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<u>IN THE COURT OF 3rd JOINT CIVIL JUDGE, JUNIOR</u> <u>DIVISION, RAIGAD-ALIBAG.</u> (Presided over by Komal Pramod Gade)	
REGULAR CIVIL SUIT NO.35/2019 Exh. No.122 /A	
1)Sou. Niyati Narendra Mhatre, (for himself and as legal heir for plaintiff no.2) age – 54 Years, Occu. Agriculture 2)Shri. Narendra Balkrushn Mhatre age- 59, Occu. Service (Deceased through legal heirs plaintiff no.1 and 3) 3) Shri. Raj Narendra Mhatre, age – 24 Years, Occu. education, All are R/o Mu-22/71, Oshivra Sagar Apartment, New Link road, near infinity mall, Andheri (west) Mumbai-400 053	Plaintiffs
VERSUS	
Shri. Rupchand Amirchand Jain	

(Dead through legal heir) Shri. Nitin Rupchand Jain age- 42, Occu. Buisness R/O- Post Poynad, Tal-Alibag,Dist-raigad.	Defendant
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Appearance:

Shri. S. Y. Bartake, the learned advocate for the plaintiffs.

Shri. R.B. Kosamkar, the learned advocate for the defendant.

JUDGMENT

(Delivered on 12/02/2025)

The suit is filed under section 15 and 16 of The Maharashtra Rent Control Act, 1999 (In short The Rent Act) for eviction and possession of tenanted suit premises, for recovery of arrears of rent and for damages.

Case of Plaintiffs in brief are as follows:**02. Description of the suit property:**

Village	City Sr. No.	Area	Type
Mouje Poynad	467	8.5	C
	468	19.2	C
	469	25.2	C
	470	291.5	C

House property no.48 of area 286 Sq. M situated on the above property. Out of this house property area of 185 Sq. ft. on ground floor or actual area on ground floor which is in the possession of defendant and room no.2 on first floor of house no. 48 is as per contention of defendant in his written statement are subject matter of suit. (Hereinafter called as **suit property** for sake of convenience)

03. Plaintiffs contended that, ancestral of plaintiff no.1 late Gangadhar Dharmaji Patil and his brother Arvind Patil are co-owners of suit property. Shri. Arvind Patil relinquished his share from the suit property in favor of plaintiff no.1 on 19/01/2018 by registered release deed for consideration amount of Rs. 22,50,000/- (Twenty two lakhs fifty thousand only). However, other heirs of Gangadhar Patil i. e. Uma Patil, Vrushali Kanchan and Tejashri Patil also released their share for consideration amount of rupees 20,00,000/- (Twenty lakhs only) in favor of plaintiff no.1 and 2. Therefore, now suit property is commonly owned by plaintiffs. Property No. 48 was built in near about year 1950 therefore it was 70 years old property. It is situated in main market area of Poynad. Out of this property ground floor area about 185 Sq. ft. was rented to ancestral of defendant i.e. Rupchand Amirchand Jain for monthly rent of rupees 52 (Fifty Two rupees only) for the purpose of business of cloths, on monthly basis. However, out of this property area of 100 sq. ft. on ground floor was given on rent to one Pandurang Hujare for monthly rent of rupees 20 (Twenty only).

04. The remaining area on ground floor of suit property along with entire first floor, is in possession of plaintiff and his

family. The plaintiff and his family resided in the premises several years. However, the property has deteriorated into dilapidated condition and beyond repair. The first floor and back portion of the property have completely collapsed. The structure has become hazardous and in imminent risk of further collapse. The architecture has confirmed that property has beyond repair, leaving no viable option other than demolition. Accordingly, Gram panchayat Poynad has acknowledged that the property poses a serious threat to the safety of the defendants, his customers and general public.

05. Plaintiffs further contended that, defendant has not paid the rent of the said suit property to the plaintiff or the owner of the property from 01/09/2009 till 31/08/2018. Defendant made default to paid the rent amount of rupees Rs. 5,616/- (five thousand six hundred and sixteen) for total period of 9 years i.e. 108 months. Defendant failed to pay rent for more than 6 months. Therefore, he has become a “defaulter” as per the provisions of the section 15 and 16 of The Maharashtra Rent control act. Therefore plaintiff no. 1 and Mrs. Uma Gangadhar Patil was sent notice to defendant dated 11/09/2018 through his advocate Bartake.

06. Plaintiffs further contented that, they intended to construct ne building house no. 48, as the existing structure is in a severely dilapidated condition and poses danger to defendant and to the public also. Despite of repeated requests by plaintiffs to defendant to vacat the suit property, defendant has persistently refused to do so. Further more the defendant provided a false and misleading response to the plaintiff's notice dated

11/09/2018. consequently, the plaintiffs lawfully terminated the defendant's tenancy rights effective from 31/10/2018 through notice dated 11/09/2018. Defendant filed R.C.S. No. 134/2018 against plaintiffs to pressurize them.

07. Plaintiffs further contented that, they are presently in Mumbai but wish to relocate to poynad with family. At present they resides one room kitchen flat in Andheri. Where re-development process of that building was commenced. Consequently, the plaintiffs will be required to vacate their existing accommodation in Andheri and arrange alternative accommodation of herself and for family members. Plaintiffs son i. e. plaintiff no.3 is nearing completion of his engineering studies and his marriage is also anticipated in the near future. Even after re-development the accommodation in Andheri will be inadequate to meet their needs. Additionally Plaintiff no. 2 is set to retire shortly and both plaintiff no.1 and 2 intended to establish business at Poynad for their further livelihood. Furthermore, after completing his engineering studies plaintiff no.3 aspires to start his own business in poynad. Therefore, plaintiff have a bonafide requirement of suit premises for their own residential and business purpose as well as business purpose of plaintiff no.3. Therefore, plaintiffs filed suit for eviction of defendant and possession of rented premises under section 16 of The Rent Act.

08. Defendant in his written statement stated that, area on ground floor of 224 Sq. ft. and room no.2 on first floor in his possession on rent. In spite of that, plaintiffs contended that, ground floor area of 185 Sq. ft only given on rent. However, plaintiffs further

contended that, if courts find that, room no.2 on first floor is in possession defendants. Then they claimed that, room no.2 on first floor is since from last 10-15 years it was closed without any cause. Therefore, defendant infringed provisions of section 26 of The Maharashtra Rent Control Act. Therefore, plaintiffs are entitled to recover the possession of suit property under section 16 of The Rent Act.

09. Hence, plaintiffs filed suit for possession of rented premises from defendant and for areas of rent of rupees 5,616/- (five thousand six hundred sixteen). Plaintiff also contended that, in main area of poynad now shops for business purpose given on rent of Rs. 20,000/- to 25,000/- per month. As plaintiffs terminated the tenancy of defendant, they claims damages of rupees of 20,000/- (Twenty thousand only) per month till actual possession of suit property. However, plaintiffs alternatively prayed suit property has been beyond repair, therefore the possession of the said property should be taken away from the defendant and be given to plaintiffs for demolishing the old building and constructing a new building on that place.

Defence of the Defendants:

10. Defendant filed his written statement at Exh.30 and denied all the contentions of plaintiffs. Defendant contended that, he filed R.C.S. no. 134/2018 against plaintiffs therefore to counter him plaintiffs filed the present false and frivolous suit against him. The suit is barred by law of estoppel and acquiescence. Plaintiffs harass defendant by breaking roof of suit property. Therefore, he sent

notice to plaintiffs dated 09/06/2018. Defendant don't know about any deed and document between plaintiffs and his family members. Plaintiffs did not give notice of attorney to this defendant. Defendant also contended that, he is tenant on the suit property, since from 1958. Defendant and his ancestral doing the business of cloths by name "Mahendra Cloths stores" in suit premises. The said business of defendant is sole business of his livelihood. The rent of ground floor shop of area 224 sq. ft. and on first floor of room no.2 of same area was paid to mother of plaintiff no.1 i.e Chandrabhaga Dharmaji Patil since from 1958. Defendant has been paying the rent of first flower room of rupees 12 and rent of ground floor shop of rupees 40 to mother of plaintiff no.1. Defendant has been paid regularly rent amount to the plaintiff. Its receipts and money order receipts are also with defendants.

11. The defendant has kept the said property properly by taking regular care. On 09/06/2018 defendant sent notice to plaintiffs stating that plaintiff had broken the gable roof of house of the suit premises. The plaintiff has created an impression that the said property has collapsed and beyond repair. However, plaintiffs themselves are damaging the building for one reason or another. Presently the shop of defendant is running properly and is in good condition and don't need repair for next 25 years. Plaintiffs intentionally broken the gable roof of suit property therefore to repair the same defendant filed R.C.S. No. 134/2018.

12. Defendant further contended that, periodically he paid amount of rent to the plaintiffs, but the plaintiff himself did not

accept amount of rent after year 2010. However, defendant have all the receipts of rent from year 1958. Plaintiff made false statement regarding arrears of rent. Defendant along with reply to notice dated 11/09/2018, he was given cheque for amount of rupees 5,616/- to plaintiff and was asked to accept original cheque and hand over receipt to the defendant. Therefore, defendant is not intended to make default to pay rent. Therefore, he is not defaulter of rent amount.

13. Defendant further contended that, plaintiffs owns lot of land. Everyone owns flats and houses in Mumbai. Therefore, there is no need of suit property to them. The claims made by plaintiffs are false and inconsistent with the true facts. Plaintiff was carrying on business in Andheri, Mumbai and plaintiffs are residing there. However, “Mahendra Cloth Store” is the sole business of defendant and means of livelihood of his family. His whole family depends on this business. Defendant have no other accommodation available in Poynad. In Poynad it is a not possible to get place at a strategic/main location at present. The defendant has also earn goodwill as well as name in the said garment business. The defendant has doing clothing business in the name of “Mahendra Cloth Stores” and that business is the sole means of livelihood of the defendant’s family and the defendant’s family is dependent on it. There is no other premises on rent in poynad. Also the defendant is not having any other property in poynad other than the said tenanted premises. The defendant has running the said business for about 60 years. The plaintiff has never been to Poynad. They come only to harass, create

confusion and make false allegations against the defendant. Plaintiff does not require any kind of land.

14. In his additional written statement at exh.37 defendant contended that, actual area of ground floor shop is 224 Sq. ft and room no.2 on first floor is in possession of defendant as tenant. Mother of defendant resides in Pratibha Society and defendant uses room no.2 for lunch and other purposes. Plaintiffs have lots of property at Poynad Pen. If plaintiffs not prevented from disturbing the possession of defendant house, shop by breaking the gable roof and any other way, if the action of the plaintiff continues to damage the houses in the suit property then defendants will never be paid. The resulting damages will be immeasurable and will never be repaid in monetary terms, balance of convenience is in favor of defendant. Prima facia case is also in favors of defendant. Hence, he prayed to dismiss the suit with costs.

15. The issues are framed at Exh. 38, they are reproduced below, along with my findings thereon.

Sr. No.	ISSUES	FINDINGS
1.	Whether the plaintiff prove that the suit premises no. 1 and 2 are reasonably and bonafide required by himself for the immediate purpose of demolishing them and for the purpose of erecting new building?	Yes
2.	Whether the plaintiff prove that the defendant committed default in payment of rent?	No
3.	Whether the plaintiff prove that the premises	

	have not been used without reasonable cause for the purpose for which they were let since last 15 years?	Yes
4.	Whether the plaintiff prove that he requires the suit premises reasonable and bonafide occupation for himself and family members?	Yes
5.	To whom greater hardship will be caused if eviction is not granted?	To Plaintiffs
6.	Whether the plaintiff is entitled for the reliefs claimed?	Partly Yes
7.	Whether the defendant is entitled for compensatory cost?	No
8.	What order and decree?	Suit is Partly Decreed With Costs.

Evidence on Record:

16. In support of their respective contentions, plaintiffs and defendant have brought on record following evidence.

A. Evidence of plaintiffs –**Oral Evidence**

SR.NO.	NAME OF WITNESS	EXHIBIT
1.	Shri. Narendra Balkrishna Mhatre	40
2.	Shri. Rahul Ramnath Sashte	60
3.	Shri. Vaibhav Bharat Thakur	63

Along with the above oral evidence plaintiffs relied upon the following documents.

Documentary Evidence:

SR.NO.	DOCUMENT	EXHIBIT
1	Office copy of Notice sent by plaintiff to defendant dt. 11/09/2018.	43
2.	Reply by defendant dated 28/09/2018 to notice	44
3.	Copy of Assessment extract of property no. 450 (17) of year 2021-22	45
4.	Copy of Assessment extract of property no. 450 (18) of year 2021-22	46
5.	Letter of Gram panchayat Poynad given to plaintiff dated 18.09.2021	47
6	Rent Receipts in bulk	48
7.	Copy of 7/12 extract of Gut No. 244 Moje Konoba of year 2019-20	49
8.	Kanhoba copy of assessment registered of Grampanchayat Pen	50
9.	Photographs of Property no. 61/B of Mouje Kanhoba Pen on the name of plaintiff no. 2	51
10.	Entrance arch of Mouje Kanhoba Pen on the name of plaintiff no. 2	52
11.	Photographs of suit Property (total 13 photographs)	53

12.	Copy of 7/12 extract of property at Talanikhar Gut no.5/1/A owned by plaintiff no. 1	54
13.	Copy of 7/12 extracts of property at Shapur Gut no.411/4, 412/3, 407/1 422/6 and 565/3 owned by plaintiff no. 1 collectively	55
14.	Rent Receipts (total 29 photographs)	58
15.	Report of architecture Rahul Sale along with photographs	61
16.	Letter given by plaintiff no. 1 to Gram panchayat Poynad along with map	66
17.	Copy of proceeding book of resolution pass in Gram panchayat Poynad dated 08/08/2019	67
18.	Letter given by plaintiff no. 1 and Praphul Hujare to B.D.O. Alibag dated 19/03/2019	68
19.	Letter given by plaintiff no. 1 and Praphul Hujare to Sarpanch Gram panchayat Poynad dated 20/01/2020	69
20.	Copy of proceeding book dated 31/01/2020	70
21.	Copy of proceeding book dated 26/05/2020	71
22.	Certified Copy of city survey no's. 467, 468, 469 and 470 collectively	113
23.	Original Copy of assessment extract of property	114

	no. 48 of year 2019-20	
24.	Certified Copy of release deed dated 19/01/2018	115
25.	Certified Copy of sale deed dated 03/01/2019	116
26.	Copy of complaint application given by plaintiff to Gram panchayat Poynad dated 28/05/2018	117
27.	Copy of complaint application given by plaintiff to Gram panchayat Poynad dated 16/07/2018	118
28.	Office Copy of notice given by plaintiff to defendant dated 02/09/2020	119
29.	Copy of Bank Statement of plaintiff no. 1	120
30.	Copy of circular dated 24/02/2021 of Rural development department Government of Maharashtra	121
31.	Evidence close purshis of plaintiffs	72

B. Evidence of defendant :-**Oral Evidence**

SR.NO.	NAME OF WITNESS	EXHIBIT
1.	Shri. Nitin Rupchand Jain	76
2.	Shri. Satish Ganpat Patil	104
3.	Shri. Bharat Bhikamchand Jain	105

Documentary Evidence:

SR.NO	DOCUMENT	EXHIBIT
1.	Copy of District Collector Office Raigad Alibag dated 31.05.1989	92
2.	Rent receipt of January 1986	93
3.	Money order receipts paid by defendant to plaintiff (total 24 receipts)	94
4.	Evidence close purshis of defendant	106

Submissions of Learned Advocates:**Defendants-**

17. The learned advocate for the defendant Shri. R.V. Kosmakar submitted that, defendant is in possession of the rented premises since from year 1958 his father doing business of clothing in the rented premises and after their demise defendant doing the same business in the same rented premises and regularly used to pay rent amount to the ancestral of plaintiff and then the plaintiffs. Tenanted premises are in good condition and did not require repair till next 25 years. Defendant got goodwill in his business of clothing. Business of defendant is his sole earnings and livelihood. In Poynad defendant will not get any other premises on rent in such strategic areas and it will cause big monetary loss on the part of defendant. If defendant is thrown out the suit premises he will be come on road.

However, defendant has many more properties in Poynad and near by vicinity. Hence, he prayed to dismiss the suit with costs.

18. Heard Ld. Adv. Shri. Bartake for plaintiffs he submitted that, plaintiffs issued notice to defendant when 9 months rent is pending. Defendant failed to pay said rent, even after service of summons defendant failed to pay remaining amount in court also. Therefore he is defaulter of rent amount. The alleged tenanted premises are 70 years old and in very dilapidated condition. Structural engineer and gram panchayat also stated that, it is beyond repair. Therefore, plaintiff wants the vacant premises for construction of new building. However, plaintiff no.2 will go to retire shortly and his son also desired to start business at Poynad. Their house at Mumbai is of 450 Sq. M area which is inadequate for their residential purpose. Therefore, they required possession of the tenanted premises for their bonafide need. Plaintiffs proves his bonafide need by his own and by evidences of his witnesses. Also by filling documents on record. Hence, they prayed to decree the suit.

REASONS

19. Undisputed Facts:

1. Relationship between plaintiffs and defendant is landlord and tenant.
2. Suit property was given on tenancy by ancestral of plaintiff to ancestral of defendant.
3. Nature of suit property is tenancy property, situated in main area of poynad and two stored house.

AS TO ISSUE NO.1 to 5:

20. These issues are related to the tenancy of suit property. Therefore, to avoid repetition of facts and evidence, they are taken up together for discussion hereinafter. Before going to discuss evidence on record it is necessary to discuss some important points here. Suit property is ancestral property of plaintiff no.1. However, present plaintiffs are plaintiff no.1 Niyati Mhatre and her husband Narendra Mhatre is plaintiff no.2. Defendant at the time his argument submitted that, plaintiff no.2 have not sufficient knowledge of suit property. In spite of that he was examined by plaintiffs. However, plaintiff no.1 not come into the witness box. Defendant also contended that, plaintiff did not give him notice of attorney. However, documents release deed and sale deed respectively filed on record at exh.115 and 116 shows that, plaintiff no.1 and 2 are the owners of suit property. However, the landlord and tenant relationship did not denied by defendant. Therefore, now ownership of plaintiffs not in dispute.

21. The landlord is seeking recovery of rented premises mainly on grounds i. e. 1. defaulter, 2. suit premises are in diaplated condition, 3. non user and 4. bonafide requirement. On the contrary defendant contended that, though suit property is 60 to 70 years old. It is in good condition now and don't need to repair for next 20 to 25 years. He is not defaulter and non user. Plaintiffs have lots of properties therefore plaintiffs need is not Bonafide. In this regard it is necessary to see evidence of the both parties.

ON POINT OF DISPUTED AREA OF TENANCY AND OF NON -USER

22. Though the suit premises given on rent, this fact is not disputed the area which is given on tenancy is in dispute here. Firstly, plaintiffs came with the case that suit property i.e. city Survey no.467, 468, 469 and 470 having house property number 48 of 286 Sq. M. area. Out of this said property are of 185 Sq. ft. on ground floor is given on rent to defendant is subject matter of the suit. Defendant in his written statement claims area of 224 Sq. M. on ground floor and room no.2 on first floor of same area given on rent to him and he is in possession of the same. Thereafter, by making amendment plaintiff claimed area of ground floor and room no.2 on the first floor which is in possession of the defendant. Therefore, it is necessary to see which room and how much area is in possession of the defendant on rent.

23. To support their contention plaintiffs examined plaintiff no.2 Narendra (PW1) at exh.40. He reiterates contentions of the suit. To support their contention they filed on record certified copy of released deed dated 19/01/2018 at exh.115, certified copy of sale deed dated 03/01/2019 at exh.116, original copy of assessment extract of house no.48 at exh.114 and revenue extracts of city survey no's 467,468,469 and 470 filed at exh.113. Which shows that plaintiffs are owner of suit premises. On the contrary defendant examined himself Nitin (DW1) at exh.76 and deposed that, ground floor shop and room no.2 on first floor were given on rent. His witnesses Satish (DW2) at exh.104 and Bharat (DW3) at exh. 105 also deposed that, ground floor and and first floor room are in possession of defendant. However, defendant in his cross

examination deposed that, room no.1 and 2 on ground floor is in his possession and room no.3 is in possession of Shri. Hujare and room no.4 is closed. He further deposed that, in room no.1 and 2 on ground floor his business is running. However, he also deposed that, he paid rent of Rs.52 of room on ground floor and room no.2 on first floor. He given description that, rent of ground floor room is Rs.40 and rent of first floor room Rs.12. Therefore, in total he paid rent of Rs.52 since from 1957.

24. Rent receipts filed at Exh.48 shows that ancestral of defendant i.e. Rupchand Jain paid rent amount of Rs.52 to Arvind Dharmaji Patil or Uma Gangadhar Patil from date January 2009 to December 2009. All receipts are original receipt which bears sing of owner. However, none of the receipt specifically mentioned that rent of Rs.40 paid towards ground floor room and rent of Rs.12 of first floor room. But some receipts showing the rent of Rs.52 paid towards rent of room no.1 and sometimes of room no. 2. However, rent receipts filed at exh.58 also mention rent amount of Rs.52 are some of years between 1975 to 1985. which mentioned that, rent of Rs.52 are of two rooms. Also rent receipt filed at exh. 93 of year January 1986 shows rent of Rs.52 /- of two rooms. The money order receipts filed at exh.94 in total 24 receipts also not mentioned separate rent of ground floor and first floor room. However, plaintiff in his deposition admitted that, suit property is building containing ground floor and first floor. Therefore, from the above discussion and rent receipts filed on record it is very difficult to ascertain which rooms were let on rent. However, it is very unfortunate that, both original landlord and tenant were no more. Who can be the best persons to tell the truth. But, it is well settled that, landlord have best

knowledge of his properties. In present case plaintiffs contented that, room on ground floor was let on rent. But afterwards by making amendment they claim any area in possession of defendant. Hence, I hold that, ground floor room and first floor room which is actually in possession of defendant is rented premises of house no.48 and is subject matter of suit.

25. Plaintiffs further, came with the case that room no.2 on first floor are not in a use for more than 10-15 years without any proper reasonable ground. Plaintiffs contended that, defendant resides at Hirudalal Nagar in Pratibha Society for more than 15 years. To support his contentions he filed on record the assessment extract of property no. 450/17 and 450/18 at exh. 45 and 46 which is on the name of defendant. However, defendant to show first floor room is in his possession not filed any document on record. He stated that, he resides in that room from 1958 therefore he is able to file light bills, accounts of his business, licence and any other document showing that, he is running business on ground floor and resides at first floor. However, defendant in his cross admitted that, without the light bill of ground floor room, no any other light bills on his name, neither residential nor commercial. However, from the cross examination of plaintiff defendant put up on record that, electricity connection was cut in year 2000, because bill was due. Plaintiff in his cross deposed that, 1100 sq. ft. area on ground floor and 1200 sq. ft. on first floor in his possession since from 25 year which is not in use, because it is in dilapidated condition. However, plaintiff witness Rahul (PW2) stated in his evidence first floor is collapsed. However, defendants witness Satish (DW2) and Bharat (DW3) admitted in his cross examination that, without their bare words they have no any

documentary evidence to show that, defendant uses room no.2 on first floor for his residence purpose. However, rooms on first floor are in dilapidated condition. Expert witness Rahul (PW2) also supports the contention of plaintiffs. From evidence of this witness is clear that first floor rooms are collapsed. However, photographs filed at exh. 53 also shows that, suit premises are very old and in dilapidated condition. Therefore, defendant did not need of room no.2 on first floor.

26. In support of his contention plaintiff relied upon citation i.e. Ravinbhushan Anant Datar and another Vs Waman Dattatrya Purohit 2004(1)Mh. L.J. 100

In the above mention citation Hon'ble High Court Confirm the decree of trail court and held that eviction on the ground that failure on the part of respondent to produce any material prima facie indicate that the premises had been used for the purpose for which they were let. Absence of electricity, telephone, books of accounts and business license then adverse inference can be drawn against tenant.

In the present case also without the bare words of defendant and his witness no any other evidence to show that, room no. 2 on first floor is in use of defendant on rent. Therefore, I most respectfully submitted that, the above cited ratio is applicable in the present case. Therefore, from the above discussion it reveals that, plaintiff who is owner of suit property not uses it because it is in dilapidated condition. But defendant as tenant is used said premises for his residential purpose and room are in good condition. This fact

is not acceptable at all. Hence, I hold that, room no.2 on first floor is not in use for more than 10 years.

ON POINT OF DILAPIDATED CONDITION OF RENTED PREMISES

27. Plaintiff further contended that, the suit property are in dilapidated condition therefore he alternatively prayed for separate possession of suit property for construction of new building on the suit premises. To support his contention plaintiff examined Rahul (PW2) at Exh.60 he is structural engineer he deposed that, plaintiff request him to do structural audit of house no.48 at Poynad and he given assessment extract of house no.48. Therefore, he went to spot for structural audit of house no.48. House no.48 is situated at main area in Poynad and it is house containing ground floor and first floor. House is made up of brick and of load bearing nature. Roof is standing on wooden blocks. On ground floor there is cloth shop and Barbar shop. On first floor no one is residing. He enters in the house and in the first floor and make inspection of house from inside and out said. He further deposed that, house property no.48 is very old and in dilapidated condition. In many places the wooden blocks are loosen and broken. The walls of ground floor and first floor are cracked also some of walls are removed at some places. Roof of house has broken. The tiles on the first floor are also broken. The walls of the first floor have fallen off. Therefore, he confirmed that, house no.48 has beyond repair. Life of that house has ended and it is not suitable for living and business purpose. He also taken photographs of house to support his investigation and prepared detail report which is at exh.61.

28. However, this witness in his cross examination admitted that, for the investigation of the house no.48 he had not issued notice to tenant. However, tenant was not present when he visited the spot. He not mentioned date of visit in his report. In his report he mentioned age of construction is 70 years old, investigation date is on 24/11/2021, type of construction is load bearing, number of stores are ground plus one, roof type is magalore tile slopping roof supported by wooden numbers. At many places wooden supports were decayed and worn out due to leakages from broken roof tiles and it is old age. It is also seen that roof have deflected at places and lost its stability. This can result in collapse of roof due to reasons like excessive rains. Hence, the structure is in very dilapidated condition and very dangers to the human life in and around the structure. Mere non presence of tenant on the spot at the time of inspection cannot impeach the testimony of this witness. Where he is expert witness.

29. In this context plaintiff further examined Vaibhav (PW 3) at exh.63 who is gram sevak at gram panchayat Poynad. He also deposed that plaintiff given application to him for permission to demolish old house in suit property and constructed new house alongwith construction plan. Said application alongwith map filed at exh.66. On the said application grampanchayat passed resolution regarding demolishing of house which is filed at exh.67. After perusal of document at exh.67, proceeding book of grampanchayat shows resolution no.46 in which it is mentioned that after receiving the application of plaintiffs, report of structural engineer Salunke called he told that, house no.48 is very old, dilapidated condition

and irreparable. Therefore, grampanchayat directed that plaintiffs demolish house no.48 with his own expenditure. However, thereafter grampanchayat refused the permission of plaintiff because defendant taken objection. However he deposed that on 19/03/2019 and 20/01/2020 defendant and one Praful Hujare taken objection to the application of plaintiff which is filed at exh.68 and 69. He also filed copies of proceeding books which filed at exh.70 which also shows that permission granted to plaintiff. In his cross examination he deposed that, now he is incharge Shahabaj, Poynad and Ambupur Grampanchayat. He used to visit grampanchayat on alternative days. However, he did not visit spot. He further deposed that, on north side of suit property there is shop of defendant, at the middle shop of Hujare and shop no.3 is closed. Further he deposed that, 3 shops are in good condition. However resolution no.22 was passed taking into consideration application at exh.69 which is filed at exh.71. From the cross examination of this witness it reveals that, the person who not visited the premises, deposed that, shops are in good condition therefore the same fact not acceptable at all. However, from the proceeding books it can be reveals that suit premises are in dilapidated condition and irreparable. Grampanchayat Poynad also confirms that, structural audit report shows suit property is in condition that there is on any other alternative to demolish it.

30. On the contrary defendant to support his contentions examined Nitin (DW1) he reiterate contention in his written statement. In his cross examination he admitted that suit property is more than 60 years old and he is residential as well as commercial. He did not given any notice to plaintiff to repair the suit house.

However, not give any application to gram panchayat to repair the said house. In support of his contention defendant examined witness Satish (DW2) and Bharat (DW3) at exh.104 and 105 respectively. Both these witness deposed that, defendant since from his father resides on first floor of house no.48 and carried on business of cloths on room at ground floor. They further deposed that, both rooms on ground floor and first floor are in good condition. Defendant periodically taking care of both properties and defendant business getting a goodwill in the Poynad area and near by vicinity. However, both these witness in their cross examination admitted that in Poynad market area. Many more constructions are going on and shops are also available on rent. However, defendant in his cross examination admitted that, when he repaired tenanted house he did not got written permission of plaintiff. Both these witnesses in their cross examination admitted that, without their bare words they have no any evidence to show that, suit premises are in good condition. Even photographs filed by defendant shows building is very old and plastic paper are used to cover it to protect from rain water. Considering the above discussion it appears that, expert witness of plaintiff given opinion that, suit premises are very old, in dilapidated condition and beyond repair. Testimony of this witness no where impeached in his cross examination Grampanchayat also confirmed that there is no any option available other than to demolish house no.48. However, testimony of defendant witnesses are shaken in their cross examination. Therefore, evidence of plaintiff is out weighed than that of the evidence of defendant. Hence, I hold that suit property is in dilapidated contion, very dangures to public at large and needs demilishion.

ON POINT OF DEFAULTER

31. Ld. Adv. for the plaintiff at the time of argument submitted that, since from 01/09/2009 to 31/08/2018 defendant failed to pay rent of total 9 years of Rs. 5616/-. Even, after perusal of roznama it appears that, even after service of suit summons defendant failed to pay arrears of rent within 90 days. Therefore, plaintiff is entitled to eviction of defendant and possession of suit premises. On the contrary, defendant submitted that defendant regularly paid rent to the plaintiff. In spite that, since 2010 plaintiffs refuses to receive rent amount. However, with answer to notice dated 11/09/2018 defendant send rent amount of Rs,5616/- by cheque no.015878 of Bank Of India Branch Poynad. But plaintiff did not given receipt of the same. The reply to plaintiff along with copy of cheque attached at exh.44 and notice send by plaintiff is attached at exh.49. To support his contention defendant filed on record the money order receipts at exh. 94. total 24 receipts are filed. Which shows that, defendant paid payment of rent for some months of 2009, 2010, 2011, 2012,2013,2014,2015, 2016, 2017 2018,2019, 2020 and 2021. Which means defendant paid rent amounts periodically to plaintiffs.

32. It is now settled position that, mistake on the part of tenant in making the payment of rent within a time allowed by law gives rise to the landlord to claim relief of eviction on the ground of default. Similarly, the legislature has extended a further opportunity to the tenants in arrears rent amount in default clear the same and to avoid action of eviction by making payment of the admitted dues within 90 days of service upon him of statutory notice under section

15(2) of Rent Act. It is further, settled that one more opportunity is given to the tenant to clear all such amount. Similarly, within 90 days of receipt of suit summons.

33. Since, from roznama it reveals that, suit summons served on defendant on 17/09/2019. Thereafter defendant appeared through on 01/10/2019. Thereafter, by setting aside order No W.S. he filed his written statement on 06/12/2019. Then on 12/01/2022 defendant filed application at exh.73 to pay rent amount of period 01/01/2021 to December 2022 in a Court. Thereafter, he paid rent amount of tenanted premises till December 2025 in a Court. However, money order receipts filed at exh.94 shows that, defendant paid rent of some months between 01/09/2009 to 31/08/2018. Which means defendant paid in lumsum and installments.

34. In support of his contentions plaintiff relied upon,

1. Zainab Bee wd/o Mohid. Ismail Vs Prabhakar Rajaram Kharwade, 2017(2) Mh.L.J 374

in this case Hon'ble high court held that, Maharashtra Rent Control Act, 1999 (18 of 2000), SS. 15(2), (3) and 16 16(1) (g) arrears of rent non payment of rent by tenant since time landlady had purchased suit house. Tenant had not paid rent after receipt of notice under section 15(2) of Act nor deposited rent during pendency of suit or appeal. Landlady is entitled for a decree of eviction on ground of arrears of rent under section 15 of Act.

2. Shila Ramchandra Sachdeva Vs Vinod Harchamal Santani, 2017(6) Mh.L.J 396

Maharashtra Rent Control Act, 1999 (18 of 2000), SS. 15(3) and 33 Eviction decree on ground of arrears of rent. Tenant deposited arrears of rent in Court with delay of fifty three days and without 15% interest as required. Decree for eviction on ground of default rightly passed by Appellate court.

But in the case in hand record shows that defendant paid rent amounts. Rent receipts at exh.48,58,93, 94 and application filed in court at exh.73,89,102,112 shows that defendant paid rent amounts periodically. Therefore, I most respectfully submitted that, this citation is not applicable in the present case. Hence, I hold that, defendant is not defaulter of arrears of rent amount.

ON POINT OF BONAFIED NEED

35. Plaintiff further claimed that, possession bonafied need of the rented suit premises for his bonafide need and for family members. To support his contention plaintiff no.2 Narendra (PW1) deposed that, they resides in one room kitchen flat in Andheri. Where re-development process of that building was commenced. Consequently, the plaintiffs will be required to vacate their existing accommodation in Andheri and arrange alternative accommodation of herself and for family members. Plaintiffs son i. e. plaintiff no.3 is nearing completion of his engineering studies and his marriage is also anticipated in the near future. Even after re-development the accommodation in Andheri will be inadequate to meet their needs. Additionally Plaintiff no. 2 is set to retire shortly and both plaintiff no.1 and 2 intended to establish business at Poynad for their further livelihood. Furthermore, after completing his engineering studies plaintiff no.3 aspires to start his own business in poynad. Therefore,

plaintiff have a bonafide requirement of suit premises for their own residential and business purpose as well as business purpose of plaintiff no.3. Therefore, their need must be bonafide. From cross examination of plaintiff defendant tried to take on record that plaintiffs have many more properties at Poynad and near by areas. To support his contention he taken up on record the documents at exh. 49,50,51 and 52 which shows that plaintiff no.2 have properties at village Kanhoba. Even, documents on record shows that, plaintiff no.1 have other proprties in nearby areas.

36. On the contrary, defendant also in his cross examination also admitted that, in Pratibha Society at Poynad he has one residential flat. He received two tax receipts of House no.450/17 and 450/18 at Pratibha Society. At the time of argument defendant submitted, flat at Pratibha society is used by his mother for residential purpose. Therefore, this defence can not be taken by plaintiff. Defendant further admitted that, his mother died on 2022. However, assessment extract filed at exh.45 and 46 shows the name of defendant to the record of right. However, defendant in his cross examination admitted that, he not tried to know about the rent of near by shops in Poynad market area. However, he did not take any search to get any other premises for his accommodation and business purpose, despite of from he received notice of plaintiff. Further he admitted that, near about 125 mtr from his shops. New construction of buildings is running. Out of these one building is completed and construction of second building is running. However, shops in new building also started. Defendant did not take any efforts to search new shop for his clothing business. Both witnesses of defendant also

acceptable that, new construction was going on in nearby vicinity of suit premises it is possible for plaintiff to get alternative accommodation in Poynad market area. However, he also admitted that, plaintiff did not have any house in Poynad other than the suit house. From the cross examination of defendant it appeared that, he did not take diligent search for alternative premises.

37. In support of their contention filed following authorities,

1. Shri. Noshir Jehangir Postwalla Vs Shri Keki Rattanji Postwalla 2000(4) All MR 637
2. Rameshwar Nanakaram Prajapal Vs Sundabai Keru Ghadage, 2013(2) Mh.L.J 178
3. Mehmooda Gulshan Vs Javaid Hussain Mungloo 2017 ALL SCR 1352

In the above cited 3 authorities, it was held that, Bonafide requirement and reasonable need for personal use. Landlord need not establish compelling, absolute or dire necessity. It is not for the tenant or for the Court to dictate what is bonafide requirement of the landlord. Genuine need of premises proved by landlord. Mere non examination of son who intends to do business in suit premises is no ground to repel reasonable requirement of landlord, tenant liable to be evicted. Which ultimately means that, only plaintiff landlord can explain his bonafied need.

On the contrary defendant relied upon following authorities

1. Baitulla Ismal Shaikh and anr Vs Khatija Ismal Panhalkar and ors Civil Appeal no.1543 of 2016 2024 INSC 71

2. Shri. Udayan Vinayak Modak and anr Vs Miss Madhavi Chandrashekhar Kale and ors 2019(5) ALL MR 828

In the both the above cited authorities facts are in all total different from the facts of present case. In that cases grounds taken for eviction are permanent structure and subletting. Also landlord requires eviction of tenant for accommodation maid. Hence, I most respectfully submitted that, these two authorities not applicable in present case.

38. It is well settled law that, the landlord is the best judge of his residential needs and the tenant cannot make landlord to adjust to smaller premises to protect the tenancy. The landlord has right to decide specific needs and court cannot impose directives on the landlord regarding the nature of quality of his chosen uses of the premises. The landlord decides whether there is bonafide necessity to run business from a place or use it for personal and the tenant cannot dictate. In the present case landlord categorically stated that, the premises are in dilapidated condition it was kept closed. His contention is supported by his witness PW2 and PW3 also. Defendant also admitted that, premises are 60 to 70 yrs old. Expert witness and Grampanchayat also confirmed the suit premises are dilapidated condition and beyond repair. Therefore, there is no reason to discard the contention of plaintiffs. The premises are required by plaintiffs for their bonafide need. Thus plaintiffs substantiate claim with credible evidence indicating genuine need for premises. Therefore,

relying upon citation filed by plaintiff I hold that, plaintiffs need is reasonable and substantiated.

ON THE POINT OF HARDSHIP

39. In was suggested by defendant that, plaintiffs have another house and other premises. Therefore, if the tenancy right is not protected the greater hardship will be caused to defendant. Though the plaintiff admitted in cross examination that, he has alternate house still tenant cannot compel or direct landlords for other portion of the property. The landlord need for the premises appears to be substantial and pressing potentially involving significant personal or economical consequences if requirement is not met. The landlord may face difficulties in meeting their one family or business made without the premises. The landlords need is based on personal or business exigencies which if unmet could lead to severe consequences including potential financial losses or family distress. Thus the court has assessed that the landlord requirement is bonafide and reasonable and suggesting that, failure to vacate could have disproportionate impact on the landlord circumstances.

40. The court has considered the potential hardship to both parties. Evidence presented by plaintiffs indicates that, failing to recover possession would severely affect their personal and family needs. Conversely the defendant's claim of hardship while noticed is outweighed by the plaintiffs urgent requirement. Defendants have not demonstrated any extra ordinary or inaccountable difficulty in finding alternative housing that would counter balanced plaintiffs

need. The balance of hardship test reveals that, the consequences of denying the recovery of possession would result in greater hardship to plaintiffs than the inconvenience or difficulty defendants may face.

41. After evaluating the evidence and arguments the court concluded that, the nature and the immediacy of the landlord requirement present a more pressing and substantiate need comparing to the tenant. The landlords hardship arises from pressing need for the premises which is directly tied to the personal need. While the tenants hardship involve displacement and potential instability but lacks the same level of immediacy of the landlord requirement given the balance of hardship. The court finds that, the landlord bona fide requirement outweighed the hardship that the tenant might face. Plaintiff on this point relied upon,

Sajuram Mahadeo Kalnekar since deceased Through Heirs Vs Hasan Imrahimkarol and others 2007 (1) B C J 478

In this case, eviction proceedings comparative hardship tenant is obliged to establish that pending litigation he made sincere efforts to secure alternative accommodation and was unable to get it. Tenant since failed to do so, issue rightly answered against him. In present case also search of defendant for alternative accommodation did not seem diligent. Hence, I hold that, it eviction is not granted greater hardship will be caused to plaintiff only.

42. From all the above discussion it appears that, plaintiff provided credible evidence demonstrating a genuine need for the tenanted premises. Testimony, affidavits and supporting documents indicate that, plaintiffs and their family are in need of premises of

personal use. The plaintiffs claim is supported by specific details regarding the need for additional space and absence of alternate accommodation. Suit premises also in very dilapidated condition and not in use. Hence, I answer issue no.1, 3 and 4 in affirmative. Issue no.2 in negative and issue no.5 hardship to plaintiffs if eviction is not granted.

AS TO ISSUE NO.6 and 7:

43. Considering the above discussion and reasons answer to point no.1 to 6. It is reveal that, suit premises are in dilapidated condition and need of plaintiff is bonafied. Therefore, plaintiff entitled to the eviction of defendant and possession of rented premises for his own use and for use of family members. However, plaintiff failed to prove defendant is defaulter of rent amount. Without their bear wards plaintiff not produced on record to show rent in nearby vicinity of suit premises are let for monthly rent of Rs.20,000/-. Therefore, plaintiff also failed to prove that he is entitled to the compensation of Rs.20,000/- monthly. Therefore, plaintiff is entitled for part decree of possession of rented premises. Hence, suit is liable to be partly decreed and plaintiff is entitled to the vacant and peaceful possession of the tenanted premises. As the suit is partly decreed. Defendant is not entitled for any compensatory cost. Hence, I answer issue no.6 in partly affirmative and issue no.7 in negaive.

AS TO ISSUE NO. 8:

44. From the all above discussion and considering answers to issue no. 1 to 7, I hold that, suit is liable to be partly decreed. The suit is old one therefore costs to be saddled on both parties. Hence, to answer issue no.8 following order.

<u>ORDER</u>	
1.	Suit is partly decreed with costs.
2.	Defendant is directed to deliver vacant and peaceful possession of the tenanted premises to plaintiffs within 3 months from date of Judgment.
3.	Decree be drawn up accordingly.

(Dictated and pronounced in open court)

Alibag.

Date- 12/02/2025

(Smt. K.P. Gade)

3rd Jt. Civil Judge Junior Division,
Raigad -Alibag.