

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.792 OF 1992

Smt. Vasanti Vinayak Raut.] ... Petitioner

Versus

Vithal Moreshwar Raote (Since Deceased)]
 1-A Dayanand Vithal Raote,]
 1-B Miss Kunda Vithal Raote,]
 1-C Sashikant Vithal Raote,]
 1-D Miss Mandakini Vithal Raote,]
 1-E Anil Vithal Raote.] ... Respondents

Mr. V. Y. Sanglikar for Petitioner.

Mr. S. V. Sadawarte i/b M/s. Mahesh Menon & Co. for Respondent
 Nos.1-A to 1-E.

CORAM :- M. S. SONAK, J.

Judgment Reserved on :- AUGUST 26, 2015
Judgment Pronounced on :- OCTOBER 09, 2015

JUDGMENT :-

1. This petition challenges Judgment and Decree dated 20/12/1991 made by the Division Bench of the Small Causes Court, Mumbai (Appeal Court), ordering the eviction of the petitioner from the suit premises under Section 13 (1)(i) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Rent Act').

2. The suit premises in the present case comprises of a plot of land admeasuring about 200 sq.ft. at Chembur Gaothan, which was leased by the respondent (Raote) to the petitioner (Pathare) under a registered document dated 01/01/1960. The Small Causes Court ('Trial Court'), by Judgment and Decree dated 25/04/1984, had dismissed R.A.E. Suit No.5514 of 1973 instituted by Raote. The Appeal Court, by impugned Judgment and Decree dated 20/12/1991, has set aside the Judgment and Decree dated 25/04/1984 made by the Trial Court and decreed Raote's suit for recovery of possession of the suit premises. Hence the present petition.

3. During the pendency of the present petition, by order dated 21/06/2011 made in Civil Application No.2147 of 2009, the petitioners were permitted to amend the petition by incorporating certain subsequent events. In the order dated 21/06/2011, it was made clear that this Court, at the time of final hearing of the petition, will consider the question whether the petitioners can be permitted to amend their written statement, considering that such prayer was made in Civil Application No.2147 of 2009. In the year 2012, when the petition was taken up for final hearing, the respondents expressed desire to amend the plaint, basically for the purposes of explaining and incorporating certain subsequent events, in order to establish that the *bona fide* need in respect of the suit premises has not been eclipsed. In these circumstances, this Court, by its order dated 18/01/2012, issued the following directions :-

“i) The parties are directed to appear before the Trial Court on Tuesday 21st February 2012.

ii) On the said date, the respondents will be free to file a formal application for the amendment of the plaint for incorporating subsequent events. If such application is made by the respondents on the date of the appearance, the Trial Court shall permit the respondents to carry out the amendment to the plaint in terms of the said application.

iii) Within a period of four weeks from the date on which a copy of amended plaint is served to the petitioners, the petitioners will file an additional Written Statement for dealing with the amended plaint as well as for incorporating the subsequent events.

iv) Thereafter, the Trial Court shall permit the respondents to adduce further evidence by recalling the witnesses examined earlier and by examining additional witnesses and by producing additional documents. Similarly, the Trial Court will grant an opportunity to the petitioners to adduce additional evidence by recalling the witnesses already examined and by examining additional witnesses and by producing the documents.

v) After considering the evidence which is already on record and the evidence which will be adduced hereinafter, the Trial Court will record a fresh finding on the issue No.2 of bonafide need framed in the suit as well as on comparative hardship. The findings shall be recorded by the Trial Court on or before 30th July 2012. The said findings shall be certified by the Appeal Bench of the Court of Small Causes after hearing both the parties. The Appellate Court shall pass an order on or before 30th November 2012.

vi) The findings of both the Courts along with Record and Proceedings shall be forthwith transmitted to this Court. Copies of the findings shall be made available to the Advocates appearing for the parties.

vii) Needless to say, it will be open for the parties to raise objections to the findings in the form of affidavits.

viii) *Record and proceedings be forwarded to the Small Causes Court as expeditiously as possible along with the Writ of this Order.*

ix) *The Petition shall be placed under the caption of "directions" before the appropriate Court on 7th December, 2012.*

x) *Learned counsel appearing for the petitioners states that, till the petition is heard and decided, the petitioners shall not create any third party interests in respect of the suit property. This statement is accepted."*

4. In pursuance of the aforesaid directions, the parties amended their pleadings, led evidence on the issue of *bona fide* requirement and comparative hardship. The Trial Court decided the issues in favour of Raote (landlord). The Appeal Court, by its order dated 06/05/2013, after afford of opportunity of hearing to the parties, has certified that the findings recorded by the Trial Court in its order dated 13/01/2013 are correct and as per the prevailing law. The petitioners were granted leave to amend this petition and challenge the orders dated 13/02/2013 and 06/05/2013, along with the impugned Judgment and Decree dated 20/12/1991 made by the Appeal Court.

5. Mr. Sanglikar, learned Counsel for petitioner, has made he following submissions in support of this petition :-

(a) That the Appeal Court has misconstrued the petitioner's case on the issue of *res judicata* and consequently posed unto itself wrong questions and consequently arrived at wrong conclusion in making the impugned Judgment and

Decree dated 20/12/1991. The petitioner's case was that in R.A.E. Suit No.6512 of 1965 instituted by Raote, Raote had pleaded and deposed that premises let out to Pathare was admeasuring 82 sq.yards and not merely 200 sq.ft. This position was accepted by the Trial Court in its Judgment and Decree dated 27/08/1971 made in R.A.E. Suit No.6512 of 1965. In the subsequent suit i.e. R.A.E. Suit No.5514 of 1973 instituted by Raote, wherein, the impugned decree has been made, the suit premises have been described as admeasuring only 200 sq.ft. This means that decree was not applied for in respect of the entire property let out to Pathare. The contention of Raote that only 200 sq.ft. area was let out to Pathare, was barred by the doctrine of 'issue estoppel' and 'principles of res judicata'. The Appeal Court, in not appreciating this contention of petitioner, has failed to exercise jurisdiction vested in it and the impugned Judgment and Decree is liable to be set aside on this ground. Reliance was placed upon the decisions in the cases of *The State of Andhra Pradesh v. Kokkiligada Meeraiah and another*¹, *Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr.*², *Gulabchand Chhotalal Parikh v. State of Gujarat*³, *Swamy Atmananda and Others Versus Sri Ramakrishna Tapovanam and Others*⁴, and *Ishwar Dutt Versus Land*

1 AIR 1970 SUPREME COURT 771

2 AIR 2012 SUPREME COURT 2844

3 AIR 1965 Supreme Court 1153

4 (2005) 10 Supreme Court Cases 51

***Acquisition Collector and Another*⁵.**

- (b) Even otherwise, the finding that the suit premises were reasonable and *bona fide* required by the Raote for the erection of new building is vitiated by perversity and is contrary to the weight of the material on record. In particular, the Appeal Court failed to appreciate that the permissions and plans produced by the Raote with regard to the proposed erection of new building, had a long since expired and therefore, no reliance could have been placed upon the same. In the absence of any valid permissions and plans on the date the impugned Judgment and Decree was made, the very making of such Judgment and Decree under the provisions of Section 13 (1)(i) of the Rent Act, is an exercise in excess of jurisdiction. Reliance was placed upon the decision of this Court in the case of ***Smt. Surajbai Kevalchand Dhadiwal (Since Deceased) by heirs and L.R.s and others Vs. Sadashiv Sawlaram Gaikwad (Since Deceased) through L.R.s and Anr.***⁶
- (c) That the cause of action pleaded by Raote in R.A.E. Suit No.5541 of 1973 was that the Raote had an ancestral house in the property adjacent to the suit premises. The ancestral house was in a dilapidated condition and it was necessary to pull down the same and erect there a new building for the occupation by the members of the Raote family. Such exercise was not possible until the Raote

⁵ (2005) 7 Supreme Court Cases 190

⁶ Writ Petition No.761 of 1992, decided on August 14, 2009.

recovered the possession of the suit premises, particularly considering that location of the suit premises qua the ancestral house. During the pendency of the suit, however, it is transpired that the ancestral house came to be demolished and in its place, new building has been duly erected. There were disputes *inter se* between the members of the Raote family and the property whereon the ancestral house was existing has been transferred, sold and conveyed by Deed of Conveyance dated 12/04/1996 to some third party. In these circumstances, Mr. Sanglikar submitted that even assuming that in case of *bona fide* requirement had been made out by Raote, the same stands completely eclipsed by such subsequent event. Therefore, the impugned Judgment and Decree made under Section 13 (1)(i) of the Rent Act is in excess of jurisdiction and liable to be set aside. Reliance was placed upon the decision in the case of *Mrs. Saharabegam Sikandar Shaikh and others Vs. Abdul Ali Mawaji Tejani and others*⁷.

6. Mr. Sadawarte, learned Counsel for Raote, defended the impugned Judgment and Decree as also orders made by the Trial Court and the Appeal Court on 13/02/2013 and 06/05/2013, in pursuance of the limited remand by this Court by its order dated 18/01/2012. Mr. Sadawarte submitted that virtually on three

⁷ 1991 Bom. R.C. 215

occasions, the Courts have recorded findings of fact that the suit premises were required reasonably and *bona fide* by the Raote and therefore, the ground for recovery of possession, as contemplated by Section 13 (1)(i) of the Rent Act had been made out. Such findings of fact are based upon the material on record and there is no perversity whatsoever in the record of the same. Mr. Sadawarte submitted that this Court, in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, ought not to interfere with such findings of fact recorded by both the Trial Court as well as the Appeal Court. Mr. Sadawarte further submitted that the parties had proceeded to trial on the correct basis that the suit premises admeasures 200 sq.ft. The document by which the lease was constituted also makes this position abundantly clear. There are admissions in the pleading of Pathare that the premises let out to them admeasure only 200 sq.ft. The contention of '*issue estoppel*' was never raised by the Pathare and therefore, there was no question of misconstruction involved. The issue of substantive *res judicata* was raised and the same has been rightly rejected by the Appeal Court. There is absolutely no jurisdictional error or perversity involved and therefore, this Court, should not interfere with the impugned Judgment and Decree as also the orders made by the Trial Court and the Appeal Court in pursuance of limited remand. Mr. Sadawarte placed reliance upon several decisions and further contended that there is no requirement that the building permissions or the building plans need to be operational on the date of the decree. The circumstances on record clearly establish that the Raotes had applied

for and obtained permission from the concerned authorities and further, they had the financial means and capacity to erect a new building upon the suit premises, consequent upon recovery of possession of the suit premises. For all these reasons, Mr. Sadawarte urged that this petition be dismissed.

7. Rival contentions now fall for my determination.

8. There is substance in the contention of Mr. Sadawarte that the contention on the basis of '*issue estoppel*' was never raised by the petitioners, either before the Trial Court or the Appeal Court. The contention raised was that R.A.E. Suit No.5514 of 1972, in which the impugned Judgment and Decree has been made, was barred by *res judicata*, in view of the earlier decision of the Small Causes Court in R.A.E. Suit No.6512 of 1965. The said contention based upon *res judicata* was correctly appreciated by the Appeal Court and rejected by setting out cogent reasons. In terms of the document of lease dated 01/01/1960, the term of the lease was for 5 years i.e. up to 31/12/1964. Raote issued quit notice dated 16/06/1965 to Pathare and thereafter instituted R.A.E. Suit No.6512 of 1965 seeking recovery of possession. This suit was dismissed by the Trial Court by Judgment and Decree dated 27/08/1971. Thereafter, the Raotes caused yet another quit notice dated 01/08/1972 to be served upon the Pathares and thereafter instituted R.A.E. Suit No.5514 of 1973 on or about 01/10/1973. The Appeal Court, in such circumstances, has rightly held that the cause of action in the two suits was different and

distinct. In any case, the later suit was based on the ground that the suit premises, being land, were reasonably and *bona fide* required by Raote for the erection of new building. This is a ground for recovery of possession contemplated by Section 13 (1)(i) of the Rent Act. The earlier suit, at the highest, related to the ground of eviction as contemplated by Section 13 (1)(g) of the Rent Act and the same was dismissed, *inter alia*, on the ground that Section 13 (1)(g) of the Rent Act do not apply to premises which are land, but would apply to erected structures whether used for residential or commercial purpose.

9. Even otherwise, a suit for *bona fide* requirement instituted almost 8 years after the dismissal of an earlier suit, even assuming the same to be for the similar purpose, cannot be barred by principles of *res judicata*, particularly where the pleadings demonstrate the varied and changed circumstances. The requirement which may not have been reasonable or *bona fide* in the year 1965, can always be demonstrated as being reasonable and *bona fide* in view of changed circumstances in the year 1973. Therefore, a fresh suit, based upon such fresh cause of action, cannot be said to be barred by principles of *res judicata* or for that matter, principles analogous thereto. The Appeal Court has rightly held that the cause of action in the two suits was different and distinct. The Appeal Court has rightly held the fresh suit was necessitated and instituted under circumstances which were different and distinct from the ones which offered cause of action for instituting the 1965 suit. There is neither any jurisdictional error nor

any perversity of approach in rejecting the petitioner's objection based upon the principle of *res judicata* or principles analogous thereto.

10. The Hon'ble Apex Court, in the case of ***Surajmal Versus Radheyshyam***⁸, has held that :-

“The bona fide need must be considered with reference to the time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff it has to be assumed that he will not have a bona fide and genuine necessity ever in future. When the nature of requirement pleaded in the earlier suit was different from that in the present suit, the bar of res judicata will not operate.”

11. There is no question of the principle of *issue estoppel* being attracted to the facts and circumstances of the present case. It is true that in the 1965 suit, there was reference to the property admeasuring 82 sq.yards and some statements in the deposition to the said effect. However, the lease document dated 01/01/1960 very clearly states that though the entire property held by Raote admeasures 82 sq.yards, what is let out to Pathare is the area admeasuring 200 sq.ft. from out of the same.

12. In the plaint in R.A.E. Suit No.5514 of 1973 at para 1, Raote has pleaded thus :-

“Plaintiffs are the owner of the vacant piece of land admeasuring about 82 Sq. Yards, situated at Chembur Gaothan and bounded on the North by the house

⁸ (1988) 2 Supreme Court Cases 18

belonging to Shri Keshav Naik, on the West by the house belonging to Shri Keshavanath Raote, and on the East by the original Plaintiff's joint family house. Out of the said land Plaintiff leased out to the original Defendant about 200 square feet of vacant land for the purpose of constructing a temporary house, on the terms and conditions recorded in the registered agreement of ground-rent dated 1st January 1960. The Plaintiff will rely upon the said agreement. The said vacant piece of land is referred to hereafter as "the suit premises" for the sake of brevity. [Emphasis supplied]

13. Pathare, in the written statement (Points of Defence) filed on 12/03/1974, in response to the plaint in R.A.E. Suit No.5514 of 1973, raised no dispute whatsoever as regards the description of area of the suit premises or pleaded that the premises let out to Pathare admeasured 82 sq.yards and therefore, the description of the suit premises was either improper or that the suit as instituted was incompetent. On the contrary, in response to the pleadings in aforesaid para 1 of the plaint, Pathare, in para 3 of the written statement, pleaded thus :-

"3. The facts stated in para 1 of the plaint are substantially correct. It is however not true tha the said piece of land is leased to the defendant for constructing a temporary house. [Emphasis supplied].

14. In the light of the aforesaid categorical admission in the pleading by Pathare, there is no question of entertaining any contention, particularly at this stage, that the premises let out by

Raote to Pathare actually admeasured 82 sq.yards and suit for recovery of possession by describing the same as admeasuring 200 sq.ft. was not maintainable. If Pathares were indeed serious that the premises let out to them admeasures 82 sq.yards i.e. 738 sq.ft., this would be possibly the first objection which the Pathares would have raised in their written statement on 12/03/1974. Instead, the Pathares, in their written statement dated 12/03/1974, specifically admitted the contents of para 1 of the plaint as being substantially correct. In para 1 of the plaint, Raotes had described the suit premises let out to Pathares as admeasuring only 200 sq.ft. from out of the larger property on 82 sq.yards held by the Raotes.

15. Nothing much turns up the use of the expression '*substantially*' in para 3 of the written statement dated 12/03/1974. In para 2, Pathare had explained the meaning of the expression by denying that the piece of land leased to Pathare was for construction of temporary house. Therefore, apart from such dispute, there was no dispute raised with regard to the area of the suit premises actually leased by Raote to Pathare. Rather, it was admitted that only a piece of land was leased and further, the averment in para 1 that such piece admeasured 200 sq.ft. was correct. On basis of such pleading, it is not possible to entertain any plea based upon alleged misconstruction of the submission as to *res judicata* or the plea based upon the principle of *issue estoppel*.

16. In terms of Order VI Rule 1 of CPC, '*pleading*' shall mean plaint or written statement. Rule 2 of Order VI of CPC, *inter alia*, provides that every pleading shall contain, and contain only, a statement in a concise 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. Order VII Rule 1 of CPC specifies the particulars to be contained in the plaint. Order VIII Rule 2 of CPC provides that the defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality. Further, Rule 3 of Order VIII of CPC provides that denial in the written statement has to be specific. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages. Rule 4 of Order VIII of CPC provides that a denial in the written statement ought not to be evasive. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those

circumstances. Rule 5 of Order VIII of CPC provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. No doubt, the Court may, in its discretion, require any facts so attempted to be proved otherwise than such admission. In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

17. Applying the aforesaid rules with regard to pleading, it is clear that Pathares, in terms admitted that a property let out to them admeasured 200 sq.ft., from out of the entire property of 82 sq.yards held by the Raotes. This is not even a case of evasive denial, but rather a case whether this position was specifically admitted by the Pathares. This admission is consistent with the document of lease dated 01/01/1960, by which, even the Pathares admit, the suit premises were leased out to them. In the course of evidence, neither did the Pathares or their witnesses depose that the premises let out to them admeasured 82 sq.yards nor were any question in this regard put to the Raotes or their witnesses. In fact, as noted earlier, the question now raised by Mr. Sanglikar was not even a question raised by and on behalf of Pathares either before the Trial Court or the Appeal Court. The Pathares had squarely urged that the subsequent suit was barred under the principles of *res judicata* as contained in Section 11 of the CPC and the said contention has very rightly been

rejected by the Appeal Court in the impugned Judgment and Decree. In fact, no attempt was made to seriously question the decision of the Appeal Court on the issue of *res judicata*, though it was contended that the submission of the Pathares in the context of *res judicata* was misconstrued, as the Pathares, in fact, meant that the issue of precise area of the premises let out by Raotes to Pathares having been settled in 1965 suit, the same constitutes an '*issue estoppel*' in the 1973 suit.

18. In the light of the pleadings, including in particular the admission in the written statement of Pathares, there is no question of any *estoppel* or *issue estoppel*. In any case, if the Pathares were indeed serious in this regard, it was their duty to have specifically raised such an issue in the written statement and on the said basis, insist upon an issue being cast. Thereafter, the parties could have led evidence in the matter and the issue as raised, adjudicated upon. In the light of admissions contained in the written statement, rightly, there was no occasion for framing of any issue and consequently any adjudication upon the same. The decisions upon which reliance was placed by Mr.Sanglikar deal with the general principles in the context of *issue estoppel*. However, none of the decisions are applicable to the facts and circumstances of the present case. The rule of *issue estoppel*, according to the decision, prevents re-litigation of the issue which has been determined earlier by a competent Court of law in proceedings competently instituted. *Issue estoppel* prevents acceptance of evidence to disturb findings already recorded. Incidentally, the decisions in the cases of ***State of Andhra Pradesh v. Kokkiligada Meeraiah and***

another (supra) and *Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr. (supra)* arose in the context of proceedings under the Criminal Procedure Code.

19. In the case of *Swamy Atmananda and Others Versus Sri Ramakrishna Tapovanam and Others (supra)*, the Hon'ble Apex Court, in the facts and circumstances of the said case, has held that there was no infirmity in consideration by the Courts of the plea based upon the doctrine of *res judicata*, even though, no issue as such had been framed in the matter. In holding so, the Hon'ble Apex Court noted that the appellants in the said case had not objected to the raising of the said plea; the plea had been adequately raised in the plaint itself; the appellants had adequate opportunity to traverse and furthermore, both parties having brought on record all relevant documents, the appellants cannot be said to have breached in any manner, by reason of non-framing of the issue as regards *res judicata*. The Court has held that in the case at hand, there were adequate pleadings, documents as also the Judgment produced in the previous suit contained extensive details of the statement of pleadings and issues which could be taken as enough to prove the plea of *res judicata*. The decision offers no parallel to the fact circumstances in the present case, particularly since Pathares admitted in their written statement that the area let out to them admeasured 200 sq.ft. Accordingly, it is not possible to accept Mr.Sanglikar's contention based upon either *res judicata* or *issue estoppel*.

20. Insofar as Mr. Sanglikar's second contention is concerned, again, the Trial Court and the Appeal Court, virtually on two occasions, appreciated the material on record and returned a finding of fact that the suit premises were indeed required reasonably and *bona fide* by the Raotes for the purposes of erection of a new building. There is really no perversity in the record of such findings of fact. The Courts have considered the parameters of the provisions contained in Section 13 (1)(i) of the Rent Act in their proper perspective. The Courts have recorded that the Raotes had sufficient financial capacity and means to erect the new building. The Courts have held that the Raotes had obtained permissions from the statutory authorities with regard to the erection of the new building. Even after the ancestral house in the adjacent property had to be demolished and the property conveyed in view of the dispute *inter alia* between the landlord, revised permissions and plans were approved by the statutory authorities in the context of erection of new building in the suit premises. There is no merit in the contention of Mr. Sanglikar that the permissions and plans had to be operative at the time the decree of eviction was made. The provisions contained in Section 13 (1)(i) of the Rent Act do not prescribe any such requirement. However, in order to establish the reasonableness and *bona fides*, a landlord, as observed by this Court in the case of ***Smt. Surajbai Kevalchand Dhadiwal*** (*supra*), is required to satisfy the Court on the aspect of financial capacity, means as well as the feasibility of construction upon the suit premises. For this purpose, it may be necessary to establish that erection of new building is permitted upon the suit premises and

building permission can be granted in respect of the proposed construction. The material on record establishes that these requirements had been fulfilled by the Pathares and there is no perversity in the record of findings of fact by the two Courts on these aspects. It is pertinent to note that in view of the changed circumstances, this Court, granted leave to both the parties to amend their pleadings and the matter was remanded to the Trial Court to enable the parties to lead evidence and further the Trial Court to record findings of fact as to reasonableness and *bona fides* and comparative hardship. The Trial Court as well as the Appeal Court, in pursuance of such remand, have recorded concurrent findings of fact in favour of the Raotes.

21. Even the last contention of Mr. Sanglikar cannot be accepted. It is true that the cause of action, as originally pleaded, did make reference to the ancestral house in the adjacent property and in dilapidated condition. The suit was instituted in the year 1973. In the meanwhile, undoubtedly, subsequent developments have taken place. The dilapidated ancestral house was required to be pulled down and the new building constructed in its place. The circumstances in which the said property was conveyed, have been explained by the Raotes. There is reference to *inter se* disputes between the landlord and all particulars with regard to the transaction concerning the ancestral house have been explained and clarified. There is no substance in the contention that the suit premises belong to the brother and not to the plaintiff. Such an issue was again never

raised in the pleadings by Pathares. The Pathares always admitted the plaintiff as the landlord in respect of the suit premises. The definition of the expression '*landlord*' as contained in Section 5 (3) of the Rent Act is substantially wide. Therefore, on the basis of some stray answer in the course of deposition, it cannot be said that the plaintiff was not the owner of the suit premises or that the plaintiff is not entitled to secure a decree of eviction under Section 13 (1)(i) of the Rent Act. Upon variation in the circumstances, both the Raotes as well as Pathares were given opportunity to amend their pleadings. Both the parties were offered opportunity to lead evidence in the context of the changed circumstances and subsequent developments. The Trial Court and the Appeal Court, on the basis of amended pleadings and the evidence on record, have concurrently recorded a finding of fact that the requirement of Raotes in respect of the suit premises not only continues but is also reasonable and *bona fide*. There is really no perversity in the record of such findings of fact. Such findings of fact is not contrary to the evidence on record. The issue of comparative hardship is also dealt with by both the Courts. Both the Courts have applied the correct tests and parameters and based their findings on the material on record.

22. The two Courts have considered the circumstances arising out of the collapse of the ancestral house, sale of the ancestral property whereunder the Raotes obtained an amount of Rs.9,00,000/-. The Raotes have acquired additional premises admeasuring about 420 sq.ft. which the two Courts, on the basis of

evidence on record, have held, are by no means sufficient for the Raotes. In these circumstances, the two Courts have held that neither the reasonableness nor the *bona fides* of requirement have been eclipsed. Normally, relief is required to be granted to the parties on the basis of jurisdictional facts in existence and the date of institution of the suit. However, particularly in matters of recovery of possession on the grounds of reasonable and *bona fide* requirement, subsequent developments can be taken into consideration, particularly where it is established that the reasonableness or the *bona fides* of the requirement stand totally eclipsed by such subsequent development. In this case therefore, both the parties were offered opportunity to amend their pleadings to place on record the subsequent developments and to lead their evidence. The two Courts, after appreciating the evidence led by the parties, have recorded findings of fact that there is no eclipse of the requirement.

23. The Hon'ble Apex Court, in the case of ***Gaya Prasad V. Pradeep Shrivastava***⁹, has held that the crucial date for deciding as to the *bona fides* of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the *bona fides* of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists.

⁹ AIR 2001 SUPREME COURT 803

The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. It is pernicious, and unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred *pendente lite*, because the opposite party succeeded in prolonging the matter for such unduly long period.

24. In paras 10, 13, 14 and 15, the Hon'ble Apex Court, in the case of **Gaya Prasad** (*supra*) has observed thus :-

“10. We have no doubt that the crucial date for deciding as to the *bona fides* of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the *bona fides* of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by

subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.”

“13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in Pusupuleti Venkateswarlu v. Motor and General Traders, (1975) 1 SCC 770 : (AIR 1975 SC 1409) which pointed to the need for re-moulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then (Para 4) :

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

“14. The next three-Judge Bench of this Court, which approved and followed the above decision, in Hasmat Rai v. Raghunath rasad, (1981) 3 SCC 103 : (AIR 1981SC 1711) has taken care to emphasise that the subsequent events should have wholly satisfied the requirement of the party who petitioned for eviction on the

ground of personal requirement. The relevant passage is extracted below:

“Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.”

(Emphasis supplied)

“15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.”

25. The two Courts have also adverted to the issue of comparative hardship. The two Courts have taken into consideration the circumstance that the plaintiff no.1a, along with his wife, son and daughter, as also the plaintiff no.1e, have no premises of their own and they are compelled to reside with plaintiff no.1c in premises which admeasures hardly 100 sq.ft. Further, the other plaintiffs also reside in premises admeasuring hardly 220 sq.ft. The two Courts have accepted this position and have held that no dent was made during

the cross-examination on this aspect. In contrast, the DW 1 has admitted in cross-examination that he has acquired another flat at another place on ownership basis and further, in the year 2010, he has given the said flat to a third party on leave and license basis. The defendant no.1 has also admitted in the course of cross-examination that his son is earning an amount of Rs.1,45,000/- per month by way of salary alone. The two Courts have held that the tenants have made no efforts to secure any alternate premises, rather, the tenants have acquired alternate premises and have licensed the same to some third party during the pendency of these proceedings. Besides, the tenants are in a financial capacity to secure alternate accommodation. On basis of such material, the issue of comparative hardship has been answered against the tenants. Again, there is absolutely no perversity in record of such findings of fact by the two Courts.

26. This Court, in the case of ***Parashram Tuljaram Belhekar (deceased through L.Rs.) Vs. Tejmal @ Kanakamal Mulchand Jain (deceased through L.Rs.)***¹⁰, relying upon the decision of the Hon'ble Apex Court in the case of ***Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada***¹¹, has held that the onus is upon the tenant to plead and establish that the comparative hardship which will result from making a decree of eviction is far grater as compared to a situation where such decree is denied. Further, this Court, in the case of ***Suhasini Atmkaram Parab Vs. B. H. Khatu***¹², has held that once a

¹⁰ 2007(3) ALL MR 657

¹¹ 2003(3) ALL MR 1141 (S.C.) : 2003 Bom.R.C. 45

¹² 2002(4) ALL MR 770 : 2003 Bom.R.C. 313

landlord proceeds to institute a suit on the ground of *bona fide* requirement, the tenant is expected to make and demonstrate that he has made efforts to obtain alternate accommodation or to explain why he has been unsuccessful in obtaining alternate accommodation, despite such efforts. This having not been done, the issue of comparative hardship, has rightly been answered against Pathare.

27. This Court, whilst exercising supervisory jurisdiction under Article 227 of the Constitution of India, is not expected to act as a Court of appeal and re-appreciate the evidence on record. Unless it is demonstrated that the findings of fact concurrently recorded are vitiated by perversity or that the view taken is manifestly incorrect and suffers from errors apparent on face of record, there is no question of any interference.

28. In the case of *M/s. India Pipe Fittings Co. vs. Fakruddin M. A. Baker & Anr.*¹³, the Apex Court in the context of exercise of supervisory jurisdiction, observed thus:

“The limitation of the High Court while exercising power under Article 227 of the Constitution of India is well settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts howsoever erroneous those may be. It is well settled and perhaps to late in the day to refer to the decision of the Constitution Bench of this Court in (Waryam Singh v. Amaranath), 1954 S.C.R. 565 : A.I.R. 1954 S.C. 215 where the principles have been clearly laid down as follows :

¹³ AIR 1978 SC 45

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., (in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee), A.I.R. 1951 Cal. 193 (SB) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not in correcting mere errors.”

29. In the case of ***Bahutmal Raichand Oswal vs. V. R. Tarte***¹⁴, in the context of proceedings between landlord and tenant under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Apex Court, relying upon its previous decision on the same subject, observed thus :

“If error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of Certiorari it should follow a fortiori that is not subject to correction by the High Court in exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior Court can do in exercise of its statutory power as Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of Appeal when the Legislature has not conferred a right of appeal and made the Subordinate Court or tribunate final on fact.”

30. In the case of ***Ashok Kumar & Ors. vs. Sita Ram***¹⁵, the Apex Court in the context of scope of interference with the findings of fact recorded by the authorities under the Rent Act has observed thus :-

¹⁴ AIR1975 SC 1297

¹⁵ (2001) 4 SCC 478

“The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where order passed by the statutory authority vested with power to act quasi judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another appellate court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case.”

31. In the case of ***Rajbir Kaur v. S. Chokesiri & Co.***¹⁶, the Apex Court in paragraph 43 has observed thus :-

“43. When the findings of fact recorded by the courts below are supportable on the evidence on record, the Revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the courts below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case.”

16 (1989)

32. Applying the aforesaid well settled principles, as also taking into consideration the facts and circumstances as borne out from the record, no case is made out to interfere with the impugned Judgment an Decree dated 20/12/1991, as also the orders dated 13/02/2013 and 06/05/2013 on the aspect of *bona fide* requirement and comparative hardship.

33. This petition is therefore liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

34. With the disposal of the main petition, Civil Application No.1658 of 2013 and Civil Application No.275 of 2015 also stand disposed of.

(M. S. SONAK, J.)

35. Mr. Sanglikar, learned Counsel for Petitioner, seeks a stay on the execution of the eviction decree for a period of eight weeks from today, as the Petitioner desires to take recourse against this Judgment and Order, before the Hon'ble Apex Court. The request of reasonable and therefore, there shall be a stay on the execution of the eviction decree for a period of eight weeks from today. This shall, however, be subject to the Petitioner filing in the Registry of this Court the usual undertaking within a period of two weeks from today. Copies of undertaking be furnished to the learned Counsel for Respondents before the same are actually filed.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment.