

UPKN010059142026



**IN THE COURT OF
DISTRICT JUDGE, KANPUR NAGAR**

Present:- Anmol Pal,.....H.J.S.

Misc. Civil (Rent) Appeal No. 136 of 2026

Rajesh aged about 60 years adult son of Late Govind Ram resident of House No.-108/143 Sisamau Bazar, Kanpur Nagar.

.....Appellant

Versus

1. Manoj Kumar Bajpai (deceased), adult son of Late Kalika Prashad Bajpai resident of House No.-109/102A, Neharunagar, Police Station Najirabad, Kanpur Nagar.
- 1/1. Smt. Padma Bajpai aged about 76 years adult wife of Late Manoj Kumar Bajpai resident of House No.-109/102A, Neharunagar, Police Station Najirabad, Kanpur Nagar.
- 1/2. Manish Bajpai aged about 54 years adult son of Late Manoj Kumar Bajpai resident House No.-109/102A, Neharunagar, Police Station Najirabad, Kanpur Nagar.
- 1/3. Sameer Bajpai aged about 51 years adult son of Late Manoj Kumar Bajpai resident of House No.-109/102A, Neharunagar, Police Station Najirabad, Kanpur Nagar.

.....Respondents

J U D G M E N T

1. The present Misc. Civil (Rent) Appeal has been preferred against the judgment and order dated 16.01.2026 passed by the learned Prescribed Authority/Civil Judge (Junior Division), Kanpur Nagar in Rent Civil Case No. 1526 of 2022 (Old Rent Case No. 178 of 2019), Manoj Kumar Bajpai (deceased) thereafter Smt. Padma

Bajpai and others vs. Rajesh. By the impugned judgment and order, the learned Prescribed Authority allowed the release application filed under Section 21(1)(a) of the U.P. Act No. 13 of 1972 and directed the appellant/tenant to vacate and hand over peaceful possession of the disputed shop bearing part of House No. 109/102-A, Nehru Nagar, Police Station Nazirabad, Kanpur Nagar, to the respondents/landlords within two months from the date of the order. The learned Prescribed Authority further directed the respondents/landlords to pay compensation to the appellant/tenant equivalent to twenty-four months' rent at the rate of Rs. 70.80/- per month, amounting to Rs. 1,699.20/-, in terms of the second proviso to Section 21(1) of the U.P. Act No. 13 of 1972.

2. The appellant has challenged the impugned judgment/order mainly on the grounds that the learned trial Court has failed to properly appreciate the facts pleaded by the appellant. The appellant is a tenant of the shop situated on the disputed premises and has been regularly depositing rent under Section 30(1) of the U.P. Rent Control Act before the Court of Civil Judge (Junior Division), Kanpur Nagar. The learned trial Court, in paragraph 5 of the impugned judgment, has observed that respondent Sameer Bajpai requires the appellant's shop for his personal need. However, the appellant specifically pleaded in the written statement that there are three shops situated on the ground floor of House No. 109/102A, Nehru Nagar, Kanpur Nagar, out of which two shops had already fallen vacant pursuant to orders passed by the Court. If the respondents genuinely require a shop, their need can conveniently be satisfied by utilizing the said vacant shops. The learned trial Court, in paragraph 8 of the impugned judgment, has observed that the wife of Manish Bajpai, namely Smt. Sunita Bajpai, requires a shop for running a boutique. However, two shops had already become vacant, which could conveniently be utilized by Smt. Sunita Bajpai for the said purpose. Apart from the

shop in occupation of the appellant, the respondents already have two vacant shops through which their alleged requirement can be adequately fulfilled. On the other hand, the appellant has no other source of livelihood. Therefore, the comparative hardship lies overwhelmingly in favour of the appellant. If so advised, the respondents can also raise construction on the upper floor of the building to satisfy their alleged requirement. The plea taken by the respondents for eviction of the appellant from the shop is *mala fide*, whereas the appellant has no alternative shop available anywhere in the city. The appellant's father was earlier carrying on business from the disputed shop, and after his demise the appellant has been continuing the same business. Thus, the *bona fide* requirement and comparative hardship are heavily in favour of the appellant, which aspect has not been properly considered by the learned court below. Respondent Sameer Bajpai is already operating his office from one of the shops. This material fact has been deliberately concealed by the respondents and was never disclosed before the learned Civil Judge (Junior Division), Kanpur Nagar. The learned court below has failed to properly consider the facts specifically pleaded by the appellant in the written statement, despite the learned counsel for the appellant repeatedly bringing the same to the notice of the Court. Despite the appellant having specifically informed the learned court below in writing, the court committed an error in not directing that all the legal heirs of the deceased Govind Ram be impleaded as parties to the proceedings. Even after the said fact was brought to its notice, the learned court below failed to consider the same, rendering the impugned proceedings unsustainable. The learned court below has undertaken a one-sided analysis of the relationship of landlord and tenant, the issue of *bona fide* requirement, and the question of comparative hardship. The learned court below failed to assign due importance to the appellant's hardship and did not properly

evaluate the comparative hardship between the parties. The appellant possesses only the disputed shop for earning his livelihood, whereas the respondents already have two shops which had earlier been got vacated through Court proceedings, as has itself been recorded in the impugned judgment.

3. The respondents also filed objections (Paper No.27-C) to the memorandum of appeal, wherein it was specifically contended that the appellant had failed to comply with Rule 10(3) of the Rules framed under the U.P. Act No. 13 of 1972 by making any *bona fide* effort to secure alternative accommodation after the institution of the release application. It was further submitted that the issue relating to impleadment of legal heirs had already been decided by the learned trial Court by order dated 04.09.2025, which had attained finality as the same was never challenged. The respondents also contended that the appellant had adopted dilatory tactics during the trial by filing his written statement belatedly and prolonging the proceedings, thereby depriving the landlords of the use of their property despite their *bona fide* requirement. Accordingly, it was prayed that the appeal be dismissed.
4. Learned counsel for the appellant submitted that two shops belonging to the respondents are already lying vacant; therefore, the need pleaded by the respondents is superficial and artificial. The appellant is carrying on an established business in the shop in question and has no other source of livelihood; therefore, the comparative hardship lies overwhelmingly in favour of the appellant.
5. The main contention raised in the memo of appeal as well as in the submissions made by learned counsel for the appellant is that there are three shops situated on the ground floor of House No. 109/102A, Nehru Nagar, Kanpur Nagar, out of which two shops had already fallen vacant pursuant to the orders passed by the Courts. It is submitted that, if the respondents genuinely require a

shop, their need can conveniently be satisfied by utilizing the said vacant shops. The appellant has no other source of livelihood; therefore, the comparative hardship lies overwhelmingly in his favour. It is further submitted that, if so required, the respondents may raise construction on the upper floor of the building to satisfy their alleged requirement. The appellant has no alternative shop available to him elsewhere in the city.

6. The submission on behalf of the respondents, however, is that it is the prerogative of the landlord to decide the manner in which he intends to use his property. It is further submitted that the appellant has failed to secure alternative accommodation. The order passed by the learned Trial Court is well-reasoned and well-discussed and is in accordance with the established principles of law.
7. Learned counsel for the respondents, by filing written submissions, contended that the present appeal is wholly misconceived and liable to be dismissed. It was submitted that the appellant has failed to point out any legal infirmity or perversity in the impugned judgment dated 16.01.2026. The plea of regular deposit of rent under Section 30(1) of the U.P. Act No. 13 of 1972 does not negate the *bona fide* requirement of the landlords. It was further submitted that the suggestions made by the appellant regarding utilization of other shops are contrary to the settled principles of law, as it is the prerogative of the landlord to decide the manner in which he intends to use his property. It was also argued that the learned Prescribed Authority has duly considered the pleadings, documentary evidence, *bona fide* requirement, comparative hardship, and the relevant statutory provisions and judicial precedents while passing the impugned judgment. The respondents further contended that the appellant failed to make any effort to secure alternative accommodation, that all the grounds raised in the appeal had already been considered and decided by the learned court below, and that no statutory or legal error has been

committed warranting interference by this Court. Accordingly, it was prayed that the appeal be dismissed and the judgment and order dated 16.01.2026 be affirmed.

8. I have heard learned counsels for the parties and have carefully perused the record, including the impugned judgment and the material available on record.

9. In ***Shiv Prasad Jaiswal and others vs. Ist Additional District Judge and others, 2006 (3) AWC 2154***, the Hon'ble Allahabad High Court has held in paragraph 9, 10, 11 & 12 as under:-

9. The Supreme Court in Siddalingama v. M. Shenoy, has held that Rent Control Acts are basically meant for the benefit of the tenants and provision of release on the ground of bona fide need is the only provision which treats the landlord with some sympathy.

10. The Supreme Court in Sarla Ahuja v. United Insurance Co. and S.N. Kapoor v. B.L. Khatri, has held that it is unnecessary to make an endeavour as to how else the landlord could have adjusted himself. It has also been held that in the matter of choice of accommodation some discretion and latitude has to be given to the landlord and tenant cannot dictate that landlord shall satisfy his need in the manner suggested by him. In the later authority it has also been held that Courts cannot impose their own wisdom in advising the landlord the manner in which he can satisfy his need without disturbing the possession of the tenant.

11. In Chandrika Prasad (Dead) through L.Rs. and Anr. v. Umesh Kumar Verma and Ors., it has been held that if release is sought of a shop situate on the main road for establishing Clinic of Doctor son-in-law, then it is immaterial that father of the said Doctor son-in-law has got some shop situate in a narrow lane. If two shops are available to the landlord, he has got the liberty to choose the better one.

12. In respect of comparative hardship appellate court held that tenant was having his own house in which he could shift his business. Landlords themselves had offered a shop belonging to their father and that several other persons were ready to let out their shops to the tenant, hence balance of comparative hardship lay in favour of the landlord. Apart from it tenant did not bring on record that what efforts he made to search alternative accommodation after filing of the release application. This by itself was sufficient to tilt the balance of comparative hardship against him. Vide B.C. Bhutada v. G.R. Mundada.

10. Learned lower Court recorded his finding that it is clear from the aforesaid judgment that where the tenant does not make reasonable efforts to seek an alternative accommodation/arrangement, the balance of hardship would tilt in favour of the landlord. It has also

been held by the Hon'ble Court that such effort should not be merely ostensible or cosmetic, but must be genuine and real. The Hon'ble Court has further held that it is a well-settled principle of law that equity and sympathy follow the law, and where, after the filing of the release application, the tenant has not made any genuine effort to find an alternative accommodation, the tenant would not be entitled to the benefit of sympathy in any manner. It has also been held by the Hon'ble Court that a question or issue should not be decided or determined merely on the basis of sympathy or sentiment. The Hon'ble Court has further held that, in all such cases where an order of release is passed and the tenant may be rendered without accommodation, such fact is wholly irrelevant for the purpose of considering the issue of comparative hardship. It is also noteworthy that, in the present case, the petitioners seek to carry on business from the shop in question with the object of augmenting their family income and enabling petitioner no. 1/2, Manish Bajpai, to bear the expenses of higher education of his daughter, Archita Bajpai, and petitioner no. 1/1, Padma Bajpai, to receive proper care and, if required, appropriate medical treatment. In such circumstances, if the shop in question is not released in favour of the petitioners and their family income is not augmented, the higher education of Archita Bajpai, daughter of petitioner no. 1/2, Manish Bajpai, would be adversely affected and there is a likelihood that her future may be seriously prejudiced. Further, in the absence of sufficient family income, proper care and, if required, appropriate medical treatment of petitioner no. 1/1, Padma Bajpai, may also not be possible. Conversely, if the shop in question is released in favour of the petitioners, the opposite party can relocate his business to some other place without facing any substantial hardship. It is true that the opposite party may have to face some financial difficulty in relocating his business; however, it is noteworthy that the petitioners are ready

and willing to pay to the opposite party, by way of compensation, an amount equivalent to two years' rent of the shop in question, which would assist the opposite party in relocating his business. Thus, from the aforesaid discussion, it is clear that if the shop in question is not released in favour of the petitioners, the petitioners would suffer greater hardship as compared to the opposite party. It is evident that the need of the petitioners and their family members is pressing and bona fide. If the shop in question is not released in favour of the petitioners, they and their family members would suffer greater hardship than the opposite party, as they would be deprived of the use of their own property for their bona fide need and that of their family members. Thus, the issue of comparative hardship also stands established in favour of the petitioners.

11. In the instant matter, although it has been mentioned in the affidavit filed in evidence that efforts were made by the tenant to make an alternative arrangement, no specific details have been furnished as to what efforts were actually made by the tenant in this regard. The Hon'ble High Court of Judicature at Allahabad, in the case of ***Govind Narain v. 7th Additional District Judge, Allahabad, 2008 (1) A.R.C. 526***, has held that the tenant has not made any effort for search of alternative accommodation and it is settled proposition of law that the equity follows law and so does sympathy. If the factors mentioned in Rule 16 are considered, taking into consideration the facts of this case, no doubt it is an old tenancy but there is nothing to show that any real efforts were made by the tenant to find another accommodation, since the date of moving of release application.
12. Hence, the efforts should be real and genuine. Nothing is on the record to show that any real and genuine efforts were made by the appellant to secure alternative accommodation after the institution of the release application.

13. Moreover, the release of the shop in question is sought on the ground of bona fide requirement. The submission of the appellant that, if the respondents genuinely require a shop, their need can conveniently be satisfied by utilizing the said vacant shops, cannot be accepted, as it is the prerogative of the landlord to choose the accommodation which he considers suitable for his bona fide requirement.
14. In *Sarla Ahuja v. United India Insurance Co. Ltd.* and *S.N. Kapoor v. B.L. Khatri*, the Hon'ble Supreme Court has held that it is unnecessary to make an endeavour as to how else the landlord could have adjusted himself. It has also been held that in the matter of choice of accommodation, some discretion and latitude has to be given to the landlord and the tenant cannot dictate that the landlord shall satisfy his need in the manner suggested by him. The Courts cannot impose their own wisdom in advising the landlord the manner in which he can satisfy his need without disturbing the possession of the tenant.
15. As per the submission made on behalf of the appellant, the respondents can also raise construction on the upper floor of the building to satisfy their alleged requirement. This submission also cannot be accepted, as the tenant cannot dictate to the landlord the manner in which he should utilize his property or satisfy his bona fide need. The landlord is entitled to choose the accommodation which is suitable for his requirement.
16. In *Chandrika Prasad (Dead) through L.Rs. and Anr. v. Umesh Kumar Verma and Ors.*, it has been held that if release is sought of a shop situated on the main road for establishing a clinic of the doctor son-in-law, then it is immaterial that the father of the said doctor son-in-law has got some shop situated in a narrow lane. It has further been held that if two shops are available to the landlord, he has the liberty to choose the better one. Thus, merely because

other shops are available, the bona fide requirement of the respondents cannot be discarded.

17. So far as the comparative hardship is concerned, the appellant has failed to establish that he made any genuine and reasonable effort to secure alternative accommodation after the institution of the release application. Mere assertion that the appellant has no other source of livelihood or that he has been carrying on business from the disputed shop for a long period is not sufficient to tilt the balance of comparative hardship in his favour. The learned Trial Court has rightly considered the relevant factors and has recorded a finding that the comparative hardship lies in favour of the respondents.
18. The contention regarding the alleged non-impleadment of all the legal heirs of deceased Govind Ram also does not warrant interference in the present appeal. The said issue had already been considered and decided by the learned Trial Court by order dated 04.09.2025, which was never challenged by the appellant and, therefore, attained finality. Hence, the said issue cannot be reopened at this stage.
19. From the overall consideration of the pleadings, evidence and findings recorded by the learned Trial Court, it is evident that the learned Trial Court has considered the bona fide requirement of the respondents as well as the comparative hardship of the parties and has recorded cogent reasons in support of its findings. The appellant has failed to point out any illegality, perversity or material irregularity in the impugned judgment and order dated 16.01.2026 warranting interference by this Court.
20. The order of the learned Trial Court is well-discussed and the points raised in the appeal have already been appropriately considered. The learned Trial Court recorded reasons and appropriately supported the findings with the case laws of the Hon'ble Courts. The order of the learned Trial Court does not

suffer from any infirmity. Hence, it deserves to be upheld. The present appeal is devoid of merit and is liable to be dismissed.

ORDER

21. Accordingly, the present Misc. Civil (Rent) Appeal is hereby dismissed. The judgment and order dated 16.01.2026 passed by the learned Prescribed Authority/Civil Judge (Junior Division), Kanpur Nagar in Rent Civil Case No. 1526 of 2022 (Old Rent Case No. 178 of 2019), Manoj Kumar Bajpai (deceased) thereafter Smt. Padma Bajpai and others vs. Rajesh, is hereby affirmed.
22. Let the record of the learned trial Court be returned forthwith along with a copy of this judgment.
23. File be consigned to the record room after due compliance.

Date:- 10.08.2026

(Anmol Pal)
ID-UP1880
District Judge,
Kanpur Nagar.

Judgment signed, dated and pronounced by me in open Court today.

Date:- 10.08.2026

(Anmol Pal)
ID-UP1880
District Judge,
Kanpur Nagar.