

(2001) 06 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 6286 of 1987

Shankar Bhairoba Vadangekar, since deceased, by his Heirs and Legal Representatives APPELLANT

Vs

Ganpati Appa Gatare, since deceased, by his Heirs and Legal Representatives RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(3), 13, 13(1)(1), 13(2)
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 1, Order 2 Rule 3, Order 2 Rule 4, Order 20 Rule 9
Constitution of India, 1950 — Article 227

Citation : (2001) 4 ALLMR 61 : (2001) 4 BomCR 806 : (2001) 4 BOMLR 58 : (2001) 4 MhLj 131

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.M. Railkar and G.R. Rege, for the Appellant; S.C. Dharmadhikari (Amicus Curiae) and P.D. Dalvi, for the Respondent

Judgement

A. M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the III Additional District Judge, Kolhapur, dated 4th September in Regular Civil Appeal No. 230 of 1984.

2. This is one of those unfortunate matters, to which the observations made by the Apex Court in a recent decision in *Gaya Prasad v. Pradeep Srivastava*," would aptly apply, for the litigation has remained unresolved for last around twentyfive years inspite of the ground of bona fide requirement pressed by the landlord. It is disheartening that matters between landlord and tenant for possession on the ground of bona fide requirement remain pending for so long. In para 15 of that decision, the Apex Court has observed that

"The judicial tardiness, for which unfortunately our system has acquired

notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, a malady afflicting the system."

3. Briefly stated, the predecessor of the petitioners, instituted a suit before the Court of Joint Civil Judge, Junior Division. Kolhapur, bearing Regular Civil Suit No. 551 of 1977 for possession of the suit premises bearing C.T.S. No. 234/C, situated at "D" Ward in Kolhapur City, on the ground of bonafide requirement, default and tenant having acquired an alternative suitable accommodation, in terms of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. (hereinafter referred to as the Bombay Rent Act). Before institution of the suit, the petitioner predecessor (original landlord) issued legal notice dated 3rd January, 1977 to the original tenant (predecessor of the respondents herein). The suit was initially filed on the grounds of bona fide requirement and default, but during the pendency of the suit, since the original tenant purchased C.T.S. No. 1511 in "B" Ward, Mangalwar Peth, Kolhapur, and is stated to have obtained vacant possession thereof, which premises, according to the landlord was sufficient to meet the requirements of the tenant, the landlord, therefore, amended the plaint by urging an additional ground of tenant having acquired alternative suitable accommodation. The tenant, on the other hand, resisted the suit and denied the material allegations in the plaint. According to the tenant, the suit premises were not required bona fide and for personal requirement of the landlord. Insofar as the ground of default was concerned, immediately on receipt of the suit notice demanding arrears and determination of the tenancy, the tenant had instituted standard rent application on 27th January, 1977, being Misc. Application No. 36 of 1977, which was within one month from the date of receipt of the suit notice, Moreover, the tenant deposited interim rent as determined by the Court from time to time. Accordingly, the tenant contended that there was no default within the meaning of Section 12 of the Bombay Rent Act. Insofar as the ground of tenant having acquired an alternative and suitable accommodation, the tenant contended that the premises purchased by him were situated away from the suit premises and that in any case the same were not suitable, inasmuch as he was not in possession thereof nor the said alternative premises could be used for business. According to the tenant, it would cause immense hardship and inconvenience to him, since he was conducting business in the suit premises for last several years and had earned goodwill. It was further contended on behalf of the tenant that the newly purchased premises could not be used for business purpose and the same were not suitable. Moreover, It would be inappropriate and impracticable for the tenant, if he was required to shift his residence to the newly acquired premises and continue to do business in the suit premises on the ground floor. This is broadly the stand taken by the respondents (tenants). I shall make reference to the detailed stand taken by them at an appropriate place, when required. Suffice It to mention that on the basis of these rival stands, the Trial Court framed nine issues.

4. The parties adduced oral as well as documentary evidence. The original landlord (predecessor of the petitioners) examined himself and another witness

Vasant Sutar in support of his claim in the suit, whereas the original tenant (predecessor of the respondents) examined himself. Both the parties, by filing pursis, agreed that the case papers in Misc. Application No. 36 of 1977 be read in evidence in the suit for possession. The Trial Court, after examining the material on record, took the view that the pleadings regarding the bona fide requirement by the landlord were very vague and no details were furnished nor the particulars of the entire house properties held by the landlord after possession were indicated, whereas all these details were mentioned only during evidence. The Trial Court further observed that besides the need of the family, the landlord has not spelt out any other requirement, and thus there was hardly any requirement, which would necessitate eviction of the defendant-tenant from the suit premises under the provisions of the Bombay Rent Act. The Trial Court also took into account the fact that the landlord has constructed two more houses at Kolhapur and the third one has been constructed halfway: that in one of the two houses constructed by the landlord, the landlord was running a shop. The Trial Court also took into account that the two houses, of which construction is complete each comprises of three floors, and the third one is a single storeyed building, out of which one of the houses was vacant. The Trial Court also observed that the landlord is already in possession of one house bearing C.T.S. No. 234 comprising of six rooms, and, therefore, there was no additional requirement in relation to the suit premises as the said premises would meet the requirements of the landlord and his family members. The Trial Court further observed that, in law, it was necessary for the landlord to mention about his alleged requirement while seeking possession of the suit premises and since the same was not indicated, the plaintiff (landlord) was not entitled for the decree of possession on this Court, for, the landlord failed to establish the element of need. Since the Trial Court answered the issue of bonafide requirement against the landlord, it did not think it proper to dwell upon the issue of comparative hardship. On the issue of default, the Trial Court, after taking into account all the relevant aspects, held that the case was neither covered by Section 12(3)(a) nor Section 12(3)(b) of the Bombay Rent Act. Insofar as the ground of tenant having acquired an alternative suitable accommodation, the Trial Court, though accepted the fact that the tenant has purchased new premises in the city of Kolhapur, but took the view that the same were not suitable for residential and business purposes and therefore, rejected the said ground. Accordingly, the suit came to be dismissed. The predecessor of the petitioners took the matter in appeal before the III Additional District Judge, Kolhapur, being Regular Civil Appeal No. 230 of 1984. The Appellate Court, after considering the rival submissions, observed that the only point which arises for decision in the appeal is whether Trial Court was right and justified in dismissing the suit on the basis of evidence on record. While considering the Issue of bona fide requirement, the Appellate Court more or less reaffirmed the view taken by the Trial Court. The Appellate Court held that the pleadings of the landlord on this issue were vague and further held that the need of the landlord must be dire and imminent. Applying the said test, the Appellate Court took the view that the landlord had led evidence on the matters relating to

this issue without laying any proper foundation in the pleadings. The Appellate Court further held that the landlord failed to indicate details about the proposed requirement of the landlord for claiming possession of the suit premises. The Appellate Court has observed that the landlord has not even indicated and yet decided what business he is going to start for his son and residence, though he has mentioned that his two sons are unemployed and he has retired from service. Accordingly, the issue of bona fide requirement was answered against the landlord, even by the Appellate Court. The Appellate Court did not address itself to the issue of comparative hardship, since it decided the issue of bona fide requirement against the landlord. The next issue considered by the Appellate Court was of tenant having acquired suitable accommodation in the city of Kolhapur. It is relevant to point out that while the appeal was pending, the Appellate Court had permitted the predecessor of the petitioners to adduce additional evidence in connection with this issue. Accordingly, the landlord had placed on record the photostat copy of the sale deed in respect of the newly acquired premises by the tenant besides the evidence already adduced before the Trial Court, being extract-Exhibit 40. The Appellate Court, while adverting to the said additional evidence, held that the same clearly establishes the fact that the tenant has obtained actual possession of the newly purchased premises. In other words, the Appellate Court reversed the finding recorded by the Trial Court to this limited extent and held that the tenant has had not only acquired but also obtained possession of the newly purchased premises. This finding has not been seriously challenged by the tenant in the present proceedings. The Appellate Court, however, went on to observe that the newly purchased premises, though acquired and possessed by the tenant were not suitable, no decree for possession could be ordered in such a situation. Accordingly, the Appellate Court also dismissed the appeal preferred by the predecessor of the petitioners.

5. Being dissatisfied, predecessor of the petitioners filed the present Writ Petition under Article 227 of the Constitution of India. During the pendency of this petition, both the original petitioner-landlord and the original respondent-tenant died and their respective legal representation have been brought on record. The learned counsel for the petitioner-landlord has mainly contended that the view taken by both the Courts below, though concurrent, is wholly unsustainable, both on facts and in law. According to him, the Courts below have applied absolutely wrong tests to non-suit the landlord. He contends that the pleadings before the Court were adequate, in that the plaint as well as the suit notice will have to be read together, for the suit notice forms an integral part of the plaint. He submits that sufficient details have been furnished by the landlord while claiming possession of the suit premises on the ground of bona fide and reasonable requirement. He further submits that, in any case, both the parties went to the trial and led evidence in that behalf. Therefore, it was not open for the tenants (respondents herein) to make a grievance about any prejudice and particularly when they have succeeded before the two Courts below. According to the learned counsel, the plaintiff (landlord) not only pleaded material facts but also led

evidence in that behalf, which was sufficient enough to establish the ground of bona fide requirement. He submits that there is enough material on record with regard to the issue of comparative hardship, and even the same will have to be answered in favour of the petitioners. Insofar as the ground of alternative accommodation is concerned, it is contended that even on that count both the Courts below have committed serious error, which has resulted in miscarriage of justice. The tests which have been applied by both the Courts below for non-suiting the landlord on this count also, cannot be sustained in law. The learned Counsel submits that although the present petition is directed against the concurrent findings of the two Courts below, that should not deter this Court from Interfering under Article 227 of the Constitution of India, particularly when it is amply clear that the decisions of both the Courts below suffer from errors apparent on the face of the record, being contrary to law, and that it would occasion serious miscarriage of Justice.

6. On the other hand, the learned Counsel for the respondents (tenants) mainly contended that in view of the concurrent findings of facts recorded by both the Courts below, this Court should be loath to interfere in its writ jurisdiction. He has adopted the reasons given by the Courts below to support the order under challenge.

7. Before I proceed to deal with the rival submissions, it would be relevant to note that, insofar as the issue of default is concerned. although grounds have been taken in the writ petition, however, the same is not seriously argued before this Court. In my case, I find that there is no infirmity in the view taken by the Trial Court that on the facts of the present case no case either u/s 12(3)(a) or u/s 12(3)(b) is made out. Accordingly, this petition would fail. Insofar as the ground of default is concerned.

8. Before I deal with the other two Issues relating to the ground of bona fide requirement of the landlord and the tenant having acquired suitable accommodation, it would be apposite to advert to the scope of interference of this Court in exercise of its writ jurisdiction under Article 227 of the Constitution of India.

9. It is well established position that the power under Article 227 of the Constitution of India is one of judicial superintendence which cannot be used to upset the conclusions of facts, however, erroneous those may be, unless such conclusions are perverse or so unreasonable that no Court would ever have reached such conclusions. In *Babhutmal Raichand Oswal v. Laxmibai R. Tarta*, the Apex Court observed that :

"The power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. The power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a 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 decision of the subordinate Court or Tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or Tribunal. Its function is limited to seeing that the subordinate Court or Tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it."

This view has been consistently followed by the Apex Court in catena of decisions. The learned Counsel for the respondents has relied on another decision in Mohd. Yunus v. Mohd. Mustaqim, to contend that this Court ought not to act as an Appeal Court or Tribunal nor it should review or re-weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision. The Apex Court in *Rena Drego v. Lalchand Soni*, has reiterated the scope of jurisdiction of the High Court in exercise of its writ jurisdiction under Article 227 of the Constitution to hold that it should be most sparingly used only in appropriate cases in order to keep the subordinate Courts within the bonds of their authority and not for correcting their mere errors of fact. In a subsequent decision in *Raghunath G. Panhale (dead) by Legal Representatives v. Chaganlal Sundarjt & Co.*, the Apex Court while considering the scope of interference by the High Court under Article 227 of the Constitution of India, against the concurrent decisions of all the three Courts below observed that Interference would be Justified in cases where orders of Lower Court have resulted into manifest injustice. It is no more *res Integra* that when it is demonstrated to the High Court that the order of the Lower Courts have resulted in manifest injustice, it is the duty of the High Court to remedy the mischief in its supervisory jurisdiction under Article 227 of the Constitution, and it would be wholly inappropriate to dismiss the writ petition simply holding that it could not interfere with findings of fact.

10. Applying the above said principles, I shall now proceed to examine the rival submission. I shall first deal with the issue of tenant having acquired vacant possession of suitable residence. Section 13(1)(1) of the Bombay Rent Act reads thus :

"that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted suitable residence."

On plain reading of this provision, it is obvious that it shall apply only to acquisition of residential premises and not to business premises. Besides that, the quint-essence of attracting this provision is that the tenant must have built or acquired a right to reside in such a suitable residence or acquired vacuity possession thereof. The Apex Court in the case of *Anandi D. Jadhav (Dead) by Legal Representative v. Nirmala Ramchandra Kore & Others*, has held that :

"From the scheme of the provision [i.e.. Section 13(1)(1)] it is discernible that it is only when the tenant gets a right to reside in a house other than the demised

premises on the happening of any one of the three alternatives mentioned therein, namely, either by building or by acquiring vacant possession of or by allotment of a house that the landlord can seek recovery of possession of the demised premises from the tenant."

11. Accordingly, the question that arises for my consideration is whether the said provision would have any application in the present case. In my view, the approach adopted by the Courts below is wrong, inasmuch as the suit premises consisted of ground floor which was used exclusively for business and was let out in the first instance and the first and second floors were exclusively used for residence. This aspect of the matter has obviously been glossed over by both the Courts below. In other words, insofar as part of the suit premises on the ground floor are concerned, which are undoubtedly let out and used for carrying on business, the provisions of Section 13(1)(1) of the Bombay Rent Act will have no application. To get over this difficulty, the learned Counsel for the respondents argued that it is not possible to decipher the purpose of letting out of the suit premises, inasmuch as the entire premises have been let out to the tenant without there being any precondition as to purpose of letting out. This argument is completely belied by the stand taken by the tenant. It would be relevant to advert to the reply given by the tenant to the suit notice through their Advocate on January 18, 1977. In the said reply, which is marked as Exhibit No. 29, it is asserted on behalf of the tenant that the premises on the ground floor were let out to the tenant on rent and subsequently premises on the first and second floors were let out. Besides that, even in the written statement filed before the Court below, the tenant has reiterated his stand that tenancy was first created in respect of the ground floor and later on in respect of the other two floors. In that sense, though the contracting parties are common, but the tenancy has been created at different point of time in respect of different premises. Although the parties determined the rent payable for the entire premises subsequently, that is, after the two floors were let out, but that by itself would not mean that tenancy with regard to the three floors is one and same. This position is also fortified from the evidence led on behalf of the tenant before the Court below wherein he has deposed that initially only the ground floor was in his possession and ten years later, the first and second floor portions were given to him, and at that time, rent of the whole of the suit premises was agreed at Rs. 720/- per year. From this evidence, it is crystal clear that two separate tenancies were created with regard to the ground floor and with regard to first and second floors of the suit premises. It has also come in evidence of the tenant that he was doing business exclusively on the ground floor and residing on the first and second floors of the suit premises. In other words, the portion on the ground floor of the suit premises have been let out and is being used for business, whereas portions on the first and second floor of the premises have been let out and is being used for residential purpose alone. In this view of the matter, the provisions of Section 13(1)(1) of the Bombay Rent Act would apply only to the portions on the first and second floor of the suit premises and not to the portion on the ground floor

of the suit premises. Besides this, since the evidence would indicate that separate tenancies were created with regard to each portion, though the rent collected was composite, it would be appropriate to adjudicate the matter in the context of the tenancies created with regard to the respective portions of the suit premises by applying the provisions of law.

12. The learned counsel for the respondents, however, contends that it would not be proper for this Court in its writ jurisdiction to adjudicate the matter in this perspective for the first time. In my view, the matter can be decided on the basis of evidence already adduced by the parties before the Court below and the facts being admitted, there is no inhibition in proceeding to decide this matter by applying such principle. It is not open for the respondents to now take a stand which is contrary to the plea taken before the Trial Court by their predecessor. As far back as in 1926, the Privy Council in the matter between *Gajapatiraj v. Secretary of State*, observed that:

"a litigant who has all along maintained a position in support of one branch of his suit cannot be permitted when he fails upon this branch to withdraw from the position and assert the contrary more especially when he thereby places his opponent at a great disadvantage."

13. In *Venkatapathi v. Venkatanarasimha*, the Privy Council observed that :

"It sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and It is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue. The vital factor in a case of this kind is the nature of the Interest which the members of the family have in the estate."

Applying the above said principles, It is the duty of this Court to adjudicate the matter in the context of the Interest and relations of the parties in relation to the estate. The fact remains that the portion on the ground floor of the suit premises was let out in the first Instance, whereas the portions on the first and second floor of the suit premises were let out subsequently after lapse of about ten years; and more so it is a common ground that the portion on the ground floor of the suit premises is being used only for business activities, whereas the portions on the first and second floor of the suit premises were being used for residence by the tenant. I have, therefore, no doubt that the two tenancies were separate, albeit between common parties; and the provisions of the Bombay Rent Act will have to be applied in the context of the tenancies vis-a-vis the portions of the suit premises. In that sense, the ground of tenant having acquired possession of suitable residence can be pressed into service only with regard to the portions on the first and second floor of the suit premises of C.T.S. No. 234/C, situated in "D" Ward in Kolhapur City.

14. While considering the appropriateness of the view taken by the two Courts below with regard to the issue of tenant having acquired possession of suitable residence, what is seen is that both the Courts below have concurrently found

that the tenant did acquired another premises in the year 1981 which could be used for residence. But the Trial Court felt that the tenant did not acquire possession thereof and thus no decree could be passed against the tenant on this ground, whereas the Appellate Court has reserved the said finding recorded by the Trial Court and instead held that the evidence on record would indicate that the tenant got possession of the new premises acquired by him immediately on the execution of the sale deed. In other words, the finding of fact recorded by the Appellate Court is that, the tenant during the pendency of the suit, had acquired vacant possession of the newly purchased premises which were capable of being used as residence. However, the Appellate Court has non-suited the landlord on the ground that the premises acquired by the tenant were not suitable. For taking this view, the Appellate Court took into account that the new house is away from the suit premises; that it is away from the busy market: that the tenant, if evicted, would be destabilised, as he had prospering business in the suit premises; that the tenant and his wife are old persons and their residence near the shop is not only suitable for them but also essential for the safety of the shop; that much energy has been wasted by the tenant in bringing prosperity in his business and earning goodwill to the suit premises; that, therefore, the said new premises were not suitable for his residence and business.

15. The tests applied by the Appellate Court for examining the suitability of the newly acquired premises for residence, in my view, are wholly erroneous, if not perverse. Merely because the new house is away from the suit premises, that cannot be a ground to frustrate the right of the landlord to recover possession guaranteed by virtue of sub-section (1) of Section 13(1). The learned Advocate for the petitioners has rightly relied on the decision of this Court in *Pandharinath Shankarrao v. Govindan*,. In the said decision this Court observed that distance between the suit premises and the newly acquired premises, if within the same vicinity, is no ground to deny decree for possession to the landlord. This Court has held that "the burden is on the tenant to establish that the premises acquired are not suitable for residence. In the above said case, the distance between the suit premises and the newly acquired premises was two-and- half miles, though within the city of Pune. Even, in the present case, the distance between the two premises is about three/four miles only within the city of Kolhapur. The suit premises are situated in "D" Ward, whereas the newly purchased premises are situated in "B" Ward of the city of Kolhapur. Accordingly, the reason about distance between the two premises is wholly inappropriate. Merely because there is distance between the two premises, that cannot rob the landlord of his right to recover possession, unless it is further shown that the newly acquired premises are not suitable for residence. Suitability of a residence is no doubt a relative term and would depend on the facts and circumstances of each case. However, the law mandates that the tenant has to establish that the newly acquired premises are not suitable for residence, as such. Moreover, when both the premise are within the same vicinity; and in the backdrop of widening horizon of socio-economic structure of the society and particularly the city of

Kolhapur, it is not possible to countenance a plea that because of the distance between the two premises, the newly acquired premises by the tenant are not suitable for residence. On the other hand, it can be safely presumed that when the tenant had purchased the new premises, he was fully aware about his requirements and had purchased the same only to subserve his future need and for no other reason. If such a test is applied, then, surely, distance between the two premises would be of no consequence. In the present case, the tenant has been cross-examined to the effect that when he had purchased the new premises, he had made necessary enquiries and had purchased the same only because he found it convenient and suitable for his residence and business. The only excuse indicated by the tenant was that he and his wife are old and not in a position to ride cycle. This plea is obviously one of sheer inconvenience; and impertinent to consider the issue as to whether the premises are suitable for residence, as such. In my view, there is nothing on record to indicate that the newly acquired premises by the tenant were not suitable for residence, but instead the evidence would go to show that the said premises were suitable for residential purpose.

16. At this stage, it is relevant to note that before the Trial Court, the tenant did not bring on record the sale deed dated June 3, 1981 in respect of the newly acquired premises; and, therefore, he was cross-examined by the landlord to the effect that he (the tenant) was not producing the same because it is mentioned therein that vacant possession of newly acquired premises bearing C.T.S. No. 1511 has been obtained by him. On the other hand, the tenant asserted in the cross-examination that he was leading evidence on the point that he was occupying the suit premises at present, but no positive evidence has been led by the tenant in this behalf. Be that as it may. The fact remains that the Appellate Court, relying on the additional evidence, rightly concluded that the tenant has acquired vacant possession of the newly acquired premises which were suitable for residence. Once such a finding is reached, coupled with no evidence regarding unsuitability of the newly acquired premises for residential use, the necessary, corollary is to decree the suit for eviction on the ground that the tenant has acquired vacant possession of premises suitable for residence within the meaning of sub-section (1) of Section 13(1) of the Bombay Rent Act.

17. The Appellate Court has indicated another reason that the newly acquired premises were away from the busy market. As observed earlier, we are not concerned with the issue as to whether the newly acquired premises are suitable for business, as such, for we are concerned with the issue relating to the ground of tenant having acquired possession of premises suitable for residence. In that sense, whether the newly acquired premises are away from the busy market is wholly inconsequential. Accordingly, this test applied by the Appellate Court also cannot stand the test of judicial scrutiny.

18. The other consideration that has weighed with the Appellate Court is that the business of the tenant would be destabilised, if decree for possession is ordered.

In my view, even this test is wholly inappropriate in the context of whether the tenant has acquired vacant possession of premises suitable for residence. Merely because, the tenant would be required to stay away from the place of his business, surely that can be no consideration for denying a decree for possession to the landlord on this count in respect of residential premises.

19. We have already seen that the portions on the first and second floor of the suit premises were let out and exclusively used for residence and the present ground is being pressed in respect of the said portion alone and not with regard to the business premises. Understood thus, the reason which has weighed with the Appellate Court that the business of the tenant would be established is not germane while considering the ground with regard to the residential premises. The Appellate Court has, therefore, proceeded wholly on erroneous considerations that the tenant would suffer immense hardship if decree for possession is ordered, while considering the subject ground with regard to his residential premises. In my view, the legal position in this behalf is that where the landlord asserts and establishes the fact that the tenant has acquired vacant possession of premises suitable for residence, the Court shall decree the suit, unless the tenant proves that the newly acquired premises are not suitable for residence, as such. Accordingly, I have no hesitation in reversing the view taken by the two Courts below with regard to this ground, insofar as the portions on the first and second floor of the suit premises bearing C.T.S. No. 234/C, situated in "D" Ward in the city of Kolhapur. Instead, I would prefer to decree the suit filed by the landlord with regard to the said premises.

20. Before I proceed to examine the ground of reasonable and bona fide requirement of the landlord, as pressed into service before the Court below, it would be essential to examine as to whether the Court can pass two separate decrees in one suit filed by the landlord, This question arises since I have already taken the view that the ground of tenant having acquired alternative and vacant possession of the premises suitable for residence can be invoked only with regard to the portion on the first and second floor of the suit premises, which are residential premises. In other words, the ground of reasonable and bona fide requirements, though common with regard to the entire suit premises, the decree of eviction on the ground of tenant having acquired suitable residence is restricted only with regard to the first and second floor of the suit premises. If this Court were to reject the ground of reasonable and bona fide requirement of the landlord, then the decree for possession could be confined only with regard to the portions on the first and second floor of the suit premises. But, if the landlord were to succeed in establishing the ground of reasonable and bona fide requirement, then, in that case, the landlord would become entitled to a decree for possession of the entire suit premises, including the ground floor portion, provided, however, the issue of comparative hardship is also decided in favour of the landlord. In the circumstances, there is a possibility of two separate decrees being passed in respect of the suit premises, although the suit is between common parties, in one suit.

21. To get assistance on the above said issue, I had requested Mr. S. C. Dharmadhikari, Advocate to assist this Court, who, in turn, expressed his willingness and gave able assistance at a short notice. Mr. Dharmadhikari, besides referring to the provisions of the Rent Act, placed reliance on the observation made by the Patna High Court in para 25 of its judgment in the case of Padam Singh Jain v. M/s. Chandra Bros., He has referred to Section 13 of the Rent Act to contend that sub-section (1) postulates that landlord shall be entitled to recover possession of any premises on the grounds referred to in the said sub-section. He submits that the expression "any premises" mentioned in the said sub-section itself indicates that the landlord can institute a suit for possession in respect of the entire premises or portion thereof on one or more grounds provided for in law. He has buttressed this submission with reference to the definition of "premises" contained in sub-section (8) of Section 5 of the Bombay Rent Act. Sub-section (8) of Section 5 of the Act defines "premises" to mean any building or part of a building let or given on licence separately, other than a farm building, including the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building. Relying on this definition, Mr. Dharmadhikari contends that from the scheme of the provisions of the Bombay Rent Act it is possible to hold that the landlord can maintain suit for recovery of possession in respect of the entire premises or portion thereof. According to him, the Court may decree the suit only with regard to portion of the building on one ground and the other portion on the other ground, though, between the common parties in one suit and direct delivery of possession to the landlord accordingly. It is also possible that, the Court, if satisfied that, the landlord is entitled to recovery of possession of only one portion of the suit premises, may decree the suit only with regard to that portion and not for the entire suit premises. Such a situation is contemplated on a conjoint reading of sub-section (1) and sub-section (2) of Section 13 which empowers the Court to pass a decree in respect of a portion of the suit premises. I find force in the above said submissions advanced by the learned Counsel. Besides the scheme of the provisions of the Bombay Rent Act, the learned counsel has rightly placed reliance on the provisions of Order II of the Code of Civil Procedure. Rule 1 thereof provides that "every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them." Rule 3 of Order II provides that "a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted." With regard to the claim for recovery of an Immovable property, reference can be made to Rule 4 of Order II, which enables joining of causes of action and the manner therefore. In other words, it is contended that, sub-section (1) of Section 13 of the Bombay Rent Act provides for different grounds and each ground asserted in the plaint would give rise to a separate cause of action, and, therefore, all the causes of action can be joined together for setting up the claim for recovery of the demised premises. The learned counsel also relied on Rule 9 of Order XX for decree for recovery of

immovable property. No other provision has been brought to my notice to persuade me to take a contra view.

22. On examining the above said provisions, there can be no doubt that I the Rent Court can pass more than one decree for recovery of possession of the suit premises in one suit filed between common parties, when the grounds for recovery of possession are different, giving rise to separate causes of action. If the Court is satisfied that the landlord has established two separate grounds for recovery of possession of the suit premises, in such a situation, one decree can be passed founded on two separate grounds and causes of action. But, when the Court is satisfied that the landlord has established only one ground with regard to one portion of the suit premises and another ground with regard to another portion of the suit premises, in such a situation two separate decrees are inevitable in respect of the two portions of the suit premises in one suit between common parties.

23. Now, I shall proceed to consider the issue of reasonable and bona fide requirement asserted by the landlord in respect of the suit premises. Both the Courts below, in my view, have applied wrong tests to non suit the landlord. At the outset, I shall advert to the legal position with regard to this ground. The Apex Court in the latest decision in the case of Raghunath Panhale v. Chaganlal Sundarji (supra) has referred to catena of decisions with regard to the said issue in paragraphs 6 to 9 of the judgment and restated the legal position. It would be useful to refer to the decision in Dattairaya Laxman Kamble v. Abdul Rasul Moulali Kotkunde,. The Trial Court has relied on the decision of this Court in Sukhadeo Krishnarao Ghatode v. Laxmibai Dattatraya Mohoril, On analysing the above said decisions, it is well settled that where the landlord seeks to evict a tenant on the ground of bona fide requirement he has to satisfy three tests (i) that he requires the suit premises reasonably and bona fide, (ii) that such requirement is for his own occupation and (iii) comparative hardship. It is well settled that the word "require" does not mean mere wish or fancy of the landlord. The landlord must show some need or necessity. However, it does not mean absolute need or absolute requirement. It is also well settled that the landlord is the best judge of his residential requirements, and he has complete freedom in that behalf. It is no concern of the Courts to dictate to the landlord as to how, in what manner, he should live or to prescribe for him a residential standard or their own. There is no law which deprives the landlord of the beneficial enjoyment of his property. Ordinarily speaking, the landlord, if he says he wished to use premises of which he is the owner, he is entitled to do so. What the Rent Act endeavours to provide for, is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a rent, or exact a higher rent from the tenant on a threat of eviction. The law as enunciated by the Apex Court see *Rena Drego v. Lalchand Soni*, is that :

"When the landlord says that he needs more accommodation for his family, there is no scope for doubting the reasonableness of the requirement. Further, the

circumstances would raise a presumption that the requirement is bona fide. It is for the tenant to show that the demand for eviction was made with any oblique motive and in the absence of any such evidence the presumption of bona fides stands un rebutted."

This principle has been reiterated by the Apex Court in the decision referred to above in the case of Raghunath Panhale v. Chaganlal Sundarji & Co. (supra). The Apex Court has reiterated the principle that the Legislature employed two terms "reasonably" and "bona fide" together, the requirement must be real and genuine from any reasonable standard. All the same, the genuineness of the requirement is not to be on par with the dire need of a landlord because the latter's need is much greater. The Apex Court has further observed that there is no warrant for presuming that the landlord's need is not bona fide. The statute enjoins that the Court should be satisfied of the requirement of the landlord. So, the Court would look into the broad aspects and if the Court feels any doubt about the bona fides of the requirement of the landlord, it is for the landlord to clear such doubts. The Apex Court has observed that it is open to the Court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement is not bona fide.

24. The principles deduced from the above said decisions would clearly justify the requirement of placing onus on the tenant to establish that the requirement of the landlord is not bona fide, whereas the burden on the landlord in this behalf is very light. This position is reinforced by the mandate of Section 17 of the Bombay Rent Act which provides that where a decree for eviction has been passed by the Court on the ground of reasonable and bona fide requirement, and the premises are not occupied or the work of erection is not commenced within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the Court may, on the application of the original tenant made within thirteen months of such date, order the landlord to place him in occupation of the premises, on the original terms and conditions, and on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.

25. Understood thus, there is no scope for the Courts to doubt the genuineness and reasonableness of the requirement of the landlord and it can be presumed that the requirement of the landlord is bona fide, for the scheme of the Rent Act would permit such an approach in that sense, it is sufficient for the landlord to assert that the suit premises are reasonably and bona fide required by him and the onus is on the tenant to show that the suit premises are neither reasonably nor bona fide required by the landlord.

26. Applying the above said principles to the facts of the present case. I shall now examine the appropriateness of the view taken by the two Courts below in relation to the ground of reasonable and bona fide requirement of the suit premises. The Trial Court has held that the pleadings were vague and bereft of

any details. This view has been affirmed by the Appellate Court. The approach adopted by the two Courts below has been rightly criticised by the learned counsel for the petitioners by relying on the decision in *Baba Kashinath Bhinge v. Samast Lingayat Gavali*. In that case, the Apex Court observed that it is true that the pleading of the plaintiffs is not precise and no specific requirement was pleaded but once the parties properly understood the case of each other, issues were framed and evidence was adduced, technicalities of pleadings recede to the background. The observations made by the Apex Court squarely apply to the present case. In my view, the Courts below have not only applied wrong test but also committed error apparent on the face of the record in non-suiting the landlord on the said count.

27. As observed earlier, the landlord gave legal notice, being Exhibit 16, through his Advocate. In the said notice, it has been clearly asserted that the landlord requires the suit premises for his own occupation, business and residence. The notice further asserts that the landlord has retired from service and was depending on the pension amount and it was not possible to maintain himself and his family on the said income. The notice states that to maintain himself and his family members in the wake of growing inflation, it has become imperative for him to engage in some business and, therefore, he (the landlord) required the suit premises. The notice also asserts that the landlord had been requesting the tenant in this behalf from time to time but the tenant has not responded to such a request. In the suit filed before the Trial Court, the plaint clearly reiterates the grounds indicated in the legal notice (Exhibit 16) It is asserted in the plaint that the landlord has given legal notice indicating the grounds and this notice has been duly received by the tenant and also replied by the tenant. In other words, the foundation for claiming recovery of possession is based on the contents of the said legal notice- in that sense, the legal notice gets incorporated in the plaint by reference. It is also not in dispute that on the basis of the pleadings between the parties, the Trial Court framed the issue of bona fide requirement and comparative hardship and that the parties went to the Trial Court and led oral and documentary evidence in that behalf. Understood thus, as observed by the Apex Court, where the case of the plaintiffs is not precise and no specific requirement was pleaded but once the parties properly understood the case of each other, issues were framed and evidence was adduced, technicalities of pleadings recede to the background. In the circumstances, the ground of lack of pleadings and vagueness of pleadings, which has weighed with the two Courts below, was wholly inappropriate and the Courts have thus applied wrong test in non-suiting the landlord.

28. There is no dispute that during the course of evidence, the landlord has deposed about the reasonableness and bona fide requirement of the suit premises for his own occupation, business and residence. He has also deposed that there are twelve members in his family, consisting of three sons and four daughters and that all his sons were married and one daughter was yet to be married. His eldest son has two sons and the second son has one son. The landlord has

deposed that his family members do not have separate place of residence and that his present accommodation, consisting of only six rooms was not adequate for the requirements of his family and himself, The evidence does indicate that the landlord's grandsons are attending classes. They have no accommodation for studies. The landlord has also deposed about the necessity of starting business in the suit premises on account of the fact that he was retired and was depending only on the pension amount and assistance from his elder son, who was employed, whereas his two sons were unemployed. The landlord has clearly asserted that he would start business in the suit premises. The Courts below have taken the view that all these details have come on record only during the evidence, and since there was no foundation led by the landlord in the pleadings, the tenant was at a disadvantage. The fact remains that the landlord established in evidence, the size of his family; and that it was a growing family, coupled with the fact that it was essential for him to supplement his income by doing some business and also to provide opportunity to the two unemployed sons. In spite of such evidence, the Courts below have proceeded to hold that the landlord had failed to establish that the suit premises were not reasonably and bona fide required by the landlord. The approach adopted by the Courts below is, therefore, wholly impermissible, if not perverse in law. Surely, this is a clear case which qualifies the test of an error apparent on the face of the record. It is well settled that the landlord can maintain a suit for recovery of possession not only on the ground that he requires the suit premises for his own occupation, but he can also maintain such suit on the ground that the suit premises are reasonably and bona fide required for the use and occupation of his family members as well. Understood thus, I have no hesitation in concluding that the approach adopted by the Courts below in non-suiting the landlord and in holding that the landlord has failed to establish reasonable and bona fide requirement, is an error on the face of the record and it has resulted in serious miscarriage of justice.

29. The Courts below have adverted to the fact that the landlord has already constructed two other houses and construction of one more house was halfway, and that out of those, one of the houses was vacant. This reasoning, in my view, is wholly inapposite, for while considering the reasonable and bona fide requirement of the landlord, the Court cannot doubt the reasonableness and bona fide requirement of the landlord, unless the tenant proves to the contrary. In the present case, the tenant has not adduced any positive evidence on record to show that the claim of the landlord was neither reasonable nor bona fide. Merely because, two other houses have been constructed, it would not frustrate the right of the landlord to claim recovery of possession in respect of the demised premises. In the present case, the finding recorded by the Court below is that the landlord was occupying only six rooms with his growing family, which consisted of twelve members, including three married sons and one unmarried daughter. Furthermore, the size of the family of the married sons of the landlord was also growing. Taking into account the totality of the circumstances, it is unfathomable that the requirement of the landlord and his family was not

reasonable and bona fide.

30. The Appellate Court has further observed that it is only when the landlord establishes case of dire need, that he would be entitled to a decree of possession. This approach of the Appellate Court is clearly in the teeth of catena of decisions of the Apex Court, including the case in *Raghunath Panhale v. Chagantal*. In that case, the Apex Court has observed that reasonable and bona fide requirement is something between a mere desire or wish on the one hand and a compelling or dire or absolute necessary on the other. The Apex Court has further observed that such need may be a present need or within reasonable proximity in the future. This view has been consistently followed by the Apex Court (see *Dattatraya v. Abdul Rasul*). In that case, the Apex Court observed that the genuineness of the requirement is not to be decided on a par with the dire need of a landlord because the latter is a much greater need. Even on this count, the basis on which the Courts have non-suited the landlord, cannot be sustained.

31. The Courts below have also taken the view that, in law, it is essential for the landlord to mention about the alleged requirement of the suit premises and in absence thereof no decree could be passed on this ground. Even this principle is no more *res integra*. The Apex Court, in *Raj Kumar Khaitan v. Bibi Zubaida Khatun*, has taken the view that it is not necessary for the landlord to indicate the precise nature of the business which he intends to start in the premises and even if the nature of the business had been indicated by the landlord, nobody can bind the landlord to start the same after the suit premises are vacated.

32. The Courts below were also influenced by the fact that the landlord did not mention the area of the premises already in his occupation. Even on this aspect, the Apex Court in *Rena Drego v. Lalchand Soul*, has observed that the landlord seeking eviction on the ground of bona fide requirement is not legally bound to specify the area in his possession.

33. Taking the totality of the circumstances into account; and examining the same in the context of the settled legal position, I have no hesitation in concluding that in the present case the landlord had established that the suit premises were reasonably and bona fide required by him and his family members. There is nothing on record to doubt the reasonableness and bona fides of the landlord so as to disentitle him from decree of eviction.

34. The next question that arises for consideration is in the context of the mandate contained in sub-section (2) of Section 13 of the Bombay Rent Act. Sub-section (2) Section 13 reads as under :

"(2) No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (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."

In the present case, indubitably both the Courts have not adverted to the issue of comparative hardship. Since, I have already come to a conclusion that the landlord has established the claim for recovery of possession of the entire suit premises on the ground of reasonable and bona fide requirement, it has now become necessary to examine the issue of comparative hardship, including the feasibility of passing a partial decree. Instead of examining this issue for the first time before this Court, I would prefer to remand the matter to the Appellate Court to adjudicate this issue on the basis of the evidence on record. Unquestionably, this issue would assume relevance only with regard to the portion on the ground floor of the suit premises; inasmuch as, the portions on the first and second floor of the suit premises are concerned, I have already held that the landlord is entitled to recover possession thereof on the ground of tenant having acquired possession of suitable residence. In that sense, the issue of comparative hardship may not be relevant with regard to the said portions. But since the decree for possession is to be ordered even in respect of the portion on the ground floor of the suit premises, which are business premises, on the ground of reasonable requirement of the landlord, it would be imperative to adjudicate the issue of comparative hardship with regard to the said premises. Accordingly, I am disposed of to remand the matter to the Appellate Court only for this limited purpose. It is made clear that merely because the matter is being remanded to the Appellate Court for adjudicating the issue of comparative hardship in relation to the premises on the ground floor, that per se would not detain the execution of the decree in respect of the portions on the first and second floor of the suit premises, which have been ordered on an independent ground u/s 13(1)(1) of the Bombay Rent Act.

35. While parting, I wish to place on record a word of appreciation for Shri S. C. Dharmadhikari, who appeared as amicus curiae in the present case and ably assisted this Court.

36. For the above said reasons, the following order is passed :

(i) The impugned Judgment and order dated 4th September, 1987 passed by the III Additional District Judge, Kolhapur, in Regular Civil Appeal No. 230 of 1984 and the Judgment and decree dated 30th June, 1984 passed by the Joint Civil Judge, Junior Division, Kolhapur, in Regular Civil Suit No. 55 of 1977 be and are hereby quashed and set aside.

(ii) The suit for possession is decreed insofar as the portions on the first and second floor of the suit premises, being C.T.S. No. 234/C, situated in "D" Ward Kolhapur city, occupied by the respondents for the purpose of residence u/s 13(1)(1) of the Bombay Rent Act.

(iii) The petitioners have succeeded in establishing the ground for possession of the entire suit premises u/s 13(1)(g) of the Bombay Rent Act. However, the matter is remanded to the District Judge, Kolhapur, to examine the issue of comparative hardship including partial decree, insofar as the portion of the suit

premises on the ground floor only, bearing C.T.S. No. 234/C, situated in "D" Ward, Kolhapur City. The District Judge shall examine the said issue expeditiously, and preferably within three months from receipt of writ of this Court.

(iv) It is further made clear that the petitioners will be at liberty to get the decree in respect of the portions on the first and second floor of the suit premises, being C.T.S. No. 234/C, situated in "D" Ward, Kolhapur City, executed forthwith irrespective of the order of remand passed by this Court to the District Court to examine the issue of comparative hardship with regard to the portion on the ground floor of the suit premises.

(v) Rule made absolute in the above terms, costs in the cause. Order accordingly.

37. After the judgment was pronounced, the learned Counsel for the respondents prayed that operation of this Judgment to be stayed for a period of eight weeks from today. Learned Counsel for the petitioners has opposed this prayer. However, I think it appropriate to stay operation of this Judgment so as to enable the respondents to prefer SLP before the Apex Court, as stated by the learned Counsel, for a period of eight weeks.