tenant, in case after eviction the landlord does not use the premises for the purpose for which it is recovered. He also relied on the case of Bentool Steel Products Pvt. Ltd. Vs. O.M.A. Mohammed Omar & anr., reported in [(2008) 17 SCC 679] to submit that in

matters of comparative hardship, the onus is on the tenant to prove relevant factors which would enable a finding as to comparative hardship being arrived at in favour of the tenant.

17. As regards reasonable and bonafide requirement u/s 13(1)(g) of the Bombay Rent Act, there is evidence that the plaintiff No.3 Ajay completed his B.E. in Electronics and that he wanted to start his own business and when defendant did not vacate suit premises in spite of request, for some time he took up a service, but as he wanted to be with his old parents and wanted to start his own business, he left the job and came back to Dhule. The evidence is that, he started his business of running Electronics shop in passage which is at the entrance of C.T.S. No.1437 by putting a counter there in a place of about 5 ft. x 8 ft. The evidence brought on record is that, original plaintiff No.1, who was Advocate (since expired), had office on the back side and even the clients, family members and others, who wanted to go to the office of the Advocate or in the house, were having access from such passage where plaintiff No.3 put up his Electronics Goods Shop. Evidence brought is that, plaintiff No.3 is unable to even keep furniture in the shop. Photographs of the suit shop as well as the shop put up by plaintiff No.3 have been brought on record at Exhibits 48 and 49 respectively. The appellate Court has examined evidence and compared the photographs and rightly arrived at the conclusion that the plaintiff No.3 is doing his business from very small portion and that the premises are insufficient for the business plaintiff wants to do.

18. The arguments raised on behalf of the defendant that plaintiff No.3 had good job and purposely left the job and started this business of Electronics shop only so that the premises could be got vacated, has rightly been discarded by the appellate Court. The appellate Court has discussed that for many years the plaintiff No.3 is doing business by putting a counter in the passage and it has been observed that if the person continues to do business for more than 15 years in such manner, it cannot be said that his intention is not bonafide to do business at the place concerned.

In the course of arguments (at the time of reply), learned counsel for petitioner (defendant) referred to the typed affidavit by way of evidence filed in the trial Court record at Exhibit 104 of P.W.2 (plaintiff No.3) to say that it is mentioned that he started his business on Ota which is 5 ft. x 80 ft. Learned Advocate submits that all along it has been considered that plaintiff No.3 is doing business in a space of 5 ft. x 8 ft., but if the affidavit is seen, it would be a big space. The learned counsel for respondents (original plaintiffs) has rightly replied that this is a typing mistake where 5 ft. x 8 ft. wrongly got typed as 5 ft. x 80 ft. Had that been so, the defendant would have made capital of it from day one. There is evidence on record of P.W.1, which appears to have been recorded before the present system of affidavit in evidence started. The recorded handwritten evidence of deceased plaintiff No.1 Vallabhdas(P.W.1) at three places in the examination-in-chief mentions that plaintiff No.3 is doing business in passage in

a space of 5 1/2 ft. x 8 ft. under great inconvenience where one cannot even stand. The cross-examination does not show defendant claimed that it was a space of 5 ft. x 80 ft. No undue benefit can be given to the defendant for an apparent typing error. It is sad as to how disadvantage is tried to be taken. I do not find any error in the findings of the appellate Court that the business was being run in a passage area of 5 ft. x 8 ft.

19. It has been argued for the defendant that, plaintiff has access to another building C.T.S. No.1351. However, the appellate Court has considered that evidence also, and record shows that the said premises is on rent with one Dr. Patil and a litigation in regard to that building was also pending as Regular Civil Suit No.387/1994. What appears is that, decree of eviction was passed in that matter, but the appeal was allowed and the suit of the landlord came to be dismissed. Again it is submitted by the learned counsel for respondents that, that Regular Civil Suit No.387/1994 was not on the ground of reasonable and bonafide requirement. The appellate Court has rightly discarded evidence relating to C.T.S. No.1351 and held that it cannot be said that the landlord has other alternative suitable premises available.

20. It is argued that, after filing of this suit, plaintiff No.3 had put in an advertisement on 8.5.1997 in newspaper Dainik Apla Maharashtra to the effect that, for Coaching Classes, Vacation Batch and Short Term Courses space of Lecture Hall is available and interested persons should meet. It is argued that, the portion of property which was to be leased out for Coaching Classes is in the same building and respondent No.3 could have very well shifted his business to that premises.

21. The evidence on record is that, the concerned portion was of basement which is situated on the back side of the building. On that side, it appears, there are other shops which are also located in the basement. The appellate Court discussed all this evidence and has found that the suit premises is on the main Agra Road and plaintiff No.3 wants to put up a business of Electronics Shop and it is but natural that he wants to put up his business in the main market area which is commercial area. The observations of the appellate Court appear to be correct that the landlord would naturally want to put up his business in the main market area and asking him to go to the basement would not be appropriate. Such back side portion cannot be said to be suitable alternative accommodation available to the landlord. It is not that the plaintiffs tried to lease out the back side portion as suitable shopping complex or shopping area. I do not find any error in the reasonings of the appellate Court when the appellate Court discarded the evidence on this count pointed out by the defendant. Basements cannot be said to be suitable or permissible for shops. Trial Court wrongly referred to portion of basement as shop. Appellate Court has rightly upset the finding. There is no substance in the argument that immediately on completing B.E. plaintiff No.3 did not start business and after notice for more than 15 months suit was not brought and so bonafide requirement was not there. Appellate Court has

properly discussed evidence and rightly held that plaintiffs prove reasonable and bonafide requirement of suit premises.

22. As regards comparative hardship, evidence brought on record shows that, during the 7-8 years period before filing of the suit, 4-5 premises in the same locality had been sold. One Carona Shop which was hardly at a distance of 10 ft. from the premises, was one of the premises. Defendant admitted that, the said shop was sold. One shop of Venus Tailors and another shop belonging to V.J. Naik was also sold. There was yet one shop of Mithsagar, which was also sold. The appellate Court discussed the evidence that defendant admitted that he did not make any effort to contact the owners of these premises to secure these premises for his business. The evidence is that, even the Nagarpalika constructed Shopping Complex near Garud High School, and shops were there. The appellate Court discussed that defendant had made no efforts to secure alternative premises. Evidence of plaintiff No.3 is that he completed his B.E. (Electronics) in 1988 and defendant was requested to make the suit premises available, but as defendant did not make efforts, he was forced to earlier go into service and kept asking the defendant to vacate and so, subsequently left the job and started business in the uncomfortable position. Thus, plaintiff is suffering great hardship in the manner in which he is forced to carry on business in the passage.

23. Evidence of plaintiff No.3 is that, in the area concerned, there are businesses related to Electronics and for him business on Agra Road is convenient. Evidence of P.W.1 Vallabhdas is also on record showing that plaintiff No.3 wanted to do business in Electronics Goods and thus, left the service of Videocon Company and started business in a passage of hardly 5 1/2 ft. x 8 ft. from where his clients and others pass. It is a place where customers cannot even stand. Evidence is that, as suit premises is not available, plaintiff No.3 is working with great inconvenience. The appellate Court discussed ratio laid down in the case of Narayan Dawal Patil Vs. Mohmad Asgar Mohamad Hanif, reported in 1989 Bom.R.C. 349, wherein it is held that, where the tenant was not keen to find any other accommodation, hardship factor tilts in favour of landlord.

It can be held that, Rent Act does not contemplate that landlord shall keep doing business from counter put in passage for long years at great inconvenience and loss of business while tenant holds on to regular shop premises and does not take steps to go for other premises.

24. The evidence and defence that the defendant was doing business in the suit premises for many years and had a goodwill has also been discarded by the appellate Court as ground for hardship. The appellate Court considered the matter of Manikchand Manjaji Sarode Vs. Dr. Vijaykumar Motilal Kawadiya, reported in 1995(1) Mah. L.R. 696, wherein it was held that, loss of goodwill is not the criteria. Thus, the appellate Court has rightly observed that the point of comparative hardship will have to be answered in favour of the plaintiffs.

25. The appellate Court rightly held that the judgment and order of Civil Judge,

Junior Division, regarding bonafide requirement and comparative hardship could not be maintained and has rightly reversed the judgment of the trial Court. I do not find any perversity in the reasons and findings recorded by the appellate Court.

26. At the stage of reply, in the course of arguments, the learned counsel for petitioner (defendant) for the first time took up a contention that, keeping in view Section 13(2) of the Bombay Rent Act, it was necessary to consider if partial eviction will meet requirement of the landlord. It was submitted by him that a dividing wall can be put in the suit premises and some portion could be carved out and given to the landlords and this needs to be explored. He placed reliance on the case of *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, wherein it was observed that the appellate Court and High Court have failed to examine whether at least partial eviction from tenancy premises could have been ordered. Reliance is also placed on the case of *Rehman Jeo Wangnoo Vs. Ram Chand and Others*, . That was matter under the J. and K. Houses and Shops Rent Control Act, requiring consideration mandating the Court to consider partial eviction.

27. Coming to the case of *Badrinarayan Chunilal Bhutada*, observations in para 10 of the judgment are as under :

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

28. Learned counsel for respondents (plaintiffs) submitted that, as observed in the matter of "*Bentool Steel Products Pvt. Ltd.*" (*supra*), in order to judge comparative hardship, the onus is on the tenant to prove relevant factors regarding comparative hardship. The learned counsel submitted that, if the

pleadings and the evidence available are seen, there is no substance in the suggestion to divide the shop by putting a wall as it would serve no purpose and would be useful neither for the plaintiff No.3 nor the defendant and there cannot be such solution as the same does not solve the bonafide requirement of the landlord.

29. Learned counsel for respondents has relied on the case of Mohd. Ayub and Another Vs. Mukesh Chand, . In that matter, the tenant was occupying two shops facing the road and two rooms separated at the rear of the said shops and the prescribed authority had dismissed the application holding that the landlords were financially sound. The appeal was dismissed by the District Court, but the High Court found that the tenant could not dictate the landlord as to what business his son should do. The High Court, however, without going into the aspect of comparative hardship, directed that only one room out of the four rooms should be handed over to the appellants by the respondent as the affidavit shows that respondent was using the same as a passage. In this context, the Hon''ble Supreme Court, in para No.9 observed as under :

"9. There is no challenge to the High Court's finding that the appellants' requirement is bona fide. The respondent has not assailed the High Court's order. We concur with the High Court on this point. However, the High Court erroneously held that the view expressed by the courts below that greater comparative hardship would be caused to the respondent if the decree of eviction is passed is correct so far as two rooms occupied by him for residence and one room in which he is running a shop is concerned. The High Court observed that no hardship will be caused to the respondent if one room is directed to be handed over to the appellants because it was used as a passage by the respondent. Surprisingly, the High Court has not given any reasons why only partial relief was being granted to the appellants. In fact, it has not discussed the issue of comparative hardship at all. Since the issue is of utmost relevance and the application of the appellants is of the year 1998, we proceed to deal with it."

The Hon''ble Supreme Court then considered the comparative hardship and discussed the facts of the case and directed handing over of all the rooms in occupation of the tenants to the landlords.

In the present matter also the plaintiffs filed the suit in 1995 and for the last 19 years the plaintiffs are struggling to get back the possession of their premises although plaintiff No.3 has apparent, reasonable and bonafide requirement. The tenant conveniently has raised the question belatedly and that too at the stage of reply of arguments. In the facts and circumstances, I proceed to deal with the point raised. The plea raised is baseless and would be for merely protracting the matter. It is quite clear that plaintiff No.3 is running his shop from portion of the house which is basically passage and people going inside the building are required to go from such passage. Naturally, the passage cannot be converted into a closed shop. If the suit premises are seen, the main portion is of 12 ft. x 20 ft. The frontage is of 12 ft. The back side room which is on the inner side of

the suit shop, is of 12 ft. x 12 ft. If such shop was to be divided by putting a wall, apart from the fact that the wall would take some space, the frontage would not even be 6 ft. x 6 ft. The plaintiff No.3 has been wanting to put up Electronics business with facility to be able to stock the goods and be able to properly display the Electronics items. Looking to the reasonable and bonafide requirement of the landlord, I am not satisfied that the suit premises could be divided and used by putting a wall. The bonafide and reasonable requirement of the landlord cannot be met by such device. I am not satisfied that passing decree in respect of part of premises is possible in such way. As is apparent from the case of Mohd. Ayub (supra), in that matter the landlord wanted to recover the two shops having four rooms so that his two sons could start general merchant business in one shop and the third son wants to start wholesale egg business in the other shop. The Hon"ble Supreme Court directed the tenant to vacate all the four rooms. Here, there is only one front shop having a smaller inner room. There is no substance in the belated plea raised to physically divide the shop of 12 ft. x 20 ft. No such partial eviction would serve the reasonable and bonafide requirement of plaintiff No.3. The plea raised is rejected.

30. The hardship the defendant is likely to face by requirement to vacate the suit premises and shifting, can be mitigated by giving him some time to vacate.

31. For the above reasons, there is no substance in the revision application. There is no illegality or irregularity appearing from the judgment and findings recorded by the first appellate Court. The first appellate Court has rightly reversed the judgment and finding of the trial Court regarding reasonable and bonafide requirement and comparative hardship.

32. The Civil Revision Application is rejected. However, the petitioner (original defendant) is given time of three months from the date of this order, to vacate the suit premises.