
(2001) 02 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 3645 of 1987

M/s. Hotel Rosalia (P.) Ltd.

APPELLANT

Vs

M/s. Metro Hotels and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Constitution of India, 1950 — Article 226, 227
Transfer of Property Act, 1882 — Section 108

Citation : (2001) 3 BomCR 400 : (2001) 3 BOMLR 1 : (2001) 2 MhLj 881

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Shri R.S. Datar, for the Appellant; Shri J.R. Trivedi, instructed by M/s. I.R. Joshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

V. C. Daga, J.—This petition is directed against the judgment and decree dated 20.10.1986 passed in Civil Appeal No. 159 of 1984 by the District Judge. Pune, whereby the judgment and decree for eviction passed in Civil Suit No. 2260 of 1978 dated 27.10.1983 was set aside by the 3rd Additional Small Cause Judge, Pune.

FACTS IN BRIEF

2. The facts in narrow compass are as under :

The petitioner-plaintiff is a private limited Company having its registered office at 14, Cannought Road, Pune. The respondent No. 1 (Tenant) is a partnership firm represented by its partners; the respondent Nos. 2 and 3 (original defendant Nos. 2 and 3 herein). The parties hereinafter referred to in their original capacities in which they were arrayed in the original suit, The Plaintiffs case :

3. The Plaintiff filed a suit being Civil Suit No. 2260 of 1978 in the Court of 3rd Additional Small Cause Court Judge. Pune, for eviction of tenant and possession

of the suit premises under the provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act for short).

4. The suit premises consists of 18 rooms located on the first floor in House No. 14/1 situate at Cannought Road, Pune. The suit was filed on the various grounds such as : (i) erection of permanent construction in violation of the provisions of the Bombay Rent Act; (ii) breach of section 108(o) of the Transfer of Property Act; (iii) the suit premises were needed by the landlords for their reasonable and bona fide occupation and (iv) that the defendants having committed acts of nuisance and annoyance were liable to be evicted from the suit premises.

5. The plaint alleged that the defendants were monthly tenants of the suit premises on payment of monthly rent of Rs. 375/- including taxes etc. The suit building was purchased for hotel business under the registered sale deed dated 24.9.1974. The tenancy was attorned. The defendants were accepted as tenants of the suit premises.

6. It was further alleged that the defendants have committed unlawful encroachment upon the open space beneath the stair case on the ground floor which was not a part of the rented premises and Illegally constructed therein the office cabin for their hotel business. The construction being of permanent nature it ought to have been done with prior permission or consent of the plaintiff-landlord. The defendants-tenants were liable to be evicted from the suit premises for having resorted to the construction without prior permission of the plaintiff-landlord. It was further alleged that the defendants have illegally removed two water storage tanks located on the terrace of the suit building and have replaced the same with their own two new tanks without having obtained prior permission from the plaintiff-landlord and that the defendants have in addition to above, installed the water pump set after erecting the shed therefore that too without prior permission and thereby defendants-tenants have indulged in act of civil trespass and caused nuisance and annoyance and rendered themselves liable for an action of eviction.

The defendant's case :

7. The defendant-respondents (Tenants) filed their written statement and denied the claim set up by the plaintiff and pleaded in defence that the contractual rent was inclusive of education cess, taxes, water charges etc. They denied to have committed any act of various breaches alleged in the plaint by the plaintiff. It was denied that defendants have constructed the office cabin under the stair case unauthorisedly. it was also denied that the alleged construction was of permanent nature. It was pleaded that the office cabin was in existence since Inception of tenancy and it was let out to the defendants as part of the demised premises. It was further denied that there has been removal of two water tanks from the terrace and submitted that they have simply replaced the same for better enjoyment of the suit premises. The new water pumps were installed as directed by the local authorities. The allegation leading to erection of permanent

structure were also denied. The defendants also denied to have indulged in any act of nuisance and annoyance and contended that none of their acts amounted to an act causing nuisance or annoyance to the other tenants or staff of the plaintiff. So far as claim of the plaintiff for bona fide and reasonable requirement was concerned, the same was denied. It was pleaded in defence that the plaintiff was not in need of the suit premises for want of any concrete proposal to set up new hotel business.

8. The parties to the suit were put to trial. They were permitted to lead oral and documentary evidence.

THE TRIAL COURT'S JUDGMENT

9. The learned 3rd Additional Small Cause Judge after hearing both the parties on perusal of the record was pleased to hold that the plaintiff has proved its case in toto and directed eviction of defendants-tenants and passed a decree for eviction and possession with arrears of rent together with costs.

THE APPEAL COURT RULING

10. Aggrieved and dissatisfied by the aforesaid judgment and decree, the defendants invoked appellate jurisdiction of the Appeal Court and preferred Regular Civil Appeal No. 159/84. The learned Additional District Judge, Pune, after hearing the parties to the appeal was pleased to set aside the judgment and decree passed by the Trial Court and held that none of the grounds set up by the plaintiffs were established. In the result, decree for eviction and possession passed by the Trial Court was set aside. The appeal was allowed.

APPROACH TO THIS COURT

The aforesaid judgment and decree of the learned District Judge, Pune, is the subject matter of challenge in the present petition filed under Article 227 of the Constitution of India.

GROUND OF ATTACK

11. The following grounds were pressed into service by the plaintiff-petitioner to attack the judgment of the Lower Appellate Court and for establishing its claim for the eviction and possession of the suit premises:

(1) The defendants-respondents (tenants) have without the consent of the plaintiff-landlord erected permanent structure on the suit premises as well as on the premises meant for beneficial enjoyment thereof and thereby exposed itself for the action of eviction u/s 13(1)(b) of the Bombay Rent Act.

(2) The defendants-respondents (tenants) have been guilty of conduct, which is a nuisance and/or annoyance to the tenants and plaintiffs staff using stair-case leading to the premises of the plaintiff-landlord and thereby committed breach of section 13(1)(c) of the Bombay Rent Act.

(3) The premises are reasonably and bona fide required by the landlord-plaintiff

for its occupation warranting eviction of the respondents (tenants) from the suit premises u/s 13(1)(g) of the Bombay Rent Act.

THE ARGUMENTS

12. The learned Counsel appearing for the petitioner contended that the order of the Lower Appellate Court suffers from an error apparent on the face of record and findings recorded therein are perverse and cannot stand to the scrutiny of law.

(a) He contended that the findings of the Court below that the defendants did not construct permanent construction is absolutely wrong and is contrary to the material available on record. He took me through the entire evidence led by the parties to the suit. He also urged that the nature of construction of the cabin beneath the stair case and installation of water tanks with pump set and shed thereon are sufficient to prove the breach of section 13(1)(b) of the Bombay Rent Act. He further urged that sufficient material was available on record to justify the bonafide and reasonable need of the plaintiff-landlord; vis-a-vis the suit premises and emphasised that the suit premises were purchased with specific Intention to establish hotel business and, therefore, the requirement of the petitioner-plaintiffs ought to have been held as reasonable and bonafide by the Court below.

(b) The learned Counsel for the plaintiff whilst elaborating his contentions further urged that it ought to have been considered by the Lower Appellate Court that the entire first floor was in possession of the defendants. Therefore question of renting out the space on the ground floor below the stair case to the defendants did not arise. The first floor could have been used for setting up office cabin for running business of hotel. He submits that there are number of hotels in Pune; where their offices are located on the first floor. In his submission, the construction of cabin for the beneficial enjoyment of the premises and convenience of the customer were the irrelevant considerations. The material question for consideration was that the space below the stair case was not the part of the premises let out to the defendants at any time. The space below stair case on the ground floor was never let out along with demised premises to the defendants. He further submitted that the Lower Appellate Court further erred in holding that for the purposes of convenience of the customers the space below the stair case on the ground floor must have been rented out to the defendants along with the demised premises, cannot be supported on any piece of evidence on record to support this finding.

(c) He further submitted that the Court below ought to have considered that it was not necessary to examine the vendor of the plaintiff to establish that the cabin on the ground floor beneath the stair case was not in existence prior to the sale deed or that subsequent thereto it was constructed. In this respect, even the defendants did not produce any evidence or documents on record to show that the cabin was constructed prior to the execution of the sale deed.

(d) The learned Counsel appearing for the petitioner further urged that the Lower Appellate Court ought to have considered that it was not necessary for plaintiff to examine other tenants. If the plaintiff stated on oath about the existence of nuisance and annoyance the Court below should have believed the said evidence unless the contrary was proved by the defendants. In his submission, the defendants did not bring any contrary evidence on record in this behalf.

(e) The learned Counsel for the petitioners seriously criticised the judgment of the Court below and contended that the Lower Appellate Court failed to appreciate and consider the proper scope of section 13(1)(g) while considering the reasonable and bona fide requirement of the plaintiff in relation to the suit premises and erroneously considered certain facts which were not necessary for deciding the issue of reasonable and bona fide requirement of the plaintiff. He thus urged that the findings recorded by the Court below in this behalf were contrary to the provisions of the Bombay Rent Act and are liable to be set aside by this Court.

13. Finally, it was urged that the Lower Appellate Court ought to have considered that the Judgment and order of the Trial Court was based on legal and proper interpretation of law and correct appreciation of evidence, as such it was unjustified on the part of the Lower Appellate Court to have set aside such judgment of the Trial Court. He therefore, prayed for setting aside the impugned Judgment of the Lower Appellate Court and requested for restoration of the judgment and decree passed by the Trial Court.

14. In reply, the learned Counsel appearing for the respondents-tenants contended that this Court not being a Court of appeal is not expected to reappreciate evidence and reach to an independent conclusion other than the conclusions reached by the Lower Appellate Court, unless the findings, so recorded, are found to be perverse and unsustainable in law considering material available on record. In other words, he contended that this Court should not in the guise of exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, convert itself into a Court of Appeal; when the Legislature has not conferred right of appeal and made the subordinate Court or Tribunal final on facts. In his submission, the findings of fact recorded by the subordinate Court or Tribunal should be respected and should not be disturbed.

(a) He further submitted that each and every finding recorded by the Lower Appellate Court can be supported by an evidence placed on record and each and every finding arrived at is reasonable and possible. As such, in his submission, no interference with the findings recorded in the impugned judgment is called for.

(b) He further contended that the reading of the plaint allegations and pleadings therein would show that none of the ingredients of either of the sub-sections of which breaches were alleged were pleaded in the plaint. He urged that no Court is expected to grant relief on the vague pleadings, especially, when material facts and material particulars constituting cause of action are absent in the plaint. He,

therefore, prayed for dismissal of petition with costs.

THE MAIN ISSUE IN THIS PETITION

15. On the basis of the foregoing pleadings and rival submissions advanced by the parties to the petition, in the light of analysis of the statutory provisions of the Bombay Rent Act and in the facts and circumstances of the case, the only issue needs consideration is : Who is right? Whether the Lower Appellate Court or the Trial Court.

CONSIDERATION

(a) Let me turn to the rival contentions and examine the findings recorded by the Lower Appellate Court to find out the legality and validity thereof vis-a-vis each ground of eviction. However, before embarking upon legality of the findings, it would be necessary to take into account the importance of pleadings in case of civil suits of instant nature.

The Three Judge Bench of the Apex Court had occasion to consider this aspect in detail in the matter of J. K. Iron and Steel Co. Ltd. Kanpur v. The Iron and Steel Mazdoor Union, Kanpur;; wherein it was observed as under :

"Very broadly, it follows the pattern of the Civil Courts. Once the reference is made by Government, the Tribunal has to take the pleadings of the parties in writing and to draw up issues. Then it takes evidence, hears arguments and finally, pronounces its "judgment" "in open Court". It is evident from this that though these Tribunals are not bound by all the technicalities of Civil Courts, they must nevertheless follow the same general pattern;

Now the only point of requiring pleadings and issues to ascertain the real disputes between the parties, to narrow the area of conflict and to see where the two sides differ, it is not open to the Tribunals to fly off at a tangent and disregarding the pleadings, to have reach any conclusions that they think are just and proper."

(b) The Three Judge Bench of the Apex Court in the case of Shan/car v. Britannia Biscuit Co. had an occasion to say as under:

"If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give the case it is called upon to meet

"The rule of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no

pleading there is no question of proving something which is not pleaded. This is very elementary,"

(c) The various grounds sought to be pressed in service in this petition shall have to be examined in the light of the aforesaid law laid down by the Apex Court in the matter of J. K. Iron & Steel Co. Ltd. and Britannia Biscuit Co. (Cited Supra).

(d) The first ground of eviction pressed in service relates to erection of permanent structure without there being prior consent of the plaintiff-landlord i.e. breach of section 13(1)(b) of the Bombay Rent Act. The said section provides that notwithstanding anything contained in this Act the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has, without the consent of the landlord, erected on the premises any permanent structure. In the light of this provision, if one turns to the pleadings incorporated in the plaint, the pleadings of the plaintiff in this behalf were as under :

"..... The defendants have illegally constructed in that open space an office cabin for the use of defendant's hotel business. The said cabin is a permanent structure and defendants have erected it without plaintiffs' consent."

16. The dissection of the aforesaid pleadings would show that the plaintiff has neither pleaded absence of written consent nor mentioned any of the material facts constituting the erection of the alleged construction on the premises as a permanent structure. No nature of the construction was pleaded in the plaint. The nature of construction or erection on the premises could be permanent, semi permanent or temporary. In order to prove erection or construction of permanent nature, one has to plead material facts and place material particulars so as to establish the nature of construction. No details are to be found in the plaint. The learned Counsel for the respondent, therefore, was right in his contention that on the basis of the averments made in the plaint no cause of action as required u/s 13(1)(b) of the Bombay Rent Act was made out by the plaintiff as such no decree for eviction can be passed against defendants-tenants.

He further submitted that the question whether particular construction is a permanent structure within the meaning of section 13(1)(b) of the Rent Act depends upon the facts and circumstances of each case and no hard and fast rule can be laid down in this behalf. The nature of the structure, its mode of annexation, the Intention of the tenant and surrounding circumstances all have to be pleaded to raise an issue whether or not particular structure is a permanent structure for the purpose aforesaid. It is also necessary to plead whether the structure brings about substantial change in the character of the demised premises. What was the object and purpose behind such construction? If the object is not for better or more complete enjoyment of the demised premises, then different consideration will walk in.

17. Apart from the vague pleadings, if one turns to evidence led by the plaintiff then it would further be clear that no evidence was produced in support of the nature of construction. On the contrary, it has come in the cross-examination of

the respondent-tenant that the construction of the cabin is not the construction done by the defendant. The tenant did nothing, merely put a front door taking advantage of two side walls of the shops and one wall of the stair case. The cabin was made simply by putting a front door on the front edges of the two walls. The evidence in this behalf available on record reads as under :

"The office is prepared with the help of two walls of two shops and one wall of the staircase there is door to that office and we can lock that door."

Dissection of the aforesaid piece of evidence would show that cabin beneath the stair case appears to have been made of two walls of two shops and one wall of the stair case, by fitting a door on the front edges of the said three walls. The cabin structure of this nature can hardly be said to be a permanent structure. The Lower Appellate Court was, therefore, justified in holding that the plaintiff has failed to prove that the construction or erection was of permanent nature so far as cabin beneath the stair case is concerned. This being a finding of fact can hardly be disturbed. The finding of fact is based on appreciation of evidence which was well within the jurisdiction of the Lower Appellate Court. No fault in this behalf can be found with these findings on this issue.

18. The other ground sought to be made out by the plaintiff relates to the alleged replacement or two water tanks which were fitted on the terrace of the building without taking permission from the plaintiff-landlord. In this behalf, pleading relating to the absence of written permission are absolutely absent. Apart from this, no details or the alleged permanent structure are to be found in the plaint. No evidence in this behalf is to be noticed. Evidence of the plaintiff is insufficient. The petitioner has stated in the examination-in-chief that defendants have replaced water tanks which were of iron sheets without taking their permission.

19. The learned Counsel for the respondent-tenant firstly denied to have replaced any such water tanks, and further went on to submit that assuming that the respondents have replaced two water tanks, even then, it would not amount to erection of permanent structure. The learned Counsel for the respondents in order to support his contention placed reliance on the judgment of this Court in the case of Dnyanu Babu Mali v. Khajesha H. A. Bandari, wherein this Court ruled that water storage tank constructed by tenant out of necessity does not attract the provisions of section 13(1)(b) of the Rent Act. In the above judgment of Dnyanu Balu Mali (cited supra) the tenant had constructed a water storage tank whereas in the case at hand, water tanks made of iron sheets were merely replaced by the tenant. Assuming that two water tanks of iron sheets were replaced by the tenant one fails to understand, how will it amount to permanent structure. How will it cause nuisance to anybody much less to the adjoining occupants ?

It is difficult to hold that the alleged construction even if proved attracts the provisions of section 13(1)(b) of the Rent Act. The water tank is an absolute

necessity especially where the premises is used for Hotel business. Where the water required is of large quantity. If the tenant has replaced the water tanks for storage of water, it is difficult to conclude that the tenant is guilty of erecting permanent structure.

The learned Counsel appearing for the respondents is right in contending that section 13(1)(b) is not at all applicable to the facts of the present case. Assuming for the sake of argument that replacement of water tanks was in the nature of permanent structure, but the same was for better enjoyment of the premises consequently, it would not fall within the mischief of section 13(1)(b). The same is the position with regard to the water tanks alleged to have been constructed by the respondents-tenants in the adjoining premises falling in Division No. 5 and part of Division No. 1. No pleadings with regard to its location are to be found in the plaint. No case in this behalf is proved or established. Even otherwise, installation, if any can be justified on the ground of necessity for beneficial enjoyment of the tenanted premises. In the above circumstances, findings recorded by the Lower Appellate Court if perused, it would be clear that the Lower Appellate Court has recorded a categorical finding that there was no material on record to show that the alleged erections were of permanent nature and that the plaintiff has failed to prove breach of section 13(1)(b) of the Act. No fault can be found with the finding recorded by the Lower Appellate Court in this behalf.

20. Now, turning to the next ground pressed into service by the plaintiff relates to breach of Section 13(1)(c) of the Rent Act which permits the landlord to evict tenant and recover possession of the premises amongst others, if the Court is satisfied that the tenant or any person along with tenant has been guilty of conduct amounting to nuisance and annoyance to the adjoining neighbouring occupier. In the light of the above provisions if one turns to the plaint pleadings; it would be clear that the pleadings in this behalf are that the construction of the cabin beneath the stair case has been causing nuisance and annoyance to the tenants and to the plaintiff's staff, who are required to use the stair case.

At this Juncture, it is necessary to notice that though the word "nuisance" is not defined but, it can be inferred from the context In which it is used what is meant therein is the actionable nuisance as recognised in Common Law. Nuisance as understood in law is broadly divided into two classes, public nuisance and private nuisance. The former consists of some acts of omissions which result in violation of rights which one enjoys in common with other members of the public. But the latter i.e. private nuisance is one which interferes with a person's use and enjoyment of immovable property or some right in respect of it.

21. In Halsbury's Laws of England (Vol. 34 of the fourth edition) at page 102, essentials of common law of nuisance are mentioned as under :

"309. Both unlawful act and damage necessary.

In order to constitute a nuisance there must be both (1) an unlawful act and (2)

damage, actual or presumed. Damage alone gives no right of action; the mere fact that an act causes loss to another does not make that act a nuisance.

For the purposes of the law of nuisance an unlawful act is the interference by act or omission with a person's use or enjoyment of land or some right over or in connection with land."

22. Suffering of damage must be proved in a case of nuisance unless it can be presumed by law to exist. But the damage to amount to actionable nuisance must be substantial or at least of some significance. In other words, if the damage is insignificant or evanescent or trivial it would not be actionable nuisance. The following passage para. 312 of the same volume in Halsbury's Laws of England is worth extracting in this context.

"312. Damage essential.- Damage, actual or prospective or presumed, is one of the essentials of nuisance. Its existence must be proved, except in those cases in which it is presumed by law to exist.

The damage need not consists of pecuniary loss but It must be material or substantial, that is. it must not be merely sentimental, speculative or trifling or damage that is merely temporary, fleeting or evanescent."

In the above backdrop, if clause (c) of sub-section (1) of section in 13 is examined, it is clear from the said clause that what is envisaged therein is only private nuisance and not public nuisance.

23. On the canvass of the above discussion and pleadings, if evidence led by the plaintiffs is examined, it would be clear that the plaintiff has neither examined any tenant nor any person occupying adjoining premises or for that purpose any member of its staff so as to establish nuisance being caused to those who are required to use the stair case. Not a single person of the category pleaded in the plaint was examined by the plaintiff. Consequently, finding recorded by the Appellate Court that the plaintiff failed to prove its case u/s 13(1)(c) cannot be faulted.

24. Apart from the two grounds the plaintiff has also pressed into service section 13(1)(g) of the Bombay Rent Act which provides that landlord can recover possession from the tenant if the Court is satisfied that the premises are reasonably and bona fide required by the landlord for his personal occupation. In this behalf, it is necessary to refer to the plaint pleadings, and quality thereof. The requisite pleadings are as under:

"The plaintiff has purchased the whole property described in the sale deed dt. 24.9.1974 for his own use and occupation, and the plaintiff has bona fide and reasonable required the said premises to start its own office and conduct its business."

The learned Counsel appearing for the respondent contended that the plaint pleadings are sketchy and no details of the proposed business are to be found in

the plaint. He further contended that it was necessary for the plaintiff to plead all the necessary material facts with material particulars thereof so as to make out cause of action for eviction of a tenant from the tenanted premises as contemplated u/s 13(1)(g) of the Rent Act. In his submission, absence of material particulars and material facts constituting cause of action, is sufficient to hold that the findings recorded by the Lower Appellate Court cannot be faulted.

25. The learned Counsel for the petitioner-plaintiff in reply contended that the plaint pleadings are sufficient to establish that the need of the petitioner-plaintiff. He sought to place reliance on the judgment of the Two Judge Bench of the Apex Court in the case of *Rajkumar Khaitan v. Bibi Zubaida Khaitun*, wherein the Apex Court ruled that it was not necessary for the landlords to have indicated the precise nature of the business which they intended to start in the suit premises and observed that even if nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated. The learned Counsel for the petitioner relying upon the said observation contended that no fault can be found with the plaint pleadings. He further contended that the Lower Appellate Court was not justified in reversing the well considering findings recorded by the Trial Court in this behalf. In order to appreciate the above rival contentions, it may be noticed that the Courts are not only required to examine the need of the landlord but have also to examine whether the requirement is reasonable and bona fide. Need should be genuine in contradistinction with the mere desire.

26. It is quite clear that the case on which the plaintiff succeeded in the Trial Court was never pleaded in plaint allegations. The Trial Court in para. 40 recorded numerous findings such as plaintiff wants to do hotel business and has to construct big building and that their project is a big project. The Trial Court also found that the plaintiff had been to U.S.A. for getting information and knowledge of the hotel business. All these facts found by the Trial Court are not to be seen in the plaint. The plaintiff ought to have pleaded all the details which were necessary for claiming relief. Unless landlord gives details tenant cannot be expected to meet the case of the landlord. The details are necessary so as to prevent the landlord to make out a new case at the time of trial in any manner he liked and tenant would have no opportunity and occasion to meet such case which is staring in his face for the first time. The importance of pleadings are already noticed by me as laid down by the Three Judge Bench Judgment of the Apex Court in the case of *J. K. Iron and Steel Co. and Britania Biscuits Co.* (cited supra). The Two Judge Bench judgment of the Apex Court in the case of *Rajkumar Khaitan* (supra) is based upon the extent and quality of pleadings as found by them in that particular case. The observations made therein will have to be read in the light of facts of that particular case. The quality of the pleadings will have to be appreciated in the light of extent and magnitude of the need sought to be made out. If need is for opening big industrial unit, then considerations would be different in contrast to that where the need sought to be made out is for one or two rooms accommodation may be for the purpose of

business or residence. In this case, the need sought to be made out is for 18 rooms located on the first floor used for running hotel business. The need is not for one or two rooms. Having seen the quality of pleadings extracted from the judgment of the Apex Court one has to reach to the conclusion that the said pleadings were certainly better than the pleadings found and noticed in this particular case. Therefore, in my opinion the judgment of the Rajkumar Khaitan's case (cited supra) does not help the petitioner - plaintiff considering the facts and circumstances of the present case and the extent of need sought to be made out.

27. Now turning to the evidence it is clear the plaintiff has examined its Managing Director in support of its claim, who made a statement on oath that the plaintiff did not propose to demolish the existing building. On the contrary, the plaintiff desired to make construction on the adjoining land. The plan of the proposed construction was submitted to the P.M.C. 3 years back. The plaintiff wants to make improvement in the plan and wants to prepare new plans. The alleged new plans have not yet seen the light of the day. The suit for eviction was filed in the year 1983. This petition came up for hearing after 18 years. Till today, no plans have been produced. No construction on the adjoining plan has been undertaken. No material is produced on record to show that any steps were taken to develop the adjoining property. If the plaintiff really desired to make construction on the adjoining land then 18 years period was sufficient for them to put its hotel project in operation. All these facts are sufficient to doubt the bona fides and reasonableness of the need of the petitioner-plaintiff-landlord sought to be projected in this suit. Ample evidence is placed on record to show that the petitioner-plaintiff-landlord has been inducting new tenants in the premises vacated by its earlier tenants from time to time. This fact was noticed by the Lower Appellate Court in para 24 of its judgment. The Lower Appellate Court also found that the tenants-respondents will be put to undue hardships as they are running their hotel business in the suit premises as against this the alleged need of the plaintiff is only on paper.

28. In the above backdrop, no fault can be found with the findings recorded by the Lower Appellate Court on this count. Each and every observation made by the Lower Appellate Court in this behalf is based on material available on record. The same can very well be sustained in the eye of law.

29. This Court not being an Appellate Court cannot be expected to reappreciate evidence afresh. The petitioner has failed to demonstrate any error patent 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 cases of *M/s India Pipe Fittings Co. v. Fakruddin M.A. Baker and anr.*, 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 v. Amaranath*, 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. v. 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 v. The Commissioner of Hills Division and Appeals, Assam*,. Even recently, in *Babhutmal Raichand Oswal v. R. Tarte*, 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 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 fact."

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 here in above the petition is dismissed holding it to be without any substance. Rule is discharged with no order as to costs.