IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 84 OF 2007

1. Shri. Shrinath V. Chaturvedi

(deleted since deceased on 16th October 2025, representative through his legal representative the Applicant No.2 already on record. Amendment carried out as per court's order)

2. Shri. Mahesh V. Chaturvedi ... *Applicants (Orig. Defendants)*

: Versus :

1. Dr. Haniraj L. Chulani

2. Shri. Satish L. Chulani .... *Respondents (Orig. Plaintiffs)*

WITH

CIVIL REVISION APPLICATION NO. 720 OF 2014

WITH

INTERIM APPLICATION NO. 7068 OF 2024

1. Shri. Shrinath V. Chaturvedi

(deleted since deceased on 16th October 2025, representative through his legal representative the Applicant No.2 already on record. Amendment carried out as per court's order)

Shri. Mahesh V. Chaturvedi ... *Applicants (Orig. Defendants)*

: Versus :

Shri. Satish L. Chulani .... *Respondent (Orig. Plaintiff)*

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Mr. Prasad Dhakephalkar, Senior Advocate *with Mr. Anuuj N. Narula i/b. Jhangiani Narula & Associates, for the Applicants in both Revision Applications.*

Mr. G.S. Godbole, Senior Advocate *with Mr. Karl Tamboly and Mr. Aayesh Gandhi i/b. Wadia Ghandy & Co., for the Respondents in CRA-84 of 2007.*

Mr. Karl Tamboly *with Mr. Aayesh Gandhi i/b. Wadia Ghandy & Co., for the Respondents in CRA No. 720 of 2014.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 6/10/2026

JUDGMENT PRONOUNCED ON : 26/11/2026

JUDGMENT:

1) The Applicants have invoked the revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 **(Code)** for challenging the concurrent decrees passed by the Small Causes Court and its Appellate Bench. These two Revision Applications are filed by the tenants challenging the eviction decree and the decree declaring absence of right of parking of cars in the compound of the building.

CHALLENGES IN THE REVISION APPLICATIONS

2) Civil Revision Application No. 84 of 2007 is filed by the Applicants, who are original Defendants in RAE Suit No. 5/9 of 2003,

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assailing the judgment and order dated 7 October 2006 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No.74 of 2005 and confirming the eviction decree dated 28/29 January 2005 passed by the Learned Judge, Court of Small Causes, Mumbai in RAE Suit No. 5/9 of 2003. The Small Causes Court decreed the Suit filed by the Respondents on the ground of bonafide requirement of the landlords and has directed the Applicants to handover vacant and peaceful possession of the suit premises to the Respondents.

3) Civil Revision Application No. 720 of 2014 is filed by the Applicants challenging the judgment and decree dated 7 May 2014 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 224 of 2010 and confirming the decree dated 3 September 2010 passed by the Small Causes Court in R.A.D. Suit No. 737 of 2000. That Suit was filed by one of the landlords-Mr. Satish Chulani seeking a declaration that the Applicants had no right to park their cars in the compound of the building.

FACTS

4) The premises admeasuring 2500 sq.ft on the ground floor of the building 'Mohini' situated at 18 Road extension, Khar (West), Mumbai -400 052 is the '**suit premises**'. Respondents are the landlord in respect of the suit premises and were residing on the 2nd floor of the same building. The suit premises was initially granted on leave and license basis for a tenure of 11 months vide Agreement

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dated 1 November 1971 by the Respondents to Shri. Shrinath V. Chaturvedi (Applicant No.1). The license was renewed by the Agreement dated 1 December 1972. At the expiry of the license, Applicant No.1 failed to vacate the suit premises. In the year 1986, Applicant No.1 filed R.A.D. Suit No. 6592 of 1986 seeking declaration of tenancy in respect of the suit premises, which was decreed on 10 September 2003.

5) Respondents are the brothers residing on the second floor of the Mohini building and their wives are real sisters. Though Applicant No.1 was the original licensee and the tenant, his brother-Respondents No.2 is occupying the suit premises. According to the Respondents, Applicant No.1 had acquired suitable alternate accommodation and had shifted in the same and only Applicant No. 2, who is not the actual tenant, has been residing in the suit premises.

Suit relating to Eviction

6) Respondents filed R.A.E. Suit No. 5/9 of 2003 seeking eviction of the Defendants in the Small Causes Court, Mumbai. Respondents pleaded that son of Respondent No.2-Shri. Pavan S. Chulani is an advocate and that he wanted to marry a girl from the Bohra community. The marriage was to take place on 7 December 2003. It was pleaded by the Respondents that on account of marriage of son

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of Respondent No.2 with a Bohra community girl, it was not possible for the Respondents to accommodate the couple in the premises on the second floor due to vast cultural and religious differences. Accordingly, the bona fide requirement of residential accommodation for the son of Respondent No. 2 was pleaded in the plaint, and eviction of the Respondents was sought on that ground. In R.A.E. Suit No. 5/9 of 2003, Applicant appeared in the suit and filed Written Statement through their constituted Attorney. Respondent No.2 examined himself and relied on several documents. Applicant did not step into the witness box and instead examined Mr. Vasudev S. Chaturvedi, their constituted Attorney. They also examined Mr. Basant M. Chaturvedi, Accountant of Applicant No.2.

7) After considering the pleadings, oral and documentary evidence, the Small Causes Court proceeded to decree the suit by accepting the ground of bonafide requirement set up by the Respondents and by judgment and order dated 28/29 January 2005, directed the Applicants to handover possession of the suit premises to the Respondents.

8) Applicants filed Appeal No.74 of 2005 before the Appellate Bench of the Small Causes Court challenging the Trial Court's eviction decree. By judgment and order dated 7 October 2006, the Appellate Bench has dismissed the Appeal and confirmed the eviction decree. Aggrieved by the concurrent findings recorded by the Trial and the Appellate Courts on the issue of bonafide

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requirement, Applicants have filed the Civil Revision Application No. 84 of 2007. By order dated 27 June 2007, the Revision Application has been admitted and the decree for possession was directed not to be executed till decision of the Revision Application. Applicants were directed to deposit compensation @ Rs.20,000/- per month. By consent of the parties, the amount of compensation was enhanced to Rs.30,000/- per month by order dated 11 July 2008. Respondents filed Civil Application No. 598 of 2011 for enhancement of the monthly compensation. By order dated 1 March 2012, this Court enhanced the monthly compensation to Rs.70,000/- per month from October 2011. Another application was filed in the year 2017 by the Respondents seeking enhancement of the interim compensation. By order dated 20 September 2017, the interim compensation is enhanced to Rs.1,00,000/- from 1 March 2017.

9) During the pendency of the Revision Application, Applicant No. 1 has passed away. Applicant No. 2 filed an application seeking to bring himself on record as the legal heir of deceased Applicant No. 1. The said application was opposed by the Respondents on the ground that the wife and son of deceased Applicant No. 1 were also his legal heirs and that, in absence of their impleadment, they might raise objections or obstruct the execution of the decree at a later stage. Applicant No.2 however submitted that consent affidavits of wife and son of Applicant No.1 would be filed expressing no objection for bringing Applicant No.2 as legal heir of Applicant No.1. Accordingly, by order dated 29 October 2026, Applicant No.2 is

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directed to be brought on record as the legal heir of Applicant No.1. The wife and son of Applicant No.1 have filed consent affidavits dated 30 October 2026.

Suit relating to Parking

10) During pendency of the eviction suit, disputes arose over parking of vehicles by Applicant No. 2 in the compound of the building and the Respondents took a stand that the tenancy was only in respect of the suit premises and that the Respondents had no right to park their cars in the compound of the building. Respondent No. 2 (Mr. Satish Chulani) therefore filed a declaratory suit bearing R.A.D. Suit No. 737 of 2000 seeking a declaration that Respondent-Mr. S.V. Chaturvedi did not have any right to park his motor car/vehicles in the compound of the building-Mohini. The Suit came to be decreed by the Small Causes Court vide judgment and order dated 3 September 2010 declaring that the Defendant in the suit has no right to park his motor car/vehicle in the compound of the building and permanently injuncting him from parking his motor car/vehicle in the compound. The Defendant filed Appeal No. 224 of 2010 before the Appellate Bench of the Small Causes Court, which was dismissed by judgment and order dated 7 May 2014.

11) Revision Application No. 720 of 2014 is filed challenging the judgment and decree dated 7 May 2014 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 224 of 2010

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and confirming the decree dated 3 September 2010 passed by the Small Causes Court. By order dated 17 June 2014, this Court continued the interim stay granted by the Appellate Court to the execution of the decree. By further order dated 23 March 2015, this Court has made an arrangement permitting the Applicant in Civil Revision Application No. 720 of 2014 to park only one car in the compound by depositing the monthly compensation of Rs.500/-.

SUBMISSIONS

12) Mr. Dhakephalkar, the learned Senior Advocate appearing for the Applicants submits that both the Courts have erred in accepting the case of bonafide requirement on the basis of false plea set up by the Plaintiffs. That the sole ground of bonafide requirement pleaded in the Suit was the need for separate residence for Plaintiff No. 2's family, in view of his son marrying a girl from a different community. The marriage with a girl from a different community was cited as a pretext for impossibility of son residing with the family on the second floor. That otherwise both the Plaintiffs had in their possession large premises admeasuring 2500 sq.ft and it was not the case of the Plaintiffs that after marriage of son of Plaintiff No.2, the premises would be insufficient. That so far as the requirement of son’s separate residence is concerned, it has come on record that he had two other premises for residence. The first premises was on the ground floor of the same building admeasuring 400 sq.ft. The second premises was located just a

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kilometer away which was owned by the mother of wives of both the Plaintiffs. That the said flat was 1100 sq.ft and was sufficient for residence of son of Plaintiff No.2 with his wife. That the Trial Court and the first Appellate Court have erred in holding that son of Plaintiff No.2 did not have right of residence in the said flat. That when 2 sisters are married to two brothers and were residing together, it was impossible to believe that the other sister would ever object to the residence of a son of her own sister in the mother's house. That the third sister was admittedly not residing in the said flat. He, therefore, submits that the pleaded case of bonafide requirement was not at all established.

13) Mr. Dhakephalkar further submits that during pendency of the revision, Plaintiffs have secured possession of the first-floor premises from another tenant-M/s. Moulds & Dyes Pvt. Ltd. through consent terms dated 14 December 2021. That the said suit was also filed on the ground of alleged bonafide requirement. That on account of recovery of possession of first floor premises, the alleged bonafide requirement of Plaintiffs is otherwise satisfied. That though different bonafide requirements may have been pleaded in R.A.D. Suit No. 6592 of 1986 for residence of 11 family members in the second floor premises, the fact of the matter is that as of now only two Plaintiffs and their wives are residing on the second floor premises. That the Plaintiffs presently occupy premises admeasuring 5,000 sq. ft., which is more than sufficient, particularly when shortage of accommodation was never pleaded as a ground for eviction of the

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Defendants. That no one is residing in the first floor premises. That Plaintiffs possessed premises with 8 bedrooms on first and second floors. That alleged need of Plaintiff No.1 to reside separately has never been pleaded in the plaint. That there is no material to demonstrate that Plaintiff No.1 and Plaintiff No.2 ever desired to reside separately at any point of time. On the other hand, their wives being real sisters, both are still residing on the second floor premises.

14) Mr. Dhakephalkar, further submits that both the Courts have completely erred in answering the issue of hardship against the Defendants. That the issue of hardship is erroneously held against the Defendants by holding that both the Defendants do not reside in the suit premises. However, it is Plaintiff's own case that Defendant No.2 is residing in the suit premises. Even the Trial Court has recorded a finding that Defendant No.2 resides in the suit premises. That this aspect is clearly overlooked and the issue of hardship is erroneously answered on an erroneous basis as if none of the Defendants reside in the suit premises.

15) Mr. Dhakephalkar further submits that Plaintiff's bonafide requirement must subsist throughout the pendency of proceedings. He submits that the Court is empowered to take into consideration the subsequent events for moulding the relief. In support of his contention, he relies on following judgments:

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i. ***Pasupuleti Venkateshwarlu V/s. The Motor & General Traders.***[1]
ii. ***Hasmat Rai and Anr. V/s. Raghunath Prasad.***[2]
iii. ***Ramesh Kumar V/s. Kesho Ram.***[3]
iv. ***Baba Kashinath Bhinge V/s. Samast Lingayat Gavali & Ors.***[4]
v. ***Om Prakash Gupta Versus. Ranbir B. Goyal.***[5]
vi. ***Sheshambal (dead) through LRs V/s. Chelur Corporation Chelur Building & Ors***.[6]
vii. ***Sulochana Divakar Parkar Vs. Shamrao Dinanath Bhatte.***[7]

16) So far as Civil Revision Application No. 720 of 2014 is concerned, Mr. Dhakephalkar submits that parking is an amenity attached to the tenanted premises and therefore so long as the Defendants occupy the suit premises, they cannot be prevented from enjoying the amenity. That therefore both the Courts have grossly erred in injuncting the Defendant from parking his car in the compound of the building. He however fairly submits that the Applicant is willing to park only one car in the compound of the building.

17) Mr. Godbole, learned Senior Advocate appearing for the Original Plaintiffs/Respondents opposes Revision Application No. 84 of 2007. He submits that concurrent findings of fact are recorded

1 **(1975) 1 SCC 770**
2 **(1981) 3 SCC 103**
3 **1992 Supp (2) SCC 623**
4 **1994 Supp (3) SCC 698**
5 **(2002) 2 SCC 256**
6 **(2010) 3 SCC 470**
7 **Civil Revision Appl No.231/2022 dated 25.10.2024**

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against the Defendants in the eviction suit and in absence of any element of perversity, no interference in such concurrent findings is warranted. That Defendant No.1 has shifted to Bandra in the year 1987 itself and has not been residing in the suit premises at the time of his death as is clearly evident from the Death Certificate. That therefore tenancy has come to an end since Defendant No.2 was not residing with Defendant No.1 at the time of death of Defendant No.1. That Defendant No.2 who is not the tenant is unnecessarily litigating and delaying handing over of possession.

18) Mr. Godbole further submits that the Plaintiffs are justified in seeking eviction of the Defendants to secure separate accommodation for the son of Plaintiff No. 2. That Defendants cannot dictate terms to the Plaintiff that the son must reside somewhere else in the City. That there is nothing wrong in parents expecting their son and daughter-in-law residing in different premises but in the same building. That the genuine and bonafide need for separate accommodation due to difficulties arising from cultural differences in joint residence has been pleaded and proved in the eviction suit. That there is no cross examination on the aspect of difficulties created on account of interfaith marriage and requirement to reside separately. That both the Defendants did not step into the witness box.

19) Mr. Godbole further submits that the case does not involve complete eclipsing of the bonafide requirement. That son of

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Plaintiff No.2 is still alive and the need still continues. That mother's flat is not in the same building and Defendants cannot insist that the son must reside in mother's flat. So far as securing possession of first floor premises is concerned, he submits that the requirement pleaded in 1976 Suit was entirely different. That in 1976, Plaintiffs pleaded and proved the requirement of additional premises for 11 family members. The paucity of premises was the bonafide requirement pleaded and proved in the 1976 Suit, whereas the requirement in the present case is altogether different, as the Plaintiffs were finding it difficult to permit Plaintiff No.2's son and daughter-in-law to reside in the same flat on account of their interfaith marriage. That therefore the bonafide requirement is not eclipsed merely on account of recovery of possession of the first floor premises. He relies on the judgment of the Apex Court in ***Gaya Prasad Versus. Pradeep Srivastava***[8]. Mr. Godbole accordingly prays for dismissal of Civil Revision Application No. 84 of 2007.

20) So far as Civil Revision Application No. 720 of 2014 is concerned, Mr. Tamboly the learned counsel opposes the same submitting that no tenancy is created in respect of the parking space in the building. That tenancy is restricted only in respect of the ground floor premises. That therefore both the Courts have rightly held that Respondent has no right to park his cars in the compound of the building. He therefore prays for dismissal of Civil Revision Application No. 720 of 2014.

8 **(2001) 2 SCC 604**

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CONSIDERATION OF SUBMISSIONS AND FINDINGS

21) These two Revision Applications arise out of proceedings before the Small Causes Court initiated by the Plaintiffs/landlords against the Respondents both for the purpose of seeking their eviction, as well as for restraining the occupant of the premises from parking his motor car/vehicle in the compound of the building. The suit premises is fairly spacious, admeasuring approximately 2,500 sq. ft., and situated in the plush locality of Khar, Mumbai. Defendant No.1-Late Shrinath Chaturvedi secured merely a license to occupy the suit premises vide Agreement dated 1 November 1971 for a tenure of 11 months. The license was apparently renewed, by way of last agreement dated 1 January 1974. The licensee-Shrinath Chaturvedi however refused to vacate the suit premises and decided to take benefit of provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 **(Bombay Rent Act)** by treating him as a deemed tenant. He filed R.A.D. Suit No. 6592/1986 seeking declaration of his tenancy. During pendency of that Suit, Plaintiffs filed R.A.E. Suit No. 5/9 of 2003 seeking his eviction. However, by the time R.A.E. Suit No. 5/9 of 2003 was filed, Defendant No.1-Shrinath Chaturvedi had apparently shifted to some other premises in Bandra and his brother-Mahesh Chaturvedi was found occupying the suit premises. Respondents, therefore, joined both the brothers as Defendants in the eviction Suit.

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22) Respondent-landlords are brothers, whose wives are real sisters. Building-Mohini apparently has ground plus two upper floors. On the ground floor of Mohini building is the suit premises. There is another premises admeasuring 400 sq. ft. on the ground floor of the building, in which relatives of Respondents were apparently residing. The first floor was apparently rented out to another tenant-M/s. Moulds and Dyes Pvt. Ltd. Respondents had filed R.A.E. Suit No. 646/3695 of 1976 seeking eviction of the tenant on the first floor on the ground of reasonable and bonafide requirement claiming that there were 11 members in the family of the Respondents who were finding it difficult to accommodate themselves in the second-floor premises.

23) The Respondents instituted R.A.E. Suit No. 5/9 of 2003 before the Small Causes Court, seeking eviction of both the Defendants on the ground of bonafide requirement. It was pleaded that Respondent No. 2's son required separate residential accommodation following his marriage to a girl belonging to the Bohra community, as it had become difficult for the family to reside together under the same roof on account of cultural differences. It was pleaded that Respondent No.2 or his son were not financially capable of securing alternate premises. Respondents also pleaded in the suit that Applicant No.1 and his wife had two flats in Florencia Co-operative Housing Society Ltd. at Pali Mall Road, Bandra (West) and that he had shifted in those premises in the year 1987. It was pleaded that some monetary arrangement took place between

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Applicant Nos.1 and 2 and Applicant No.2 was occupying the suit premises at the time of filing of the eviction Suit.

24) It appears that after filing of R.A.E. Suit No.5/9 of 2003, R.A.D. Suit No. 6592/1986 filed by the Defendants came to be decreed on 10 September 2003 and this is how Applicants were declared as the tenants in respect of the suit premises.

25) The Trial and the Appellate Court have concurrently accepted the case of bonafide requirement set up by the Respondents for directing eviction of the Applicants from the suit premises. Since there are concurrent findings on the issue of bonafide requirement, as well as comparative hardship, unless there is a case of jurisdictional error or exercise of jurisdiction with material irregularity, this Court would be loathe in interfering in those findings in exercise of its revisionary jurisdiction under Section 115 of the Code. The revisionary power of the High Court is discretionary and is meant to correct jurisdictional errors rather than re-examining the facts as a second appellate Court over concurrent findings recorded by the Courts below. Keeping in mind the broad contours of revisionary jurisdiction of this Court, I proceed to examine whether Applicants have made out any case for interference in the concurrent findings recorded by the Small Causes Court and its Appellate Bench in the eviction suit.

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26) The Respondents pleaded their bona fide requirement in respect of the suit premises for the residence of the son of Respondent No. 2 after his marriage with a girl of another community on account of the cultural differences. Defendants did not dispute the pleaded case of son of Respondent No.2 marrying a girl from Bohra community. They did not dispute the case of cultural differences between them. They did not dispute the pleaded case that families of the two Respondents found it difficult to reside together with the son and daughter-in-law of Respondent No.2 due to cultural differences. Thus, there is no dispute about the pleaded difficulties of Respondents finding it difficult to reside with son and daughter-in-law in the premises on the second floor. Instead of disputing the pleaded case of bonafide requirement, Applicants raised a plea that the son could reside in other premises available.

27) Thus, the pleaded case of bonafide requirement of son's separate residence after inter-faith marriage remained undisputed and the Applicants attempted to set up a defence of availability of other premises for the son to reside with his wife after marriage. Here the issue for consideration is whether the Applicants can dictate the terms and insist that the son must reside in some other building by permitting them to occupy the suit premises. The answer, to my mind, appears to be in the negative. This aspect is discussed in detail in the paragraphs to follow.

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28) Mr. Dhakephalkar has contended that Defendants proved availability of additional premises for separate residence of son of Respondent No.2. Even if it is momentarily accepted that there was real bonafide requirement of separate residence, he has contended that, there are premises admeasuring 400 sq.ft on the ground floor of the same building and another premises of maternal grandmother located just a couple of kms away. So far as the ground floor premises admeasuring 400 sq. ft is concerned, it has not come in evidence that the same was occupied by other family members of the landlords. Applicants could not establish that the premises admeasuring 400 sq.ft on the ground floor was vacant to be occupied by the son of Respondent No.2.

29) Greater stress is led by Mr. Dhakephalkar on availability of separate premises admeasuring 1100 sq.ft in another building located at a distance of 1 or 2 kms, which was apparently owned by the mother of Respondents' wives. As observed above, Respondents' wives are real sisters. Thus, the premises admeasuring 1100 sq. ft is of the maternal grandmother, which was apparently lying vacant and it is contended that the same could have been easily occupied by son of Respondent No.2, if he desired separate residence from Respondents. The Trial and the Appellate Courts have held that the said flat could not be occupied by son of Respondent No.2 as a matter of right. Mr. Dhakephalkar has contended that if the son could demand right to occupy father's property (suit premises), it is inconceivable that he would not have a right to occupy mother's

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premises. He has contended that though the wives of Respondents had one more sister, it is established that she was not residing in the mother's house. He has further contended that since the two sisters resided together alongwith the Respondents, there was no question of there being any dispute between the two and therefore it was easily possible for son of Respondent No.2 to occupy his mother's/grandmother's house.

30) However, what Mr. Dhakephalkar misses is the point that Respondents desired the son to reside in the same building after his marriage. In my view, there is nothing wrong with Respondent No. 2 expecting his son to reside separately in the same building. Though the cultural differences made it difficult for the two units to reside in the same house, the parents can desire that the son and daughter-in-law can reside together in the same building but in a separate flat. This is not a fanciful desire of the landlords. More importantly, the Applicants-tenants cannot dictate terms to the Respondents. Though the Respondents own the suit premises, which are in occupation of tenants, the tenants cannot insist that they must be permitted to occupy the suit premises and son of Respondent No.2 must reside in a separate building situated approximately 2 kms away. The Applicants cannot insist that the son of Respondent No. 2 should make the sacrifice of living away from his parents after his marriage merely to enable the Applicants to continue occupying the premises indefinitely. In my view therefore, it is not necessary to delve deeper into the issue of alleged right of son of Respondent

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No.2 to reside in his grandmother's house. Even assuming that the son had such a right, Applicants cannot insist that the son must reside separately from his parents at a distance of 2 kms when his parents own another flat on the ground floor of the same building. In my view, therefore, both the Trial and the Appellate Courts have rightly rejected the Applicant's defence that the son has alternate premises available for his residence, as a ground for defeating the Respondents' case of bona fide requirement.

31) Mr. Dhakephalkar has strenuously contended that paucity of premises on the second floor was neither pleaded nor attempted to be established. Though he is right in contending so, the real bonafide requirement pleaded and established is altogether different, i.e. inability of Respondents to reside together with the son and daughter-in-law in the same house. To establish this need, it was not at all necessary to plead and establish paucity of space for accommodation of son and daughter-in-law in the second-floor premises. Therefore, the issue of quantum/size of premises in possession of Respondents was irrelevant.

32) Most importantly, both the Applicants shied away from entering the witness box. They examined the constituted attorney and an accountant to deal with the case of Respondents' bonafide requirement and sufferance of comparative hardship. Failure to examine the tenant and the actual occupant (*Defendant No.2*) was clearly fatal to the defence of the Defendants. The constituted

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attorney and the accountant, having no personal knowledge about the need of the landlords, could not have deposed to prove the defence of the Applicants.

33) Thus, the case does not involve a fanciful wish but a real, bonafide, reasonable and genuine need of separate premises for residence of the son. Applicants neither disputed the factum of interfaith marriage nor the requirement of son's separate residence. In my view therefore, the Trial Court has rightly accepted the case of bonafide requirement set out by the Respondents and the Applicants are unable to demonstrate the case of jurisdictional error or gross perversity in the findings recorded by the two Courts.

34) Another point which is strenuously urged by Mr. Dhakephalkar, and which now constitutes the principal bone of contention of the Applicants, is the alleged eclipse of the Respondents' bona fide requirement on account of subsequent events that have occurred during the pendency of the Revision Application. Applicants have filed Interim Application No. 7068 of 2024 to bring on record subsequent events. It is brought out by the Applicants that during pendency of the Revision Application, the tenant of first floor premises, M/s. Mould and Dyes Pvt. Ltd. has handed over possession of first floor premises to the Respondents vide consent terms dated 14 December 2021 in this Court. Respondents have not disputed the position that they have secured possession of first floor premises from the tenant-M/s. Mould & Dyes

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Pvt. Ltd. vide consent terms accepted by this Court on 14 December 2021. According to the Applicants, another flat admeasuring 2500 sq.ft on the first floor of the building is now in possession of the Respondents, that their alleged bonafide requirement has now eclipsed and that the son of Respondent No.2 can occupy the first-floor premises. According to the Applicants, Respondents now have substantially large premises admeasuring 5000 sq. ft. (on first and second floors of the building) comprising of 8 bedrooms and therefore the very need in respect of the suit premises has now come to an end.

35) On the other hand, it is the case of the Respondents that possession of first floor premises is secured as a result of eviction decree passed in R.A.E. Suit No. 646/3695 of 1976. That Suit was filed by Respondents seeking eviction of tenant-M/s. Mould & Dyes Pvt. Ltd. on the ground of bonafide requirement since 11 family members were residing on the second-floor premises. According to the Respondents, bonafide requirement pleaded and established in RA.E. Suit No. 646/3695 of 1976 is different and distinct from the one pleaded and established in R.A.E. Suit No. 5/9 of 2003.

36) It is the case of the Respondents that after securing possession of the premises on the first floor, Respondent No.1-Dr. Haniraj Chulani alongwith his wife, has shifted in the first-floor premises in August 2003 after carrying out repairs and interior work. It is contended that Dr. Haniraj Chulani has three children and four

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grandchildren who visit and reside with them frequently and therefore the entire first floor premises is required by Dr. Haniraj Chulani and his family. Mr. Dhakephalkar, however, disputes the position and submits that there is neither any material nor any evidence to support the contention sought to be raised in the Affidavit-in-Reply filed to the Interim Application. He submits that even Respondent No.1 continues to reside on the second-floor premises.

37) In my view, the bona fide requirements pleaded and established in the two suits pertaining to the first floor and the ground floor are entirely distinct and have no correlation with each other. The bona fide requirement in respect of the first-floor premises, as pleaded and established in R.A.E. Suit No. 646/3695 of 1976, essentially arose from the inadequacy of space on the second floor to accommodate the entire family. On the other hand, lack of space was never pleaded or attempted to be established in R.A.E. Suit No.5/9 of 2003. The bonafide requirement pleaded and established in that suit is about a separate residence for the son of Respondent No.2 on account of family, finding it difficult to reside together due to cultural differences on account of son's interfaith marriage. Upon recovery of possession of the first-floor premises on the ground of bona fide requirement arising from the inadequacy of accommodation, the first difficulty faced by the Respondents' family stood ameliorated. Consequently, some of the family members of the Respondents shifted to the first-floor premises, thereby alleviating

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the problem of shortage of space. This, however, does not resolve the second problem of son of the Respondent No. 2 and his wife regarding inability to reside together with his parents in the same house. This need for a separate residence continued even after recovery of possession of the first-floor premises. As pointed out by Mr. Godbole, the initial problem of shortage of space has been resolved by Respondent No. 1 by shifting to the first-floor premises. However, the difficulty faced by the family of Respondent No. 2 in residing together with his son and daughter-in-law continues to persist. In my view, therefore the case does not involve complete eclipsing of the bonafide requirement.

38) It is strenuously sought to be contended on behalf of the Applicants that the problem of paucity of space on the second floor was not the pleaded case of the Respondents. Though this contention is not entirely incorrect, in my view, the bona fide requirement in the present suit filed against the Applicants did not relate to the problem of paucity of space, but related to the genuine difficulty of son's inability to reside with his parents. Therefore, mere absence of pleading in the case about paucity of space does not make the case of Applicants any better. In fact, Respondents rightly avoided to plead the case of paucity of space for the family in the suit filed against the Applicants. They rightly compartmentalized the two needs of larger space and son's inability to reside with the family in two distinct suits filed against the two tenants.

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39) Thus, recovery of possession of the first-floor premises has no bearing on the pleaded and established bona fide requirement of the son's separate residence. The said requirement remains unaffected and continues to subsist in its entirety. Even the intensity of the need has not reduced with recovery of possession of the first-floor premises. What is required to be established is not reduction of intensity of need but complete eclipsing of the need. Since the case does not involve complete eclipsing of the bonafide requirement, the subsequent events that occurred during pendency of the Revision Applications does not warrant moulding of the relief.

40) There are numerous precedents dealing with the issue as to whether the bona fide requirement must continue to subsist throughout pendency of the proceedings and the extent to which subsequent developments occurring during pendency of eviction proceedings can have a bearing on sustainability of the eviction decree. In ***Gaya Prasad*** (supra), the Apex Court has held that a landlord should not be penalized for slowness of the legal system and that the crucial date for deciding the bonafide requirement of the landlord is the date of application for eviction. It has been consistently held that subsequent developments occurring during the pendency of the eviction proceedings, merely as a consequence of the protracted nature of the litigation process, cannot be made a ground to deny the landlord the relief which he is otherwise entitled to. The Apex Court has clarified that the subsequent events may, in certain circumstances, be considered to have overshadowed the

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genuineness of the landlord's requirement. However, such subsequent events can be taken into consideration by the Court only when they are of such a nature and magnitude as to completely eclipse the landlord's requirement and render it insignificant altogether. It is held in paragraphs 10, 13 and 15 of the judgment as under:

> 10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

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> 13. **In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.** A three-Judge Bench of this Court in ***Pasupuleti Venkateswarlu vs. Motor and General Traders*** [1975 (1) SCC 770] which pointed to the need for re-moulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that **cognizance of such subsequent events should be taken very cautiously.** This is what learned Judges of the Bench said then:
>
> > '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 proceedings provided the rules of fairness to both sides are scrupulously obeyed.'
>
> 15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. **If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.**
>
> *(emphasis added)*

The ratio of the judgments of the Apex Court in ***Pasupuleti Venkateshwarlu, Hasmat Rai*** and ***Ramesh Kumar*** (supra), relied upon by Mr. Dhakephalkar, is considered by the Apex Court in ***Gaya Prasad*** (supra) and need not be discussed separately.

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41) Mr. Dhakephalkar's reliance on Apex Court judgment in ***Sheshambal*** (supra) is inapposite. The judgment is an authority on the principle that landlord's right to seek eviction on the ground of bona fide requirement is personal to him and that upon the death of the original landlord during pendency of litigation, the personal requirement can become extinct. The Apex Court held that the legal representatives cannot sustain eviction on unpleaded family requirements that were never set up in the original eviction petition. In that case, the suit was instituted by the landlords, who had three married daughters. The Court found that all the three married daughters were residing separately in different cities. It is on account of these peculiar facts that the Apex Court held that the bonafide requirement was completely eclipsed. The judgment rendered in peculiar facts of that case has no application to the present case where bonafide requirement of son's separate residence still continues to subsist.

42) Mr. Dhakephalkar has relied on judgment of this Court in ***Sulochana Divakar Parkar*** (supra) in support of his contention that for the purpose of determining the bonafide requirement of a family member, the pleadings in the plaint must be considered. In case before this Court, the original Plaintiff had pleaded the bonafide requirement for himself and his son to run the cycle repairing shop in the suit premises. However, the duo passed away during pendency of the proceedings. While prosecuting the Appeal, Plaintiff's legal heirs did not seek to amend the plaint and set up the case of their

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own bonafide requirement in respect of the shop. Thus, the originally pleaded requirement got eclipsed by death of Plaintiff and his son. It is in the light of those peculiar facts that this Court confirmed the decree of the Trial Court by dismissing the eviction suit. The ratio of the judgment has no application to the peculiar facts of the present case where bonafide requirement still continues to subsist.

43) Mr. Godbole has relied upon judgment of this Court in ***Gracy D'souza V/s. Administrative Tribunal by its Chairman and Ors.***[9] in which it is held that bonafide requirement of the landlord is to be reckoned as on the date of filing of the application and the same need not continue till final adjudication. This Court has held in paragraphs 46 and 47 of the judgment as under:

> 46. The bonafide need which the landlady has to prove for herself and for her family members, is on the date of the filing of the proceedings for eviction, as held in the decisions discussed above. It is no doubt true that the landlady expired in November 1993, but by that time, the recording of her evidence was already over. The legal representatives including her four children and their spouses were already brought on record. Therefore, the crucial date for considering the bonafide need of the landlady, and after she died for her family members, is the date on which the case was filed. As on the date of passing the order of eviction by the Rent Controller, the need for the said premises by the legal heirs of the landlady very much subsists and thus, the contentions raised by Mr. Diniz, which are contrary to the settled proposition of law, cannot be accepted.
>
> 47. In Shakuntala Bai (supra), the crucial date for deciding the bonafide requirement of the landlord is held to be the date of the institution of the proceedings. If the landlord or his legal heirs prove

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such bonafide need, the Rent Controller is duty bound to consider it and act accordingly.

44) The Apex Court judgment in ***Om Prakash Gupta*** (supra) relied upon by Mr. Dhakephalkar does not assist his case. The judgment is an authority on the principle that the general rule in civil litigation is that rights are determined as on the date of filing the suit and that a subsequent event can be considered only if it has a direct bearing on the relief claimed, and a party cannot rely on new factual developments without properly amending pleadings. The general rule even in eviction proceedings is that rights are determined as on the date of filing the suit. The bonafide requirement therefore needs to be adjudged as on the date of filing of the suit. A subsequent event can be considered only if it has a direct bearing on the relief claimed, and a party cannot rely on new factual developments without properly amending pleadings. The judgment is relied upon primarily in support of the contention that the Respondents have failed to duly comply with the established procedure while asserting that the first-floor premises is being used for the residence of Respondent No. 1. By relying on the judgment, the Applicants are looking at an opportunity to seek remand of the proceedings to the Small Causes Court so as to further delay the litigation and continue the litigation. In my view, the inquiry into what Respondents did in respect of the first floor premises is entirely unnecessary for determining the real question of controversy between the parties. As observed above, the needs pleaded in the two

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suits are distinct having no interconnection with each other. The first-floor premises has been vacated recently as on 14 December 2021 as an outcome of the suit which was filed for bonafide requirement of space crunch. Therefore, the stand taken in the reply about Respondent No.1 shifting to first floor premises, after availability of additional premises, cannot be disbelieved altogether. It, therefore, cannot be contended that Respondents were required to lead evidence to establish residence of Respondent No.1 in the suit premises after recovery of first floor premises from another tenant.

45) In view of the above discussion, I find it difficult to accept the case of the Applicants that the bonafide requirement of the Respondents has completely eclipsed the subsequent events. The requirement continues to subsist even today and therefore the decree of eviction deserves to be upheld.

46) On the issue of comparative hardship, Mr. Dhakephalkar has sought to assail the findings of the Trial and the Appellate Courts contending that there is error in holding that Applicant No.2 is not residing in the suit premises. The finding appears to have been recorded on account of Applicant No.2 not stepping into the witness box and instead examining his employee. To prove the comparative hardship, it was incumbent for Applicant No.2, who claims residence in the suit premises, to lead evidence. However, for reasons unknown, Applicant No.2 shied away from the witness box. So far as Applicant No.1 is concerned, it is clearly borne out from evidence

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that he had shifted to another premises in the year 1987 itself. It was Applicant No.1, who had secured license from the Respondents to reside in the suit premises. There was actually no privity of relationship between Respondent-landlords and Applicant No.2. By way of internal arrangement between the brothers, Applicant No.1 appears to have permitted his brother to reside in the suit premises. Thus, the original inductee is not residing in the suit premises which is allowed to be occupied by his brother. On the other hand, the need of son of Respondent No.2 to reside in his suit premises is genuine and real. In my view, therefore, the issue of comparative hardship is rightly answered by both the Courts in favour of the Respondents and against the Applicants.

47) In view of the above discussion, I do not find any valid case being made out in Civil Revision Application No. 84 of 2007 for interfering in the concurrent findings recorded by the Trial and the Appellate Courts on the issue of bonafide requirement.

48) So far as Civil Revision Application No.720 of 2014 is concerned, the issue therein is about the right of Applicants to park their vehicles in the compound of the building. Since the eviction decree is upheld, Applicants will have to vacate the suit premises and hence, nothing survives in said Revision Application. Even otherwise, the tenancy did not cover right to park the vehicles. Since the Applicants will have to vacate the suit premises, there is no question of them parking their vehicles in the compound of the

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building. It is therefore not necessary to delve deeper into the aspect of parking and to record any independent finding relating to the decree passed in the Suit granting injunction against Applicant No.2 from parking his vehicle in the compound of the building.

49) Therefore, both the Revision Applications deserve to be dismissed.

Conclusions

50) The conspectus of the above discussion is that the Applicants have failed to make out any case for interference in the impugned decrees passed by the Small Causes Court and its Appellate Bench. Respondents have established the pleaded case of bonafide requirement of the suit premises. The need has not been completely eclipsed by the subsequent events occurring during pendency of the long litigation. Vacation of the first-floor premises by another tenant is an irrelevant factor.

51) Applicant No. 1 (*who had long before shifted to alternate premises and who is no more*) came in possession of the suit premises as a mere licensee for 11 months in the year 1971. He shifted to another premises in 1987 and allowed his brother to occupy the suit premises and later on, passed away. His wife and son do not reside in the suit premises and have apparently no interest in prosecuting the litigation on behalf of Applicant No.1. They have let Applicant No. 2 to act on behalf of the deceased brother. It is tragic that the

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premises granted on a mere license for 11 months still remain in possession of the brother of the original licensee. The tardiness of the legal proceedings has aided the Applicants to occupy the premises for 23 years after filing of the eviction suit. It has been 55 long years since the owners were prevented from using the premises. Time has come for the Applicants to vacate the suit premises so that the owners make use of the same for their needs.

Order

52) Resultantly, both the Revision Applications are **dismissed** with costs. Applicants shall handover possession of the suit premises to the Respondents within a period of 2 months by continuing to deposit the interim compensation till vacation of the premises. The Respondents shall be entitled to withdraw the deposited amounts with accrued interest.

53) All the pending Interim Applications also stand disposed of.

NEETA SHAILESH SAWANT
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[SANDEEP V. MARNE, J.]

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