CNR NO.MHSCA-20122152004

Presented on	:	22/04/1996
Registered on	:	06/07/1996
Decided on	:	30/04/2022
Duration	:	Years Months Days 25 09 24

IN THE COURT OF SMALL CAUSES, AT MUMBAI

R.A.E. SUIT NO. 485/999 OF 1996 Exh.155

The Cricket Club of India
a Company incorporated under
the Indian Companies Act, 1913
and having its Registered Office
at Brabourne Stadium,
Dinshaw Wachha Road, . . Plaintiffs.
Bombay - 400 020.

Versus

K. Rustom & Company
Shop No.6, Ground Floor,
North Stand Building,
Veer Nariman Road, . . Defendants.
Bombay - 400 020.

Anand Gandhi : Advocate for Plaintiffs.
Rita D. Bhatia : Advocate for Defendants.

Coram	:	S. B. Todkar, Judge, C.R.No.11 Date : 30/04/2022.

ORAL JUDGMENT :

This is a suit filed by the plaintiffs for eviction of the defendants from the suit premises viz. Shop No.6 (comprising approximately of 3070 sq.ft. and mezzanine floor admeasuring

approximately 950 sq.ft., on the ground floor, of the plaintiff's property known as “North Stand Building”, Veer Nariman Road, Bombay 400 020, U/Sec.16(1)(g) of The Maharashtra Rent Control Act, 1999 or U/Sec.13(1)(g) of Bombay Rent Control Act.

2. The case of the plaintiffs in short as under :

The plaintiffs are owners and therefore landlords within the meaning and definition under the Bombay Rent Act, of the property known as “North Stand Building” forming part of the Brabourne Stadium situate at 67, Veer Nariman Road, Churchgate, Bombay - 400 020. (Hereinafter for brevity sake referred to as “the said property”).

3. The defendants are the tenants of the plaintiffs in respect of Shop No.6, comprising approximately 3070 sq.ft. and a mezzanine floor admeasuring approximately 950 sq.ft., on the ground floor of the said property known as North Stand Building. (Hereinafter referred to as “the suit premises”).

4. The defendants have been paying the monthly rent in respect of the suit premises to the plaintiffs at the rate of Rs.527/- per month, exclusive of electricity and water charges. The defendants are paying electricity and water charges separately. The rent paid at the rate of Rs.527/- per month is for below the standard rent.

5. The defendants are not using the substantial portion of the suit premises for the purpose for which the same were let to them for last more than three to four years. They have got certain photographs taken, showing the position of the suit premises and of the portion of the suit premises which was either kept unused or

under lock. On realizing that they have taken out the photographs, the defendants have opened the premises and have stuffed their material in showcase which would show as if the suit premises are being used. In fact there is no business being carried out by the defendants in the suit premises or any part thereof. The plaintiffs themselves are in need of the suit premises for the purpose of their club activities and thus the plaintiffs require the suit premises for their use and occupation reasonable and bonafide. The defendants have thereby committed breach of the provisions of Bombay Rent Act.

6. In view of what is stated in proceeding para, defendants have lost the protection of the Bombay Rent Act and plaintiffs have therefore, become entitled to recover and therefore seeks to recover quiet, vacant and peaceful possession of the suit premises from the defendants on the following amongst other grounds :-

(A) The suit premises or the substantial portion thereof is not being used for more than six months immediately preceding the date thereof.

(B) The suit premises are reasonably and bonafide required by the plaintiffs for their personal use for club activities. The plaintiffs will suffer grave and unmitigated hardship if a decree in eviction is refused and whereas no hardship will be caused to the defendants, if decree in ejectment is passed in favour of the plaintiffs.

(C) The defendants have committed breaches of the provisions of Bombay Rent Act.

7. The plaintiffs vide their letter dated 14th June, 1995 called upon the defendants to let them know as to whether they have created any third party interest or were likely to sublet and/or part with possession of the suit premises or any part thereof. The defendants by their reply letter dated 19th June, 1995, informed the plaintiffs that they were in exclusive use of the suit premises and were not trying to create any third party interest or negotiating to create third party interest in respect of the suit premises.

8. Thereafter, they made enquiries with regard to the use of the suit premises by the defendants, when they learnt that the substantial portion of the suit premises in occupation of the defendants is unused since more than three to four years, as stated hereinbefore. Recently the Chief Executive & Secretary of the plaintiffs has started receiving telephone calls as to permit the defendants for negotiating with the representatives of Mac Donald & Co. for their permission to sublet and/or transfer and/or part with possession of the suit premises or portion thereof. In fact, one of the Real Estate Agent having an office above the suit premises has also given an advertisement in the issue of Times of India dated 3rd July, 1995, that Mac Donald & Co. were looking out for premises, and from the contents of the said advertisement, the plaintiffs have reason to believe that same is with reference to the suit premises, as the area of which is more or less the same of the defendants. On or about 15th January, 1996, the Chief Executive & Secretary of the plaintiffs received an anonymous call whereby he was threatened by caller of dire consequences in the event the plaintiffs or on behalf of plaintiffs he would not agree to transfer the suit premises and/or give permission for creating third party interest or part with

possession under some suitable arrangement of the suit premises, the defendants would go ahead and induct any person or persons and/or create third party interest and/or enter into some arrangement in respect of the suit premises or portion thereof.

9. In view of what is stated above, it is obvious and the plaintiffs have reasonable apprehension that the defendants are trying to create third party interest which is totally unjust, unwarranted, illegal and in breach of the terms of tenancy. The conduct of the defendants in giving/issuing threats to the Chief Executive & Secretary and/or insisting upon him to agree upon either for an outright transfer and/or permission to create third party interest or permit them to part with possession speaks of arrogant attitude adopted by the defendants through their partners/servants or agents. The conduct of the defendants are reprehensible. The defendants are not justified in inducting third party in the suit premises or any part thereof, which would be detrimental to the interest of the plaintiffs. The defendants if act in compliance of their threats not only would jeopardise the reversionary rights of the plaintiffs but would suffer irreparable loss, injury, harm and prejudice of grave nature to the plaintiffs. The plaintiffs themselves are in need of the premises for their personal bonafide use and occupation.

10. The list of their members of the plaintiffs club has gone up substantially in the last 14 years since filing of the suit and consequently the club need for more space to meet the growing requirements of the members. At present, there are more than 8000 members and additionally the guests of the members who frequently visit the club to utilize the coffee shop which is operational between

7 a.m. to 11 p.m. At the movement, the plaintiffs have only one coffee shop by the name of Poolside Glance which has merely 17 tables. The plaintiffs do not have in their possession a suitable place which can be used as a coffee shop which can accommodate substantially large number of plaintiffs members and their guests which are increasing day by day. Of late, there is a great demand for a bigger coffee shop in the club premises. There has been representation from several members that the existing coffee shop catering to only 74 persons is too congested being a small place as it could not accommodate more than 74 persons at a time. There has been a growing demand from the members to have a substantially larger coffee shop which can accommodate at least 200 persons at a time. Taking into consideration the growing demands of the members the plaintiffs have taken a survey recently of various premises in the club property and have come to the conclusion that the suit premises is the only place which is ideally suited and suitable to start as a coffee shop, since the suit premises is the only premises which is specious enough and easily accessible and hence ideal and suitable which would accommodate substantially large number of patrons who would be using the coffee shop. Accordingly, the Executive committee members and the Estate committee of the plaintiffs and after due deliberation have resolved that an application be made to the Court for seeking the eviction of the defendants from the suit premises since the plaintiff's requirement is reasonable and bonafide to use the same as another coffee shop specious enough to accommodate substantially larger number of members and their guests ranging 200.

11. The present coffee shop i.e. Poolside Glance being small

and insufficient, plaintiffs require the suit premises to be used as a specious new coffee shop. The suit premises are the only premises which are more suitable and ideally situated for the plaintiff to commence as their additional coffee shop to meet the growing demands of the plaintiffs members and their guests. This requirement of the plaintiffs has arisen recently during the pendency of the above suit. The plaintiffs are therefore entitled to the suit premises on the ground of reasonably and bonafide requirements. The plaintiffs will suffer irreparable loss, injury, prejudice and hardship of grave nature if a decree of eviction is refused in plaintiffs favour. The defendants will not suffer any loss, injury or hardship of any nature since the defendants are not occupying substantial portion of the suit premises and more than two-third area of the suit premises are unused since more than three to four years from the date of the filing of the suit. In any event, the hardship if any of the defendants can be mitigated by giving them a reasonable compensation to the defendants partners who are senior citizens and more or less retired from active business and one of the partners of the defendants is permanently retired and settled down at Pune and has no interest in the business nor the suit premises which are practically lying idle and unused.

12. Taking into consideration the fact that the defendants are not using the suit premises for their business which has virtually stopped, without prejudice to the respective rights of the parties the plaintiffs began negotiating for an 'out of Court' settlement where under the defendants were to hand over the premises to the plaintiffs by vacating the same. The said talks of settlement could not fructify as the demands, if the defendants were unreasonable in the matter of

compensation for surrender of premises. The plaintiffs undertook the process of negotiation recently as there were in dire and urgent need of the suit premises to start a new coffee shop for meeting the growing requirement of the plaintiffs members. In view of the facts stated above the plaintiffs therefore respectfully submit that the defendants are simply hanging on to the suit premises despite having kept the same closed and unused solely with the view to pressurize the plaintiffs to pay them to meet their unreasonable demands which is just not possible for the plaintiffs. Plaintiffs therefore, pray that a decree of eviction be passed against the defendants.

13. The defendants have lost protection under the provisions of the Bombay Rent Act and as such are bound and liable to quit, vacate and hand over quiet, vacant and peaceful possession of the suit premises.

14. The defendants are attempting to create third party interest and/or part with possession of the suit premises or portion thereof and in view of the threat received by the Chief Executive & Secretary for dire consequences as stated hereinabove, it is just, equitable, expedient and in the interest of justice that the defendants, their partners, proprietor, servants, agents and representatives be restrained by an order and injunction from creating any third party interest or inducting any strangers into and upon the suit premises or any portion thereof. Hence, the plaintiffs have filed the present suit for eviction of the defendants from the suit premises, permanent injunction etc. On the abovesaid grounds plaintiffs have filed this suit for possession of the suit premises from the defendants and permanent injunction against the defendants.

15. The defendants have resisted the suit by filing their

written statement at Exh.7. It is the contention of the defendants that this suit cannot be considered to be a suit by CCI. The said Natarajan is not a person in any manner authorised or competent to sign the plaint and institute the present suit in the name of CCI.

16. The suit in the name of CCI is not proper and maintainable. Moreover, the said Natarajan is not in any contractual relationship with this defendant. He has no cause of action whatsoever to file a suit against this defendant. The suit therefore is liable to be dismissed with costs in limini.

17. CCI is an inanimate person. It is incorporated under the Companies Act of 1913 and is now deemed to have been incorporated under the Companies Act, 1956. A mere perusal of the Memorandum and Articles of Association of CCI would disclose that the constitution of CCI is not traditional and usual as would be anticipated under the provisions of the Companies Act. CCI has no shareholders but CCI has merely members. The license dated 21st May 1987 from the Regional Director, Government of India, Ministry of Industry and Company affairs, Department of Company Affairs (Company Law Board) at Bombay as clearly set out in para (ii) and to quote: “That the income and property of the said company when so derived shall be applied solely for the promotion of the objects as set forth in its Memorandum of Association and that no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to persons who, any time are or have been members of the said company or to any of them or to any person claiming through anyone or more of them.”

18. A member of CCI would mean a Patron, Vice-Patron, Founder Member, Life Member or Ordinary Member, but is not a

shareholder. CCI has provided for "Executive Committee" which consists of members for the time being of the Executive Committee constituted as provided in the Articles of Association constituting CCI. The Executive Committee is to consist of not less than 15 and not more than 20 members. It appears that at the initial stage when CCI was constituted under the Indian Companies Act, 1913, there was no provision for retirement by rotation but as far as it can be seen the existing Memorandum and Articles of Association of CCI, by Article 74 thereof at the Annual General Meeting in each year of CCI 1/3rd of the members of the Executive Committee for the time being (excluding nominated members, if any, and the ex-officio members) and if their number is not three or a multiple of three, then a number nearest to 1/3rd are required to retire from office. Such retiring members would be eligible for re-election. It would appear that in the place of retiring members of the Executive Committee, fresh candidates are elected inter alia as per Article 77 of the said Memorandum and Articles of Association of CCI. CCI as per Article 97, the management and control of the CCI is vested in the Executive Committee who would be the governing body of CCI. Such Executive Committee under Article 98 ["Article" referred to herein referred to Articles of the Articles of Association of CCI] can appoint and dismiss a Secretary any other officers and employees provided for and otherwise carry out all day to day functions. Under Article 98 (r), the Executive Committee is empowered at any time and from time to time by a power of attorney under the seal to appoint any person to be the Attorney of the Club for such purposes and such powers and authorities and discretions not exceeding or exercisable by the Executive Committee under these presents and for such period and subject to such conditions as the Executive Committee may from

time to time deem fit and to authorize any such Attorney to sub-delegate all such powers, authorities and discretion's for the time being vested in him. By virtue of Article 94, the Executive Committee is mandated to cause Minutes to be duly entered in the books for the purpose of all appointments of officers and local or sub-committees etc. and inter alia to enter all resolutions and proceedings of general meetings and all meetings of the Executive Committee and any local sub-committee which minutes are required to be signed by the Chairman and shall be receivable as prima facie evidence of the matters stated in such minutes.

19. It appears that the said Natarajan appears to be completely obvious to the said Articles. In the submission of the defendant if the said Natarajan was authorized officer as stated by him in the verification clause only and nowhere-else in the body of the plaint, the plaint proceedings would have set out the necessary particulars of his authority to file the present suit in the name of CCI. It is absolutely necessary and mandatory under procedural law that a person instituting any proceedings and/or authorizing a legal practitioner inter alia by Vakalatnama to file a suit on behalf of an inanimate person would set in clear terms as to when, where and how such inanimate person has authorized him to adopt legal proceedings on behalf of such inanimate person. The said Natarajan has of necessity and requirement of law would have also annexed a power of attorney if there was any in his favour by such an inanimate person. The defendant inter alia having regard to the above status submits that the said Natarajan has unauthorisedly used the name of CCI as plaintiff and as filed the present suit in an unauthorised manner against the defendant by abusing the due process of law and

for oblique an illegal motive. This by itself requires that the suit be dismissed in limini with costs.

20. The plaint and proceedings do not disclose any cause of action against the defendant. Exh.A stated to be letter dated 14th June 1995 from one R. M. Ranjan, claiming to be the Chief Executive & Secretary, presumably of CCI, discloses that according to the said Ranjan, the defendant was "trying to create a third party interest" in the suit premises and that the defendant was not utilising the suit premises. He proceeds to demand in the said letter immediate confirmation of the defendant on receipt the said letter that the defendant is not negotiating/creating a third party interest nor is intending to part with the unused or unutilised premises in the defendant's occupation. Exh.B to the plaint sets out a letter dated 19th June 1995 from the defendant to what has been stated as Chief Executive & Secretary of CCI that the claim in Exh.A was not correct. The defendant has conveyed in clear terms that the defendant was occupying and was in possession of the entire area originally rented and that the suit premises were in possession of the defendant. The defendant denied that the defendant was trying to create and/or was negotiating to create any third party interest in respect of the suit premises or any part thereof. To the claim of said Ranjan in Exh.A that CCI required the premises for its bonafide use, the defendant has stated that the claim for bonafide use was irrelevant. Thus, with regard to Exh.A and Exh.B, the defendant states and submits that there was a complete compliance of all requisitions by the defendant as demanded by the said Ranjan and the defendant did not take into account the Memorandum and Articles of Association of CCI and the correspondence in existence and/or in any event though oversight of

the constitution of the CCI. The Memorandum and Articles of Association of CCI do not provide any Chief Executive & Secretary. The said Ranjan appears to have falsely assumed the role of Chief Executive & Secretary. The footnote in Exh.A clearly discloses what the said Ranjan intended to do. The footnote is addressed to Mr. Ashok Mehta of Messrs. Gagrat & Company. It discloses that according to the said Ranjan he had approached Mr. Ashok Mehta and that in the course of the said interaction between the said Ranjan and Mr. Ashok Mehta, the said Ranjan had addressed a fax dated 23rd June 1995 to the said Ashok Mehta and that thereafter the said Ranjan had "subsequent conversation" with Mr. Mehta during which, according to the said Ranjan, Mr. Mehta advised Mr. Ranjan that a letter to that effect contained in Exh.B would be appropriate and that such a letter should be sent "first before filing petition for injunction". The question of CCI requiring the premises for bonafide use was nowhere under consideration and all that the said Ranjan was advised to do was to ultimately file a petition for obtaining injunction and no more. The said Mr. Ashok Mehta is an eminent lawyer and lawyers of such eminence as Gagrat & Company would not be unaware of the fact that in order to constitute a valid ground for eviction, the desire of the landlord who will require the premises should not be merely for bonafide use but that such requirement should also be reasonable. The said letter dated June 14, 1995 discloses no cause of action since the claim for acquirement of premises was only for "bona fide use" and not for "reasonable use". It is also clear that even in the said unauthorised plaint filed, the said Ranjan did not contemplate any termination of the tenancy of this defendant and/or was not prepared with the case for bonafide and reasonable requirement of CCI of the suit premises.

21. Even the grounds set out in the plaint proceedings do not constitute any cause of action. This suit therefore is liable to be dismissed with costs, in limini. The defendant admits that the defendant is a tenant of CCI with regard to the suit premises.

22. The rent receipts in favour of the defendant set out Shop No.6 on the ground floor as being the premises let out CCI to the defendant. The defendant has not verified the measurement of the suit premises and therefore does not plead to the measurement. The measurement of the premises is irrelevant to the subject matter of this suit and in the event it being found that the same is relevant to venture on the measurement and set out the findings thereof.

23. What is stated therein with regard to the monthly rent, is not accurate, the rent of the premises is Rs.468/- per month. To this amount CCI adds Rs.46/- and Rs.13/- as State Education Cess and Education Cess respectively, making the aggregate amount as Rs.527/- per month. The plaintiff has overlooked that the payments by the defendant towards water charges and electricity are substantial. Such payments with regard to electricity are in the proximity of Rs.20,000/- per month and water charges are in the proximity of Rs.5,000/- per quarter. The said Natarajan has falsely and mischievously set out in the said para that a sum of Rs.527/- paid as aforesaid by the defendant to CCI is “far below the standard rent”. The said Natarajan has indulged into this irrelevant and unnecessary allegation without any basis whatsoever and it clearly betrays the ill-founded prejudice and bias against the defendant. Apart from the other grounds set out herein, such a statement on the part of the said Natarajan about Rs.527/- being below the standard rent is in itself an incredible statement which lends credence to the

plea that the said Natarajan has filed this suit maliciously and on conscious knowledge that he is abusing the process of this Court.

24. The defendant is not using a substantial portion of the suit premises for the purpose for which the same were let to the defendant and that this is happening for more than 3 to 4 years. The said Natarajan has made this vague and false statement, which is hereby denied by the defendant, by being absolutely vague and uncertain. Nowhere the said Natarajan has stated as to when, where and how he ascertained the allegation made by him that the defendant was not using a substantial portion of the suit premises. On the contrary, if he had taken the slightest trouble, he would have found out that the defendant which pays such large amounts towards electricity and water charges besides the use of telephone and other outgoings, could ill afford not to make use of the suit premises. The said Natarajan, while making such a false statement, is oblivious of the fact that the defendant is a tenant of the suit premises ever since the suit premises were constructed and came into existence. This was prior to the declaration of the Second World War when premises were freely available in the city of Mumbai. The defendant denies the allegation of the said Natarajan that "the plaintiffs have got certain photographs taken" showing the position of the suit premises and also the portion of the suit premises which was either kept unused or under lock and that the suggestion that the said Natarajan can refer to and rely on such photographs when produced. The said Natarajan consciously and willfully omitted to state as to when, where and how such photographs were taken and the occasion thereof. The defendant does not recall any occasion when the said Natarajan or anyone on his behalf ever entered the suit premises

and/or took any photographs of any portion of the suit premises. This defendant denies all and singular the said allegation of the said Natarajan about the CCI and/or the said Natarajan or anyone of the two or either of them having taken any photographs and/or such photographs show a portion of the suit premises having been kept unused or under lock. It is absolutely false for the said Natarajan to state that the defendant is not carrying on any business in the suit premises or any part thereof. Such a statement of Natarajan is patently false and in stating so, the said Natarajan has purjured himself as would be conclusively proved by the fact that as aforesaid, the defendant has been paying large amounts towards water, electricity, staffing and other outgoings necessary and incidental to carrying on a thriving and large business in the suit premises. It would also appear that the said Natarajan presumably smarts under an unjustified and incorrect view of the present provisions of the Rent Act to urge non-use of a part of premises as a ground for eviction. The defendant denies the contention of the said Natarajan that CCI is in need of the suit premises for the purpose of its Club activities and as such, CCI requires the suit premises for its use and occupation reasonably and bonafide. In the first instance, the said Natarajan has failed and neglected to set out as to when, where and how and with regard to what area CCI has felt need for personal occupation and that such need is reasonable. The said Natarajan has overlooked the fact that it is absolutely essential for a pleading on the ground of reasonable and bonafide requirement that the landlord or the person entitled to possession should set out in sufficient details the reasonableness of the need, so that the defendant can understand the case and meet the same by proper reply by way of pleading and keeping himself in readiness to contest the case at the

hearing of the suit. It is submitted that the said Natarajan having betrayed gross ignorance of the ground of the Rent Act with regard to non-use of the premises for six months prior to the institution of the suit and equating the ground of non-use of the premises for six months at the time of institution of the suit keeping part of the premises vacant. There has been a gross error in understanding the ground under the Rent Act. This ground having failed, the only surviving ground advanced by the said Natarajan for bonafide and reasonable use having not been substantiated or backed up by a proper pleading as required in law the plaint obviously does not disclose any cause of action against the defendant and regardless of the suit in the name of the CCI having been unauthorisedly filed by the said Natarajan the want of cause of action in itself is sufficient ground to dismiss this suit in limini. All the allegations of the said Natarajan contrary to or inconsistent with the true facts herein, made in the plaint and in para 4 in particular are hereby denied as false and unsustainable.

25. It is false for the said Natarajan to urge that the defendant has lost the protection under the Bombay Rent Act and the defendant hereby denies the same. The defendant denies that the said Natarajan and/or CCI is entitled to recover and/or either CCI or the said Natarajan can seek to acquire vacant and peaceful possession of the suit premises of the defendant on any of the grounds set out in para 5 or in any other manner and as stated hereinabove, the suit is liable to be dismissed with costs in limini for the reason that it does not disclose any cause of action.

26. The said Natarajan has set out the contents of the correspondence, namely Exh.A and B, copies of which letters are

annexed to the plaint. It is false for the said Natarajan to suggest that the letter dated 14th June 1995 is the one which has been authorisedly addressed on behalf of CCI to the defendant. The said letter purports to have been signed by one Ranjan who calls himself as the Chief Executive & Secretary, which fact obviously is belied by the contents of the Memorandum and Articles of Association of CCI as aforesaid. The Memorandum and Articles of Association do not indicate any post and/or authority of Chief Executive & Secretary, which can ever act in an authorised manner on behalf of CCI which is an inanimate person. The defendant has ground to believe that the said letter dated June 14, 1995 addressed by the said Ranjan, is an exercise of adventure with a view to extort some advantage from the defendant by delivering the defendant a threat of frivolous litigation and unnecessary costs, loss of time, and trouble as well as exercise of facing a frivolous litigation. If CCI was serious in seeking possession, the normal course would have been for CCI to instruct eminent lawyers of the standard of Gagrat & Co. to address an orderly notice to the defendant setting out in proper terms the grounds for evicting the defendant. But that has not been done. On the contrary, as shown by the said Ranjan himself at the foot of the letter to Messrs. Gagrat & Co. have declined to conduct any correspondence presumably because Gagrat & Company did not feel itself assured that the said Ranjan was the correct person to instruct on behalf of CCI to address a letter of termination of tenancy. The defendant in ignorance and/or overlooking the constitution and making of CCI erroneously believe that the letter was by an authorised person or CCI and responded to the same. In any event, the said letter was in full compliance of the requisitions made by the said Ranjan in his letter dated 15th June 1995 and therefore no

requisitions ever survived after the said reply. Besides, it is evident that if the said Ranjan was serious and truly believed in what he had stated in the said letter of June 14, 1995, the filing of the suit after the letter dated 19th June, 1995 would have been so prolonged that ultimately the plaint in the present form was declared on 17th April 1996, lodged on 22nd April 1996 and such a long gap of time with regard to the removal of defects in the plaint should have been carried forward so late as on 6th July 1996. The long gap that passed after the said reply of the defendant dated 19th June 1995, the declaration of the plaint and removal of objections in itself shows that the said Natarajan and/or the said Ranjan had no confidence and/or seriousness about making false allegations about the defendant as contained in the plaint proceedings and the said correspondence and that the filing of the said suit should have been delayed so inordinately. It is also implicit in the conduct of the said Ranjan as well as Natarajan that both of them appear to have alleged that the defendant has not been using the premises and part of it is kept vacant for the last three or four years, which obviously would be prior to 14th June 1995. Such false allegations are mechanically repeated in the plaint. Both the said Ranjan and Natarajan have alleged that part of the premises were kept vacant prior to 14th June 1995. There is no allegation whatsoever both in substance and form that the premises were kept vacant for the six months prior to the filing of the suit i.e. 17th April 1996. This in itself shows the conduct of both the said Ranjan and Natarajan which is absolutely casual and indifferent and betrays complete lack of seriousness and responsibility in filing the present suit in an unauthorised manner in the name of CCI. Even more, the said Ranjan who claims himself as Chief Executive & Secretary in the said letter dated 14th June 1995

on behalf of CCI, does not sign and/or declare the plaint but the same is left to be done by Natarajan. The defendant understands that the said Natarajan is no more an employee of CCI, which fact has been carefully kept back by the said Ranjan in the present proceedings when he filed rejoinder dated 26th June 1996 in the notice proceedings being Interim Notice No.21070 of 1996. Both Ranjan and Natarajan affidavit of evidence liable to be prosecuted for willfully playing and tinkering with the process of this Hon'ble Court by making false statements and unauthorisedly putting the legal machinery in motion in the name of CCI.

27. The several statements contained therein are blissfully vague, false and without any basis whatsoever. The said Natarajan as required by the mandatory provisions of procedural law, has not correctly verified the plaint inter alia for the reason that he has not stated as to what were the matters stated in the plaint which were true to his knowledge and which were the matters which were based on information and belief and the source of such information and belief. What has been contained in paragraph 7 is absolutely false and concocted. The said Natarajan does not state as to through whom, when and how and with what result enquiries were made with regard to the said premises occupied by the defendant and as to how and on what basis the said Natarajan falsely states that a substantial portion of the suit premises in occupation of the defendant is unused since three to four years. Also, it is clear that when the said Natarajan in terms states that according to the enquiries made, the defendant was not using substantial portion of the suit premises (as stated hereinabove he clearly means to suggest that those three to four years relate to the time prior to 14th June

1995 Exhibit A). This in itself would put the said Natarajan out of Court because the requirement of law with regard to a plaintiff making a case with regard to non-user of the premises would relate to the whole of the premises and not to part thereof and even such non-user of the premises should relate to the time immediately six months prior to the institution of the suit, i.e. six months prior in any event to the declaration of the plaint, which was on 17th April 1996. Besides, if the said Natarajan had made the allegations in para 7 in any seriousness in the honest belief with regard to the truth thereof it is against human conduct for the said Natarajan to wait right from 14th June 1995 till 17th April 1996 to file the present suit. This in itself is an indication of the falsehood of the case urged by the said Natarajan. With regard to the supposed telephone calls having been received by the Chief Executive & Secretary to negotiate with the representatives of Mac Donald & Co., there is no suggestion by Natarajan that the same was motivated or engineered either by the defendant or anyone on behalf of the defendant. On the contrary, the advertisement which the said Natarajan has referred to relate to an advertisement on behalf of Mac Donald & Co., world's largest chain of restaurants which chain of restaurants was looking for commercial space of 2000 to 5000 sq.ft. anywhere between Andheri and Chembur. A xerox copy of such an advertisement was produced on behalf of Natarajan at the hearing of the interim application being Application No.21070 of 1996. The defendant referred to an advertisement published in Times of India dated 3rd July 1995 and therefore the false allegations in para 7 appear to relate to the period prior to 3rd July 1995. It is absolutely irrational, unreasonable and illogical for the said Natarajan to place any blame on the defendant for what the plaintiff considers to be acts of Natarajan and not of the

defendant. Besides, all that is stated in para 7 appears to be highly improbable and concocted. The very fact that the said Mac Donald & Co. or anyone on its behalf is stated to have approached CCI in itself shows that what was sought was the permission of CCI and that neither Mac Donald & Co. nor the defendant desired to do anything with regard to the suit premises without obtaining consent of CCI and getting into contractual relationships. This submission of the defendant is without prejudice to the defendant's submission that the entire story in para 7 is false and concocted and defendant puts the plaintiff to the proof thereof.

28. It is false to suggest and urged that by virtue of what is stated either CCI or Natarajan can have reasonable apprehension of the defendant creating any third party interest. In any event, the defendant had made, as it was competent and within its control to do so, a categorical statement by its letter dated 19th June 1995 that the defendant had not parted with possession, that the premises were not out of use and that the defendant had no intention of parting with possession.

29. The letter of pleading forbids any reply on merits to such submission. The same are to be dealt with and whatever submission is advanced at the suit.

30. The defendant denies that the defendant is attempting and/or seeking to create a third party interest and/or part with the possession of the suit premises and/or portion thereof and/or that any threats have been directed either by this defendant or by anyone on behalf of the defendant to the so called Chief Executive and Secretary and/or anyone for dire consequences and/or that the said Natarajan or anyone is entitled to any order of injunction or any

interim relief as sought for or at all. As a matter of fact, the said Natarajan took out a frivolous notice dated 22nd April 1996 for ad interim and interim reliefs. Though the defendant had readily conveyed by the defendant's letter dated 19th June, 1995 that the defendant had not parted with possession and that it was not intending to create or negotiating to create any third party interest. The said Natarajan created an absolutely false and artificial urgency with regard to ad interim and interim reliefs, to which he was not entitled. At the final hearing of the said notice, the defendant which had clear conscience and in order to cut the matter short, filed an affidavit dated 8th August 1996. The plaint being patently unauthorised and having disclosed no cause of action is not a valid plaint for the suit to proceed the suit therefore, should be dismissed in limini with compensatory costs.

31. The defendant has filed additional written statement at Exh.95 and denies that the plaintiff has any genuine or valid or reasonable or bonafide requirement of the suit premises or for its use or occupation or for personal use for club activities. The defendant denies that the plaintiff shall suffer grave or unmitigated or any hardship at all if decree is refused or that there will be no hardship to the defendant if decree in ejectment is passed in favour of the plaintiff.

32. The amendment to the plaint is only an after thought filed at this late stage after evidence is more than half completed and at the stage of cross examination of the defendant only to cover loopholes in the plaintiffs case. That rights have accrued to the defendant which cannot be washed away by amendment. The original plaint contained only bare amendment of requirement and

hardship without any particulars and thus the ground of requirement is liable to be rejected for want of particulars. The right accruing to the defendant cannot be dissipated or denied by amendment at this stage. The amendment cannot relate back to the filing of the suit and this would deny the defendants right. The defendant also denies the said amendment and validating and contents thereon.

33. The defendant denies that the list of their members of the plaintiffs club has gone up substantially in the last 14 years since filing of the suit and consequently the club need for more space to meet the growing requirements of the members. At present, there are more than 8000 members and additionally the guests of the members who frequently visit the club to utilize the coffee shop which is operational between 7 a.m. to 11 p.m. At the movement, the plaintiffs have only one coffee shop by the name of Poolside Glance which has merely 17 tables. The plaintiffs do not have in their possession a suitable place which can be used as a coffee shop which can accommodate substantially large number of plaintiffs members and their guests which are increasing day by day. Of late, there is a great demand for a bigger coffee shop in the club premises. There has been representation from several members that the existing coffee shop catering to only 74 persons is too congested being a small place as it could not accommodate more than 74 persons at a time. There has been a growing demand from the members to have a substantially larger coffee shop which can accommodate at least 200 persons at a time. Taking into consideration the growing demands of the members the plaintiffs have taken a survey recently of various premises in the club property and have come to the conclusion that the suit premises is the only

place which is ideally suited and suitable to start as a coffee shop, since the suit premises is the only premises which is specious enough and easily accessible and hence ideal and suitable which would accommodate substantially large number of patrons who would be using the coffee shop. Accordingly, the Executive committee members and the Estate committee of the plaintiffs and after due deliberation have resolved that an application be made to the Court for seeking the eviction of the defendants from the suit premises since the plaintiff's requirement is reasonable and bonafide to use the same as another coffee shop specious enough to accommodate substantially larger number of members and their guests ranging 200. The plaintiff has no need or requirement at all and is only raising this false ground as excuse to evict the defendant.

34. The defendant denies that the present coffee shop is small or insufficient or that the plaintiff require the suit premises or to be used as a specious new coffee shop. The suit premises is the only premises which is more suitable and ideally situated for the plaintiff to commence or additional coffee shop or demands or that the same are growing at all. The plaintiff has any requirement or that the same has arising recently during the pendency of the suit or that the plaintiff is entitled to the suit premises on the ground of requirements for bonafide or reasonable or at all. The plaintiff will suffer any loss or injury or prejudice or hardship or of any nature if decree is refused. The plaintiff is one of the richest institution in the country. The plaintiff has huge premises available to it and in its possession and some part are under utilised and some are unutilised and the plaintiff has more than adequate and suitable premises at its disposal. Besides the plaintiff had filed suit in eviction in respect of

the various premises belonging to it and as even obtained eviction orders in some of them. e.g. VES Global (Passport & UK Visa) and others. These premises are in the same structure as the suit premises and on the ground floor with lift facility and most suitable to the plaintiff. Besides the plaintiff has entered into fresh agreement recently with the following person in respect of premises in the same structure viz. Cruzo Studio and others. The plaintiff has no requirement at all. The plaintiff shall also not suffer any hardship at all if the suit is dismissed. The defendant denies that it will not suffer any loss or injury or hardship or that it is not occupying any portion of the suit premises or that two thirds or any part of the suit premises is unused at any time or since three or four years from the date of filing of the suit. The defendant denies that hardship can be mitigated or by giving reasonable compensation to the defendants partners or that they are more or less retired from active business or that one partner is permanently retired or settled at Pune or has no interest in the business or the suit premises or that the same is lying idle or unused at all. Both its business of ice-cream parlour and of readymade clothes are working full time. The ice-cream parlour is in great demand with the public as well as members of the plaintiff club. The business of readymade garments is also carried on. The suit premises are fully utilized in the businesses. The defendant partners are working actively and full time in the businesses and are healthy and capable of working for many more years. The defendant has no other premises to do business and will be out on the streets and without business or income if decree in eviction is passed. The defendant has made enquiries for other premises in the locality where the defendant has developed a unique reputation and goodwill but could not find any other premises due to scarcity and

escalating prices and premiums. The defendant will suffer greater and irreparable hardship if decree in eviction is granted.

35. The defendant denies that they are not using the suit premises or that the business is virtually stopped as alleged or at all. A few talks did take place but same were without prejudice and hence cannot be referred to nor considered at all. In any event and without prejudice the defendants state that the plaintiff only made a show and mockery of discussions and offer amount that were far to low and not reasonable or fair or adequate at all. The defendant would not be able to get any other adequate or suitable premises and would be out on the street away. There is no question of unreasonableness. The defendant denies that the plaintiff was in urgent or dire need of the suit premises or to start new coffee shop or that there is requirement of the plaintiff's member. The defendant denies that it is simply hanging on the suit premises or that the same is closed or unused or to pressurize the plaintiff or there is unreasonable demand or that decree in eviction should be passed under Section 16(1)(g) of Maharashtra Rent Control Act or under Section 13(1)(g) of Bombay Rent Control Act or under any ground or provisions at all. The allegations in the plaint, both original and amended are false, frivolous and vexatious and liable to be rejected and dismissed.

36. My Ld. Predecessor framed issues at Exh.9 which are reproduced below along with my findings thereon.

Sr. No.	**Issues**	**Findings**
1.	Whether the plaintiffs prove that the suit premises or the substantial portion thereof is not being used by	. . In the negative.

	the defendant for more than 6 months immediately preceding the date of filing of the suit ?	
2.	Whether the plaintiffs prove that they require the suit premises reasonably and bonafide for their personal use for club activities ?	. . In the affirmative.
3.	Whether the greater hardship would be caused by passing the decree than to refuse the decree in the suit ?	..If decree refused to pass then plaintiffs would suffer greater hardship.
4.	Whether the plaintiffs prove that they are entitled for the decree of permanent order of injunction against the defendant as prayed by them in prayer (b) in the plaint ?	. . In the negative.
5.	Whether the plaintiffs are entitled for the decree of ejectment in respect of the suit premises against the defendant and for the recovery of possession of the same ?	. . In the affirmative.
6.	What order and decree ?	As per final order.

: <u>R E A S O N S</u> :

37. To prove substantiate their claim plaintiffs have filed affidavit of examination-in-chief of their Chief Accountant Mr. Navneet Shivshankar at Exh.10 as P.W. No.1. The plaintiffs have examined P.W. No.2 Roshan Ramesh Kanekar on 22/08/2006 and 05/10/2006. The plaintiffs have filed affidavit of examination-in-chief of their Legal Officer Nandini Dwivedi at Exh.99 as P.W. No.3, affidavit of examination-in-chief of Sureshkumar Sumermal Bafna at Exh.138 as P.W. No.4. The plaintiffs have filed counter foils of rent receipts issued to the defendants at Exh.A colly., the copy of notice

dated 14/06/1995 for the confirmation of whether defendants are trying to create third party interest in respect of the suit premises issued by plaintiffs to the defendants at Exh.B, reply of defendants dated 19/06/1995 to the Chief Executive & Secretary of plaintiffs informing that the entire premises are in their possession denying that they are trying to create any third party interest in respect of the suit premises at Exh.C, rough sketch of plan showing the description of the entire suit premises at Exh.D, Advertisement in Times of India dated 03/07/1995 at Exh.E, Photographs taken by the plaintiffs are at Exh.2 & Exh.3. Letters dated 20/10/2021 and 09/11/2021 issued by the advocate for plaintiffs to the advocate for defendants calling upon the documents mentioned in the letters are at Exh.148/1 and Exh.148/2. During cross examination of the defendant's witness the plaintiffs have filed Registration Certificate of Establishment in the name of M/s. Rodabe K. Irani for the business of ICE-Cream MFG. at the address of the suit premises at Exh.149, Two electricity bills dated 05/03/2019 and 01/04/2019 in the name of defendants at the address of the suit premises at Exh.150 colly. Copy of order dated 04/04/2018 in Writ Petition No.639 of 2017 with Writ Petition No.640 of 2017 between Mrs. Zarine Minoo Dastoor Vs. Cricket Club of India and Anr. at Exh.151. True copy of extract of resolution passed by the Executive Committee of the CCI by circulation dated 11/12/2019 at Exh.142 authorising Mr. Sureshkumar Sumerlal Bafna to file affidavit of evidence and for the purpose to sign, execute, appear and lead evidence in the present suit, true copy of extract of resolution passed by the Executive Committee of the CCI by circulation dated 11/12/2019 at Exh.143 rectifying the action taken in the year 1996 of filing the present suit and Mr. S. Natarajan was authorised to sign, verify, appear and filed the plaint and to take

necessary steps including appointing the advocates and signing Vakalatnama and duly authorised to file, appear and give evidence on behalf of the club. 9 photographs alongwith compact disc and invoices of Quintessential Entertainment LLP dated 11th December 2019 Exh.144/1 to 144/9. The plaintiffs have filed evidence closed pursis at Exh.146 and list of authorities at Exh.155.

38. On the other hand, on behalf of defendants, they have filed affidavit of examination in chief of Ms. Roda Irani at Exh.61 as D.W. No.1. The defendants have filed Shop and Establishment License :- BMC (1) Eating House - 1989 to 2008 at Exh.63, (2) Departmental Store 1989 to 2008 at Exh.63, Trading License :- from BMC (1) Eating House - 1995 to 2007 (2) Departmental Store - 1996 to 2007 at Exh.64, Sales Tax Assessment orders and payment challans Exh.65 colly., Purchase Registers :- (1) credit register - 01/04/1993 (2) six cash registers - 31/01/1994 at Exh.66, six Musters :- (1) Eating House (2) Departmental Store – 01/04/1993 to 31/03/1996 at Exh.67, three income tax returns - 01/04/1993 to 31/03/1996 at Exh.68, seven telephone bills from 1993 to 1996 at Exh.69 colly., eight electricity bills from 1993 to 1996 at Exh.70 colly., eight water bills from 1993 to 1996 at Exh.71 colly., bank books :- (1) Eating House (2) Departmental Store - from 1993 to 1996 at Exh.72, three insurance policies from 1993 to 1996 at Exh.73, receipts for VRS paid to employees dated 10/01/1994 at Exh.74 colly., C.C. of Labour Courts order dated 10/01/1994 at Exh.75, photographs of the suit premises - Article-Y, Indian Express Mumbai News line dated 17/06/2003 – Article-Y1, Deed of Partnership dated 02/07/1984 at Exh.76, letter dated 09/09/2009 issued by the Advocate for the defendants to the Advocate of the

plaintiffs at Exh.78, letter dated 22/09/2009 issued by the advocate for plaintiffs to the advocate for the defendants at Exh.79. The defendants have filed evidence closed pursis at Exh.15, written submissions at Exh.153 and synopsis of relied decisions alongwith citations at Exh.154.

As to Issue No.1 :

39. Issue No.1 is in respect of whether the plaintiffs prove that the suit premises or substantial portion thereof is not being used by the defendants for more than 6 months immediately preceding the date of filing of the suit. It appears from the record that suit is filed on 22/04/1996, registered on 06/07/1996, therefore the relevant period starts from 22/10/1995 to 22/04/1996 to find out whether the suit premises or substantial portion thereof is used or not used by the defendants. It is pertinent to note here that there is no dispute about the suit premises and relationship.

40. To prove this issue P.W. No.1 Navneet deposed that, the plaintiffs are the landlords and owners of property known as "North Stand Building". The defendants are tenants of the plaintiffs in respect of Shop No.6, comprising approximately 3070 sq.ft. and a mezzanine floor ad-measuring 950 sq.ft., on the ground floor of North Stand building. The defendants are not using the substantial portion of the suit premises for the purpose for which the same were let out to them for last more than 3 to 4 years. The plaintiffs have got certain photographs taken, showing the position of the suit premises and of the portion of the suit premises which was either kept unused or under lock. On realising that the plaintiffs have taken out the photographs, the defendants have opened the premises and have stuffed their material in show-case which would show as if

the suit premises are being used. In fact there is no business being carried out by the defendants in the suit premises or any part thereof.

41. During cross examination P.W. No.1 Navneet stated that, since letting out the defendants are doing business in the suit premises. The suit notice Exh.B was served upon the defendants at the suit premises and at that time the defendants were carrying on business in the suit premises. According to him, defendants are not using the substantial portion mean to say that the defendants are not using above 2000 sq.ft. area in the suit premises for their business. He failed to state since when the defendants are not using the substantial portion of the suit premises for their business. He admitted that, which particular area of the suit premises is not being used by the defendants is not mentioned in the plaint or in his affidavit. The defendants are still running their business in the suit premises. Suit premises is single unit not divided by walls. In the suit notice Exh.B it is not mentioned that the substantial portion of the suit premises is not in use. He never visited inside the suit premises prior to the filing of the suit. If they stand facing towards the suit premises, left side portion of the suit premises is used by the defendants for Ice-cream business. Defendants have displayed readymade garments in part of the suit premises. Before two years back the remaining portion of the suit premises was locked.

42. It appears from affidavit of P.W. No.3 Nandini that there is no whisper in her deposition about this issue but during cross examination she stated that according to her, 3/4th area of the suit premises and mezzanine area the defendants are not utilising. For running ice-cream parlour the suit premises were let out in the year

1939. The defendants have not discontinued the ice-cream parlour business.

43. P.W. No.4 Sureshkumar deposed that he personally visited the suit premises on several occasions. The suit premises consists of four Galas all facing the main Veer Nariman Road. The defendants are using only one of the Gala of the suit premises. The defendants have constructed a brick wall in the suit premises thereby separating one Gala from the other three Galas. Since last many years i.e. even prior to filing of the present suit the defendants are only utilising/occupying one of the Gala of the suit premises for carrying on their business of ice-cream parlour. The other three Galas of the suit premises, which have separate independent entrance is always kept lock and vacant and unused since prior to filing of the suit. He has personally visited the suit premises several times prior to year 1996 and even after filing of the suit and have always found three Galas of the suit premises to be vacant and unused. The defendants in order to show that they are using the said three Galas of the suit premises as Art Gallery have merely displayed 2-3 paintings at the entrance of separate gate of three Galas of the suit premises. He has taken photographs of the suit premises from outside which clearly goes to show that the defendants are carrying on business of selling ice-cream only from 1/4th area of the suit premises (i.e. one Gala) and there is wall separating the said Gala and balance 3/4th area (consisting of three Galas) of the suit premises is not used. The said photographs also show that merely some paintings are displayed at the entrance of three galas of the suit premises. However, the inside area of the said 3/4th portion is either lying vacant or is used as dump yard.

44. During cross examination P.W. No.4 Sureshkumar deposed that on the photographs No.144/7 it is appearing the wall dividing the Galas. Four Galas are appearing in photograph No.144/1. There is only one board i.e. K. Rustom & Company in the photograph. There is in built lock at the bottom of Galas.

45. D.W. No.1 Roda deposed that, no particular requisite of alleged grounds of non-user of the suit premises are disclosed in the plaint. The defendants denied that they are not using any portion of suit premises for more than 3 to 4 years before Mr. Ranjan's letter dated 14/06/1995 was served upon them as alleged in letter or in the plaint which in any case would be as per the plaint the period between about 1991-92 to 1994-95 and cannot be the period of six months immediately prior to the date of the filing of the suit which is 22/04/1996. They denied that any portion of the suit premises was either kept locked or unused. The entire suit premises is used by them for their business and material displayed in the show-case and in the suit premises is the stock-in-trade. They denied that, no business is carried out in suit premises or any part thereof.

46. D.W. No.1 Roda further deposed that, the defendants are carrying on Ice-cream parlour and eatables and Ready-made Garments etc. in the suit premises since long and they are maintaining their books of accounts and other documents and papers, in usual and regular course of their business. The defendants have maintained and are in their possession various registers, documents etc. pertaining to their said business since last 40/50 years. Now also continue to carry on business in the suit premises, continuously and regularly till today. Some account books, registers etc. were destroyed by white ants and are not available and

defendants are unable to produce.

47. D.W. No.1 Roda further deposed that, there was strike in Eating House department from October 1993 to January 1994 and because of go-slow of the employees working in the Eating House department for certain period. On 10/01/1994 final settlement was made with those employees and orders were passed by Labour Court recording the same on 10/01/1994 and these employees were discharged from the service of the defendants. In these circumstances, the defendants were forced to transfer some of their employees from department store to Eating House department and hence the activity of the departmental store was for sometime sluggish but the same was again fully resumed after strike was over and continued full fledged even then and continues even now.

48. D.W. No.1 Roda during her cross examination further stated that, the nature of business of K. Rustom & Co. from the beginning was selling of medicine and everything i.e. General Stores, but now they are manufacturing and selling Ice-cream. She is ready to produce other documents on record to show that they were doing various activities in the suit premises other than the documents which are already produced. Now they have also the business of painting in the suit premises. Since long back they were doing the business of painting in the suit premises. She failed to state whether they have obtained Shop and Establishment License for conducting the business of painting. Her sister is an Artist and they are selling her paintings. Since long back she is making the colour paintings. She failed to state whether they have mentioned about the business of painting of her sister in the written statement and affidavit of evidence. Besides manufacturing and selling of Ice-cream and selling

of painting, no other business is there in the suit premises. They are carrying the business of painting on the name of Aban Irani. She failed to state whether Aban obtained license for the business of painting in the suit premises. Suit premises is one big shop. There is only one partition in the suit premises. Exh.141/1 is the photograph of the suit premises. From the last portion of that photograph they are conducting the business of selling Ice-cream. She has not brought other documents to show that they were doing various activities in the suit premises. She has no documents to show that Aban is conducting painting business in the suit premises. Aban not obtained Shops and Establishment License for conducting the business of painting in the suit premises. Aban has not employed any person under her for the work of painting. Aban has not sold any painting from the suit premises, therefore she is unable to bring any invoices of sale of painting of Aban from the suit premises. Aban has not obtained Sale Tax Registration Number, GST Number from the suit premises. Aban is not doing the business of painting from the suit premises, but she is only painting from the suit premises. Painting is the hobby of Aban. She has not brought Shops and Establishment License of the departmental store from the suit premises after 2008. She has brought Shops and Establishment License (Exh.149) for the year 2016 to 2018, electricity bills (Exh.150 colly.) for the month of December 2018 and January 2019 in respect of the suit premises as called upon by the plaintiffs. There are two meters installed in the suit premises. In the electricity bill Exh.70 there are four electricity meters mentioned. Photograph below Exh.148/8 (actually Exh.144/8) is the portion from which they are selling Ice-cream to the customers. Photograph below Exh.148/9 (actually Exh.144/9) is the only partition wall in the suit

premises. Photograph below Exh.148/1 (actually Exh.144/1) is the other portion of the suit premises she can see only painting being displayed. She admitted that, Ice-cream is not sold from the portion visible in these photographs at Exh.144/1 to Exh.144/6. She failed to state when they stopped business of Ready-made garments from the suit premises. She admitted that, she has not produced any document to show that, they have suffered white ants problems.

49. It is the case of the plaintiffs that the defendants are not using the substantial portion of the suit premises for the purpose for which the same were let out to them for last more than 3 to 4 years. The plaintiffs have got certain photographs taken, showing the position of the suit premises and of the portion of the suit premises which was either kept unused or under lock. But for the purpose to decide the present issue, the relevant period starts from 22/10/1995 to 22/04/1996. From the above detailed discussed oral as well as documentary evidence of both sides it appears that, P.W. No.1 Navneet failed to state since when the defendants are not using the substantial portion of the suit premises for their business. He admitted that, which particular area of the suit premises is not being used by the defendants is not mentioned in the plaint or in his affidavit. The defendants are still running their business in the suit premises. Suit premises is single unit not divided by walls. In the suit notice Exh.B it is not mentioned that the substantial portion of the suit premises is not in use. He never visited inside the suit premises prior to the filing of the suit. Therefore, his evidence is not personal but it is hearsay. On the contrary, the evidence of P.W. No.1 Navneet supports the case of defendants that at the relevant period they were doing the business in the suit premises. Moreover,

P.W. No.3 Nandini during her cross examination admitted that for running ice-cream parlour the suit premises was let out in the year 1939. From this evidence it clears that for what purpose the suit premises were let out by the plaintiffs to the defendants, they are still doing the same business in the suit premises. There are number of documents on record i.e. Shops and Establishment license Exh.63, Trading license Exh.64, purchase registers Exh.66 colly., musters Exh.67 colly., bank pass book Exh.72 colly., receipts for VRS paid to employees Exh.74 colly., CC copy of Labour Court's order Exh.75 which shows that defendants were using the suit premises for more than six months immediately preceding the date of filing of the suit. Though D.W. No.1 Roda during her cross examination admitted that besides manufacturing and selling of ice-cream and selling of painting, no other business is there in the suit premises, Aban has not sold any painting from the suit premises and Ice-cream is not sold from the portion visible in photographs below Exh.144/1 to Exh. 144/6 from the suit premises, she has not brought other documents to show that they were doing various activities in the suit premises, but this is not the position of the suit premises when the suit was filed. Because it appears from the bill of photographs below Exh.144 that the bill is dated 11/12/2019 and the cross examination of defendant's witness started on 30/09/2021 and completed on 28/02/2022. Thus, it appears from the above discussion that the plaintiffs failed to prove that the suit premises or substantial portion thereof is not being used by the defendants for more than 6 months immediately preceding the date of filing of the suit. Hence, I answer issue No.1 in the negative.

As to Issue No.2 :-

50. This issue is in respect of whether the plaintiffs prove that they require the suit premises reasonably and bonafide for their personal use for club activities. The burden to prove this fact is on the plaintiffs. P.W. No.1 Navneet deposed that, the plaintiffs themselves are in need of the suit premises for the purpose of their club activities and thus the plaintiffs require the suit premises for their use and occupation reasonable and bonafide.

51. During his cross examination P.W. No.1 Navneet stated that, since 1991 many suits have been filed by the plaintiffs against various tenants of the suit property. Since, 1990 four suits have been decreed in their favour. Of none of the premises, they have taken possession under the Court decree. Except one premises no other premises were vacated by the tenant in the suit property. The said premises were let out by the plaintiffs to Kouni Travels in the year 2003. Those premises were of the area 9000 sq.ft. situated on the first floor. Open space between the staircase was provided to World Wild Life Fund for Nature. There area is hardly 80 sq.ft.

52. P.W. No.3 Nandini deposed that the list of plaintiffs' members has gone up substantially in the last 14 years since the filing of the suit and consequently plaintiffs' club need for more space to meet the growing requirements of its members. At present, there are more than 9,500 members and additionally the guests of the members who frequently visit the club to utilise the facility of coffee shop which is operational between 7.00 a.m to 11.00 p.m. At the moment, the plaintiffs have only one coffee shop by name Poolside Glance which has merely 17 tables. The plaintiffs do not have in their possession a suitable place which can be used as coffee shop

which can accommodate substantially large number of plaintiffs members and their guest which are increasing day by day. Of late, there is great demand for bigger coffee shop in the club premises. There has been representation from several members that the existing coffee shop catering only 74 persons is too congested being a small place as it could not accommodate more than 74 persons at a time. There has been a growing demand from the members to have substantially larger coffee shop which can accommodate at least 200 persons at a time. Taking into consideration the growth demands of the members of the plaintiffs have taken a survey recently of various premises in the club property and have come to the conclusion that the suit premises is the only place which is ideally suited and suitable to start as a coffee shop, since the suit premises is the only premises which is spacious enough and easily accessible and hence ideal and suitable which would accommodate substantially larger number of patrons who would be using the coffee shop. Accordingly, the Executive Committee members and the Estate Committee of the plaintiffs and after due deliberations have resolved that an application be made to the Court for seeking the eviction of the defendants from the suit premises since the plaintiff's requirement is reasonable and bonafide to use the same as another coffee shop spacious enough to accommodate substantially larger number of the members and their guests ranging 200.

53. P.W. No.3 Nandini further deposed that, the present coffee shop i.e. Poolside Glance being small and insufficient, plaintiffs require the suit premises to be used as spacious new coffee shop. The suit premises are the only premises which are more suitable and ideally situated for the plaintiff to commence as their

additional coffee shop to meet the growing demands of the plaintiff members and their guest. This requirement of the plaintiff has arising recently during pendency of the suit.

54. P.W. No.3 Nandini during her cross examination stated that, there are three restaurants in area of CCI of Club House. There is Bar and Card Room. There is one party hall namely C.K. Naidu. Outside the club, there is one coffee shop which is next to the swimming pool. Except the monsoon season, members used to sit on the lawn. There are other activities like badminton, table tennis, squash, skating, indoor cricket, Zumba class, indoor games and football. All these activities are arranged in and around the area of CCI Club House. There is second Card room on the first floor next to the office of President. There is a board room. They are giving rooms for staying to the members and non-members introduced by the members. They also used to give rooms in CCI chambers for staying. There is a Gymnasium and Health Club in the CCI Club. On the North side of stadium there is a building by name Stadium House. There are shops on the ground floor of Stadium house i.e. Kay Sons, Radio Emporium, National Travels, Alankar Chemist, Wordell, Beauty Art and Dyers, Marise Marrel and Devi K. Pandit. Earlier one shop was in possession of Calcutta, Bombay Trading and now it is in possession of the plaintiff. The area known as North Stand Building consist of shops namely suit premises i.e. K. Rustom, Tanishq, Ajanta Travels and one sanitary block. There is one more coffee shop other than mentioned in para No.8 of the plaint and it is outside round table outside the pastry shop.

55. P.W. No.4 Sureshkumar deposed that the plaintiffs are sport and recreation club of repute in South Mumbai where

membership is in great demand. At the time of filing of the suit in the year 1996 there was about 5000 members. At present there are 10,000 members and there is long waiting list of proposed members. The plaintiffs are under obligations to provide the best of amenities and facilities to their members. The plaintiffs at present are providing several sports facilities to their members like Cricket Ground, Indore Cricket facility, Tennis Courts, Squash Courts, mini Football ground, Basketball Court, Billiards Tables, Swimming Pool, Skating, Yoga, Zomba classes etc. along with other recreational facilities like Card Room, Restaurant & Bar, Library, Gymnasium, Guest Rooms etc. The plaintiffs intends to enhance/ upgrade their existing facilities and also increase/add additional sports and recreational facilities in the club for their members. There is increasing demand for sports and recreational facilities in the Club and the plaintiffs are finding it difficult to accommodate all their members in the existing facilities. Further, the plaintiffs are required to provide the said facilities to their member's children as well as also make them full fledge members of their attaining 21 age. The plaintiffs have from time to time incurred heavy expenditure to enhance the existing sports and recreational facilities in their club but they are unable to meet their requirements due to paucity of space. The plaintiffs now fill pressing the need to not only enhance their existing sports and recreational facilities but also add more sports and recreational facilities in their club. The plaintiff are in dire need of additional space to enhance the existing sports and recreational facilities in their club. The said additional space to enhance and add to the existing sports and recreational facilities is the bonafide requirement of the plaintiffs. In the year 2012 the plaintiffs required the suit premises for the purpose of the coffee

shop. As stated above, the plaintiffs are in dire need of additional space to enhance their existing sports and recreational facilities in the club. The plaintiffs may want to use the suit premises for the purpose of coffee shop or for any of the allied sports or recreational facilities in the club because of growing demands and requirements of their members. There is also growing demand amongst the members for providing banquet facilities in the club premises. The plaintiffs are enjoined with a duty to meet the said requirements of their members and therefore resonably and bonafide require the suit premises for their own use and occupation of their members and to accommodate new members. There is no cross examination of P.W. No.4 Sureshkumar on this issue.

56. D.W. No.1 Roda deposed that, no particular requisite of alleged bonafide or reasonable requirements including how, when and for which activity plaintiffs' need had arisen are disclosed in the plaint. The defendants denied that the plaintiffs are in need of the suit premises for the purpose of their club activities or reasonably or bonafide require the same. After filing of the suit or just before that, recently the plaintiffs had acquired certain premises and got vacant possession thereof which they let out or have inducted other occupants which clearly shows that they have no need of the suit premises.

57. D.W. No.1 Roda during her cross examination answered to the question that, “the plaintiff is expanding its sports and other activities ? – I suppose so.” She failed to state that the number of member of the plaintiffs club has increased.

58. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Nana s/o. Kisanrao Thokade (since deceased)**

through his LRs. Vs. Prabhakar s/o. Ambadas Gosavi, reported in 2014(6) Mh.L.J. 563 and wherein the Hon'ble Bombay High observed that,

> "18. In the case reported as *1999(2) Mh.L.J. 793, Datttatray vs. Abdul* it is held by Apex Court that absence of existence of business of landlord can not led to inference of absence of bona fides of the landlord. It is observed by the Apex Court that Court may presume in appropriate case that landlord's requirement is bona fide and in such case Court may ask the tenant to show that need is not bona fide. In the facts of the present case this Court holds that present case is such where the tenant was required to show that need of the landlord is not bona fide and greater hardship will be caused to him if decree is given the landlord. The wording of section 16(2) shows that burden in this regard was on tenant."
>
> "19. In the case of *2003(4) Mh.L.J. 226, Dwarka Prasad vs. Niranjan* the Apex Court has laid down that normally rent legislations are meant for the benefit of the tenant but the rent statues contain exception in favour of the landlord, which give him a right to evict the tenant. It is observed that if some grounds are given in statue then landlord can get decree of eviction if grounds exist..."
>
> "20.... In the case reported as *(2003) 1 SCC 462, Akhileshwar Kumar vs. Mustaqim* the Apex Court has laid down that the landlord has the right to decide which is suitable premises for the business which he wants to start..."
>
> "21. For determination of hardship, most important factor is whether reasonable accommodation is available for landlord or tenant. This Court has already observed that the tenant has his own premises acquired in 1980 and there he can shift his business. It is also observed that the suit premises is suitable to the landlord for starting the business which he intends to start. So, on this ground also the tenant has failed. In the case reported as 2009(4) Mh.L.J. 131, Chotumal Bahiramal Sindho vs. Baburao Vinayak Mohadkar it is observed that in such a case tenant should lead evidence to show

> that after making demand of premises by the landlord, the tenant has attempted to find out alternative premises. No such evidence is given by the tenant and further alternative accommodation is available with the tenant. Though for consideration of hardship, other factors like financial position can also be considered, when alternative premises is available that factor is most important factor in such a case. In such case the factor of financial position need not be compared. However, there is no specific evidence to prove that the landlord is better placed.

59. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Ragavendra Kumar Vs. Firm Prem Machinery & Co.**, reported in (2000) 1 SCC 679 and wherein the Hon'ble Supreme Court in para No.10 observed that,

> "The learned Single Judge of the High Court while formulating the first substantial question of law proceeded on the basis that the plaintiff landlord admitted that there were number of plots, shops and houses in his possession. We have taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the mater. *(See Prativa Devi v. T. V. Krishna)*. In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

60. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Bhupinder Singh Bawa Vs. Asha Devi**, reported in (2016) 10 SCC 209, wherein the Hon'ble Supreme Court in para No.9.1 & 12 observed that,

> "....The courts held that the law does not provide that if a landlord/ landlady requires the premises for running business of his/her young son who is an MBA, and is already engaged in some other business, he is acting mala fide and thus, no relief should be granted to him/her."
>
> "In the light of above, the Additional Rent Controller and the High Court rightly concluded that no alternative premises were lying vacant for running business of the respondent's son. The High Court rightly relied on the ratio of *Anil Bajaj v. Vinod Ahuja* to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to which shop her son should start the business from."

61. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Tola Ram Vs. Addl. District Judge & Anr.**, reported in (2012) 2 RLW 1160 and wherein the Hon'ble Rajastan High Court in para No.14 observed that,

> "...It is settled that the bonafide necessity of the landlord is to be considered of the day when necessity arose and the crucial date is the date of the petition. If any subsequent event emerges, the necessity of landlord does not cease nor the bonafide necessity of that day becomes non-existent...."

62. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and others**, reported in (2005) 8 SCC 252 and wherein the Hon'ble Supreme Court in para No.4, 5 & 8 observed that,

> ".... It is not the tenant who can dictate the terms to the landlord and advice him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of the business. ..."
>
> "It is common experience that landlord-tenant disputes

> in our country take a long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not bona fide."
>
> "In the case of *Gaya Prasad v. Pradeep Srivastav*a Their Lordships observed that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bona fides of the requirement of the landlord is the date of his application for eviction. Their Lordships also observed that the process of litigation cannot be made the basis for denying the landlord relief while litigation at least reaches the final stage. However, Their Lordships further added that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need but only if they are of such nature and dimension as to completely eclipse such need and mate it lose significance altogether."

63. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Mohd. Ayub and another Vs. Mukesh Chand**, reported in (2012) 2 SCC 155 wherein the Hon'ble Supreme Court in para No.6,12,15,16,18 observed that,

> "6. While disposing of the petition filed by the appellant the High Court rightly held that the landlord cannot be dictated by the tenant what business his sons should do and the observations made by the courts below to that effect and the findings reached by the courts below on bonafide requirement of the landlord are perverse. However, without going into the aspect of comparative hardship, the High Court directed that only one room out of the four rooms should be handed over to the appellants by the respondent as from the affidavit it appears that the respondent was using it as a passage."
>
> "12. ….This Court further observed that there was an additional circumstance that the tenant had not brought on record any material to indicate that at any time during the pendency of this long drawn-out litigation he had made any attempt to seek an alternative

accommodation and was unable to get it."

"15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of District Court to hold that the Appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non vegetarian food. It is for the landlord to decide which business he wants to do. The court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below."

"16. This Court observed that if this is the correct approach then an affluent landlord can never get possession of his premises even if he proves all his bonafide requirements. This Court further observed that the fact that a person has the capacity to purchase the property cannot be the sole ground against him while deciding the question of comparative hardship."

"18. …. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make an alternative arrangement."

64. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Raghunath G. Panhale (Dead) By LRs. Vs. Chaganlal Sundarji and Co.** reported in (1999) 8 SCC 1 wherein the Hon'ble Supreme Court in para No.6,7,8,9,12 observed that,

"…. A reasonable and bonafide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end.

It may be a need in praesenti or within reasonable proximity in the future. The use of the word "bona fide" is an additional requirement under Section 13(1)(g) and it means that the requirement must also be honest and not be tainted with any oblique motive."

"The above principles have been laid down in various decisions of this Court and we shall refer to a few of them which are relevant to the issue before us. It was stated in Bega Begum v. Abdul Ahad Khan that the reasonable requirement postulates an element of "need" as opposed to a mere "desire or wish". It was also pointed out that if it was indeed a case of a reasonable need, the same could not be diluted by characterising it as only a mere desire. It was stated."

"The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire."

"It was also held that the language of the provision cannot be unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get possession. If more limitations are imposed upon the landlord holding property, it would expose itself to the vice of unconstitutionality (Yudhishter v. Ashok Kumar). The construction of the relevant statutory provision must strike a just balance between the right of the landlord and the right of the tenant."

"This Court took judicial notice of long delays in courts and observed (SCC pp. 374 & 375, para 13) It is a common but unfortunate failing of our judicial system that a litigation takes an inordinately long time in reaching a final conclusion and then also it is uncertain as to how it will end and with what result and that, therefore, it would be too much to expect from him (landlord) that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stocks of iron and steel materials when he would not know whether he would at all be able to get possession of the Lohiya Bazar shop, and if so, when and after how many years."

> "…. It was stated in *Prativa Devi v. T. V.Krishnan* and in *Meenal Eknath Kshirsagar v. Traders and Agencies* that the landlord was the best judge of his requirement. In *Sheela Chadha v. Dr Achharaj Ram Sehgal* it was held that the landlord had the discretion to determine his need. See also in this connection the judgment of this Court in *Shiv Sarup Gupta v. Dr Mahesh Chand Gupta.* In *Raj Kumar Khaitan v. Bibi Zubaida Khatun* this Court had even stated that it was not necessary for the landlord to state in the pleadings, the nature of the business he proposed to start."
>
> "…. It is true, the above judgment does not support the above connection. On the main point, the above decision was overruled in *Shantilal Thakordas v. Chimanlal Maganlal Telwala* where it was held that if the original plaintiff pleaded that it was his own need and that of the family members, the cause of action would survive on his death to his heirs."

65. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Abdul Rahiman Noormohammed Daruwalle Vs. Sonabai Sahebrao Bhilare and others** reported in 2010(6) Mh.L.J.106, wherein the Hon'ble Bombay High Court in para No.3,8,9,12 observed that,

> "The landlords sought possession of the properties from the applicants on the grounds of arrears of rent and bona fide need to start a flour mill, rice holler and chilly pounding machine utilizing the experience of Ramchandra, the husband of landlady Leelabai. It was also alleged that shop was let to applicant Chipade for tailoring business, but he changed the user by starting cutlery business. They stated that while the tenant Chipade had premises available at Mahabaleshwar for doing his business, tenant Daruwalle had other premises available at Panchgani itself. Therefore, according to landladies, they would suffer greater hardship if decree of ejectment was refused."
>
> "The learned counsel for the tenant Chipade next

> submitted that if the need of the landladies can be satisfied by securing possession of one of the premises, the Courts below ought to have restricted the decree to one of the two premises. He then submitted that in such an eventuality, it would have been necessary for the Courts to decide as to which of the two tenants ought to be evicted, considering the comparative hardship inter se the tenants, and, since the other applicant Daruwalle has allegedly constructed a new building in Panchgani itself, the axe should fall on Daruwalle. The learned counsel submitted that since this would require evidence to be taken and would involve evaluation of needs/resources of the two tenants, the matters may be remanded back to the trial Court. This is indeed an ingenious argument which would ensure that the tenants remain over the property for another 25 years."
>
> "This Contention has to be rejected because it is not the case of the landladies that their need was for one of the two premises. As pointed out by the learned senior counsel for the landladies, the premises in possession of the tenant Daruwalle would be used for locating flour mill at front and chilly pounder at the back and the premises with Chipade would be used for customer area and sales counter at the front and rice mill at the rear. Since the entire premises are needed by the landladies, further hypothetical problems raised do not survive."
>
> "As held by the Supreme Court in Raj Kumar Khaitan's case (supra), even if nature of business is indicated for pleading bona fide need, nobody could bind the landlords to start the same business."

66. On the other hand the Ld. Advocate for the defendants placed her reliance on the decision of **Shankar Tukaram Gosavi vs. Vishwanath Tolaji Sarate**, reported in 1986(1) Bom 453 and wherein the Hon'ble Bombay High Court in para No.4 observed that,

> "The appellate Court rightly took into consideration the fact that although a second room was available to the plaintiff and his family, the plaintiff kept the said room locked. The appellate Court rightly came to the conclusion that if the plaintiff had bona fide need for

> additional accommodation the plaintiff would have made use of this vacant room which was larger than the room in his occupation and was available to the plaintiff."

Relying on this decision it is submitted by the Ld. Advocate for the defendants that, the plaintiffs have provided their members all possibly conceivable amenities and facilities in the acres of land and buildings standing thereon in their possession. Even when they got the vacant possession of 9000 sq.ft. from Kouni Travels, they rented out the said premises to Cricket Board of India, while they continued to pursue their false case lacking any merits against the defendants for further 20 years.

67. The Ld. Advocate for the defendants further submitted that, the plaintiffs have miserably failed to make out a prima facie case. Even their alleged bona fide requirement is vague and devoid of details. In fact when they realised that their case was sitting on "quick sand" they amended the same. Yet they could not discharge the burden of proof which as resting on their shoulder. Hence, lame attempts were made to prove the plaintiffs case from the mouth of the defendants witness.

68. It appears from the evidence of plaintiffs that P.W. No.1 Navneet deposed that the plaintiffs themselves are in need of the suit premises for the purpose of their club activities and thus the plaintiffs' require the suit premises for their use and occupation, reasonable and bonafide. P.W. No.3 Nandini deposed that the plaintiffs require the suit premises to be used as specious new coffee shop and P.W. No.4 Sureshkumar deposed that the plaintiffs may want to use the suit premises for the purpose of coffee shop or for any of the allied sports or recreational facilities in the club because of

growing demands and requirements of their members. During cross examination nothing could be eliminated to disbelieve their evidence.

69. In the present case it appears that the plaintiffs need is bonafide and the defendants have not shown that the need of the plaintiffs is not bonafide. The landlord has the right to decide which is suitable premises for the business which he wants to start. The suit premises is suitable to the plaintiffs for starting the business of coffee shop or sports and recreational activities etc. which they intends to start. The plaintiffs' witnesses in their evidence stated that the plaintiffs themselves are in need of the suit premises for the purpose of their club activities. The plaintiffs require the suit premises to be used as spacious new coffee shop. The suit premises are the only premises which are more suitable and ideally situated for the plaintiffs to commence as their additional coffee shop to meet the growing demands of the plaintiffs members and their guests. The plaintiffs intend to enhance/ upgrade their existing facilities and also increase / add additional sports and recreational facilities in the club for their members. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In the case in hand, the plaintiffs wants eviction of the defendants from the suit premises for starting their new coffee shop or sports and recreational facilities or any of allied sports or for providing banquet facilities and as it is suitable and it cannot be faulted. It is perfectly open to the plaintiffs to choose a more suitable premises for carrying on their coffee shop or sports and recreational activities for their members and that the plaintiffs cannot be dictated by the defendants as to which shop or

premises should start the business from. It is settled that the bonafide necessity of the landlord is to be considered of the day when necessity arose and the crucial date is the date of the petition. If any subsequent event emerges, the necessity of landlord does not cease nor the bonafide necessity of that day becomes non-existent. In the present case in hand since filing of the suit the plaintiffs require the suit premises for the purpose of their club activities, subsequently they require the suit premises for coffee shop and thereafter for the enhancement of the sports and recreational activities for their members. Therefore, the necessity of the plaintiffs does not cease nor bonfide necessity of that day became non-existent. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. The court cannot advise the landlord. Similarly, length of tenancy of the defendants in the circumstances of the case ought not to have weighed. From this evidence it appears that the plaintiffs have proved that they require the suit premises reasonably and bonafide for their personal use for the club activities. Hence, I answer this issue in the affirmative.

As to Issue No.3 :-

70. This issue is in respect of greater hardship. P.W. No.1 Navneet deposed that, no hardship will be caused to the defendants if the decree of ejectment is passed in favour of the plaintiffs.

71. During his cross examination P.W. No.1 Navneet stated that, the plaintiffs paid last year income tax of Rs.30 Lacs and income tax varies from year to year. The defendants have very good

reputation in their ice-cream business. Plaintiffs annual income of the last financial year was Rs.One Crores on which the income tax was paid. She failed to state whether the defendants shall suffer much hardship if decree is passed.

72. P.W. No.3 Nandini deposed that, the plaintiffs will suffer irreparable loss, injury, prejudice and hardship of grave nature, if a decree of eviction is refused in plaintiffs favour. The defendants will not suffer any loss, injury or hardship of any nature since the defendants are not occupying substantial portion of the suit premises and more than 2-3 area of the suit premises are unused since more than three- four years from the date of filing of the suit. In any event, the hardship if any of the defendants can be mitigated by giving them a reasonable compensation to the defendants partners who are the senior citizens and more or less retired from the active business and one of the partners of the defendants is permanently retired and settled down at Pune and has no interest in the business nor the suit premises which are practically lying ideal and unused.

73. During cross examination of P.W. No.3 Nandini she stated that 3/4th area of the suit premises and mezzanine area the defendants are not utilizing. The suit premises were let out for the purpose of ice-cream parlour in the year 1939 to the defendants.

74. P.W. No.4 Sureshkumar deposed that the plaintiffs are facing greater hardship due to paucity of the space whereas the defendants will not face any hardship if decree of eviction is passed against the defendants. No cross examination by the defendants of this witness on this issue.

75. D.W. No.1 Roda deposed that, if the plaintiffs demand

for the suit premises is rejected, no hardship at all will be caused to them, but in case of eviction decree against the defendants, great hardship will be caused to them because the business in the suit premises is their only source of income for their family. The defendants being family firm and will be a great blow to the acquired goodwill and reputation built by them since at least more than a half century and they will be thrown on the streets while the plaintiffs are multi millionaires and their income and profits are huge and they have enough accommodation to carry on their activities.

76. During cross examination of D.W. No.1 it has come on record that the last portion of the photograph below Exh.144/1 they are conducting the business of selling ice-cream. She has not brought other documents to show that they were doing various activities in the suit premises. She has no document to show that Aban is conducting painting business in the suit premises. Painting is the hobby of Aban. She has not brought original Shops and Establishment License of the Departmental store from the suit premises after 2008. The only partition wall in the suit premises as can be seen from the photograph below Exh.144/9. In the other portion of the suit premises she can see only painting being displayed photograph below Exh.144/1. Ice-cream is not sold from the portion visible in photographs below Exh.144/1 to Exh.144/6.

77. The Ld. Advocate for the plaintiffs placed his reliance on the decision of **Nana s/o. Kisanrao Thokade (since deceased) through his LRs. Vs. Prabhakar s/o. Ambadas Gosavi**, reported in 2014(6) Mh.L.J. 563 and wherein the Hon'ble Bombay High observed that,

"21. For determination of hardship, most important

> factor is whether reasonable accommodation is available for landlord or tenant. This Court has already observed that the tenant has his own premises acquired in 1980 and there he can shift his business. It is also observed that the suit premises is suitable to the landlord for starting the business which he intents to start. So, on this ground also the tenant has failed. In the case reported as *2009(4) Mh.L.J. 131, Chotumal Bahirmal Sindho vs. Baburao Vinayak Mohadkar* it is observed that in such a case tenant should lead evidence to show that after making demand of premises by the landlord, the tenant has attempted to find out alternative premises. No such evidence is given by the tenant and further alternative accommodation is available with tenant. Though for consideration of hardship, other factors like financial position can also be considered, when alternative premises is available that factor is most important factor in such a case. In such case the factor of financial position need not be compared. However, there is no specific evidence to prove that the landlord is better placed."

78. The Ld. Advocate for the defendants placed her reliance on the decision of **Shankar Tukaram Gosavi vs. Vishwanath Tolaji Sarate**, reported in 1986(1) Bom 453 and wherein the Hon'ble Bombay High Court in para No.5 observed that,

> "On the question of hardship also, even assuming that the landlord has a bona fide need for the premises, which does not appear to be the case, the hardship to the defendant would be must grater since he would be totally dis housed if a decree for possession is passed against him."

79. From the evidence of D.W. No.1 Roda it evident that at present the defendants are not doing the business of ice-cream in the entire area of the suit premises but they are doing the business of manufacturing and selling of the business of ice-cream only in part of the suit premises. It appears from the Assessment Order Exh.65 colly. of the defendants that, gross turn over of sales for the period

from 01/04/1993 to 31/03/1994 of the defendants was Rs.3994136/- and gross turn over of sales for the period from 01/04/1994 to 31/03/1995 of the defendants was Rs.2174445/- from this gross turn over of sale appears that the defendants financial condition is also sound.

80. It appears from the evidence of the plaintiffs witnesses that the plaintiffs are the sports and recreational club of repute in South Mumbai. Now the number of members of plaintiffs club are more than 10,000 and there is a long waiting list of proposed members. The plaintiffs are under obligations to provide the best amenities and facilities to their members. The plaintiffs are in dire need of additional space to enhance the existing sports and recreational facilities in their club.

81. The defendants have not led evidence to show that after making demand of premises by the plaintiffs, they have attempted to find out alternative premises. No such evidence is given by the defendants to that effect. The defendants had not brought on record any material to indicate that at any time during the pendency of this long drawn-out litigation they had made any attempt to seek an alternative accommodation and were unable to get it. Whenever the tenant is asked to move out of the premises some hardship is inherent. I have noted that the defendants are in occupation of the premises for a long time. But in my opinion, in the facts of this case that circumstance cannot be the sole determinative factor. Therefore, considering the above facts and circumstances of the case, if decree refused to pass then plaintiffs would suffer greater hardship. Hence, I answer this issue accordingly.

As to Issue No.4 :-

82. This issue is in respect of whether the plaintiffs prove that they are entitled for decree of permanent order and injunction against the defendants as prayed by them in prayer (b) in the plaint. The burden to prove this fact is on the plaintiffs. P.W. No.1 Navneet deposed that, the plaintiffs vide their letter dated 14th June, 1995 called upon the defendants to let them know whether they have created any third party interest or were likely to sublet and/or part with the possession of the suit premises or any part thereof. The defendants by their reply dated 19th June, 1995 informed the plaintiffs that they were in exclusive use of the suit premises and were not trying to create any third party interest or negotiating to create third party interest in respect of the suit premises. Recently the Chief Executive & Secretary of the plaintiffs has started receiving telephone calls as to permit the defendants for negotiating with the representatives of Mac Donald & Co. and for their permission to sublet and/or transfer and/or part with possession of the suit premises or portion thereof. One of the Real Estate agents having an office above the suit premises has also given an advertisement in the issue of Times of India dated 3rd July, 1995, that Mac Donald & Co. were looking out for a premises and from the contents of the said advertisement the plaintiffs have reason to believe that the same is with reference to the suit premises, as the area of which is more or less the same of the defendants. On or about 15th January 1996, the Chief Executive & Secretary of the plaintiffs received an anonymous call whereby he was threatened by caller of dire consequences in the event the plaintiff or on behalf of the plaintiffs he would not agree to transfer the suit premises and/or give permission for creating third

party interest or part with possession under some suitable agreement of the suit premises, the defendants would go ahead and induct any person or persons and/or create third party interest and/or enter into some arrangement in respect of the suit premises or portion thereof.

83. P.W. No.1 Navneet further deposed that, what is stated herein above, it is obvious and the plaintiffs have reasonable apprehension that the defendants are trying to create third party interest which is totally unjust, unwarranted, illegal and in breach of the terms of tenancy. Therefore, it is just, equitable, expedient and in the interest of justice that the defendants be restrained by an order of injunction.

84. During his cross examination P.W. No.1 Navneet stated that, between the date when notice was issued and before filing of the suit, the defendants had not inducted 3rd party in the suit premises. At present also the defendants have not inducted 3rd party in the suit premises. Mr. Ranjan himself told him that he has received threatening phone calls to allow the defendants to sublet the suit premises. Mr. Ranjan has not informed him as to who had made those phone calls. The notice Exh.B does not mention the said phone calls. No complaints were made to the police as they were not threatening calls. No letter was given to the defendants about this phone calls received. He has no personal knowledge about the phone calls except what Mr. Ranjan told him.

85. During cross examination P.W. No.1 Navneet further stated that nobody disclosed the name and identity who made the threatening telephone calls on behalf of the defendants and therefore he is not able to state their names. The so called threatening calls were never received by him. He has nothing to show except his oral

statement that Mr. Ranjan received threatening telephone calls on behalf of the defendants.

86. In order to prove an advertisement in the issue of Times of India dated 3rd July, 1995 is with reference to the suit premises, the plaintiffs have examined P.W. No.2 Rohan Ramesh Kanekar but nothing could be eliminated from his evidence to support their case on this issue.

87. It appears from the record that in the affidavit of P.W. No.3 Nandini there is no whisper about this issue but during her cross examination stated that, the defendants are not found sub-letted the suit premises or part of the suit premises to anybody. She failed to state the name of Estate broker. She admitted that, in Advertisement Exh.E it does not contain the shop number of the defendants.

88. D.W. No.1 Roda in her affidavit denied that, after or before letter dated 14/06/1995 the plaintiffs made any enquiry or learnt that substantial portion of the suit premises was unused or the plaintiffs' Chief Executive & Secretary received any telephone calls or the defendants or anyone on their behalf gave any advertisement. She denied that, the defendants tried to create third party interest in breach of terms of tenancy or otherwise there were any terms of tenancy. D.W. No.1 Roda during cross examination stated that, they have not authorised to anybody else to use and occupy the suit premises.

89. The Ld. Advocate for the defendants placed her reliance on the decision of **S. P. Chengalvaraya Naidu (dead) by Lrs. Vs. Jagannath (dead) by Lrs. and others**, reported in (1994) 1 SCC 1

and wherein the Hon'ble Supreme Court observed that,

> "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

Relying on this decision it is submitted by the Ld. Advocate for the defendants that, the plaintiffs have played a fraud upon the Court. The plaintiffs have come to Court with a false case. The defendants have shown the false case. The plaintiffs cannot be allowed the grant of equitable relief of injunction upon such falsity. In fact upon law laid down in the case of C. Naidu the plaintiffs suit would deserve to be dismissed.

90. From the cross examination of P.W. No.1 Navneet it appears that he admitted that between the date when the notice was issued and before filing of the suit, the defendants had not inducted 3rd party in the suit premises. He further admitted that at present also the defendants have not created any third party interest in the suit premises. No complaints were made to police as they were not threatening calls. No letter was also given to the defendants about this phone calls. He has no knowledge about these phone calls. Therefore, his evidence about the threatening calls is hearsay. Hearsay evidence is not admissible in evidence. Nobody discloses the name and the identity of the persons who threatened the Chief Executive & Secretary of the plaintiff. P.W. No.2 Rohan not supported the case of plaintiff. There is no iota of evidence on this point. Thus, the plaintiffs miserably failed to prove that they are entitled for decree of permanent injunction as prayed by them in prayer clause (b) of the plaint. Hence, I answer issue No.4 in the

negative.

<u>As to Issue No.5</u> :-

91. This issue is in respect of entitlement of decree of ejection and recovery of possession of the suit premises. During argument, the learned advocate for the defendants raised objections on the point of plaintiffs have filed false case. P.W. No.4 Sureshkumar examined subsequently such a belated stage to bring resolution retrospectively to support the filing of suit by S. Natarajan. But there is no resolution to support the filing of evidence or deposing in the case by either P.W. No.1 Navneet or P.W. No.3 Nandini.

92. P.W. No.1 Navneet – Chief Accountant of the plaintiffs deposed that, he is one of the principle officer of the plaintiffs. During his cross examination P.W. No.1 Navneet has shown his identity card as a Chief Accountant with the plaintiffs.

93. P.W. 2 Nandini deposed that she is the legal officer of the plaintiffs. She is authorised to give evidence in the matter pursuant to the resolution and authority letter dated 17/12/2011 issued by the plaintiffs. She has filed present evidence after the amendment effected to the plaint pursuant to the order dated 12/01/2011. During her cross examination she stated that since 2008 she is working as a law Officer of C.C.I. She has authorization from C.C.I. In resolution Exh.103 it is not mentioned that she is authorized to appear in this matter.

94. D.W. No.1 Roda deposed that, the suit is not maintainable as the plaint is signed and declared and Vakalatnama is signed by Shri S. Natarajan the alleged Chief Accountant and the suit

filed by him, unauthorisedly and illegally as he has no such authority and he is not competent to file the suit and even no such designation or office is in existence as per Memorandum or Articles of Association of the plaintiffs. The plaintiffs is a limited company, have not passed any resolution to serve the notice upon the defendants or file suit against the defendants nor authorised anyone in that respect.

95. D.W. No.1 Roda during her cross examination stated that, she has not inspected or taken search of documents maintained by the plaintiffs. She has not seen the Memorandum or Articles of Association. She failed to state on what basis she has stated that no such post of Chief Accountant in the plaintiff's company. She has filed affidavit of evidence for and on behalf of all the partners of K. Rustom & Co. Other partners of K. Rustom & Co. not given her writing authorisation to depose on behalf of all. She has not proceeded any authority letter/ document showing that K. Rustom & Co. authorised her to represent in the suit.

96. The Ld. Advocate for the defendants placed her reliance on the decision of **Ram Lal Vs. Mustafabad Oil and Cotton Ginning Factory and others**, reported in AIR 1968 P&H 399 and wherein the Hon'ble P & H Court observed that,

> "The decision of a Court should rest not upon a conjecture, surmise or suspicion but upon legal grounds substantiated through legal testimony. Failure of Court to consider matter on evidence proceed would be regarded as dereliction of duty. Failure to consider material evidence in arriving at a conclusion, or, resting decision on surmises and conjectures without considering lie legal principles governing the conclusions as to the existence of nuisance or not, vitiate a seeming finding of fact."

Relying on this decision it is submitted by the Ld. Advocate for the defendant that, this Court should therefore apply its mind to the false and fabricated case of the plaintiffs based on untenable documents and the contradictions exposed in the deposition of the witnesses of the plaintiffs who have deposed without any resolutions with express authority by the Management Board of the plaintiffs.

97. The Ld. Advocate for the defendants further submitted that, in order to maintain sanctity and solemnity of the proceedings in law Courts it is necessary that parties should not make false or knowingly incorrect statements or misrepresentations and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the Court, when a Court is considered as a place where truth and justice are the solemn pursuits. If a party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its won risk and cost.

98. It appears from Exh.142 and Exh.143 that they are true copies of extracts of resolution passed by the Executive Committee of the Cricket Club of India by Circulation dated 11th December, 2019 by which Mr. Sureshkumar is authorised to file affidavit of evidence and for that purpose to sign, execute, appear and lead evidence in the present suit and the Executive Committee ratifies the filing of eviction suit in the present matter. Mr. S. Natarajan the then Chief Accountant of the plaintiffs was authorised to sign, verify, appear and filed the plaint in the present suit and to take all necessary steps including appointing of the advocates and signing vakalatnama, to file, appear and give evidence on behalf of the club. Therefore, at this stage, it cannot be said that the suit is filed without

authorisation. It is already held that the plaintiffs have proved that, the suit premises are reasonably and bonafide required by the plaintiffs for their personal use for club activities and no hardship will be caused to the defendants if the decree of ejectment is passed in favour of the plaintiffs therefore, they are entitled to recover quit, vacant and peaceful possession of the suit premises. In view of my findings to issues No.2 and 3, the plaintiffs are entitled to get decree of ejectment in respect of the suit premises against the defendants and for recovery of the possession of the same. It is settled position that the costs shall abide the ultimate result of the suit. Hence, I answer issue No.5 in the affirmative and in answer to issue No.6, I proceed to pass the following order.

ORDER

1. Suit is partly decreed with costs.
2. The defendants are hereby directed to hand over the quite, vacant and peaceful possession of the suit premises viz. Shop No.6, comprising approximately 3070 sq.ft. and mezzanine floor admeasuring approximately 950 sq.ft., on the ground floor of the property known as “North Stand Building” forming part of the Brabourne Stadium, situate at 67, Veer Nariman Road, Churchgate, Bombay - 400 020 to the plaintiffs, within two months from the date of this order.
3. The prayer of permanent injunction is rejected.
4. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

DISTRICT COURTS MAHARASHTRA

Digitally signed by SUDHIR B TODKAR
Date: 2022.04.30 17:27:57 +0530

[S. B. Todkar]
Judge, Court of Small Causes, Mumbai.
[Court Room No.11].

Date : 30/04/2022.

Judgment dictated on : 30/04/2022.
Judgment checked and signed on : 30/04/2022.