MHNG010054282011

BEFORE THE PRINCIPAL DISTRICT JUDGE NAGPUR.
[Presided over by Dinesh P. Surana]

Reg. Civil Appeal No.326 of 2011

Lala Amarnath Khanuja (dead), through his L.Rs.

-- Versus --

Surindarsingh S/o. Bentsingh Hoda & 1.

ORDER BELOW EXH.87
[Passed on 16.02.2026]

The appellants (original defendants), by this application under Order XLI Rule 27 of C.P.C., have prayed to produce the additional evidence in the present appeal.

2] The appellants (original defendants) (hereinafter referred to as "applicants") are the tenants of the respondents. The suit property is a shop admeasuring 300 sq. fts., wherein they are running a grocery shop (more specifically described in Schedule-A with the plaint). The respondents (original plaintiffs) filed Regular Civil Suit No.416 of 2005 for ejectment, possession and mesne profits under Section 16 of the Maharashtra Rent Control Act, 1999, claiming their bona fide need and reasonable requirement of the suit shop. By its judgment Exh.81 dated 09.06.2011, the learned Judge, Small Causes Court, Nagpur, decreed the suit, directing the applicants to handover the vacant and peaceful possession of the suit shop to the plaintiffs.

3] Being aggrieved by the said judgment, the applicants preferred the Regular Civil Appeal No.326 of 2011. My learned predecessor in title dismissed the said appeal by judgment dated 27.03.2023. The applicant preferred Writ Petition No.6089 of 2023 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur. The Hon'ble High Court, by judgment dated 11.11.2025, partly allowed the Writ Petition by setting aside the judgment and decree dated 27.03.2023, passed by this Court in Regular Civil Appeal No.376 of 2011 and remitted the appeal for fresh adjudication.

4] When this appeal was fixed for final arguments, the applicants filed additional submissions and grounds of appeal Exh.86, to be considered as part of the appeal, with prints of 5 photographs. As per the applicants, the photographs show that there is no need for having additional premises for the son of respondent No.1, as claimed in the suit. Thereafter, the present application Exh.87 is filed for the production of additional evidence, i.e. same photographs for additional grounds and the documents with photographs filed to be considered as relevant evidence. By way of said application Exh.87 the applicants contended that there are various premises vacant and available for the use of the respondents and their son, and the respondents do not need any premises.

5] The respondents, by way of reply/say, opposed the application contending that (1) most of the contentions therein are nothing but the repetition of the earlier submissions, and (2) no extraordinary case is made out for production of additional evidence in the Appellate Court.

6] Heard arguments advanced by Adv. Anjan De for the applicants and Adv. Shirish Kotwal for the respondents.

7] Ld. advocate De for the applicants submitted that the photographs clearly show that due to the subsequent events, the claim of the plaintiffs of bona fide need of the suit shop has ceased. Therefore, in view of such circumstances, the material evidence of the applicants, which was not in existence earlier, should be allowed to be produced under Order XLI Rule 27 of C.P.C.

8] He also submitted that the additional grounds, documents, and photographs filed are the relevant evidence that is required to be taken into consideration. The photographs clearly show that the opposite premises to the tenanted shop are owned by the plaintiffs. The two shops are rented out by the plaintiffs to Raza Big Bazar, and one shop is in possession of the applicants, which is adjacent to the Raza Big Bazar. Now the middle shop is vacant during the pendency of this appeal. He also pointed out the photographs filed by them along with the Writ Petition before the Hon'ble High Court. In support of his contentions, he also relied on the following case laws.

(i) The Hon'ble Supreme Court in the case of ***Hasmat Rai Vs. Raghunath Prasad [1981 (3) SCC 103]***, has held that:

> *"A landlord was in a position to show he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suited. Can the court shut its eyes and evict the tenant? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of*

re-entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events occur which if noticed would non suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly."

(ii) The Hon'ble Supreme Court in the case of ***M Laxmi & Co. Vs. Anant R Deshpande [1973 (1) SCC 37],*** has held that:

"It is true that the Court can take notice of subsequent events. These cases are where the court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same."

(iii) The Hon'ble Supreme Court in the case of ***Pasupuleti Venkateswarlu Vs. The Motor & General Traders [1975 (1) SCC 770]***, has held that:

"First about the jurisdiction and propriety viz-a-viz circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, ***is brought diligently to the notice of the tribunal,*** *it cannot blink at it or be blind to events which stultify or render inept the decrotal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling (actors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are my-raid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally*

and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(iv) The Hon'ble Supreme Court in the case of ***C Venkat Swamy Vs. H N Shivanna(D) by L.R. & Anr. etc. [2018 (1) SCC 604]***, has held that:

"11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference."

(v) The Hon'ble Supreme Court in the case of ***M M Quasim Vs. Manohar Lal Sharma [1981 (3) SCC 36]***, has held that:

"Once this subsequent event of landlord's interest in the property getting extinguished as the property in question is allotted as an exclusive owner to a sharer upon a partition amongst co-sharers, is properly evaluated, unless some proper explanation is offered by the landlords who are parties to the proceedings, the plaintiffs are liable to be non-suited.

Before turning to the next topic, a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place. The learned judge of the first appellate court while upholding the claim of personal requirement of respondent has observed as under:

"It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Girdih.... The defendant appellant has also filed certified copy of judgment of one Suit No. 47/73 which is Ext. only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs".

This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison de'etre of the Rent Act.
Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life – shelter - and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe."

(vi) The Hon'ble Supreme Court in the case of ***Phiroze Bamanji Desai Vs. Chandrakant M Patil [1974 (1) SCC 661 : 1974 AIR(SC) 1059]***, has held that:

"So far as the finding on the question of greater hardship is concerned, the District Judge decided against the respondents on the view that as soon as the landlord establishes that he reasonably and bona fide requires the premises for his own use and occupation, the burden of proving that greater hardship would be

caused by passing a decree for eviction than by refusing to pass it is on the tenant and if the tenant fails to discharge this burden by producing proper evidence, a decree for eviction must go against him. This view in regard to the burden of proof, no doubt, prevailed at one time in various High Courts on the basis of the decision of the Court of Appeal in England in Kelly v. Goodwin (1) but it can no longer be regarded as correct after the, decision of this Court in M/s. Central Tobacco Co. v. Chandra Prakash (2). This Court speaking through Mitter, J., pointed out in that case, while discussing S. 21(4) of the Mysore Rent Control Act; 1961, and what was said there must apply equally in relation to s. 13(2) of the Bombay Rent Act, which is in identical terms "We do not find ourselves able to accept the broad proposition that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under s. 21 sub-s. (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act. Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the court to determine whether the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal.

The whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings etc. And S. 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Cl. (h) of s. 21. contains one of such grounds, namely, that the premises are reasonably and bona fide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord. We see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenants making it obligatory on him to show that greater hardship (1) [1947] All Eng. Report 810. (2) Civil Appeal 1175 of 1969, date 23-4-1969, would be caused to him by passing the decree than by refusing to pass it. In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after shifting such evidence that the court must form its conclusion on consideration of all the circumstances of the of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it."

(vii) The Hon'ble Bombay High Court in the case of ***Vasant Mahadeo Gujar Vs. Shri Baitulla Ismail Shaikh And Anr [2016 (4) AllMR 174 : 2015 LawSuit (Bom.) 1485]***, has held that:

"it is well settled that the landlord is not only required to establish his need to be bona fide but also to be reasonable. If the landlord

fails to plead or establish either of this ingredient then the ground under Section 13(1)(g) of the Act for eviction is unavailable to the landlord. Inherent in this test is that if the landlord has failed to disclose relevant materials in the pleading and in his evidence (examination-in-chief), dejure, the landlord has not approached the court with clean hands. In such a case, it will be the duty of the court to non-suit the landlord with regard to this ground."

(viii) The Hon'ble Bombay High Court in the case of ***Tarachand Hassaram Shamdasani Vs. Shri Durgashankar G. Shroff And Ors. [2002 LawSuit (Bom.) 1427]***, has held that:

"8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisitions and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.

9. I have no hesitation in taking the view that in the fact situation of the present case the Plaintiffs has failed to plead and also depose in his evidence (examination-in-chief) about the ownership of other premises capable of being used for the requirement pressed into service in the subject suit."

9] As against this, Adv. Shirish Kotwal submitted that the suit was filed 20 years before, asking the parties to plead every further development and change, will open the case for recording of evidence, which would have no end in the litigation. The contentions as to subsequent events as contended are not pleaded in the written statement, and therefore, the applicants cannot be permitted to produce the evidence. Apart from his contentions in his reply, he also submitted that there was no due diligence on the part of the applicants, as required under Order XLI Rule 27 of C.P.C. His similar application for amendment was rejected, which is not challenged. As such, he requested that the application be rejected.

10] At the outset, I would like to mention here that the applicant's contention is all about the premises which were purchased in 2010 by the respondents, opposite the premises of the appellants, in which Gurunanak Store and Raza Big Bazar are located. The copy of the sale deed of the said premises, i.e. house No.821, purchased by the respondents, is also filed by the appellant in the Writ Petition No.6089 of 2023 before the Hon'ble High Court.

11] Prior there to, when the present appeal was pending for adjudication before this Court, the applicants moved an application Exh.38 on 23.06.2016, for carrying out amendment in the memorandum of appeal under Order VI Rule 17 of C.P.C., seeking one of the amendment that the Trial Court should have considered all the facts and circumstances of the case including the oral and documentary evidence on record as to whether any other reasonable accommodation is available for the landlord or the tenant to whom greater hardship would be caused by passing the decree than by refusing to pass it. By order dated 29.08.2022, this Court allowed the applicants to carry out the amendment as prayed.

12] On 16.03.2022, the applicants filed an application Exh.65 under Order VI Rule 17 of C.P.C., for amendment in the written statement, wherein they have specifically mentioned that the respondents already had three vacant rooms in their adjacent house No.821, since long. By order dated 29.08.2022, this Court has specifically mentioned in the reasoning that, "it has been contended that three rooms occupied by the landlord are kept vacant, but the application is silent why this fact was not pleaded earlier. ---- In such circumstances, at such belated stage, I do not find it necessary to allow amendment of written statement".

13] The order below Exh.65 is not alleged to have been challenged by the applicants. Therefore, the applicants, whose rented premises are opposite to the premises of the respondents, purchased in 2010 by the respondents, were aware of the said fact since long. By order below Exh.65, dated 29.08.2022, their amendment regarding such purchase of premises in 2010, wherein three rooms occupied by the respondents are kept vacant, was rejected and not challenged and thereby attended finality. Therefore, what applicants want is to lead evidence without there being any pleadings to that effect in their written statement.

14] The Regular Civil Suit No.416 of 2005 was decided on 09.06.2011. The Regular Civil Appeal No.326 of 2011 was earlier dismissed by my learned predecessor in title by order dated 27.03.2023. Under such circumstances, without there being any pleadings in the written statement under Order XLI Rule 27 of C.P.C., the parties cannot be allowed to produce the additional evidence, oral or documentary, even in the Appellate Court.

15] Under Order XLI Rule 27(1)(aa) of C.P.C., the party seeking to produce additional evidence has to establish that such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

16] Vide order below Exh.65, it is already held that the contention of the applicants, that the three rooms occupied by the landlord are kept vacant, is belated. Even at this stage, the application is silent as to the said aspect. As such, the applicant has failed to establish his due diligence or that such fact was not within his knowledge earlier.

17] Unless the due diligence is established by the applicants, they cannot be permitted to adduce evidence as per his choice and at any stage. In the case of ***Hasmat Rai,*** *cited supra by the applicant, the Hon'ble Apex Court was pleased to permit the appellants to amend their written statement and allowing the parties to lead such evidence as is consequentially called for. In the case of* ***Pasupuleti Venkateswarlu,*** *cited supra by the applicant, the Hon'ble Apex Court has held that the fact arising after the lis should be brought diligently to the notice of the tribunal. In the case cited supra there was a proper and regular application to meet with the requriements of Order XLI Rule 27 of C.P.C. In the case of* ***M M Quasim,*** *cited supra by the applicant, the Hon'ble Apex Court relied upon the case of* ***Pasupuleti Venkateswarlu****. However, in the case in hand the application doesnt meet with the requirements of Order XLI Rule 27 of C.P.C.* In none of the judgments cited supra by the applicants, it is held that without pleadings being allowed and without there being due diligence, the parties can be permitted to adduce additional evidence in appeal. Under such circumstances, neither of the judgments cited supra by the appellant will apply to the present facts of the case. As such, I am of the view that the application deserves to be rejected. In the result, I proceed to pass the following order.

O R D E R

Application Exh.87 stands rejected with costs of Rs.15,000/- to be paid to the respondents.

DINESH PRAMOD SURANA
Digitally signed by DINESH PRAMOD SURANA
Date: 2026.02.17 15:57:09 +0530

Nagpur. [Dinesh P. Surana]
Date : 16/02/2026 Principal District Judge, Nagpur.

Case argued on	:	28/01/2026
Order dictated on	:	16/02/2026
Transcription ready on	:	16/02/2026
Order checked and signed on	:	17/02/2026

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CERTIFICATE

I affirm that the contents of this PDF file of the order are word-to-word, as per the original order.

Name of Stenographer (Grade-I) : Ajay P. Bothe