

**(1978) 12 BOM CK 0013**

**Bombay High Court**

**Case No:** Special Civil Application No. 530 of 1974

Ramnarayan Kisanlal Maniyar  
(By heir)

APPELLANT

Vs

Waman Tukaram Joshi and  
Others

RESPONDENT

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**Date of Decision:** Dec. 21, 1978

**Acts Referred:**

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1)
- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** M.P. Kanade, J

**Bench:** Single Bench

**Advocate:** K.R. Bengeri and C.K. Bengeri, for the Appellant; J.R. Lalit, for the Respondent

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### **Judgement**

M.P. Kanade, J.

The petitioner is admittedly an owner and the landlord of the eastern wing of the three storeyed building bearing Municipal No. 146/1, situated on City Survey No. 1703, Bhavani Peth, Jalgaon. He filed a suit against respondents Nos. 1 and 2 for an order of eviction of the ground that the defendant No. 1 is the monthly tenant of the suit premises and the contractual rent of the suit premises is Rs. 24.50 p., and the tenancy month commences from the 27th day of each month and expires on the 26th day of the next month. Defendant No. 1 had committed defaults in the payment of the monthly rents. The second ground of eviction of the tenant was that defendant No. 1, has built a new house consisting of a ground floor, first and second floor, and the entire house in his possession and under the provisions of section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter for brevity's sake referred to as the Bombay Rent Act), the plaintiff would be entitled to an order of eviction on ground that the tenant has built or acquired possession which is as suitable residence.

2. The present suit was filed on October 24, 1970, on the allegations stated above. The respondents resisted the suit and contended, inter alia, that the family of defendant No. 1 is a very big family and in spite of new house, it is not a suitable residence, and therefore, the suit should be dismissed.

3. The trial Court after recording the evidence adduced by the parties came to the conclusion by his judgment and order dated July 10, 1972, that the tenant has built a house for himself and for his joint family. With regard to the arrears of rent, it is held that the tenant is not a defaulter. It is further held that respondent No. 2 is not a member of the joint family of respondent No. 1, and she has no right to stay in the suit premises and thus the landlord is entitled to the possession of the suit premises.

4. The respondents feeling aggrieved by the said judgment and order dated July 10, 1972, filed an appeal to the District Court, Jalgaon. The said appeal was heard by the learned assistant Judge, Jalgaon, who, by his judgment and order dated January 18, 1973, partly allowed the appeal and the judgment and decree passed by the trial Court, was varied, and it was directed that defendant No. 1 should pay to the plaintiff the amount of Rs. 490-00 towards the arrears of rent and the plaintiff's claim for restoration of possession of the suit premises was dismissed. The parties were directed to bear their own costs in both the courts.

5. Being aggrieved by the aforesaid judgment and decree passed by the learned Assistant Judge, Jalgaon, the present Special Civil Application has been filed under Article 227 of the Constitution challenging the legality and the correctness of the said order.

6. Mr. Bengeri, the learned Counsel appearing on behalf of the petitioner, vehemently argued that a cousin-daughter who was married and gone to another family cannot be a member of the joint family of respondent No. 1. He further submitted that, admittedly, defendant No. 1 has constructed a new building which is a three-storeyed building and that fact is not, as well as disputed, by the Appellate Court, and having regard to the provisions of section 13(1)(l) of the Rent Act, the petitioner will be entitled to the restoration of possession.

7. Mr. Bengeri challenged the findings recorded by the Appellate Court. The Appellate Court held that "the suitability or otherwise of a newly built, acquired or allotted residence would depend upon a variety of facts. The size of defendant No. 1's family which includes his wife, children and the wife and children of Krishnaji cannot be lost sight of. So far as the suit premises are concerned, they appear to have no more than 5 to 6 closed rooms with a verandah or two. It does not have a latrine. As against this, house No. 74 has about 4 rooms and a verandah or two. However, spacious the rooms and the structure may be, no room can be expected to accommodate more than one couple and its young children. If the children are grown up, they would have to be sent elsewhere at least, during the night time.

Defendant No. 1 has described the large size of the family thus :---

"In our family we are in all 26 members, I my wife and my 3 children from one unit of family. Wife of Krishnaji, her 3 sons and two daughters are the second unit. One daughter is by name Kantabai (defendant No. 2) she has five children. All three sons of Krishnarao are married. One son has four sons. The second son has three sons. The third son has one son. Eight children are school going. Two sons are college going ..... Ten members of the family reside in the new house No. 74. Rest reside in the suit house. It is impossible for all of us to reside in the new house. It is false to say that I need not continue in the suit house in view of the new house".

Having regard to this evidence on record, the Appellate Court came to the conclusion that the new house will not be suitable for residence, and therefore, reversed the finding recorded by the trial Court. This finding is challenged by Mr. Bengeri, contending that Kantabai with her five children cannot be included in the joint family of respondent No. 1. Admittedly she is a widowed daughter. For the purpose of the education of her children she lives with the family of respondent No. 1. The Appellate Court have recorded that finding on the appreciation of the evidence and while entertaining an application under Article 227 of the Constitution, it will not be lawful for me to interfere with the said finding. That finding admittedly is not a perverse finding. That finding may be erroneous in law, but I am not bound to interfere with the said erroneous finding under Article 227 of the Constitution of India. This Court can interfere with the judgment of the lower Appellate Court only in the interest of justice. It appears to me that the lower Court has decided the case keeping in view the interest of justice not to disturb the joint family of respondent No. 1.

8. In the result, the rule granted by this Court is discharged with no order as to costs.