

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 21.05.2026

Pronounced on: 30.06.2026

Uploaded on: 01.07.2026

*Whether the operative part or full
judgment is pronounced: **Full***

RSA No.1/2024

SANTOSH KUMARI & ORS.

...APPELLANTS

*Through: - Mr. G. A. Lone, Sr. Advocate, with
Mr. Mujeeb Andrabi, Advocate.*

Vs.

MST. MEHMOODA

...RESPONDENT(S)

Through: - Mr. Manzoor A. Dar, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants, through the medium of present appeal, have challenged judgment and decree dated 26.10.2016 passed by the learned City Munsiff, Srinagar (hereinafter “the trial court”), as upheld by the learned 4th Additional District Judge, Srinagar (hereinafter “the 1st Appellate Court”) in terms of judgment dated 6th February, 2024. Initially, the present appeal was filed on behalf of six appellants, namely, Rakesh Haksar, Rinki Haksar, Puran Haksar, Santosh Kumari, Raju Haksar and Minu Haksar, but later on, in terms of order dated 18.03.2025 passed by

this Court on an application bearing CM No.5584/2024 filed by appellants Santosh Kumari, Raju Haksar and Minu Haksar, the other three appellants came to be transposed as proforma respondents.

2) The facts giving rise to the filing of the present Civil 2nd Appeal are that the contesting respondent, Shri Ghulam Nabi Dar (now deceased), filed a suit against Shri Girdari Lal (the original defendant) seeking his ejectment from a shop situated in the ground floor of the house belonging to the contesting respondent/plaintiff at Maisuma Bazar, Srinagar. It was pleaded by the plaintiff that by virtue of rent deed dated 10.10.1980, he had leased out the suit shop to original defendant on a monthly rent of Rs.75/ for a period of 11 months and that the defendant had agreed to enter into a fresh lease agreement after the expiry of initial period of lease but he failed to execute the fresh rent deed in favour of the plaintiff. It was pleaded that the suit shop is reasonably required by the plaintiff for his personal requirement as his father and brother, who are dependent upon him, are sitting idle and that they intend to operate the business of motor spare parts in the suit shop. According to the plaintiff, the suit shop was reasonably and bonafidely required by him for his father and brother. It was also pleaded that the plaintiff

served a legal notice dated 15.06.1987 through his counsel upon the defendant calling upon him to vacate the suit shop but he did not respond to the same.

3) The defendant contested the suit by filing his written statement, in which he admitted the relationship of landlord and tenant between the parties. However, he pleaded that the plaintiff had received an advance rent of Rs.5000/, as such, the term of lease was five years, six months and twenty days. It was further pleaded that the defendant is a tenant holding over and is protected from eviction in terms of the J&K Houses and Shops Rent Control Act, 1966. The defendant further offered renewal of the lease.

4) Regarding assertion of the plaintiff about his personal need of the suit shop, the defendant pleaded that father of the plaintiff is an old person who is incapable of starting any business at this advanced age. It was further pleaded that brother and father of the plaintiff have no right over the suit shop as the same is exclusive property of the plaintiff. The defendant denied need of the plaintiff relating to the suit shop and claimed that the same is unfounded and baseless. It was further pleaded that father and brother of the plaintiff have their own sources of income and that the shop is not at all required by the plaintiff. According to the defendant, the

plaintiff has filed the suit only with a view to seek enhancement of the rent. It was further pleaded that the defendant and his father have been running the provision and grocery business in the suit shop for the last 50 years and that the defendant has two wives and seven children whose maintenance is derived from the earnings of the suit shop. It was contended that in case the defendant is evicted from the suit shop, his whole family will starve and that goods in the suit shop will have to be sold on throwaway prices and, thus, upon consideration of comparative advantages and disadvantages, the defendant is not liable to be evicted from the suit.

5) During the pendency of the suit, original defendant Girdari Lal passed away and in his place, his legal heirs, namely, Sanjay Haksar, Rakesh Haksar, Rinki Haksar, Puran Haksar, Santosh Kumari, Raju Haksar and Minu Haksar, were substituted as the defendants.

6) It appears that legal heirs of the original defendant, namely Sanjay Haksar, Rakesh Haksar, Rinki Haksar and Puran Haksar, did not contest the suit and they were set *exparte*. It also appears that the contesting defendants, namely, Santosh Kumari, Raju Haksar and Minu Haksar, contested the suit through one Shri Pyarelal, who claimed to

be their power of attorney holder. A perusal of the minutes of the proceedings of the trial court would reveal that initially, defendant Santosh Kumari was appointed as guardian of minor defendants, namely, Raju Haksar and Minu Haksar, but she refused to represent the said minor defendants, despite she being their natural guardian. Initially, the learned trial court did not permit defendant Santosh Kumari to resile from acting as guardian of defendants Raju Haksar and Minu Haksar, but, later on, Shri Pyarelal was appointed as guardian of defendants Raju Haksar and Minu Haksar.

7) The learned trial court, on the basis of the pleadings of the parties, framed the following issues:

1. *Whether the suit shop is required by the plaintiff for his father and brother dependent upon him? OPP.*
2. *Whether the partial eviction will satisfy the plaintiffs need for personal requirement? OPP*
3. *What will be the comparative advantage and disadvantage of eviction case of eviction?*
4. *Whether the suit is liable to be dismissed for want of notice? OPD.*
5. *Whether the plaintiff has no cause of action? OPD*
6. *Relief.*

8) After the framing of the issues, when the trial of the case was in progress, the respondent/plaintiff made an application under Order 6 Rule 17 CPC seeking amendment

of the plaint. By way of amendment, the respondent/plaintiff submitted that after the filing of the suit about more than 16 years back, father of the plaintiff for whom the suit shop was reasonably and bonafidely required, has died and brother of the plaintiff has also found an alternative occupation. It was further submitted in the application that during this period of sixteen years, two sons of the plaintiff, namely, Zafar Ahmad Dar and Rayees Ahmad Dar, have become major and they have acquired qualification in computers, but they are unable to get government or semi-government job. It was further submitted in the application that the two sons of the plaintiff propose to open a computer training institute and that they have collected sufficient finances to start the said business and for that purpose, they require the suit shop. It was further submitted that the defendants have no necessity for the suit shop as they are not intending to operate the business in the suit shop themselves and that they have sublet the suit shop to one Pyarelal.

9) The aforesaid application was contested by the appellants/contesting defendants, primarily, on the ground that the same cannot be allowed because it changes the cause of action.

10) The application for amendment of the suit was allowed by the trial court in terms of order dated 16.12.2006. The said order has not been put to challenge by the defendants and, as such, the same has attained finality.

11) Pursuant to the passing of order dated 16.12.2006 by the learned trial court, the plaintiff filed the amended plaint by incorporating the pleadings with regard to reasonable and *bona fide* requirement in relation to the suit shop for his two sons instead of his father and brother. The defendants filed their written statement to the amended plaint, in which they denied the assertions with regard to need of the plaintiff for his two sons. The learned trial court, however, did not amend the issues and the trial proceeded on the basis of the issues already framed prior to amendment of the suit.

12) The plaintiff, besides examining himself as witness, also examined PWs Rayees Ahmad Dar, Bashir Ahmad Dar, Gulam Mohammad Bhat, Bashir Ahmad Balti and Bashir Ahmad Bazaz, as witnesses in support of his case whereas the defendants examined DWs Abdul Gaffar Guru, Ravi Shah and Mohammad Shafi Dar, as witnesses in support of their case. It is pertinent to mention here that neither any of the defendants nor their attorney Pyarelal entered the witness box.

13) The learned trial court, after analyzing the evidence on record, while deciding issue No.1, came to the conclusion that the plaintiff has succeeded in establishing that the suit shop is reasonably required by him for his personal use as he has two educated jobless sons who are in need of the shop to operate their business. While deciding issue No.2, the learned trial court came to the conclusion that partial eviction of the defendants from the suit shop will not satisfy the requirements of the plaintiffs. While deciding issue No.3, the learned trial court came to the conclusion that there will be no disadvantage to the defendants if they are evicted from the suit shop because the original defendant has died and his legal heirs are living outside the State and they are no more concerned about the suit shop. It was also observed that a third person is running the suit shop and it is not proved that the said person, namely, Shri Pyarelal, is running the suit shop for the welfare and benefit of the legal heirs of the original defendant. While deciding issue No.4, the learned trial court came to the conclusion that notice has duly been served upon the original defendant and while deciding issue No.5, it was found by the trial court that the material on record discloses cause of action in favour of the plaintiff and against the defendant. Accordingly, in terms of impugned judgment and decree dated 26.10.2016, the suit

was decreed in favour of the plaintiff and against the defendants by passing a decree of eviction.

14) The aforesaid judgment and decree passed by the learned trial court came to be challenged by the appellants/defendants before the 1st Appellate Court. It is pertinent to mention here that the first appeal was filed by the contesting defendants through their attorney, Shri Pyarelal Shah and the legal heirs of original defendant, namely, Rakesh Haksar, Rinki Haksar and Puran Haksar, were also shown to be as 'the appellants', though they had not chosen to file the appeal. It also appears that the legal heir of the original defendant, Shri Sanjay Haksar, was not impleaded as a party to the first appeal, though he had died during pendency of the suit itself. Regarding death of Sanjay Haksar, the appellants have, along with the present memo of appeal, placed on record his death certificate, which reflects his date of death as 26.03.2007. However, neither the defendants nor their counsel brought to the notice of the trial court the fact relating to death of Sanjay Haksar. Even in the first appeal it was not explained as to why Sanjay Haksar is not being impleaded as party to the first appeal and why his legal heirs were not impleaded as parties to the first appeal.

15) The appellants challenged the judgment of the trial court before the 1st Appellate Court on the grounds that the trial court has not reframed the issues afresh after amendment of the suit, which has caused prejudice in the trial proceedings. It was also contended that the evidence on record with regard to the plea of personal requirement of the plaintiff is sketchy and uncorroborated. It was further contended that the learned trial court has not appreciated the evidence on record properly. It was also contended that because the appellants are migrants, therefore, no action could have been continued against them by the trial court. It was further contended that Pyarelal was guardian and attorney holder of the appellants who was running the suit shop as their agent but the learned trial court has recorded a finding contrary to the actual position relating to the status of Shri Pyarelal. It was also contended that during pendency of the suit, one of the defendants, Sanjay Haksar, had passed away, but the plaintiff did not take any steps to bring on record his legal heirs and, as such, the suit has abated.

16) The learned 1st Appellate Court, vide impugned judgment dated 6th February, 2024, proceeded to dismiss the appeal of the appellants. While doing so, it has been held by the learned 1st Appellate Court that trial court has touched every aspect of the case and has properly appreciated the

evidence on record. It was further observed by the learned 1st Appellate Court that personal necessity of the landlord does not mean only his necessity, but it means and includes necessity of any member of his family as well and, therefore, the need for the suit shop for rehabilitating his sons can be termed as personal necessity of plaintiff/landlord. While dealing with the issue relating to comparative advantages and disadvantages, the learned 1st Appellate Court came to the conclusion that there is no other shop of the landlord from which his sons can operate business. With regard to the issue of partial eviction, the learned 1st Appellate Court observed that it is not for the tenant to dictate to the landlord how much space is required for proposed business. The learned 1st Appellate Court, while dealing with the contention that the issues were not re-framed by the trial court after amendment of the plaint, has observed that the same does not make any difference because personal requirement not only means requirement of the landlord but it also means requirement of his family members and because the defendants were aware about the amendment, so no prejudice was caused to them.

17) The appellants have challenged the impugned judgments and decrees passed by the courts below on the grounds that that the proceedings in the suit were liable to

be stayed in view of the provisions contained in the Jammu and Kashmir Migrants (Stay of Proceedings Act) 1997, as the appellants had migrated out of Kashmir Valley after the eruption of militancy in the year 1989 and settled in Delhi and other places of the Country but the said plea raised by the appellants before the 1st Appellate Court has not been dealt with. It has been further contended that Shri Pyarelal, who is a close relative of the appellants, is running the business on their behalf and if they are evicted from the suit shop, it will cause great injustice to them and it will deprive the appellants, who are migrants, from their only source of livelihood but this aspect of the matter has not been considered by the courts below. It has been further contended that a totally new case was set up by the plaintiff after amending his suit and, as such, it was not legally permissible for the trial court to allow the amendment of the plaint. It has been contended that the courts below have committed serious errors resulting in grave prejudice to the defendants, inasmuch as both the courts below have ignored the material evidence, as a result of which the findings arrived at by them are perverse. It has been further contended that as per the evidence on record, the suit shop is capable of being partitioned and, therefore, the issue

relating to partial eviction has not been properly analyzed by the courts below.

18) This Court has, while admitting the present appeal in terms of order dated 28.02.2024, framed the following substantial questions of law:

i) Whether a generalized personal necessity of a landlord can result in decree of eviction against a tenant without pleading/proving the specificity of the personal requirement?

ii) Whether the statutory tenancy qua the suit shop amounts to definition of immovable property in the context of the Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 thereby barring not only the civil court jurisdiction but also overriding other laws including the J&K House and Shops Rent Control Act, 1966 in furtherance of which the respondent/plaintiff came to seek decree for eviction against the original tenants Girdari Lal and his successors in interest?

iii) Whether the variance between the pleadings and the evidence inherently vitiates the concurrent decrees/judgments of the trial court as well as the appellate court?

19) During the course of hearing, learned counsel for the parties have raised issues which have given rise to the following additional substantial questions of law:

iv) What would be the effect of non-impleadment of legal heirs of deceased defendant Shri Sanjay Haksar as parties to the suit and as parties to the appeal, either before the 1st Appellate Court or before this Court?

v) Whether the order passed by the trial court, whereby the plaintiff was permitted to amend the plaint, is in accordance with law and whether the said order can be challenged by the appellants in the present appeal, when the same has not been challenged by them prior to the filing of the present appeal?

20) I have heard learned counsels for the parties and I have also gone through the impugned judgments passed by the learned trial court and the learned 1st Appellate Court, the memo of appeal and the evidence on record.

21) Before dealing with the questions of law framed in terms of order dated 28.02.2024, it would be apt to deal with the question No.(iv), which relates to the effect of non-impleadment of legal heirs of Sanjay Haksar as parties to the suit/as parties to the first appeal and second appeal.

22) The appellants have placed on record copy of death certificate of Sanjay Haksar, who was one of the legal heirs of original defendant Girdari Lal. He is stated to have died on 26.03.2007 at Jammu, meaning thereby that Shri Sanjay Haksar had died during pendency of the suit. A perusal of the minutes of proceedings of the trial court would reveal that the factum relating to death of Shri Sanjay Haksar was never brought to the notice of the court, either by the contesting defendants or by their counsel. It is an admitted

case of the parties that during pendency of the suit, all the defendants had migrated from Kashmir Valley and, therefore, it was practically impossible for the plaintiff to come to know about the death of Shri Sanjay Haksar, particularly when he was not even running the business from the suit shop, either personally or through any agent. The appellants, who are close relatives of Sanjay Haksar, did not bring the factum of his death to the notice of the trial court. Though Rule 10-A of Order 22 of the CPC, which casts a duty upon a pleader to communicate to court the death of a party whom he represents, would not in terms apply to the present case, yet because of the fact that the plaintiff had no occasion to know about the death of Shri Sanjay Haksar on account of his migration from Kashmir Valley, it was incumbent upon the contesting defendants to bring the said fact to the notice of trial court or to the notice of the plaintiff so that he could make necessary application for impleadment of his legal heirs. The omission on the part of the contesting defendants to do so, leads to the inference that the conduct of the plaintiff in not impleading the legal heirs of Sanjay Haksar as parties, cannot be termed as negligent.

23) Apart from this, Shri Sanjay Haksar has, at no point of time, contested the suit and he has not filed any written

statement. Therefore, in terms of sub-rule (4) of Rule 4 of Order 22 of CPC, the court has the power to exempt the plaintiff from necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who has failed to appear and contest the suit at the hearing. Keeping in view the spirit of the said provision and having regard to the fact that the plaintiff had no means to know about death of Shri Sanjay Haksar, which fact was not brought to his notice by the contesting defendants, the plaintiff deserves to be exempted from the necessity of substituting the legal heirs of Shri Sanjay Haksar.

24) Another aspect of the matter that is required to be noticed is that, after death of the original tenant, namely, Girdari Lal, the tenancy rights had devolved upon his heirs as joint tenants. There was no division of the premises or the rent payable for the demised premises. It was a single tenancy which had devolved upon the legal heirs of Girdari Lal and the legal heirs of Girdari Lal were not the tenants in common, but they were joint tenants. Therefore, upon death of one of the joint tenants, his rights in the tenancy devolved upon the surviving tenants and not on his legal heirs as opposed to the case of common tenants where the interest of a deceased tenant devolves upon his legal heirs. Thus, the

interest of Shri Sanjay Haksar in the joint tenancy relating to the suit shop, upon his death, had devolved upon the surviving tenants, including the contesting defendants. Therefore, there was no question of abatement of the suit when the surviving tenants were already representing his estate before the trial court.

25) That takes us to the effect of non-impleadment of legal heirs of Shri Sanjay Haksar as parties to the first appeal and to the present appeal. According to the learned counsel appearing for the plaintiff/respondent, both the first appeal as well as the present appeal are not maintainable without impleadment of legal heirs of late Sanjay Haksar. To support his contention, the learned counsel for respondent/plaintiff has placed reliance upon the judgment of the Supreme Court in the case of **Suresh Chandra (deceased) through LRs & Ors. vs. Parasram & Ors.** 2025 SCC OnLine SC 1472.

26) Per contra, learned Senior Counsel appearing for the appellants has submitted that in terms of the provisions contained in Order 41 Rule 4 CPC, it is legally permissible for the appellants/contesting defendants to file appeal against the impugned judgment and decree passed by the trial court, even without impleading all the defendants as parties to the appeal because the decree appealed from proceeds on common grounds to all the defendants.

27) The legal position in the above context has been analyzed in detail by the Supreme Court in **Suresh Chandra's** case (supra). The Supreme Court has, in the said after taking note of the ratio laid down by it in its previous judgments delivered in the cases of **Sardar Amarjit Singh Kalra (Dead) by LRs and others v. Pramod Gupta (Smt) (Dead) by LRs and others**, (2003) 3 SCC 272, **State of Punjab v. Nathu Ram**, AIR 1962 SC 89, and, **Ram Sarup v. Munshi**, AIR 1963 SC 553, summarized the legal position on the interplay between the provisions of Order 41 Rule 4 and Order 22 of CPC qua abatement of an appeal in the following manner:

i. Rule 4 of Order XLI applies to the stage when an appeal is filed and empowers one of the plaintiffs or defendants to file an appeal against the entire decree in certain circumstances. A plaintiff or defendant can take advantage of this provision, but he may not. Therefore, once an appeal is filed by all the plaintiffs or defendants aggrieved by the decree, the provisions of Order XLI, Rule 4 become unavailable.

ii. Rule 4 of Order XLI is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are having the same interest as the appellant, even though they have not appealed against the decree. This is so, because it is not the law that when a decree is passed on a ground common to all the parties, the appeal is to be filed by all the parties or not at all.

iii. Order XXII applies without exception to all proceedings covered by it. It operates during the pendency of a proceeding including an appeal and not at its institution. Therefore, if an appellant dies during the pendency of the appeal, his legal representatives must be brought on record within the period of limitation. If that is not done, the appeal by the deceased appellant abates.

iv. Where an appeal is filed by any one or some of the plaintiffs, or defendants, aggrieved by the decree, by impleading other such plaintiff(s) or defendant(s) as proforma-respondent(s), in the event of death of such proforma-respondent, the benefit of the provisions of Order XLI Rule 4 would be available to continue the appeal regardless of substitution of LRs of such proforma-respondent.

v. There is no inconsistency between the provisions of Order XXII and those of Rule 4 of Order XLI CPC. They operate at different stages and provide for different contingencies. There is nothing common in their provisions which make the provisions of one interfere in any way with those of the other.

28) From the foregoing analysis of the legal position, it is clear that Rule 4 of Order 41 applies at a stage when an appeal is filed. This provision empowers one of the plaintiffs or defendants to file an appeal against the entire decree in certain circumstances. However, once an appeal is filed by all the plaintiffs or all the defendants aggrieved by a decree, and one of the parties dies during the pendency of the appeal, the provisions of Rule 4 of 41 Rule CPC would not come into play and the consequences of Order 22 of CPC would follow. Thus, while it is open to one of the plaintiffs or

defendants to challenge a judgment or a decree, which proceeds on any ground common to all the plaintiffs or defendants, but once the appeal is filed, if one of the parties expires during the pendency of the appeal, it is necessary for the appellants to bring on record the legal representatives of the deceased party, failing which the consequences provided under Order 22 CPC would come into play and the appeal or the proceedings would abate.

29) Coming to the facts of the present case, the appellants have filed the present appeal without impleadment of legal heirs of deceased Sanjay Haksar as party to the appeal. It is not a case where death of Sanjay Haksar has taken place during the pendency of the first appeal or during the pendency of the present appeal. Therefore, the provisions of Rule 4 Order 41 of CPC are clearly applicable to the present case. The non-impleadment of legal heirs of deceased Sanjay Haksar as parties to first appeal or to present appeal, therefore, does not have any adverse impact on the maintainability of these appeals.

30) That takes us to the question No.(v), which relates to the issue whether at this stage it is open to the appellants to challenge the order of the trial court whereby the plaintiff was permitted to amend the plaint.

31) Section 105 of CPC provides that where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case can be set forth as a ground of objection in the memorandum of appeal. On the strength of this provision, the appellants seek to call in question order dated 16.12.2006 passed by the learned trial court, whereby application of the plaintiff for amendment of the plaint was allowed. It is to be noted that the said order has neither been challenged by the appellant/defendants, either during trial of the suit before the higher forum nor has it been set up as a ground of challenge in the first appeal. The defendants have neither assailed the order permitting amendment of the plaint during trial of the case nor have they objected to the same while filing the first appeal against the impugned judgment and decree. In fact, a perusal of the trial court record would reveal that after the amendment of the plaint, the defendants have proceeded to cross-examine the witnesses of the plaintiff who have made statements in the light of the amended pleadings and even the defendants have led evidence in rebuttal in the light of the amended pleadings. These circumstances clearly go on to show that defendants have accepted the legality and validity of order dated 16-12-2006, whereby amendment of the plaint was allowed by the trial court.

32) Even otherwise, this Court does not find any illegality or impropriety having been committed by the learned trial court while allowing the amendment of the plaint. The contention of the appellants that by allowing the plaintiff to incorporate the need of his sons in respect of the suit shop for operation of their business instead of need of the father and brother of the plaintiffs, the cause of action of the suit has been altered, appears to be without any substance. If we have a look at the application of the plaintiff seeking amendment of the plaint, it has been pleaded by him that the suit has remained pending before the trial court for more than 16 years, during which period his father has died and his brother has got employed in a different occupation. Therefore, their need for the suit shop has vanished and, in the meantime, sons of the plaintiff have become major and they have acquired qualification in computers. These facts are not in dispute. Thus, subsequent events have taken place which have material bearing on the entitlement of the plaintiff to the relief sought. In such circumstances, the court is not precluded from taking cognizance of these subsequent events and permitting the amendment of the pleadings so that appropriate relief is permitted to be sought by the plaintiff.

33) In the above context, reliance is being placed upon the judgment of the Supreme Court in the case of **Om Prakash Gupta vs. Ranbir B. Goyal Goyal**, (2002) 2 SCC 256. In the said case, the Supreme Court has, while observing that ordinarily rights of parties stand crystallized on the date of institution of the suit, yet the court has power to take note of the subsequent events and mould the relief accordingly, held as under:

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders (1975) 1 SCC 770 this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render

inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

34) A similar view has been taken by the Supreme Court in the case of **Nidhi v. Ram Kripal Sharma**, (2017) 5 SCC 640.

35) Again, in **Pasupuleti Venkateswarlu v. Motor & General Traders**, (1975) 1 SCC 770, the Supreme Court has, while dealing with a similar issue, held as under:

“First about the jurisdiction and propriety vis a vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice.

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.”

36) The said ratio laid down in the aforesaid judgment has been reiterated and reaffirmed by the Supreme Court in the recent judgment delivered in the case of **Vinay Raghunath Deshmukh v. Natwarlal Shamji Gada and another**, 2026 SCC OnLine SC 669.

37) From the foregoing analysis of the legal position, it is clear that it is always open to the court to take note of the subsequent events and permit the plaintiff to mould the relief in accordance with law. The only caution that has to be taken by the court is that while allowing the subsequent events to be brought on record, the provisions relating to fair play are not to be violated and both sides should be given a fair opportunity to present their respective stands.

38) In the present case, as already stated, during the pendency of the suit, which remained pending for decades together, many important developments took place which include the death of father of the plaintiff, adjustment of his brother in another occupation and attainment of majority of his two sons. If the plaintiff would have been asked to withdraw his earlier suit and to file a fresh one, it would have taken another few decades for the parties to complete the pleadings and then proceed for trial of the case. This would

have resulted in multiplicity and protraction of litigation between them. Therefore, the learned trial court has rightly allowed the plaintiff to place on record the subsequent developments, which did not alter the cause of action at all.

39) It is to be noted that in the original plaint, the plaintiff had sought ejectment of the defendants from the suit shop, as according to him, he reasonably required the suit shop for supporting his family. While at the relevant time, his family included his father and brother but subsequent death of his father and employment of his brother, the situation underwent change and the requirement was now in respect of his two major sons. So, the reasonable and *bonafide* requirement of the plaintiff did not undergo any change, but the change was only in respect of the persons for whom the shop was to be used. This does not change the cause of action. Therefore, the order passed by the learned trial court, whereby amendment of the plaint was allowed, is perfectly in accordance with law.

40) Coming to the issue whether by permitting the amendment of the plaint any prejudice has been caused to the defendants. It is to be noted that the defendants were permitted to file written statement to the amended plaint. They cross-examined the witnesses of the plaintiff after the

amendment of the plaint on all aspects which were projected by the plaintiff by way of amended plaint and they also led evidence in rebuttal on the basis of amended pleadings. Therefore, no prejudice was caused to them. In fact, they were very well aware as to the real nature of controversy between the parties, even though the learned trial court did not amend issue No.1 pursuant to amendment of the plaint. Thus, no prejudice was caused to the defendants by permitting amendment of the plaint.

41) That takes us to the next questions of law framed vide order dated 28.02.2024. First and third questions, framed vide the said order, can be taken up together for determination as the same are interlinked in nature.

42) It is clear from the material on record that while the plaintiff had projected his personal requirement as a ground for seeking eviction of the defendants from the suit shop. Initially he had specified the requirement of his father and brother as the ground for personal requirement but after amendment of the plaint, he pleaded that requirement of the suit shop qua his father and brother has vanished and now the suit shop is needed for the benefit of his two major sons. So, the plaintiff had pleaded a specific requirement with regard to the suit shop by projecting the need of his two

major sons. Thus, it is not a case of generalized personal necessity of the plaintiff on the basis of which the impugned decree of eviction was passed.

43) That takes us to the question whether there was any variance between the pleadings and the evidence led by the plaintiff. As already stated, initially the plaintiff had projected the requirement of his father and brother and after the amendment of the plaint, the requirement of the suit shop was changed to that of his two sons. The statement of plaintiff was recorded before amendment of the plaint. In his statement, he has projected the need relating to the suit shop for its use by his father who had retired and by his brother who was sitting idle. In his statement which was recorded on 14.11.1992, he has also stated that his sons have become major and they are sitting idle. Since the statement of the plaintiff was recorded prior to the amendment of the plaint, therefore, he has deposed only with regard to the requirement of his father and brother, though his sons had also attained majority at the relevant time.

44) After the amendment of the plaint, one of the sons of the plaintiff, namely Rayees Ahmad Dar, entered the witness box and stated that he has acquired diploma in IT and that

he is sitting idle whereas his other brother, Zafar Ahmed, is working as a financial advisor in Bajaj Allianz Company. He has further stated that he is sitting idle for the last four years and that he needs the shop for operating the business of computers. Besides this, other witnesses produced by the plaintiff during the trial of the case have also supported the contention of the plaintiff that the shop is needed by him for rehabilitating his two sons.

45) From the aforesaid evidence on record, it is clear that the finding of fact arrived at by the learned trial court that the suit shop is needed by the plaintiff for the purpose of rehabilitating his two sons and, as such, his need for the suit shop is *bonafide* and reasonable, is based upon reliable and cogent material. The said finding has been upheld by the learned 1st Appellate Court. It is not open to this Court to interfere in the concurrent findings of fact recorded by the learned trial court and the 1st Appellate Court on this aspect of the matter, particularly when the same is based upon evidence led before the trial court which has remained un rebutted.

46) There is no variance between the pleadings and the evidence recorded before the trial court. The only variance which can be seen between the evidence and the pleadings is the statement of the plaintiff which, as already stated, was

recorded at a time when the plaint was yet to be amended. After the amendment of the plaint, there is no variance between the pleadings and the evidence led by the plaintiff. Thus, there is no ground to interfere in the concurrent findings of fact recorded by the learned trial court and the 1st Appellate Court.

47) With regard to second question of law framed vide order dated 28.02.2024, the learned Senior Counsel for the appellants has fairly conceded the legal position that once a migrant participates in the proceedings, he waives the right to seek stay of proceedings on the strength of the provisions contained in the Jammu and Kashmir Migrants (Stay of Proceedings) Act. The said issue stands settled by this Court in the case of **Madanlal Sahani and others vs. Satpal Sahani and others**, 2004 (II) SLJ 605. In the said case, this Court has held that once a migrant participates in the proceedings, he is estopped from seeking stay of the proceedings on the principle of waiver and acquiescence. It has been held that Section 3 of the Act does not contemplate automatic cessation of proceedings and that there is no inherent lack of jurisdiction of the court in proceeding with the suit against the migrant.

48) In the present case, the defendants have all along participated in the proceedings before the trial court and they have at no stage raised any objection with regard to continuance of proceedings nor have they made any application before the trial court seeking stay of proceedings in terms of Section 3 of the Act. Therefore, they are deemed to have waived their right to seek stay of the proceedings as they have acquiesced in the continuance of the proceedings. Thus, the trial court was well within its jurisdiction to proceed ahead with the trial of the case and to pass the impugned judgment/decreed.

49) It has also been contended by learned Senior Counsel appearing for the appellants that the learned 1st Appellate Court has not discussed the evidence on record and being the final court on facts, it was the duty of the 1st Appellate Court to analyze the evidence on record before recording its findings. He has contended that the approach adopted by the learned 1st Appellate Court has resulted in loss of a valuable right of the defendants to be heard on questions of law as well as of fact. To support his contention, the learned Senior Counsel has placed reliance upon the judgments of the Supreme Court in the case of **Madhukar and Ors. vs. Sangram and Ors.**, (2001) 4 SCC 756, **Shashidhar vs. Ashwini Uma Mathad & Anr.** (2015) 11 SCC 269.

50) There is no dispute to the legal position that it is the duty of the 1st Appellate Court to record its findings only after dealing with all issues of law as well as of fact and to analyze the evidence, oral as well as documentary, led by the parties. When we have a look at the judgment passed by the learned 1st Appellate Court, it becomes clear that the Court has framed points for determination by following the mandate of Order 41 Rule 31 of CPC and has noted all the rival contentions raised by the parties. The learned 1st Appellate Court has, though without referring to the particular statements of the witnesses, taken note of the evidence led by the parties and has dealt with each and every contention raised by the appellants in the first appeal. Therefore, it cannot be stated that the learned 1st Appellate Court has not dealt with the issues raised in the first appeal with reference to the evidence led before the trial court.

51) It has also been contended by the learned Senior Counsel for the appellants that there is evidence on record to show that the suit shop can be divided into two portions and therefore, the requirement of the plaintiff can be met by partial eviction of the defendants.

52) As per the evidence on record, the suit shop is measuring 22'x12' and some witnesses have stated that it is measuring 22'x15'. It has also come in the evidence on

record that there are two shutters fixed on the suit shop. As per the evidence on record, it also appears that a negotiation had taken place between the parties in the year 2001 and the Bazaar Committee had proposed that a portion of the suit shop would be vacated by Pyarelal who is in occupation of the suit shop and the other portion would remain in the possession of Pyarelal for some time. Thus, the evidence on record does show that the suit shop is capable of being divided into two, but the question remains as to whether need of the plaintiff can be met by partial eviction and whether need of the defendants is so pressing that their eviction from the suit shop would have grave consequences on their economic condition.

53) As already stated, the plaintiff needs the suit shop for setting up of a computer training institute, which is to be operated by his son, who is a qualified computer-knowing person. A shop measuring 22'x15' is barely enough to accommodate a business like operating a computer training institute, which requires a huge space for creating a number of workstations for the trainees. Having regard to the nature of business which the son of the plaintiff proposes to operate from the suit shop, it is virtually impossible for him to carry out the said business in half of the suit shop.

54) Apart from the above, the need of defendants is not pressing for the reason that there is enough evidence on record to show that business from the suit shop is not being run by the defendants, but it is being run by Pyarelal, who happens to be their relative. The defendants have not placed on record any document to show that Pyarelal has been authorized to operate business on their behalf. The power of attorney placed on record by the defendants shows that they have authorized Pyarelal only to pursue litigation on their behalf. Neither any bank statements nor any other material has been placed on record by the defendants to show that earnings from the suit shop are being credited to their accounts. In fact, the contesting defendants have not entered the witness box to explain these aspects. Even Pyarelal has not stepped into the witness box to prove that he is running the business for the benefit of the contesting defendants. It is a settled law that if a party does not step into the witness box in support of his or her case, it has to be assumed that the case set up by him or her is false. In the absence of the proof of the pleadings filed by the defendants, their defence with regard to the need of the shop being pressing is not proved.

55) Having regard to the nature of evidence on record as discussed hereinabove, it is clear that partial eviction of the defendants from the suit shop would not serve the purpose.

56) For what has been discussed hereinbefore, I do not find any merit in this appeal. The same is dismissed accordingly.

57) The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

SRINAGAR

30.06.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**

