



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 238 OF 2021

Parshuram Chunilal Kanojiya

....*Applicant*

-Versus-

Manohar Vithoba Kuntha (since
Deceased through Legal Heirs)
And another

....*Respondents*

Mr. Rajesh Kachare with Mr. Tushar Dahibawkar with Ms. Sonal Dabhokar i/b Dahibawkar & Co., *for the Applicant.*

Dr. Ranjit A. Thorat, Senior Advocate with Ms. Pratibha Shelake with Ms. Anamika Malhotra i/b Mainak Adhikary, *for the Respondent No.1(a) to 1(d).*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 24 September 2024.

Pronounced On : 4 October 2024.

JUDGMENT :

1) This Revision Application is filed challenging the decree dated 8 October 2021 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 376/2017 filed by the Applicant/Defendant No.2 and confirming the eviction decree dated

26 October 2017 passed by the learned Judge of the Small Causes Court directing the Defendants to handover possession of the suit premises in addition to conduct of enquiry into mesne profits.

2) Briefly stated, facts of the case are that, Plaintiffs are owners and landlords in respect of the property known as Building No.4 situated on plot of land bearing CTS No.425, 12th lane, Kamathipura, Nagpada, Mumbai 400 008. Defendant No.1 was inducted as a monthly tenant in respect of Shop No.1 on the ground floor of the said Building No.4 on monthly rent of Rs.400/-, which are the '**suit premises**'. Plaintiff instituted R.A.E. Suit No.253/426 of 2011 seeking recovery of possession of the suit premises alleging unauthorised subletting by Defendant No.1 in favour of Defendant No.2. Plaintiff also claimed the ground of non-user as well as bonafide requirement of the landlord. The suit was resisted by Defendant No.2 by filing Written Statement that he is the son of Defendant No.1 and denied the allegation of unlawful subletting. Defendant No.2 also contested the grounds of non-user and bonafide requirement of Plaintiff-landlord. Both the sides led evidence in support of their respective claims. It appears that during the pendency of the suit, Defendant No.1-Tenant passed away. In the Affidavit of Evidence, Plaintiff made a statement that he was not pressing the grounds of non-user and unlawful subletting though pleaded in the plaint. Thus, the suit proceeded on the sole ground of bonafide requirement of Plaintiff. After considering the pleadings, documentary and oral evidence, the Trial Court answered the issues of bonafide requirement and comparative hardship in favour of Plaintiff and proceeded to decree the suit vide judgment and order dated 6 October 2017.

Defendants were directed to handover possession of the suit premises with further enquiry into mesne profits under Order 20 Rule 12 of the Code of Civil Procedure, 1908. Revision Applicant/Defendant No.2 filed Appeal No. 376/2017 before the Appellate Bench of the Small Causes Court challenging the eviction decree dated 6 October 2017. The Appellate Bench has however dismissed the appeal confirming the eviction decree by its judgment and order dated 8 October 2021. Defendant No.2/Revision Applicant has accordingly filed the present Revision Application under the provisions of Section 115 of the Code.

3) Mr. Kachare, the learned counsel appearing for Petitioner would submit that the Trial Court and Appellate Bench have erroneously accepted the ground of bonafide requirement for passing eviction decree against the Revision Applicant. He would take me through the averments in the plaint in support of his contention that the bonafide requirement as originally pleaded was that Plaintiff's daughter-in-law needed the suit premises for the purpose of her business as Consultant in investment and Agency of Postal Savings, R.B.I. Bond Saving Scheme, ICICI Bond Saving Scheme, ICICI Prudential Life Insurance etc. That it was pleaded that the daughter-in-law had clients around the suit premises and she was looking after the affairs of the business from residential premises of the Plaintiff located in the same building which consisted of only one room and kitchen. He would submit that in the cross-examination, it was admitted by the Plaintiff's daughter-in-law that the Plaintiff was not residing in the building, in which the suit premises are located and that he had permanently shifted to the flat at Wadala. He would submit that the said witness also admitted that Plaintiff was also in

possession of Room No.3 in the suit building, which is kept vacant. That she was also admitted availing of commercial electricity connection in respect of the said Room No.3. That she further admitted that neither she nor any member of her family ever resided in the suit building at any point of time. That she further admitted that no difficulty would arise for the Plaintiff if the decree was to be refused.

4) Mr. Kachare would submit that in the light of the above specific admissions given by the Plaintiff's witness, the ground of bonafide requirement and/or comparative hardship could not have been held to be proved. He would take me through the electricity meter in respect of Room No.3 in support of his contention that the same could be used for commercial purposes. He would submit that in any case, the Plaintiff himself had admitted that the daughter-in-law was doing business from residential premise and the premises were required because of nuisance caused to him on account of the daughter-in-law conducting business therefrom. That it was admitted by the daughter-in-law that Plaintiff no longer resides in the said residential premises located in the suit building and therefore there is absolutely no difficulty for the daughter-in-law to conduct her business activities. That the business activity of the daughter-in-law is such that the same does not require use of any commercial premises. That even if it is to be assumed that any commercial premises are required, Plaintiff is in possession of Room No.3 with commercial electricity connection, which can also be used by the daughter-in-law.

5) Mr. Kachare would submit that the provisions of Section 25 of the Bombay Rents, Hotel and Lodging House Rates Control Act or Section 30 of the Maharashtra Rent Control Act do not put any prohibition on landlord converting his own premises from residential to commercial. In support, he would rely upon judgment of this Court in Motilal M. Mehra Versus. Ruttu Homi Bharucha and another¹ and Madhukar Vishnu Sathe and others Versus. Vithoba Ramji Thorat (since deceased by L.R.'s) and others². Mr. Kachare would accordingly submit that sufficient premises are available for Plaintiff's daughter-in-law for conducting business. That despite establishment of availability of alternate premises, the Trial Court have erroneously held that the tenant cannot dictate terms of the landlord. That this is not a case involving dictation of terms by tenant for landlords and once it is proved that suitable premises are available for conducting business, the Trial Court ought to have dismissed the suit seeking recovery of possession on the ground of bonafide requirement.

6) Dr. Thorat, the learned senior advocate appearing for Respondent Nos.1(a) to 1(d) would submit that no interference is warranted in the concurrent findings recorded by the Trial Court and its Appellate Bench in exercise of revisionary jurisdiction by this Court. That Plaintiff's daughter-in-law needs commercial premises and the tenant cannot dictate terms for landlord to use residential premises for commercial purposes. That suit premises are the only commercial premises which can be used for conducting business by

¹ 1983 Mh.L.J. 25

² AIR 1992 Bom 272

the daughter-in-law. He would rely upon the provisions of Section 30 of the Maharashtra Rent Control Act in support of his contention that there is a prohibition for landlord to convert residential premises for commercial use. In support he would rely upon the judgment of the Apex Court in **Bapubhai Mohanbhai Versus. Mahila Sahakari Udyog Mandir**³.

7) Dr. Thorat would submit that the electricity connection in respect of Room No.3 was procured by mistake. That in any case, mere procurement of electric connection does not mean that premises got converted for commercial use. He would submit that in the records of the Planning Authority, Room No.3 still continues to be for residential use. That the Trial Court and the Appellate Court have considered all these aspects and have rightly arrived at the conclusion that the Defendant could not establish availability of any commercial premises for conducting of business by the Plaintiff's daughter-in-law. That therefore in absence of any commercial premises, the bonafide requirement as well as comparative hardship for Plaintiff is rightly held to be proved. That Defendant No.1 was the original Tenant and other sons of Defendant No.1 are well established at Banaras and Saudi Arabia. That the Appellate Bench has recorded a specific finding that Defendant No. 2 is not running laundry business in the suit premises. As against this, need of Plaintiff's daughter-in-law is established. That in such circumstances, no interference is warranted in the concurrent findings recorded by both the Courts below. He would pray for dismissal of the Revision Application.

³ AIR 1975 SC 2128

8) Rival contentions of the parties now fall for my consideration.

9) As observed above, though the suit was initially filed on three grounds of (i) unlawful subletting, (ii) non-user and (iii) bonafide requirement of landlord, Plaintiff gave up the grounds of unlawful subletting and non-user by making following statements in his Affidavit of Evidence:

9. I say that the original Defendant No.1 died and the Defendant No.2 is his son, one of the heirs and legal representatives, the Plaintiff is not pressing the ground of non-user and unlawful subletting for eviction which are taken in the plaint against the Defendants.

10) The suit thus proceeded on the sole ground of bonafide requirement, in respect of which, the Trial Court was supposed to answer the issues of establishment of bonafide requirement of Plaintiff and cause of comparative hardship to rival parties within the meaning of Section 16(2) of the MRC Act.

11) Plaintiff pleaded for recovery of possession of the suit premises on the ground of bonafide requirement, which was premised on his daughter-in-law's need for conduct of her business as Consultant as well as of Agency of various financial and insurance schemes. It would be necessary to reproduce relevant pleadings in paras-10 to 13 of the plaint, which read thus:

10. The Plaintiff states that the Plaintiff is in dire need of the suit premises. The Plaintiff states that the suit premises are required by the Plaintiff for reasonably bonafide for the use of his family members. The Plaintiff states that the suit premises are required for the office of his daughter-in-law Mrs. Sunita Amul Kuntha (the wife of his son) by the Plaintiff. The Plaintiff states that his daughter-in-law is educated in Diploma in Electronic and Telecom Engineering. The Plaintiff states that said daughter in law of the Plaintiff is doing business as consultant in investment and also having Agency of Postal Saving, R.B.I. Bond Saving Scheme, ICICI Bond Saving Scheme, ICICI PRUDENTIAL LIFE INSURANCE. etc. The Plaintiff states that the Government of India Small Savings Schemes & Mahila Pradhan Kshetriya Bachat Yojana Authority for Appointment as Authorized Agent has issued the certificates to her said daughter-in-law. The said certificate is annexed herewith and marked as "**Exhibit - A**". The Plaintiff states that National savings Organization of Government of India has issued certificate to her daughter-in-law. The same is annexed herewith and marked as "**Exhibit - B**" colly. The Plaintiff states that the Insurance Regulatory and Development Authority issued the Licenses being Licence No. 819402 and 'Identity' card to his daughter-in-law. The same is annexed herewith and marked as "**Exhibit -C**" colly. The Plaintiff states that his daughter in law is having other certificates in respects of her Business. The said certificates are annexed herewith and marked as "**Exhibit-D**" colly.

11.The Plaintiff states that she is having one staff to assist her in his business. The name of the said Assistant is Mr. Uday Govalkar. The daughter-in-law of the Plaintiff is paying his salary by cheque. The Plaintiff craves leave to refer to and rely upon the Banks Statement when produced.

12. The Plaintiff states that at present her daughter in law Mrs. Sunita is looking after all the affairs of her said business from the residence premises of the Plaintiff. The Plaintiff states that the residential premises in occupation of the Plaintiff is very small premises having area 325 sq.ft. consisting of one Room and kitchen, and one residential small room having area approximately 80 sq.ft. on the ground floor of the suit building. The Plaintiff states that the premises having on third floor is residential premises and the same is belonging to the legal heirs of the brother of the plaintiff. The Plaintiff states that the family of the Plaintiff is consist of six members. The Plaintiff states that the Plaintiff is having two grand sons aged 13 years and 4 years respectively. The Plaintiff states that the elder grand son is studying in fifth standard. The Plaintiff states that his son was in possession of one residential premises at lower parel. The said premises was not suitable hence he has sold the said premises and taken one residential premises at Wadala from the amount of Lower Parel premises and also taken the loan by

mortgaging the said residential premises with the Bank as the residential premises available with the Plaintiff was inadequate to accommodate all family members as the family of the Plaintiff are increasing.

13. The Plaintiff states that now the Plaintiffs' family residing at both the premises at the above referred premises and Wadala premises. The Plaintiff states that he and his wife reside for at the suit building for most of the time and his son, daughter in-law and granddaughter and son residing at wadala premises and also residing with the Plaintiffs. The Plaintiff states that all costumers of the daughter of Plaintiffs are from the area/locality of Kamathipura wherein the suit premises are situated. The Plaintiff states that at present his daughter-in-law is looking after all affairs of her business from the residence of the Plaintiff it causes disturbs to the privacy of the family of the Plaintiff as her clients/costumers visit her and she use to hold meeting in the residence as she is not having any other place. The Plaintiff state that the Plaintiff and his wife are senior citizen having 76 years and 65 years old and in their old age they don't get peaceful atmosphere in the residence as the clients of his daughter-in-law visits the residence of Plaintiff.

12) Thus as pleaded in the plaint, Plaintiff's daughter-in-law was conducting the business of consultancy and agency of financial and insurance schemes in residential premises of Plaintiff located in the suit building comprising of one room Kitchen admeasuring 325 sq.ft on upper floor and 80 sq.ft on the ground floor. Plaintiff, however admitted that his son was residing separately at Wadala with his daughter-in-law and grandchildren, but since customers of his daughter-in-law were located in Kamathipura area, the daughter-in-law was looking after the business from the residence of Plaintiff, which was disturbing Plaintiff's privacy. This was Plaintiff's pleaded case.

13) Plaintiff examined Smt. Sunita Kuntha, daughter-in-law, as his constituted attorney as P.W.1. In her evidence, she produced various certificates to prove conduct of business by her of

consultancy and agency of financial and insurance schemes. She also proved payment of salary to her Clerk. She reiterated the contents of the plaint about convenience of carrying out business in Kamathipura area on account of location of customers in that area.

14) However, when Smt. Sunita was subjected to cross-examination she gave vital admissions against the case of Plaintiff and in support of Defendant. It would be relevant to reproduce the relevant part of cross-examination of P.W. 1, which reads thus:

It is true to say that my father-in-law has given me power of attorney to file suit. At the time of filing of suit my husband and me went to the office of advocate to give instructions. My father-in law was waiting outside the office. My father-in-law at present 81 years old. It is true to say that he is residing in the house and not doing any work. At present me and my husband looking after my father-in-law. Suit premises is at building No.4, 12th Lane, Kamathipura, Nagpada, Mumbai. It is true to say that suit premises is at ground floor. There are three floors in the suit premises. **At present my father-in-law is not residing at suit premises but he is residing at Dosti Acre, Flora Tank Bldg. 705, Vadala (East), Mumbai.** The said premises is in my name and in the name of my husband. It is true to say that my mother-in-law is also residing at Vadala. It is true to say that initially I along with my husband, father-in-law and mother-in-law were residing together. It is true to say that I was residing at Nilganga society, Lower Parel in the year 2004. I have taken the said premises in the lucky draw of MHADA. At the relevant time I have paid Rs.2,50,000/- to MHADA. The area of said premises was 500 sq.ft. It is true to say that on some occasions my father-in-law used to come at Lower Parel for residence. It is to say that I have not mentioned about the residence of Lower Parel in plaint and affidavit. It is true to say that I have not filed proof about the residence at Lower Parel. By obtaining the loan of bank and selling the property of Lower Parel, I purchased the property at Vadala. Approximate area of flat situated at Vadala is 1200 sq.ft. It is true to say that I alongwith my husband, father-in-law and mother-in-law are residing at Vadala. I have two sons namely Apurv and Indra. Apurv is of 19 years and Indra is of 12 years. It is true to say that both are taking education. The elder son is taking education in Poddar College, Matunga and younger son is taking education at Vadala.

No family member is residing at suit premises. My some clients of LIC are residing in the suit building. I tried to search the other premises but I

could not get it in Kamathipura. I have taken the flat at Vadala in year 2009. It is true to say that at the time of filing of suit I was having a place to reside at Lower Parel. **It is true to say that since filing of first suit till today my father-in-law is having possession of second and third floor of suit building.**

XXXXX

XXXXX

In the suit building one residential room except the suit premises was available in the name of my father-in-law. **It is true to say that room available in the suit building is having room No.3. The rent receipt of room No.3 is in the name of my mother-in-law.** My mother- in-law is housewife. Initially she was doing the tailoring business in private firm. **At present room No.3 is kept vacant.** It is true to say that at present my father-in-law and mother-in-law are residing with me at Vadala. The electric bill of premises i.e. Room No.3 is in the name of Rajani Manohar Kuntha i.e. my mother-in-law. It is residential electric bill. I have seen the electric bill of room No.3. It is not true to say that electric bill is at present commercial.

It is true to say that due to residence of my in-laws with me, second and third floor of suit building are kept vacant. **It is true to say that room No.3 of ground floor is also kept vacant.** It is not true to say that for commercial purpose bank can issue loan in my favour.

Xxxx

It is true to say that neither me nor any family member is resided at any time in the suit premises. Para 17 of examination-in- chief is now shown to the witness. It is true to say that physical condition of my father-in-law is not good to use the suit premises. It is true to say that I am managing the affairs of family. It is true to say that at present my father-in-law i.e. plaintiff is dependent upon me. It is true to say that at present my father-in-law i.e. plaintiff is residing at Wadala and therefore, there is no question of nuisance to my father-in- law. **It is true to say that at present no person is residing in room No.3 of the suit building. It is true to say that my client can meet me in room No.3 situated at ground floor of the suit building. It is true to say that no difficulty will arise to me and my father-in-law, if decree is refused.** Witness volunteers that room situated at ground floor is a residential premises, hence same cannot be used for commercial premises. When my father-in-law was residing in the suit premises, room No.3 was kept for the purpose of visiting of the clients. It is true to say that at present plaintiff cannot climb the second and third floor of the suit building due to his ill health.

It is true to say that in year 2016 the electric meter of room No.3 was commercial meter. Witness volunteers that the electric meter was converted into commercial by mistake. I cannot exactly tell the date when

I came to know about the electric meter of suit premises converted into commercial. It is not true to say that the electric meter of room No.3 is a commercial meter. It is not true to say that only to harass the defendant, I have filed the false suit against the defendant. It is not true to say that only as a counter blast to the proceeding filed by defendant before the Hon'ble High Court I have filed the present suit. It is not true to say that suit premises is not reasonably and bonafidely required by the plaintiff. It is not true to say that hardship will cause to the defendant, if decree is passed. I do not know whether the defendant is having any other commercial premises for the business.

(emphasis added)

15) Plaintiff's daughter-in-law thus admitted that Plaintiff was no longer residing in the suit building and was residing alongwith his son and daughter-in-law at Dosti Acre, Wadala (East), Mumbai. She also admitted that none of the family members were residing in the suit building. She further admitted that in addition to the premises in which her father-in-law was residing, additionally Room No.3 is in possession of the Plaintiff which is kept vacant. Though, she claimed that the electricity connection in respect of Room No.3 was residential, she later admitted that in the year 2016, commercial electricity meter was procured in respect of Room No.3. She further admitted that neither she nor any member of her family ever resided in the suit building. She further admitted that since the Plaintiff was residing at Wadala, therefore there was no question of cause of any nuisance to him on account of her absence. To make case worst for Plaintiff, she admitted that *'It is true that no difficulty would arise for me or my father-in-law if decree is refused'*. She further admitted that when Plaintiff used to reside in the suit building, Room No.3 was actually being used for visiting the clients.

16) In my view, the above admissions given by Plaintiff's witness completely demolishes the case of bonafide requirement. Plaintiff's witness (*daughter-in-law for whose need recovery of possession of suit premises is sought*) admitted the following:

- (i) That Plaintiff was no longer residing in the suit building and therefore no nuisance would be caused to him if business is conducted by the daughter-in-law in the room, in which the father-in-law was earlier residing.
- (ii) That Room No.3 on the ground floor is kept vacant.
- (iii) That commercial electricity connection was procured in respect of Room No.3.
- (iv) That while Plaintiff was residing in the suit building, Room No.3 was being used for doing her business.

17) The above admissions go contrary to the theory pleaded in the plaint that Plaintiff's business in residential premises of the father-in-law located in the suit building was causing annoyance, which is why the daughter-in-law needed to conduct her business in the suit premises. As of today, the residential premises in which the Plaintiff was residing, and where the daughter-in-law was allegedly conducting business while residing at Wadala, are admittedly vacant. Plaintiff did not plead that she was facing any difficulty in conducting any activities of consultancy in the residential premises of father-in-law. All that she pleaded was that Plaintiff was facing nuisance on account of clients of daughter-in-law visiting the said residential premises. Now that those residential premises are vacant, the very cause of alleged nuisance to Plaintiff no longer survives.

18) Additionally, it has come in evidence that Plaintiff possesses Room No. 3 on the ground floor, which was being used for meeting clients by the daughter-in-law and that Plaintiff was residing in the residential premises located in the suit building. It has also come in evidence that Plaintiff procured commercial electricity connection in respect of said Room No.3. True it is that mere procurement of commercial electricity meter cannot be a reason enough for assuming that there is conversion of residential premises into commercial one. However, at the same time looking at the nature of business of daughter-in-law, it is more in the nature of a profession of consultancy, which can be and was being carried out earlier from Room No.3.

19) Dr. Thorat has relied on provisions of Section 30 of the Maharashtra Rent Control Act in support of his contention that there is prohibition for the landlord to convert residential premises into commercial one. Provisions of Section 30 of the Maharashtra Rent Control Act reads thus:

30. Conversion of residential into commercial premises prohibited.

(1) A landlord shall not use or permit, to be used for a commercial purpose any premises which, on the date of the commencement of this Act, were used for a residential purpose.

(2) Any landlord who contravenes the provisions of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

20) The prohibition under Section 30 is on use of residential premises for commercial purpose. Since the word 'landlord' is used, the prohibition is essentially with reference to a tenant. Thus, the

owner of property who has created tenancy, cannot permit the tenant to use the residential premises for commercial use. Even if it is to be accepted that the prohibition applies to landlord as well, at the highest, it can be held that the landlord who secures possession of the residential premises cannot use the same for commercial use. Mr. Thorat has relied upon judgment of the Apex Court in **Bapubhai Mohanbhai** (supra). In para-7 of the judgment, the Apex Court held as under:

7. Learned counsel for the respondent places great reliance on the non-obstante clause of section 13 (1) and argues that legislature , having considered the question whether section 13 should be made subject to any other law or to any other Provision of the Act came to the conclusion that it should be made subject to the provisions of section 15 only and therefore it would be wrong to subject the provisions contained in section 13(1) to section 25. The High Court also approached the problem before it by saying that the material question for consideration was whether section 13(1) can be made subject to section 25. This question was answered by the High Court by saying that since the legislature did not subject the right conferred on the landlord by section 13(1) to any other provision save the one contained in section 15, section 25 cannot be permitted to override section 13(1). This approach, in our opinion, is misconceived. The true question for consideration is not whether as between section 13(1) and section 25(1) one overrides the other and indeed, in view of the wording of the non obstante clause of section 13 (1), the provisions of that section must have priority over the rest of the Act, except for what is contained in section 15. But conceding to section 13(1) its rightful precedence and granting that it stands supreme except for section 15, according to its own terms the court has to be satisfied that the requirement of the landlord is reasonable. A requirement which runs in the teeth of section 25 and which, if established, may throw the landlord open to the risk of a prosecution cannot be called reasonable. Therefore, if the respondent shall have failed, it is not because section 25 overrides section 13 (1) but because of its failure to prove the reasonableness of its requirement. Whether the requirement of the landlord is reasonable or not is to be judged from all the facts and circumstances of the case and a highly relevant circumstance bearing on the reasonableness of the landlord's requirement is that the purpose for which the possession is sought is a purpose for which the premises cannot be used save on pain of penal consequence. Courts ought not to construe a statute in a manner

which will encourage the breach of any of its provisions and, most certainly, a decree ought not to be passed which, if honored, will attract penal consequences. To pass a decree in favour of the respondent on the grounds accepted by the High Court is to invite the respondent to commit a breach of the statutory injunction contained in section 25 (1).

21) In the case before the Apex Court, the landlord filed suit for recovery of possession of the tenanted premises for its business, whereas the premises were let out for residential purposes. It is in the light of those facts that the Trial Court held that the landlord cannot secure possession of residential premises and then use the same for commercial purposes on account of prohibition under Section 25 of the Bombay Rent Act which prohibition was *pari materia* to Section 30 of the Maharashtra Rent Control Act. In the present case, Room No.3 is not let out to any tenant for residential purposes and therefore there is no embargo on the landlord for converting the same for commercial use. This is however not to suggest that Plaintiff can use the premises for commercial purpose.

22) Thus, reliance by Plaintiff on provisions of Section 30 of the MRC Act, which is *pari materia* to Section 25 of the Bombay Rent Act, in support of the contention that there is prohibition on use of Room No.3 for the landlord and to convert the same into commercial purposes is completely misplaced.

23) In fact, reliance of Mr. Kachare on judgment of this Court in **Motilal M. Mehra** (supra) appears to be apposite. In that case,

owner of the building consisting of four floors converted ground floor in his exclusive possession into a guesthouse. The tenant residing on third floor instituted suit for injunction against the owner from using the same on ground floor for non-residential purposes by relying upon Section 25 of the Bombay Rent Act. In the light of these facts, this Court held in paras-9, 10 and 11 as under:

9. There is another difficulty in the way of the plaintiff. The bar created by section 26 is firstly against a landlord and secondly it is in respect of a certain premises. Now both these terms have been defined in the Act itself. The use of these terms pre-supposes a relationship between landlord and a tenanted premises. That is the concept which is given effect to in the definition which is exhaustive in section 5(3) of the Bombay Rent Act. The term landlord is defined in so far as is material is as follows:

“Landlord” means any person who is for the time being receiving, or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person..... who would be entitled to receive the rent if the premises were let to a tenant;

The term landlord is defined in the context of premises, and the premises must be those in respect of which rent is being received or receivable by the landlord. Therefore, unless the premises are rented out, the owner cannot become a landlord for the purposes of the Bombay Rent Act. Consistent with this definition and with the object of the Act, the word ‘premises’ has also been defined in section 8 as meaning, *inter alia*, “any building or part of a building let or given on licence separately but does not include a room or other accommodation in a hotel or a lodging house”. The other part of the definition is not relevant. What is, however, important is that here again the definition of premises is an exhaustive definition, because the word used is “means”. Therefore, before any house or accommodation can be called premises for the purposes of the Bombay Rent Act it must be a building or a part of a building let or given on licence separately. This exhaustive definition of premises will, therefore, not include any premises in the possession of the owner and which are not let or given on licence separately.

10. Now it is a known canon of construction of statutes that where the Act itself provides for a dictionary of the meaning of the words used in the Act, wherever those words are utilised in the different

provisions of the law, those definitions must be substituted in those provisions. If we now thus read section 26, having regard to the definition of the words landlord and premises, it is obvious that section 26(1) will be attracted only where the premises which are let or given on licence are allowed to be used or used by the landlord of the premises for a non-residential purpose if they were originally used for residential purpose. In other words, the disability created by section 26(1) fastens itself only on rented premises or premises given on licence and the person subjected to the disability must satisfy the character of a landlord. Where none of these or any one of these conditions are not satisfied, it is obvious that section 26(1) will not be attracted at all.

11. Mr. Gumaste, however, contended that the definition in section 5 opens with the words “unless there is anything repugnant to the subject or context” and, therefore, according to the learned counsel, the word landlord in section 26(1) must be given a wider meaning and must take within it even an owner of a property which is not a subject of tenancy. It is difficult to accept this argument. Firstly, it is not pointed out by the learned counsel how there is anything repugnant to the subject or context in section 26 to justify the giving of a different meaning to the word landlord. Secondly, even generally understood the term landlord implies that there is a relationship of landlord and tenant in respect of certain premises, though a landlord would be an owner of a property. However, owner of a property will not be a ‘landlord’ as understood in the context of a law relating to landlord and tenant unless the premises are let out. I have, therefore, no doubt in my mind that section 26(1) is wholly irrelevant so far as the premises owned by the petitioner is concerned. The tenant in the instant case can have no right to challenge the user by the landlord of his other property. The averments in the plaint and the relief sought from the Small Causes Court show that the suit is founded wholly on the assumption that section 26(1) creates a right in favour of the plaintiff-respondent. In the view which I have taken, it is obvious that the suit does not relate to any question arising out of the provisions of the Rent Act and, apart from the fact, it is wholly misconceived.

(emphasis added)

24) In ***Madhukar Vishnu Sathe*** (supra), this Court has followed the ratio in ***Motilal M. Mehra***’s case and has held in para-11 as under:

11. The appellate Court has declined to grant the decree for eviction on this ground only on the basis of the effect according to it of Section 25 of the Bombay Rents Act prohibiting the change of user from non-residential to residential and residential to non-residential. The said provision states that the land lord shall not use or permit to be used for a non-residential purpose any premises which on the date of the coming into operation of this Act were used for a residential purpose. The appellate Court found difficulty of conversion of the use of the premises which have been found suitable and having been acquired by the tenants. Therefore, it becomes necessary to consider whether the bar of Section 25 can be said to be applicable to the situation at hand. In a decision considering the question of jurisdiction under Section 28 of the Bombay Rents Act. Motilal Mehra's case (1983 Mah L.J. 25) (supra), the Court has taken into consideration the disability of the landlord with regard to the change of the use of the premises as contemplated under Section 25 of the Bombay Rents Act and in that connection it has been observed that this fastens itself only on rented premises or on premises given on licence or the person subject to the disability imposed satisfying the character of a landlord. Thus, it is clear that before proceeding to consider the application of Section 25 of the Bombay Rents Act it will have to be considered as to whether respondents would be in the position of landlords in relation to the premises in question. It would also be necessary to consider as to whether the premises in question is rented premises and it is then only it would be possible to consider whether the provisions of Section 25 of the Bombay Rents Act could be held to apply prohibiting residential character being converted into non-residential character. On the facts of this case the respondents are the owners of the premises in question. The admitted position is that the premises which is sought to be contended as suitable accommodation is in the possession of the respondents-tenants in their capacity as the owners. In any sense of the term, they cannot be considered to be landlords of the premises. The premises is not rented out. It is not in possession of anyone even under licence. The facts and the material on record is more than clear that the position is that no satisfactory material is on record in any manner to state that the premises in question can be the premises to which Section 25 of the Bombay Rents Act could at all apply. In this view of the position it is not possible to endorse the view of the appellate Court that the decree for eviction cannot be passed on the ground of there being a bar of Section 25 of the Bombay Rents Act.

(emphasis added)

25) In the present case, Plaintiff's daughter-in-law has not been conducting any commercial business as such. It is Plaintiff's own case that prior to filing of the suit, the activities of profession of consultancy were being carried by daughter-in-law from the residential premises, in which the Plaintiff was residing. The root cause for filing of the suit was alleged nuisance caused to Plaintiff on account of his daughter-in-law's clients visiting the residential premises. Therefore, if the daughter-in-law conducted consultancy activities from residential premises, in which Plaintiff was residing at the time of filing of the suit, I do not see any reason why the same activities cannot be continued after Plaintiff left the said residential premises and shifted in son's house at Wadala. Additionally, Room No. 3 on the ground floor, in which admittedly commercial electricity connection was procured by Plaintiff, is also available for conducting daughter-in-law's consultancy activities. I am therefore of the view that Plaintiff has thoroughly failed to prove his bonafide requirement.

26) Despite acknowledging availability of necessary premises for conducting daughter-in-law's consultancy activities, the Trial Court has held that the tenant cannot dictate terms upon the landlord. True it is that landlord is the best judge in respect of his need and that the tenant cannot dictate terms upon the landlord as to how the premises need to be used. However, in the present case, the tenant is not dictating terms to the landlord. It is Plaintiff's own case that the daughter-in-law has been conducting her consultancy activities from residential premises. This is not a case where the daughter-in-law intended to embark upon a new business activity, for

which commercial premises were necessary. There is no pleading or evidence that the daughter-in-law faced any difficulties in carrying out consultancy activities from residential premises. The only difficulty expressed was nuisance caused to Plaintiff and his wife, who were aged at the time of filing of the suit. Apart from the fact that at the time of filing of the suit, Room No.3 on the ground floor was also available for carrying out consultancy activities by daughter-in-law, Plaintiff shifted to his son's flat at Wadala as is clearly admitted by Smt. Sunita and no member of the family was found residing in the residential premises located in the suit building as on 11 August 2016, when Smt. Sunita deposed. She gave a specific admission that '*It is true that no difficulty will arise to me and my father-in-law if the decree is refused*'. Thus, Plaintiff's witness gave an admission that she would not face any difficulty in carrying out her consultancy activities if decree of eviction was not granted. In the light of these clear admissions and since no case is made out by Plaintiff about genuine need to occupy the suit premises for carrying out consultancy activities by Smt. Sunita, in my view, the bonafide requirement of Plaintiff itself is not established. In the light of Plaintiff not making out a case that any difficulty or inconvenience was caused in using residential premises for consultancy activities of Smt. Sunita, there is no question of tenant dictating terms on Plaintiff. In my view, therefore the Trial Court and the Appellate Court have grossly erred in accepting the grounds of bonafide requirement.

27) Since bonafide requirement itself is not established, it is not necessary to go into the issue of comparative hardship under Section 16(2) of the MRC Act. However, just for the sake of completion of the findings on all issues framed in the suit, it would be necessary to consider the evidence led by parties on the issue of comparative hardship. As observed above, Plaintiff's witness Smt. Sunita gave specific admission of non-cause of any difficulty to Plaintiff and to herself in the event of decree being refused. Additionally, in the cross-examination, Defendant's witness specifically stated that '*After death of my father i.e. Defendant No.1, I myself is running the business in the suit premises*'. Thus, there is specific evidence led by the Defendants that Defendant's witness has been carrying out business in the suit premises after death of the original Tenant. Plaintiff gave up the ground of non-user and thereby admitted that Defendant No. 2 has been running the laundry business from the suit premises. In my view, therefore the point of comparative hardship also needs to be decided against the Plaintiff and in favour of the Defendants.

28) After considering the overall conspectus of the case, I am of the view that the Trial Court and its Appellate Bench have palpably erred in accepting the ground of bonafide requirement for passing a decree of eviction. The finding recorded by both the Courts are of such a nature that they are impossible of being sustained in the light of pleadings and evidence available on record. Therefore, this Court is justified in exercising revisionary jurisdiction under the provisions of Section 115 of the Code in interfering with the same.

29) Consequently, the Civil Revision Application succeeds. The judgment and decrees passed by the Trial Court on 6 October 2017 as confirmed by the Appellate Bench on 8 October 2021 are accordingly set aside. R.A.E.& R. Suit No. 253/426 of 2011 filed by Plaintiff is dismissed. If any interim compensation is deposited by the Revision Applicant before the Small Causes Court or before this Court (except rent), the same shall be permitted to be withdrawn by the Revision Applicant alongwith accrued interest. The amount of rent, if deposited in Small Causes Court or in this Court, is permitted to be withdrawn by Respondents/Plaintiffs alongwith accrued interest. The Civil Revision Application is accordingly **allowed**. Considering the facts and circumstances of the case, there shall be no order as to costs.

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[SANDEEP V. MARNE, J.]