



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13811 OF 2022

Lovely Jogindersingh Sethi
Age : 60 years, Occ : Business
R/o. 1992, Covenant Street,
Camp, Pune -1.

.... Petitioner
(Orig. Defendant)

: *Versus* :

1. Nayeem Riyaz Khan
Age : 56 years, Occ : Advocate
2. Mrs. Naina Naiem Khan
Age : 50 years, Occ : Advocate

Both r/o. 645, Nana Peth, Begam Manzil,
Second Floor, Pune – 411 002 and at
Flat N0.204, Radiant Ultimate, 964,
New Nana Peth, Maha Parvez Road,
Pune- 411 002.

... Respondents
(Orig. Plaintiffs)

Mr. Prasad Dani, Senior Advocate with Mr. Vikram Walawalkar,
Mr. Kuldeep Khamare, Mr. Amey Sawant, Mr. Virendrasinh
Tapkir, Iqra Qureshi and Ms. Sayali Gamgal, *for Petitioner.*

Mr. Rajesh More *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 25 July 2024.

Pronounced On : 31 July 2024.

JUDGMENT :

1) Petitioner-Defendant has filed this petition challenging the Decree dated 14 March 2022 passed by the District Judge, Pune dismissing Civil Revision Application No. 17/2014 and confirming the Decree dated 30 October 2013 passed by the Small Causes Court, Pune in Civil Suit No. 276 of 2011. The Small Causes Court, while decreeing the suit filed by the Respondents-Plaintiffs, has directed Petitioner-Defendant to vacate the suit premises and to pay arrears of rent of Rs. 3,600/- to Plaintiffs. Separate enquiry is directed to be conducted in *mesne profits* from the date of filing of the suit till recovery of possession under Order 20 Rule 12 of the Code of Civil Procedure, 1908 (**the Code**).

2) Briefly stated, facts of the case are that two residential blocks situated on north-east corner on the ground floor of the House Property No. 1992, Convent Street, Pune are the '**suit premises**'. House property No. 1992 was originally owned by Ms. Perin Behram Gastava. The erstwhile landlord, Ms. Perin Gastava had inducted Defendant's father late Joginder Singh Sethi as

tenant in respect of the suit premises. After death of late Joginder Singh Sethi, tenancy rights in respect of the suit premises are claimed by the Defendant, who has been residing in the suit property. By Agreement for Sale dated 18 December 2007, Plaintiff agreed to purchase house bearing No. 1992. Thereafter, registered Sale Deed dated 31 January 2008 was executed and this is how Plaintiffs became owner of property bearing House No. 1992 and also became landlord in respect of the suit premises. According to Plaintiffs, Defendant stopped paying rent in respect of the suit premises to the erstwhile landlady, Smt. Perin Gastava from the year 1995. After purchase of the suit property, Plaintiff served notice dated 14 March 2008 on the Defendants demanding rent from January 1995. Defendant gave reply dated 4 June 2008 denying liability to pay rent. It appears that money order was sent by Defendant to Plaintiffs in respect of the rent for the period from 1 February 2008 to 31 March 2009 and according to the Plaintiffs the rent prior to 1 February 2008 as well as rent after 31 March 2009 was not paid by the Defendant. This is how Defendant was in arrears of rent of Rs.2,400/- from 1 April 2009 till the date of filing of the suit besides the liability to pay permitted increases etc. Plaintiffs accordingly instituted Civil Suit No. 276 of 2011 in the Court of Small Causes at Pune seeking recovery of possession of the suit premises from the Defendant on the grounds of default, *bonafide*

requirement. Recovery of arrears of rent of Rs.20,400/- from January 1995 to 31 January 2008 and from 1 April 2009 till filing of the suit was also sought.

3) Defendant appeared in the suit and filed Written Statement claiming that he was a tenant in respect of the entire ground floor consisting of four rooms or four blocks in House No. 1992. It was contended that initially two adjoining blocks were let out to Mr. Pushpa H. Merwani and Mr. J.N. Parek, who surrendered their tenancies in favour of the original owner, Ms. Perin Gastava, who let out the said two blocks to Defendant's father and this is how Defendant's father started paying rent to Ms. Perin Gastava in respect of the four blocks. Reliance was placed on rent receipt dated 11 June 1992. Defendant denied the allegation of non-payment of rent since 1995, as well any *bonafide* need on the part of the Plaintiffs.

4) The Plaint was amended and additional details about Plaintiffs' family members were added by way of para-8A to further buttress the ground of *bonafide* need. It was also pleaded in the amended para that Defendant had spacious residential flat at Wanowrie, Pune. Plaintiffs also added paras-5(a) and 5(b) in the plaint about obstruction caused by Defendant on 11 July 2011 from visiting the house property owned by them. The

ground of making permanent alterations in the suit premises was also added stating that as per the sanctioned plan, there were six rooms in the suit property wherein the Defendant removed internal walls and committed breach of terms of tenancy.

5) Defendant filed additional Written Statement denying the allegation of causing obstruction to Plaintiffs from visiting the house property as well as the allegation of carrying out any alterations in the suit premises. Defendant also denied the details relating to family members of Plaintiffs as well as the premises in their possession. Defendant also denied that he owned a spacious flat at Wanowrie, Pune. Defendant reiterated the claim that two additional rooms were earlier let out to earlier tenant and that the original landlord handed over possession of those two additional rooms to Defendant's father. Defendant claimed that the entire constructed portion is in possession of the Defendant as a tenant.

6) Both the sides led evidence in support of their respective claims. After considering the pleadings, oral as well as documentary evidence, the Small Causes Court proceeded to decree the suit vide judgment and order dated 30 October 2013. The Court accepted the grounds of delay, nuisance and annoyance, physical obstruction to Plaintiff No.2 from entering

into the house property and reasonable and *bonafide* requirement of Plaintiffs. The ground of making permanent alterations without landlord's consent and causing damage to the suit property was however rejected. The Small Causes Court also passed decree for amount of Rs.3,600/- towards arrears of rent for only three years while rejecting the claim for recovery of arrears of rent in respect of the last period on the ground of limitation.

7) Aggrieved by the decree dated 30 October 2013, Defendant filed Regular Civil Appeal No. 17 of 2014 before the District Judge, Pune. In the Appeal, Defendant also filed application for production of additional evidence under Order 41 Rule 27 of the Code which included various money order receipts from 1987 to 1995, unclaimed envelopes of 4 December 1995 and 3 March 1998, written money order receipts dated 22 February 2008, police complaint dated 30 August 2011, public notice dated 2 August 2007 and three documents to prove ownership of flat by Plaintiff at Radiant Ultimate Co-op. Hsg. Soc. Ltd. (**Radiant Ultimate Flat**).

8) The Appellate Court, however, proceeded to dismiss the Appeal by decree dated 14 March 2022, which is the subject matter of challenge in the present petition.

9) Mr. Dani, the learned senior advocate would appear on behalf of Petitioner/Defendant and submit that the ground of *bonafide* need has erroneously been accepted by the Trial and the Appellate Court. That both the Courts below have failed to appreciate that the Plaint contains specific averments that the suit premises are required by Plaintiffs for the purpose of demolition of old structure and for reconstructing the same. That therefore the suit ought to have been filed under the provisions of clause (i) of sub-section (1) of Section 16. Relying on sub-section (6) of Section 16 of the Maharashtra Rent Control Act, 1999 (**MRC Act**), Mr. Dani would contend that once possession of the suit premises is sought under Section 16(1)(i), it becomes incumbent for the landlord to prove (a) availability of necessary funds for erection of new building (b) sanctioned plans, (c) construction of tenements not less than the number of existing tenements sought to be demolished and (d) undertaking for provision of same carpet area to the tenant in the reconstructed structure. On account of specific averment in the plaint that the suit premises were required for demolition of the old structure and for erection of new structure thereat, the Trial and the Appellate Court have erred in erroneously treating the suit under Section 16(1)(g) of the MRC Act. Mr. Dani would also seek to highlight the marked distinction between the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

(Bombay Rent Act) which covered even land within the definition of the term ‘premises’ as contradistinct from definition of the term ‘premises’ under the MRC Act which does not include land. That under Section 13(1)(i) of the Bombay Rent Act, the clause applied only in respect of the land, whereas under Section 16(1) (i) of the MRC Act, the provision applies even to constructed premises. He would therefore submit that the suit for eviction could not have been entertained and decreed in absence of fulfillment of conditions of Section 16(6) of the MRC Act.

10) Mr. Dani would further submit that in any case, Plaintiffs could not prove *bonafide* requirement for seeking possession of the suit premises. That it is borne out in evidence that Plaintiffs owned as many as three premises being (i) House Property bearing No. 645, Nana Peth (ii) House Property bearing No. 964, Nana Peth and (iii) office at Bhavani Peth. Additionally, Plaintiffs admitted ownership of Radiant Ultimate Flat, which according to Mr. Dani is the fourth premises in possession of the Plaintiffs. That in addition to the said admission given by the Plaintiffs’ witness, Defendant produced additional evidence before the Appellate Court by filing application under Order 41 Rule 27 of the Code alongwith which, three documents were produced in the form of application filed by Radiant Ultimate Co-op. Hsg. Soc. Ltd before the Deputy Registrar Co-operative Societies

describing Naeem Khan (Plaintiff No.1) as its Chairman, as well as notice of the Advocate addressed to Plaintiff No.1 in his capacity as Chairman of the said Society. That though the Appellate Court had directed that the application under Order 41 rule 27 would be considered at the time of final decision of the Appeal, the decree of the Appellate Court does not make any reference to the said three vital documents as well as to the fact that the Plaintiffs also owned fourth premise Radiant Ultimate Flat. That Plaintiffs are under obligation to disclose all the properties owned and possessed by them as repeatedly held in catena of decisions and suppression on the part of the Plaintiffs in respect of the fourth property of Radiant Ultimate Flat was clearly fatal to Plaintiffs' case. That in any case, even in respect of the three properties disclosed by the Plaintiffs, there is no finding by both the Courts below that the said accommodation was not suitable to Plaintiffs' family. That except the Ration Card procured after amendment of the suit, no other documentary evidence was produced to prove presence of seven family members in the said three properties. That in any case, since Plaintiffs already owned and possessed office at Bhavani Peth, the pleaded ground of suit premises being needed for operation of Plaintiffs' office was clearly baseless and ought to have been rejected. So far as flat at Wanowrie is concerned, Mr. Dani would contend that Plaintiffs took disadvantage of similarity in

the name of ‘*Joginder Singh Sethi*’ which is common name in Punjabi community. Inviting my attention to the difference in the address of Mr. Joginder Singh Sethi in the Agreement dated 30 June 1994 (*1992, St. Vincent Street, Pune-400 001*) and on possession receipt dated 27 November 2000 (*1984 Convent Street, Stanley House, Flat 317, Pune-411 001*), Mr. Dani would submit that the two documents appear to be in respect of two different persons. That Defendant has denied that the person described in the said agreement and possession receipt is his father. In any case, the said documents are not proved as only photocopies were filed on record, but the Courts below have erred in relying upon the same.

11) So far as the ground of default is concerned, Mr. Dani would submit that the house property is claimed to have been purchased by Plaintiffs vide registered Sale-Deed dated 30 January 2008 and therefore Plaintiffs do not have any right to seek recovery of rent allegedly due to the erstwhile landlady, Ms. Perin Gastave. At the highest, the said amount would become the due to Ms. Perin Gastave or even if it is assumed that Plaintiffs are entitled to recover the said debt, non-payment of the same does not become a ground for Defendant’s eviction. He would submit that the notice claiming arrears of rent was served on Defendant on 14 March 2008, which was acted upon by offering

to pay rent for the period from 1 February 2008 to 1 April 2009. That no notice was served in respect of the rent due after 1 April 2009 and since no notice was served under Section 15(2) of the MRC Act, the suit for eviction was clearly not maintainable. That Defendant was not under obligation to deposit arrears of rent under Section 15(3) before the Court in absence of service of notice under Section 15(2) of the MRC Act. He would therefore submit that both the Courts below have erred in accepting the ground of default.

12) So far as the ground of nuisance and annoyance is concerned, Mr. Dani would submit that the entire ground floor of House Property No. 1992 has been let out to the Defendant and no portion of the said house property therefore remains in Plaintiffs' possession. That therefore Plaintiff No.2 could not have entered House Property bearing No. 1992 without prior notice and there was no question of Defendants creating any obstruction to entry of Plaintiffs. He would therefore submit that the ground of nuisance and annoyance is also erroneously accepted by the Trial and the Appellate Court. He would therefore pray for setting aside the decrees of both the Courts below.

13) Mr. Rajesh More, the learned counsel appearing for Respondents would submit that the concurrent findings on issues

of delay in payment of rent, *bonafide* requirement and nuisance and annoyance have been recorded by the Trial and the Appellate Court and in absence of any perversity in the said findings, no interference is warranted in exercise of writ jurisdiction by this Court. So far as the ground of *bonafide* need is concerned, Mr. More would submit that the House Property at 645, Nana Peth consists of only one room, which is occupied by first Plaintiff's mother, divorced sister and her children. The second House Property at 964, Nana Peth consists of only one Hall, Kitchen and Bedroom, in which Plaintiffs reside alongwith their son which was insufficient as Plaintiffs' son at the relevant time was in 10th Standard and needed separate room for his studies. The third property at Bhavani Peth is a small room where both Plaintiffs, being practicing Advocates, operate their office. Contrary to this position, the Defendant had encroached upon four rooms in House Property No. 1992. Additionally his father received a spacious flat being Flat No.11, 2nd Floor, Ravi Park Society, Survey No. 77, Jagtap Chowk, Wanowrie, Pune which is considered as one of the best locations in Pune. Thus, cause of greater hardship to Plaintiffs was clearly proved. He would submit that the Petitioner/Defendant is misleading this Court by referring to Radiant Ultimate Flat to be the fourth premise in Plaintiffs' possession. That Radiant Ultimate Flat is located at 964, Nana Peth being 1 BHK Flat where Plaintiffs

reside alongwith their son and which was disclosed in para-8A of the plaint. He would take me through the findings recorded by the Trial Court on the issue of *bonafide* need. So far as the ground of nuisance and annoyance is concerned, he would take me through the evidence of Defendant, wherein he has clearly given admission about specification of the entire House Property No. 1992. He would submit that only two rooms have been let out to the Defendant and would rely upon rent receipts reflecting only 'two blocks'. That encroachment upon the entire House Property No.1992 is thus clearly proved. He would submit that the suit is not filed exclusively for demolition of the old structure and the suit is filed to seek recovery of possession of suit premises for *bonafide* need of the Plaintiffs. That it is therefore erroneous to presume that the suit ought to have been filed under Section 16(1)(i) of the MRC Act. Mr. More would pray for dismissal of the petition.

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

15) Petitioner has suffered decree of eviction on the grounds of *bonafide* requirement, arrears of rent, and nuisance and annoyance.

16) So far as the ground of *bonafide* requirement is concerned, the first point that is sought to be raised on Petitioner's behalf is about consideration of the ground by the Trial and the Appellate Court under Section 16(1)(g) of the MRC Act. It is sought to be contended that possession of the suit premises was sought for the purpose of demolition of the existing structure and for reconstruction thereof. Pleadings in para-8 of the Complaint are sought to be highlighted in this regard:

8. The Plaintiffs submit that the Suit premises in tenancy-occupancy of the Defendant are badly needed to the Plaintiffs for the purpose of causing the residential accommodation to the members of the family of the Plaintiffs, dependent upon the Plaintiffs, and it is submitted that the present accommodation of the Plaintiffs at 645, Nana Peth, is not sufficient and suitable and further, the same is held by the Plaintiffs in tenancy-occupancy. The Plaintiffs intend to have the exclusive and peaceful enjoyment of their own property and as such, the Plaintiffs intend to cause the construction on the property, suitable to their needs and to have total new construction by demolishing the presently existing old manglorian roof structure and for the said purpose the construction on the total property is being envisaged by the Plaintiffs to meet their needs for the purpose of bonafide requirement of residence as well for the office needs as Advocates. In the circumstances, the requirement of the Plaintiffs is reasonable and bonafide and the Defendant is not entitled to retain the premises, so as to deny the Plaintiffs the claim. It is submitted that the attitude of the Defendant is very serious and non-cooperative, even of not disclosing any other persons related to late Jogindersingh and the said attitude could be revealed from the reply given by the Defendant through his Advocate. In the circumstances, it is herewith submitted that the Defendant is also having other premises else where of which the Defendant is keeping himself

silent and not revealing any knowledge to the Plaintiffs. It is herewith submitted that if the Plaintiffs are not availed the Decree for eviction of the Defendant, the Plaintiffs would be put to irreparable loss and hardship. It is further submitted that to harass the Plaintiffs, the Defendant is threatening, of inducing some other persons in the Suit premises and thereby threatening to create malafide evidence against the interest of the Plaintiffs. The Plaintiffs, therefore, are required to vindicate against the Defendant by the present Suit.

17) Careful reading of the above pleadings in para-8 of the Plaint would indicate that Plaintiffs did not seek recovery of possession of the suit premises purely for the purpose of demolition of the existing structure and for erection of new structure as per Section 16(1)(i) of the MRC Act. On the contrary, Plaintiffs came with a specific case that they required suit premises as accommodation in Plaintiffs' possession was not sufficient and suitable. Plaintiffs further pleaded that they required the premises for residence, as well as for their office need as Advocates. Though reference is made in the pleadings about intention of the Plaintiffs to cause construction on the property by demolition to the then existing *Mangalore* roof structure and for construction on the total property, it cannot be stated that the recovery of the suit premises was sought purely with the intention of demolition of the structure and replacement of the same by a new structure. In this regard, Clauses-(g) and (i) of Section 16(1) are reproduced below:

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

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

18) Thus, under Clause-(i) of Section 16(1) of MRC Act, recovery of possession can be sought by the landlord when the same are required for the immediate purpose of demolishing them for erecting new building. Thus, in a given case where the structure has become dilapidated and the tenant does not co-operate with the landlord for demolition of the existing structure, Section 16(1)(i) can be invoked, and the Court can direct tenant's temporary eviction under Section 16(1)(i). In such circumstances, though the tenant is temporarily evicted, he is required to be granted same carpet area in the newly constructed structure under Section 16(6). Clause (6) of Section 16 reads thus:

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

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

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

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

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

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

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

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

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

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

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded extend the period by such further periods, not

exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

19) Thus what is effected under Section 16(1)(i) is merely temporary eviction of the tenant till the building is reconstructed and the landlord is under obligation to offer same carpet area to the tenant in the reconstructed building. The ground under Section 16(1)(i) does not involve the issue of need or requirement of landlord for additional space or the issue of comparative hardship. On the contrary, Section 16(1)(g) is to be invoked when the landlord seeks recovery of possession of the suit premises and wants to use the same for himself. In my view, pleadings at para-8 would clearly indicate that the Plaintiffs desired to evict Defendant from the suit premises and to occupy the same for their own use. Therefore, the pleadings made by Plaintiffs about their intention to demolish and reconstruct the structure is required to be understood in the context of Plaintiffs' *bonafide* need to occupy the structure for themselves. If any doubt remained about this position, the same got clarified by incorporation of para-8A of the plaint, which reads thus:

8A. "The family of the Plaintiffs consists of themselves as husband and wife respectively, their son, mother of the Plaintiff No.1, sister of Plaintiff No.1 Smt. Faryal Khan who is a divorcee and has been residing with the Plaintiffs as a family member of the Plaintiffs alongwith her 3 children by name (1) Rumana (2) Aman (3) Atik. The children of the sister of

Plaintiff No.1 are of (1)16 years (2)10 years (3)5 years of age and they are taking education at present. They are residing at 645 Nana Peth, Pune 411002. The said premises is in possession of the Plaintiff No.1's mother and the Plaintiff No.1 is the tenant of the said premises. The said premises consists of 1 room, and its dimensions are 10 feet x 12 feet and part of the said room is used as kitchen and we, and the remaining room is used as living room. The toilet is common and is out of the said room. The mother of Plaintiff No.1 being an old senior citizen, finds difficult to every now and then attend for natures call. The sister of Plaintiff No.1 and her children are required to be accommodated in the said premises. The children are school going. Mother of Plaintiff No.1 is an old lady and the room is indeed insufficient for the use and enjoyment of their family members. Therefore, the Plaintiffs and their family members require suit premises bonafide and reasonable for their own use and occupation. Plaintiffs are also having another premises at 964, Nana Peth, Pune, where they are residing alongwith their son and the same is also insufficient as the same is 1 hall kitchen and bedroom. The Plaintiffs as such have no privacy as the son of the Plaintiff is studying in Std X and needs a separate room for his study activities considering the competition in the field of education today. The Plaintiffs are also having another premises at Bhawani Peth, Pune 411002. The said premises is purchased by the Plaintiffs for their office as both the Plaintiffs are Advocates. As such the said premises is of no use for the residence of the Plaintiffs and their family members. On the other hand the Defendant has a spacious residential Flat No.11, Second Floor, Ravi Park, S.No. 77, Jagtap Chowk, Wanowrie, Pune, which is considered to be one of the best location in Pune. Thus, the premises available with the Defendant are more than sufficient to accommodate the Defendant and his family members. Therefore, if the decree for possession is passed against the Defendant no loss or hardship will be caused to the Defendant. On the contrary greater loss and hardship will be caused to the Plaintiffs if the decree is refused. On this count also the Plaintiffs are entitled to claim possession of the suit premises from the Defendant".

20) I am therefore unable to agree with the contention of Mr. Dani that Section 16(1)(g) has been erroneously invoked in the present case.

21) Coming to the factual aspect of *bonafide* need of the Plaintiffs, it is seen that the Petitioner/Defendant has adopted two dishonest stands in this regard. Firstly, misleading statement is made that in addition to the three premises at 645-Nana Peth, 964-Nana Peth and Office at Bhavani Peth, Plaintiffs have fourth structure in the form of Radiant Ultimate Flat. For proving this misleading statement, Petitioner-Defendant went to the extent of filing application under Order 41 Rule 27 to place before the Appellate Bench, three documents in the form of (i) application filed by Radiant Ultima CHSL before the Deputy Registrar of Co-operative Societies describing the First Plaintiff, Mr. Naeem Khan as its Chairman, (ii) application filed by Mrs. Ziba Nayabzadeh before the Deputy Registrar Co-operative Societies against Radiant Ultimate CHSL describing the First Plaintiff as its Chairman and (iii) notice dated 23 November 2010 issued by the Advocate to the First Plaintiff in his capacity as Chairman of Radiant Ultimate CHSL. On the basis of the above three documents, it is sought to be contended that, in addition to the three premises disclosed in para-8A of the plaint, Plaintiffs also possessed a flat in Radiant

Ultimate CHSL. However, the building in Radiant Ultimate CHSL is situated at 964-Nana Peth and this is the same premises which is described by the Plaintiffs in para-8A of the plaint. Petitioners thus adopted a false defence by attempting to mislead the Appellate Court by production of additional documents to show that Plaintiffs possessed four premises in the form of Flat in Radiant Ultimate CHSL. The Petitioners did not stop at misleading the Appellate Court but went to the extent of canvassing submissions before this Court in support of the said contention about fourth premises being available to the Plaintiffs in Radiant Ultimate Society. Infact before me, it was sought to be contended that the Appellate Court completely ignored the aforesaid three documents which were sought to be produced as additional evidence under Order 41 Rule 27 of the Code. I find this stand taken by the Petitioner to be totally dishonest. Petitioner has thus attempted to mislead not only the Appellate Court but also this Court.

22) Another dishonest stand sought to be adopted by the Petitioner is with regard to the availability of flat for himself at building Ravi Park, Wanowrie, Pune. When agreement executed in the name of Joginder Singh Sethi by the developer for allotment of flat in the said building Ravi Park was produced by Plaintiffs alongwith the possession receipts, Defendant sought to

disown the said documents by not admitting that the person ‘Joginder Singh Sethi’ named in the said document is his father. In the cross-examination, Defendant went to the extent of disclaiming the name of the person recorded in the said documents to be his father. He initially sought to completely deny his association with the said Flat No.11 in the building Ravi Park. However, towards the end of the cross-examination, he admitted that the property tax bills issued by the Corporation in respect of Flat No.11 stood in the name of his father. Relevant cross-examination of the Defendant in this regard reads thus:

I have not seen the documents produced by the office bearer of Ravi Society Wanowori. I have not denied in my additional written statement that flat no.11, second floor in Ravi Society, Wanowori is owned and possessed by me. I am not aware that name of my father is recorded owner of flat no.11, Ravi Society, Wanowori in the assessment list register of the Corporation. I am not aware amount the agreement dated 30.6.1994 in which a flat was given to my father in Ravi Park Society. I am not aware anything about flat no.11 in B-building Ravi Park Society. I am not aware as to who is residing in that flat at present. I am not aware that the plot was owned by my father and he entered into with Builder Khinwasara Chavan Associates. It is not true to say that at present I am in possession of flat no.11 and since record is in court, I am showing ignorance. It is not true to say that said flat is admeasuring 1600 sq. ft. and sufficient premises is for my residence. **Now property tax bill issued by Corporation shown to me, it pertain to flat no. 11 stands in the name of my father.** After filing the tax bill in court, I have not inquired with the Corporation as to how the flat stands in the name of my father.

(emphasis& underlining supplied)

23) Thus, the defence adopted by Defendant in respect of Flat No.11 in Ravi Park building is also proved to be dishonest.

24) After considering the entire evidence on record, I am of the view that Plaintiffs clearly proved the case of *bonafide* requirement. Plaintiffs are found to be in possession of the three premises as under:

- (i) 645, Nana Peth comprising of just one room admeasuring 10 x 12 ft in which First Petitioner's mother and his sister alongwith her three children were staying.
- (ii) 1 BHK flat at 964-Nana Peth in which Plaintiffs and their son were staying, and
- (iii) Office at Bhavani Peth, in which Plaintiffs practiced as Advocates.

25) Thus cause of greater hardship to Plaintiffs as compared to Defendants is clearly proved. I therefore do not find any reason to interfere in the concurrent findings of the Trial and the Appellate Court on the issue of *bonafide* requirement.

26) So far as the ground of nuisance and annoyance is concerned, the same is referable to Defendant's act in preventing the two Plaintiffs from entering the House Property No. 1992 on 11 July 2011. Plaintiff No.2 was physically obstructed by the Defendant and his family members from entering the house property. Here again the Defendant adopts false and dishonest stand that the entire House Property No. 1992 was let out to him. There is no dispute to the position that initially only two rooms or two blocks were let out to Defendant by the erstwhile landlord, Ms. Perin Gastave. However, Defendant claimed that after tenants, Pushpa H. Merwani and J.N. Parikh surrendered their tenancies in respect of the other two blocks, his father was inducted by the then landlord into the said two blocks in the year 1992. Rent receipt dated 11 June 1992 was sought to be relied upon in this regard. Perusal of the various rent receipts produced by the Petitioners would indicate that the words '*two blocks*' are clearly written thereon. Rent receipts only till 7 January 1989 are placed on record in support of the contention that two more blocks were let out to Defendant, no evidence in placed on record by the Petitioners. On the contrary, the Sale-Deed dated 30 January 2008 executed between Ms. Perin Gastave and Plaintiffs clearly contain a covenant as under:

3. For peaceful possession and quiet enjoyment :

That it shall be lawful for the Purchasers from time to time and at all times hereafter peaceably and quietly to hold the premises **leaving two blocks occupied by the heirs of late tenant Mr. Jogindersingh Sethi** and to use occupy, possess and enjoy the said premises hereby granted, conveyed, transferred and assured with their appurtenances and receive the rents issues and profits thereof and of every part thereof to and for their own use and benefit without any suit or lawful eviction, interruption, claim and demand whatsoever from or by the Vendor or her successors and assigns or any of them from or by any person lawfully or equitably claiming or to claim by from under or in trust for her. As regards possession, the said property is being sold on “as is where is” basis.

(emphasis added)

27) Thus, there is nothing on record to indicate that Defendant was inducted as a tenant in addition to any structure than two rooms let out to him. The Defendant however adopted a false stand that he was a tenant in respect of the four blocks and thereafter showed the audacity to obstruct Plaintiffs’ entry into the structure in which the suit premises are located.

28) In *M/s. Impex (India) Ltd. Versus. Mr. Dinashah Jal Daruwala and others*¹, this Court has taken a view that any act of tenant which seeks to interfere with landlord’s right to use his property amounts to nuisance and annoyance. This Court has held as under :

¹ Writ Petition No. 2748 of 2004 decided on 4 April 2024.

93. Thus, from various judgments cited on the issue of nuisance and annoyance, it can be inferred that every act of tenant which interferes with landlord's right to use or occupy his property would amount to actionable nuisance. In Gulam Husain Mirza this Court has gone to the extent of holding that every act of a tenant which disturbs the reasonable peace of ordinary person and which leads to unpleasurable feeling would constitute nuisance or annoyance. No doubt in Awabai Muncharji Cama the Single Judge of this Court (S.K. Desai, J.) has struck a sort of discordant note qua the observations in Gulam Husain Mirza, but the learned Judge himself has clarified that his observations are obiter. It therefore cannot be contended that in Awabai Mansarji Cama, S.K. Desai, J. disagreed with the view taken by Masodkar, J. in Gulam Husain Mirza. Infact, A.M. Khanwilkar, J. has subsequently followed Gulam Husain Mirza's decision in D.V. Panse. I am therefore of the view that every act of tenant which seeks to interfere with landlord's peaceful use and occupation of his property would constitute nuisance and annoyance, especially when the landlords property adjoins that of tenanted premises. **A tenant cannot trespass upon landlord's property, obstruct him from using his own property and then contend that the same does not constitute nuisance or annoyance. A tenant has no business to interfere with landlord's use and enjoyment of his own property and if he does so, his act would be covered in the mischief of nuisance and annoyance.**

(emphasis added)

29) In my view, therefore Defendant's act of preventing landlord from entering the structure in which the suit premises are located, clearly amounts to nuisance and annoyance.

30) So far as the ground of default in payment of rent is concerned, there is no dispute to the position that except dispatching one money order in respect of rent from 1 February

2008 to 31 March 2009, Defendant has not paid rent after 1 April 2009. After receipt of suit summons, the arrears of rent are not deposited alongwith the costs and interests within 15 days of receipt of suit summons as required under Section 15(3) of the MRC Act. In my view, therefore the ground of default in payment of rent is also clearly established.

31) Considering the overall conspectus of the case, I do not find any ground to interfere in the concurrent findings recorded by the Trial and the Appellate Court. In fact, Petitioners-Defendants has apparently adopted false and dishonest stands in the entire course of litigation. Therefore, dismissal of the present petition would not be without any consequences.

32) The Writ Petition is accordingly dismissed by imposing costs of Rs.25,000/- on Petitioner-Defendant. The amount of costs shall be paid by the Petitioner to Respondents-Plaintiffs within a period of four weeks from today. Since the Writ Petition is dismissed by upholding the decree for eviction, the Respondents shall be entitled to withdraw the amounts deposited in this Court, as well as in the Appellate Court alongwith accrued interest.

[SANDEEP V. MARNE, J.]

33) After the judgment is pronounced, the learned counsel appearing for the Petitioner seeks extension of interim order granted by this Court. The request is opposed by the learned counsel appearing for Respondents. Considering the findings recorded in the judgment, which has resulted in imposition of costs on the Petitioner, I am not inclined to extend the interim order. The request is accordingly rejected.

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[SANDEEP V. MARNE, J.]