

**2026 LiveLaw (SC) 503**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
MANOJ MISRA; J., MANMOHAN; J.**

**SLP(C) No.31012 of 2025; May 15, 2026**

**MARIETTA D' SILVA *versus* RUDOLF CLOTHAN LACERDA & ORS.**

**Rent Control and Eviction – Bona Fide Requirement and Comparative Hardship - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 – Sections 13(1)(g), 13(1)(l), and 13(2) – Eviction suit filed by co-landlord – Landlord-tenant relationship – Acquisition of alternate accommodation by tenants – Temporary co-occupation of another portion of the building by the co-landlord during the pendency of the suit due to the death of a parent does not negate her bona fide need – Tenant cannot dictate to the landlord the suitability of the tenanted premises or insist on utilizing some other property – In assessing comparative hardship, the acquisition of alternative accommodation by the tenants shifts the balance in favor of the landlord – Selling alternative accommodation during the pendency of a suit to avoid eviction reflects a conduct that tilts relative hardship against the tenant.**

*[Paras 51-53, 56 - 60]*

**Civil Procedure – Pleadings vs. Proof – Scope of Summary Facts - Code of Civil Procedure, 1908 – Order VI Rules 1 & 2 – Distinction between *facta probanda* (material facts to be proved) and *facta probantia* (facts/evidence by which they are proved) – Pleadings must contain only *facta probanda* and not *facta probantia* – In an eviction suit, the plaintiff is required to plead and prove the existence of a landlord-tenant relationship and the statutory grounds for eviction – Specific documents like share certificates, internal family understandings, or detailed requirements of the family constitute evidence (*facta probantia*) to establish the material facts and are not required to be set out verbatim in the plaint itself – Both tests of pleading and proof stand satisfied if the essential elements of the cause of action are present in the plaint and substantiated through evidence. *[Paras 28, 31-34, 36, 40]***

**Civil Procedure – Practice and Procedure – Deficiency in Pleadings raised in Appeal - Code of Civil Procedure, 1908 – Pleadings – Deficiency raised for the first time in appeal – Where the pleadings in substance contain the necessary averments, and the parties went to trial fully conscious of the case and the issues, leading evidence thereon, it is not open to a party to raise the question of deficiency or absence of specific pleadings in appeal. *[Para 41]***

**Property Law – Co-ownership and Definition of Landlord - Transfer of Property Act, 1882 – Sections 3 & 8 – Share certificates of land – Interest in land includes things attached to the earth, such as walls or buildings – Holders of share certificates of the land are co-owners of the building built thereon – Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 – Section 5(3) – Definition of ‘Landlord’ – A co-owner of the building who is entitled to receive rent or receives rent on behalf of another falls squarely within the statutory definition of a ‘landlord’ and possesses the locus to maintain an eviction petition. *[Paras 42-46]***

**Civil Procedure – Practice and Procedure – Taking Cognizance of Subsequent Events - Subsequent developments – Power of the Court to take note of subsequent events – While relief is ordinarily judged based on the date of institution of the suit, the Court can, and in many cases must, take cautious cognizance of subsequent**

events and developments to ensure the remedy matches current realities, provided rules of fairness are scrupulously observed. [Para 47]

**Family Arrangement – Oral Settlements - Oral Family Settlement – Validity and enforcement – A family arrangement or settlement can be entered into even by way of an unregistered oral agreement and is enforceable under special principles of equity – Technical considerations must give way to peace and harmony in enforcing family arrangements – Co-landlord is fully entitled to rely upon an oral family arrangement earmarking the suit premises for her exclusive use as a subsequent development.** [Relied on *Virender Nath Gautam v. Satpal Singh & Ors.*, (2007) 3 SCC 617; *Ram Sarup Gupta (Dead) By LRs. v. Bishun Narain Inter College & Ors.*, (1987) 2 SCC 555; *Bachhaj Nahar v. Nilima Mandal & Anr.*, (2008) 17 SCC 491; *Pasupuleti Venkateswarlu v. The Motor & General Traders*, (1975) 1 SCC 770; *Kale & Ors. v. Deputy Director of Consolidation & Ors.*, (1976) 3 SCC 11; Paras 49-50]

*For Petitioner(s): Mr. Siddharth Bhatnagar, Sr. Adv. Ms. Pritha Srikumar Iyer, AOR Mr. Arun Srikumar, Adv. Mr. Nadeem Afroz, Adv. Mr. Ritwik Gupta, Adv.*

*For Respondent(s): Mr. Upendra Mahadik, Adv. M/s Juritrust Law Offices, AOR Mr. Prashant Shrikant Kenjale, Adv. Mr. Naveen Hegde, AOR*

## **J U D G M E N T**

### **MANMOHAN, J.**

1. Leave granted.

2. Present appeal has been filed challenging the impugned judgment and order dated 23<sup>rd</sup> June 2025 passed by the High Court of Bombay in Civil Revision Application No. 308 of 2019 whereby the High Court allowed the revision application filed by Respondent No.1 and set aside concurrent findings in the judgment dated 14<sup>th</sup> September, 2007 passed by Small Causes Court at Bombay in Rent and Eviction Suit No. 411/861 of 1996 as also judgment and order dated 25<sup>th</sup> July 2017 passed by the Appellate Bench of Small Causes Court at Bombay in Appeal No. 677 of 2007. By virtue of the impugned judgment and order passed by the High Court, the suit filed by the Appellant-Plaintiff No. 1 seeking eviction of Respondent No.1 was dismissed and Appellant/Plaintiff No.1 was directed to restore possession of the premises in question to Respondent No.1.

### **FACTUAL BACKGROUND**

3. Briefly stated, the material facts are that a 99-year lease of land was granted by the St. Anthony's Homes Cooperative Society Ltd. in favour of the parents of Appellant-Plaintiff No.1. Upon the leased land, the parents constructed the Memorare Building ("Suit Building") situated at 16<sup>th</sup> Road, Chembur, Bombay – 400071 comprising six flats (flat Nos.1-6). Five share certificates dated 6<sup>th</sup> June 1959 were issued by the Cooperative Society to the parents of the Appellant.

4. A sub-tenancy agreement dated 6<sup>th</sup> June 1962 was executed for flat No.2 ("Suit Premises") by the father of the Appellant in favour of one Mr. Augustine Lacerda (father of Defendant Nos.1-3 and grandfather of Respondent No.1 herein, who is the son of deceased Defendant No.1). Upon the death of Mr. Augustine Lacerda on 7<sup>th</sup> December 1969, the sub-tenancy devolved upon his widow, Mrs. Virginia Lacerda.

5. Subsequently, on 5<sup>th</sup> July 1987, the five share certificates were transferred in favour of the joint names of Appellant-Plaintiff No.1 as well as her sister Respondent No.2-Plaintiff No.2 and their family members –Defendant Nos.4-8.

6. Three months after the death of Mrs. Virginia Lacerda, an eviction suit (later numbered as R.A.E. Suit No. 411/861 of 1996) was filed in July 1993 with regard to the

Suit Premises by Appellant-Plaintiff No.1 and Respondent No.2-Plaintiff No.2 against the legal heirs of Mrs. Virginia Lacerda (i.e. Defendant Nos.1-3). The suit was founded on grounds under Section 13(1)(g) read with Section 13(2) [*bona fide need of the landlord, coupled with greater hardship*]; Section 13(1)(l) [*acquisition of alternative accommodation by the tenant*]; and Section 13(1)(k) [*change of user*] of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (“the Act”).

7. According to the Appellant-Plaintiff No.1, at the time of filing of the suit, flat Nos.5-6 (which were the only flats available to the co-landlords) were occupied by the parents of the Appellant-Plaintiff No.1. Appellant’s father passed away on 24<sup>th</sup> February 1994 i.e. subsequent to the institution of the suit. It is the case of the Appellant-Plaintiff No.1 that pursuant to an oral family arrangement between the Appellant and her siblings all the five children were to co-own all units as well as jointly contribute to the maintenance and up-keep of the whole building, with flat Nos. 5 & 6 earmarked for the exclusive use of the two sons only (Defendant Nos.6 and 8/Respondent No. 4 & 6 herein), while Appellant/Plaintiff No.1 was to get exclusive use of flat No.2/ Suit Premises upon eviction of the tenants.

8. During the pendency of the suit in 1996, the Appellant shifted to Mumbai and temporarily resided with her mother in flat Nos.5 and 6, having no other accommodation in the city.

9. By judgment and decree dated 14<sup>th</sup> September 2007, the Small Causes Court decreed the eviction suit in favour of Appellant–Plaintiff No.1, holding that she had established her bona fide requirement and that alternative accommodation was available to the tenants. The issue of comparative hardship was also decided in favour of the Appellant. However, the claim of Respondent No.2–Plaintiff No.2 was rejected on the ground that she was residing in Goa, which finding was not challenged by her. The plea of change of user was likewise rejected. The relevant portion of the Trial Court’s judgment is extracted hereinbelow:

*“14. ...However, so far as the plaintiff No.1 is concerned, the defendant Nos. 1 and 2 unable to produce any material before the court which could positively indicate the fact that the plaintiff No.1 has her own premises in Mumbai. Similarly, the evidence relating to frequent transfer of the plaintiff No.1’s husband also not destroyed by the defendant Nos. 1 and 2. The fact of other brothers are residing at Canada and USA does not necessarily mean that they will not come to India whenever they intend to pay visit to India. They could have also resided in their own premises and therefore, the story put up by the plaintiff No. 1 relating to this particular fact is certainly believable. The fact of the plaintiff No.1 residence in the suit premises is not at all denied by the defendants and therefore, the plaintiff No.1’s need is sincere and honest. In this connection, it has to be mentioned that in such a situation even the minor need of the landlord is sufficient to pass the decree when the defendants have acquired alternate suitable accommodation in Mumbai. The defendant No.1 was selling his own premises during the pendency of the suit and this fact has not at all denied by the defendants. If this being the position, it can hardly be said that the plaintiff No.1’s need is not sincere and honest...*

xxxx xxxx xxxx

*17... it has fairly been admitted by the defendant No.2 that he is the owner of flat No. F-129 at Madhuwana Society, Andheri (East), Mumbai-400058. The said flat consists of hall, kitchen, bed room, w.c. and bath room and it admeasures 450 sq.ft. Similarly, on page No.44 of the notes of evidence this witness conceded the fact that the defendant No.3 is residing on the address of flat No.606, 6<sup>th</sup> floor, Ritik Rishi Complex, Holy Cross Road, IC Colony, Borivali. These two admissions are itself sufficient to conceive the fact that the defendant Nos.1 to 3 are not at all residing in the suit premises and as such their hardship assumes no importance. The question remains only in respect of the defendant No.2’s hardship...*

*...According to the plaintiffs, the defendant No.2 acquired alternate accommodation on the address of D-82, Madhuwana Society, Andheri (E), Mumbai 400 058 and the plaintiffs visited the said premises. The evidence led by the plaintiff so far as this residence is concerned appears to be rather conceivable particularly in view of evidence led by the defendant No.2 in his cross examination...*

XXXX XXXX XXXX

*19. His (Defendant No.2) evidence further shows that his sister, defendant No.3 was occupying the said flat.....*

*...His evidence further shows that he has entered with an agreement with Mr. Lancelot C. D'Souza with regard to flat No. D-82 in Madhuwana Society. He signed the said agreement dated 29.11.2002 (Ex.D) in the office of the society and the said agreement has been admitted by defendant No.2...*

*...This particular transfer made in favour of Mr. Lancelot during the pendency of this suit itself sufficient to conceive the fact that the said transfer in respect of flat No. D-82 was made by the defendant No.2 only with a view to defeat the present suit and nothing else. As a matter of fact, instead of searching other accommodation, the defendant No.2 sold the said premises. Even apart from this fact, the consideration of Rs. 12 lakhs could have been used or utilised for the purpose of purchasing other accommodation, but the same was not done. Therefore, the fact remains that the defendant No.2 received Rs.12 lakhs out of said transaction.*

XXXX XXXX XXXX

*23. ...As a matter of fact, once the bona-fide need is proved, the question of relative hardship become rather academic...*

*... But so far as the plaintiff No. 1 is concerned, it has been held that the defendants unable to produce any material before the court which could positively show that the plaintiff No.1 has her own premises in Mumbai..... Therefore, in my view, relative hardship certainly tilts towards the plaintiff No.1 and not in favour of the defendants. XXXX XXXX XXXX*

*25. In view of above reasoning. I hold that, the plaintiff-No.1 succeeded in proving that she requires the suit premises for her own use and occupation and greater hardship would be caused to her in the event of decree being refused. I therefore answer these issues accordingly.*

XXXX XXXX XXXX

*28... Therefore, it is amply established before this court that the defendant Nos. 1 to 3 have acquired alternate suitable accommodation and they are not at all in need of the suit premises.*

**10.** The tenants aggrieved by the judgment and decree passed by the Small Causes Court preferred an appeal bearing no. 677/2017 before the Appellate Bench of the Small Causes Court in October 2007. The said appeal was dismissed vide judgment dated 25<sup>th</sup> July 2017.

**11.** Thereafter, Respondent No.1 instituted Civil Revision Application (ST) No. 28304 of 2017 before the High Court of Bombay on 3<sup>rd</sup> October 2017, assailing the judgment dated 25<sup>th</sup> July 2017 of the Appellate Bench. By the impugned judgment dated 23<sup>rd</sup> June 2025, the High Court set aside the concurrent decrees of the Courts below and directed restoration of possession of the Suit Premises to Respondent No.1–tenant.

**12.** Aggrieved thereby, Appellant-Plaintiff No.1 has approached this Court by way of the present appeal.

#### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

**13.** Mr. Siddharth Bhatnagar, learned senior counsel appearing for Appellant–Plaintiff No.1, submitted that the Appellant was a co-landlord of the Suit Premises at the time of

institution of the eviction suit, her name being jointly reflected in the five share certificates of the Suit Building. He invited the attention of this Court to the plaint, wherein the Appellant had specifically averred as follows: -

*“1. The Plaintiffs, along with Defendants Nos.4 to 8 are the landlords of the building known as Memorare, situated at 16<sup>th</sup> Road, Chembur, Bombay 400071.*

*2. Mr. A. Cyprian O Lacerda was the tenant of Flat No.2 on the Ground Floor of the aforesaid property of the Plaintiffs.....*

*4. The Plaintiffs seek to recover, from Defendant Nos.1-3, peaceful and vacant possession of the suit premises on the following grounds:*

*a. The suit premises are reasonably and Bonafide required by the Plaintiffs for their own use and occupation.....”*

**14.** It was urged that the Appellant was able to record her evidence only in 2004, by which time her father had passed away in 1994. In the intervening period, she had joined her mother in flat Nos.5 and 6, owing to want of alternative accommodation in Mumbai and the necessity of educating her children in the city, despite the protracted progress of the eviction suit. In her affidavit of evidence, she explained that flat Nos.5 and 6 had since been allotted to her brothers, who, though residing abroad, were expected to return to India and occupy those flats. Thus, while the death of her father created temporary space for her to reside with her mother, it did not defeat the bona fide requirement pleaded in the plaint.

**15.** Learned senior counsel further contended that the Appellant had, in her examination-in-chief, established both her status as co-landlord and her entitlement to eviction under Section 13(1)(g) read with Section 13(2) and Section 13(1)(l) of the Act. The relevant portion of her affidavit of examination-in-chief is reproduced hereinbelow: -

*“3. We, Plaintiffs Nos. 1 and 2 and Defendants Nos. 4 to 8 are the landlords of the suit building known as Memorare which is situated on 16<sup>th</sup> Road, Chembur, Mumbai 400071. I have the share certificate issued by St. Anthony’s Homes Cooperative Society Ltd., which is a co-operative society duly registered under the Co-operative Societies Act (II of 1912). There are 5 share certificates bearing Nos. 526 to 530 issued by St. Anthony’s Homes Co-operative Society Ltd. These share certificates pertain to the suit property. These share certificates, which stood in the names of my parents, Leo Clement Pinto and Muriel Marie Teresa Pinto, stand in the names of Leo Clement Pinto, Muriel M.T. Pinto, Gerard F. Pinto, Marietta M. D’Silva, Melanie M. Pinto, Gregory J. Pinto and Melinda M. Pinto since 5<sup>th</sup> July 1987. I tender the said five share certificates; the same are true and correct. The same have been issued by the society as per the rules and regulations of the Cooperative Societies Act. The same are duly signed by the members of the Managing Committee and the Honorary Secretary. The same may be marked as Exhibit A colly; and the true xerox copies thereof be marked as Exhibit A-1. The original share certificates may be ordered to be returned to me on the usual undertaking.*

*4. The suit premises is Flat No.2, situated on the ground floor of the suit building. Shri Cypriano Lacerda was the tenant in respect of the suit premises. He expired on or about 17<sup>th</sup> December 1969 leaving behind his widow, Virginia, and children, as his heirs and legal representatives.*

*5. The tenancy of the suit premises was then transferred from the name of Cypriano Lacerda to the name of his widow, Virginia, on the joint request of Mrs. Virgini Lacerda and other heirs and legal representatives of Mr. Cypriano Lacerda.*

*6. Mrs. Virginia Lacerda expired in Bombay on or about 18<sup>th</sup> March 1993, leaving behind Defendants Nos. 1, 2 and 3 her heirs and legal representatives, were residing with her in the suit premises as members of her family.*

7. *I say that possession of the suit premises is sought to be recovered from the Defendants as the same are reasonably and bonafide required for the use and Occupation of Plaintiffs Nos.1 and 2 and their respective families.*

8. *I say that my family consists of myself, my husband and two sons, viz., Christopher and Craig, aged 20 and 17 years respectively. Both my sons are studying. The flat on the second floor where I am residing is of my brother, Gerard, and he has permitted me to occupy the same temporarily. I say that the two flats on the second floor of the suit building are of my two brothers. Flat No.5 is of Gerard and Flat No.6 is of Gregory. Both Gerard and Gregory are at present out of Mumbai. Gerard is at Canada and is likely to come back to Mumbai, and as such I and my family would be compelled to remove ourselves from the said premises.*

9. *I say that after my marriage in the year 1983, my husband and I went to reside at Ambala. I say that I could not reside on the second floor with my parents as there was disagreement with my parents and as such my husband and I could not reside with them. I say that from the year 1983 till March 2001 my husband, who was in the Indian Air Force was posted in various places, viz., Hyderabad, Udampur near Jammu, and also at Gandhinagar near Ahmedabad when he took premature retirement in March 2001. I further say that on the return of my two brothers, or either of them, to the suit building, the accommodation of Flat 5 and 6 would also be insufficient for the families to reside thereat.....*

14. *I require the suit premises for my own use and occupation and that of my family. The premises where I am residing is of my mother and my two brothers, Gerard and Gregory. Gerard, who is at present at Canada, is likely to come back to Mumbai from Canada and as such I and my family would be compelled to remove ourselves from the premises. Even otherwise, I and my family are unable to reside on the second floor due to quarrels between my brother, Gerard, on the one hand and my husband on the other. My brother, Gerard, has also been insisting that I should not stay in the premises. I accordingly require the suit premises for my own use and occupation and that of my family.*

15. *I further say that the Defendants are also liable to be evicted from the suit premises as the Defendants have suitable other residences. Defendants Nos.1, 2 and 3 have each built, acquired or have been allotted a suitable residence. The First Defendant has acquired a suitable residence, viz., a Flat bearing No.F-129 in the building known as Madhuwana situated next to Indian Oil Nagar, Andheri Versova Road, Andheri (West), Mumbai 400 058. The Second Defendant has also acquired a suitable residence/premises, viz., Flat No.D-82 in the said Madhuwana building. Defendant No.3 has also acquired a flat in the said Madhuwana building. All these flats acquired by these Defendants are suitable residential premises. I tender photographs together with the negatives thereof, showing that the Defendants have acquired premises at Madhuwana building. The photographs are true and correct and I request that the same be marked as Exhibits.*

16. *I also state that the Defendants have changed the user of the suit premises to one of business. The Defendants are running tuition classes in the suit premises.*

17. *I say that no hardship would be caused to the Defendants for, as set out hereinabove, each of the Defendants have acquired suitable other residential residences/premises. I say that I and my family would continue to suffer great hardship and inconvenience if a decree is refused to be passed against the Defendants. I also say and submit that Plaintiff No.2 and her family would suffer great hardship and inconvenience for she has no accommodation in Mumbai for her residence.*

18. *I therefore pray that a decree in eviction be passed against the Defendants."*

**16.** Learned senior counsel submitted that the High Court erred in interfering with concurrent findings on the wholly misconceived assumption that the Appellant's case was premised upon a 'family partition' whereby flat Nos.5 and 6 were allotted to her brothers and flat No.2 to her share. He argued that no such case was ever set up. The Appellant had merely alluded in her evidence to an amicable living arrangement among the co-

landlords following the demise of their parents. Such an arrangement did not amount to a partition, nor was any such plea advanced.

17. He emphasised that under the family arrangement, flat Nos.5 and 6 were understood to be earmarked for the exclusive use of the Appellant's two brothers, while the Suit Premises was understood to be available for the Appellant's exclusive use upon conclusion of the eviction proceedings. Nevertheless, all six flats continued to be jointly owned by the Appellant and her siblings. No division or partition had taken place and no exclusive title vested in any individual sibling.

18. It was further submitted that the said arrangement could not have been pleaded in 1993, when the suit was instituted, as it had not then come into existence. In any event, the arrangement was an internal understanding among the co-landlords and did not concern Respondent No.1 or the other tenants. The eviction decreed by the Courts below could not, therefore, have been set aside by the High Court on that basis.

### SUBMISSIONS ON BEHALF OF THE RESPONDENTS

19. *Per contra*, Mr. Prashant Shrikant Kenjale, learned counsel for the Respondents, contended that there was a fundamental jurisdictional defect in the Appellant's case. He submitted that the plaint did not contain any clear or specific pleading establishing how the Appellant had acquired the status of landlord of the Suit Premises at the time of filing the suit. He pointed out that the written statement categorically denied the relationship of landlord and tenant and raised a jurisdictional objection under Section 28 of the Act. Despite this, the Appellant sought to build her case through her affidavit of evidence by introducing an alleged family arrangement, reliance on share certificates and other material not pleaded in the plaint. Such a course, he argued, was impermissible in law.

20. Learned counsel submitted that the Appellant's locus as landlord was a threshold issue. Once the defendants specifically denied the relationship and title, the burden lay upon the Appellant to plead and prove clearly and specifically, her entitlement to sue as landlord and to receive rent. The plaint, however, contained only a general assertion of landlordship, without pleading any family arrangement, division of the building or transfer of the right to receive rent in her favour. The suit, therefore, rested upon an unpleaded and unproved assumption of landlordship.

21. Learned counsel submitted that the legal position is well settled that evidence cannot be looked into unless it is supported by corresponding pleadings. A party cannot be permitted to travel beyond the case pleaded in the plaint, nor can relief be granted on the basis of a narrative introduced for the first time in evidence. Reliance was placed on ***Bachhaj Nahar vs. Nilima Mandal, (2008) 17 SCC 491***, wherein this Court held that a case not pleaded cannot be made out by evidence or submissions and relief cannot be granted on an unpleaded foundation. Accordingly, it was contended that the Appellant's reliance on family arrangement, share-based allocation and derived landlordship was impermissible, as none of these were pleaded.

22. He further submitted that the Appellant's own cross-examination undermined the oral theory of family arrangement as it was admitted by the Appellant that '*the share certificates disclose names of the co-owners and not the flat owners.*' Thus, the share certificates pertained to the land and not to individual flats in the building and could not establish exclusive landlordship of the Suit Premises.

23. Learned counsel argued that the Appellant's reliance on subsequent developments was equally untenable. Even if the father's death in 1994 created certain factual changes,

such subsequent events could not retrospectively confer landlordship in a suit filed in 1993 unless the pleadings were amended and the change in status properly brought on record. A later event cannot be used to manufacture original locus as the suit must stand or fall on the pleadings and rights asserted at the time of institution.

**24.** On the test of bona fide requirement, it was submitted that mere preference of the landlord is insufficient. The need must be pleaded and proved as real as well as existing necessity and a manufactured or subsequently improved case does not satisfy the statutory standard. In the present case, the Appellant's own admissions revealed that she was already in occupation of the second floor, comprising two flats and that no decree of partition existed among the family members. In such circumstances, the finding of the Trial Court and Appellate Court that she alone required the Suit Premises was not based on proper pleadings and proof, but on an unpleaded narrative. It was further contended that each statutory ingredient under Section 13(1)(l) of the Act had not been clearly pleaded and proved. Lastly, reliance was placed on ***B.R. Mehta vs. Atma Devi, (1987) 4 SCC 183***, wherein this Court emphasised that alternate accommodation under the Rent Act is effective only if the tenant himself has acquired or been allotted suitable premises. Allotment to a spouse or family member is insufficient unless the tenant has a legal right thereto.

### ISSUES

**25.** Having heard learned counsel for the parties, this Court is of the view that apart from questions of facts, substantial questions of law arise for consideration in the present appeal namely what constitutes a pleading, what is the distinction between the pleading and proof and as to whether the tests of pleading and proof stand satisfied in the present case?

### REASONING

#### WHAT CONSTITUTES A PLEADING?

**26.** '*Pleading*' denotes a formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials or defenses<sup>1</sup>. Every pleading must contain and contain only a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and the statement must be as brief as the nature of the case admits<sup>2</sup>. The rules governing pleadings are not rigid absolutes but guiding principles designed to ensure clarity and precision in framing the case.

**27.** Order VI Rule 1 of the Code of Civil Procedure states that pleading means '*Plaint or Written Statement*'. A plaint is the statement of claim in which the plaintiff sets out his cause of action with all requisite particulars. A written statement, on the other hand, is the defendant's response, wherein he deals with each material fact alleged by the plaintiff and sets out any new facts in his favour, together with such objections as he wishes to raise to the claim.

**28.** Order VI Rule 2(1) of the Code of Civil Procedure stipulates that:

(i) Pleadings must state facts and not law;

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<sup>1</sup> Black's Law Dictionary Ninth Edition

<sup>2</sup> Halsbury's Laws of England, Fourth Edition Reissue Volume 36(1) 1999

- (ii) They must state all material facts and material facts alone i.e. facts essential to the plaintiff's cause of action or to the defendant's defence;
- (iii) They must state only the facts relied upon not the evidence by which they are to be proved; and
- (iv) They must state such facts concisely with precision and certainty so as to maintain brevity and clarity.

**29.** The object of pleadings is to assist the Court and the parties in the adjudication of disputes. The intent is to provide fair notice of the opponent's case, to ascertain with precision the points of agreement and divergence and thereby to bring the parties to definite issues.

**30.** Accordingly, pleadings of the parties form the foundation of their case as they are the statement of facts in writing drawn up and filed in a Court by each party stating therein what his/her contention shall be at the trial.

**31.** Consequently, the requisites of a good and sufficient pleading are that it should contain (1) a statement of facts, not law, (2) material facts only, (3) facts, not evidence and (4) facts stated in a summary form.

#### **DISTINCTION BETWEEN PLEADING AND PROOF**

**32.** Another fundamental rule of pleading as laid down by Order VI Rule 2 of the Code of Civil Procedure is that every pleading must contain material facts but not the evidence by which those facts are to be proved. The material facts on which a party relies are called *Facta Prabanda*, i.e. the facts to be proved and they are required to be stated in the pleadings. The evidence or facts by which *Facta Prabanda* are to be proved are called *Facta Probantia* and these are not to be included in the pleadings. *Facta Prabanda* are not the facts in issue rather, they are the relevant facts which, when proved at trial, establish the facts in issue. In ***Virender Nath Gautam vs. Satpal Singh & Ors., (2007) 3 SCC 617***, this Court has held as under:-

*"50. There is distinction between facta probanda (the facts required to be proved i.e. material facts) and facta probantia (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.*

**33.** Though it is settled law that no evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure a defect in pleadings, yet it is equally well settled that facts which are merely evidence of material facts should not themselves be pleaded.

**34.** Pleading and proof thus represent distinct stages in legal proceedings. Pleading is the formal assertion of material facts with the intent to define the case, whereas proof, by contrast, is the evidence adduced to establish those facts as true.

#### **BOTH PLEADING AND PROOF ARE SUFFICIENT IN THE PRESENT SUIT FOR EVICTION**

**35.** This Court reiterates that the nature and extent of pleading required in a case depends on the essence of the claim or to put it differently the type of proceeding. For

instance, there is a distinction between a pleading in a suit for possession and eviction<sup>3</sup> as well as in a proceeding filed under the Code of Civil Procedure and a writ petition under Article 226 of the Constitution<sup>4</sup>. Similarly, where allegations of misrepresentation, fraud, breach of trust, wilful default, or undue influence are made, full particulars must necessarily be set out in the pleadings<sup>5</sup>.

**36.** It is settled law that in a suit for eviction under the State Rent Act, the plaintiff has to plead and prove the existence of a landlord-tenant relationship between the parties and the statutory ground for eviction under the Rent Act<sup>67</sup>.

**37.** In the plaint numbered as Rent and Eviction Suit No. 411/861 of 1996, Appellant-Plaintiff No.1 has averred that she is a co-landlord along with her parents and siblings. Further, the Appellant-Plaintiff No.1 in the plaint sought for recovery of possession of the Suit Premises from Defendant Nos.1-3 on the grounds mentioned in the Act, namely, bona fide need, relative hardship and the availability of alternative accommodation to the tenants.

**38.** Upon completion of pleadings, Appellant-Plaintiff No.1 filed her affidavit of examination-in-chief, wherein she deposed in detail as to her status as co-landlord and her entitlement to eviction under Section 13(1)(l) and Section 13(1)(g) read with Section 13(2) of the Act.

**39.** Accordingly, this Court is of the view that the plaint did contain the necessary and material facts essential to the Appellant's cause of action, asserting both her status as co-landlord and the statutory grounds for eviction.

**40.** Further, to prove the facts pleaded, the Appellant adduced evidence by way of affidavit, placing on record the requirements of her family, her own need, the family arrangement and the share certificates. These documents and averments constituted evidence to establish the material facts pleaded and were not required to be set out in the plaint itself. Consequently, this Court finds that in the present case both the tests of pleading and proof stand satisfied.

#### WHEN ISSUE OF DEFICIENCY IN PLEADINGS CANNOT BE RAISED IN APPEAL

**41.** Moreover, this Court in a catena of judgments has held that in certain eventualities issue of deficiency in pleadings cannot be raised for the first time in appeal. In **Ram Sarup Gupta (Dead) By LRs. vs. Bishun Narain Inter College & Ors. (1987) 2 SCC 555**, it has been held, *'whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead, the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once*

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<sup>3</sup> See: *Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) Thr. LRs.*, (2012) 5 SCC 370 and *Kanaklata Das & Ors. v. Naba Kumar Das & Ors.*, (2018) 2 SCC 352

<sup>4</sup> In *Bharat Singh & Ors v. State of Haryana & Ors. (1988) 4 SCC 534*, it has been held, ".....there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading i.e. a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

<sup>5</sup> Order VI Rule 4, Code of Civil Procedure, 1908.

<sup>6</sup> In *Kanaklata Das & Ors. v. Naba Kumar Das & Ors.*, (2018) 2 SCC 352, it has been held, "There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:....."

<sup>7</sup> .2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds."

*it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.’ In a similar vein, this Court in **Bachhaj Nahar vs. Nilima Mandal & Anr., (2008) 17 SCC 491** has reiterated the said principle in the following terms: -*

*“17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise.....”*

### SHARE CERTIFICATE IS OF BOTH LAND AND BUILDING

**42.** Section 8 of the Transfer of Property Act, 1882 stipulates that upon transfer of property all the interest passes to the transferee which the transferor is then capable of passing in the property and in the legal incidents thereof, and where the property is land it would include all things attached to earth.<sup>8</sup> Things attached to the earth means things embedded in earth, as in the case of walls or buildings.<sup>8</sup> Consequently, unless a contrary intention appears in the instrument of transfer, an interest in land necessarily implies an interest in the building situated thereon. It was not the defendants’ case that the Suit Building was constructed or owned by a third party. On the contrary, DW-1, in his examination-in-chief, unequivocally admitted that the Suit Building had been constructed by the father of the Appellant.

**43.** It is admitted that the share certificates for the land stand in the names of all co-owners, including the Appellant. In her examination-in-chief, the Appellant deposed that the certificates were originally issued in the names of her parents and were subsequently transferred, on 5th July 1987, in favour of the Appellant and her siblings. This part of her deposition remained unchallenged in cross-examination.

**44.** Consequently, this Court holds that the Appellant has conclusively proved that, at the time of filing the suit, she was a holder of the share certificates, had an interest in the land and was a co-owner of the Suit Building.

### APPELLANT WAS A CO-LANDLORD ON THE DATE OF FILING OF SUIT

**45.** Section 5(3) of the Act defines landlord as ‘*any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or....*’

**46.** In light of this definition, this Court is of the view that the Appellant, being the co-owner of the suit building was entitled to receive rent and thus fell squarely within the statutory definition of ‘landlord’ under the Act. Also, the Appellant in her cross-examination had deposed that the Appellant is receiving rent on behalf of her mother. Consequently, this Court is of the view that at the time of filing of the suit, the Appellant was a co-landlord as well as co-owner of the suit building and even if there was deficiency in the pleadings, parties knew the case and they proceeded to trial by producing evidence.

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<sup>8</sup> Section 8, Transfer of Property Act, 1882. 8 Section 3, Transfer of Property Act, 1882.

## COURTS CAN IN CERTAIN CIRCUMSTANCES TAKE INTO ACCOUNT SUBSEQUENT EVENTS

47. Though, the right to relief is normally to be judged as on the date the proceeding is instituted, yet it is equally well settled that the Court can take cautious cognisance of events and developments subsequent to the institution of the proceedings, provided the rules of fairness to both sides are scrupulously observed. Justice Krishna Iyer in his inimitable style in ***Pasupuleti Venkateswarlu Vs. The Motor & General Traders, (1975) 1 SCC 770*** has observed as under:-

*.....We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.....”*

48. Recently a coordinate Bench of this Court in ***Vinay Raghunath Deshmukh vs. Natwarlal Shamji Gada & Anr., 2026 INSC 416*** has reiterated the aforesaid principle.

## ORAL FAMILY ARRANGEMENT/SETTLEMENT CAN BE RELIED UPON

49. It is further settled law that a family arrangement can be entered into even by way of an unregistered oral agreement<sup>9</sup> and such family settlements are enforced by Courts as they are governed by special equity principles. This Court in ***Hari Shankar Singhania & Ors. vs. Gaur Hari Singhania & Ors., (2006) 4 SCC 658***, following the judgment in ***K.K. Modi vs. K.N. Modi & Ors.***<sup>10</sup> has held, ‘.... in our opinion, technical considerations should give way to peace and harmony in the enforcement of family arrangements or settlements.’

50. Consequently, the Appellant is entitled to rely upon the oral family arrangement/settlement, as deposed in her affidavit of examination-in-chief even in absence of a decree of partition between herself and her siblings, as it represents a subsequent development.

## APPELLANT HAS SUCCESSFULLY PROVED HER BONA FIDE NEED

51. With respect to the Appellant-Plaintiff No.1’s bona fide need, Appellant has pleaded and deposed in her examination-in-chief that her parents were occupying flat Nos.5 & 6 available to the family and that her husband did not get along with her parents and that the Appellant/Plaintiff No.1 has no other premise for her use at Mumbai and that her family includes two children whose education was adversely affected by her husband’s frequent transfers. Further, the only flats available with the landlord family at the time of filing the suit i.e. flat Nos. 5 and 6 were insufficient to accommodate the Appellant, her husband and two children, her aged parents (both alive at the time of suit), as well as her two brothers with their respective families.

52. It is settled law that a tenant cannot dictate to the landlord the suitability of the tenanted premises, nor insist that the landlord utilise some other property.

53. Additionally, this Court is of the opinion that Appellant-Plaintiff No.1’s temporary co-occupation of flats No. 5 & 6 during the pendency of the eviction suit and after passing away of her father in 1994 cannot negate her bona fide need for the Suit Premises. The

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<sup>9</sup> *Kale & Ors. vs. Deputy Director of Consolidation & Ors., (1976) 3 SCC 119*

<sup>10</sup> (1998) 3 SCC 573

said flats were insufficient to accommodate the entire family of the Appellant and those of her brothers, particularly in light of the family arrangement/settlement.

COMPARATIVE HARDSHIP

54. It is pertinent to note that the Suit Premises is situated in a building co-owned by the Appellant's family, comprising six flats. At the time of filing the suit, only flat Nos.5 and 6 were available to the landlord family, which then consisted of the Appellant, her four adult siblings, their two aged parents and the spouses and children of each sibling. The remaining four flats, including the Suit Premises, were occupied by tenants.

55. The availability of alternative accommodation could not have been assessed with reference to Mrs. Virginia Lacerda, who had passed away three months prior to the institution of the suit. Her three adult children, Defendant Nos.1 to 3, had succeeded to the tenancy. For the purposes of Section 13(1)(l) of the Act, it was sufficient for the Appellant to establish that these tenants had alternative accommodation available to them (**Suresh @ Suryakant Ramchandra Chonkar v. Bhikaji Bhagwat Redkar, 2008 SCC OnLine Bom 1156**).

56. On the date of filing the suit, alternative accommodations were indeed available to each of the original defendants. Defendant No.1 owned flat No. F-129 in Madhuvana Society. Defendant No.2 owned flat No. D-82 in the same society since 1976, which was initially occupied by Defendant No.3. In 2002, during the pendency of the suit, Defendant No.2 sold the said flat for Rs.12 lakhs and the proceeds were utilised to purchase another flat in Borivali, Mumbai, which was occupied by Defendant No.3. The contention that alternate accommodation under the Rent Act is effective only if the tenant himself has acquired or been allotted suitable premises is contrary to the facts of the present case. The evidence demonstrates that Defendant No.3 was and continues to be in occupation of one of the flats owned by the defendants. No evidence was led to show that Defendant Nos.1 and 2 could not reside with Defendant No.3. Accordingly, the judgment in **B.R. Mehta** (supra) does not assist the respondents.

57. Additionally, the conduct of Defendant No.2 in selling his alternative accommodation during the pendency of the suit indicates that the sale was effected only to avoid a decree of eviction. Even considering subsequent events, the Appellant's hardship is demonstrably greater than that of the respondents. The Appellant continues to have no accommodation in Mumbai, while her brothers (Respondent Nos.4 and 6 herein) have taken exclusive control of flat Nos.5 and 6, rendering them unavailable for her use.

58. Furthermore, the original contesting tenants, Defendant Nos.1 and 2, are no longer alive. Defendant No.2 remained unmarried and left no heirs. Defendant No.3 continues to occupy a separate flat. Respondent No.1, son of Defendant No.1, resides and works in Pune, where he owns property, while his wife resides in Norway. He has no genuine need for a flat in Chembur, Mumbai.

59. In these circumstances, Respondent No.1's assertion that he might apply for a better job in Mumbai if affordable accommodation were available cannot be accepted. He holds stable employment with L&T Infotech in Pune and owns property there, evidencing his long-term intention to remain in Pune.

60. Consequently, this Court holds that, in light of the tenants' acquisition of alternative accommodation, greater hardship would be caused to the Appellant if eviction were denied. The Appellant, despite being the landlord and in bona fide need of accommodation

for herself and her family, would otherwise be compelled to purchase or rent another premises.

**CONCLUSION**

**61.** Keeping in view the aforesaid, the present appeal is allowed and the impugned judgment and order dated 23<sup>rd</sup> June 2025 passed by the High Court of Bombay in Civil Revision Application No. 308 of 2019 is set aside and the judgment and decree dated 14<sup>th</sup> September 2007 passed by Small Causes Court at Bombay in Rent and Eviction Suit No. 411/861 of 1996 is restored.

**62.** Pending applications, if any, shall stand disposed of.

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