

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-5961-2003 (O&M)

Date of decision: 14.01.2015

Gama

..... Petitioner

Versus

Shaukat Ali Khan

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. SK Singla, Advocate for the petitioner.

Mr. RS Athwal, Advocate for the respondent.

R.P. NAGRATH, J.

The petitioner-tenant has filed the instant revision in terms of Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (to be referred hereinafter as 'the Act'). The respondent-landlord sought eviction on the grounds of non-payment of rent w.e.f. 1.11.1997 @ ₹ 175/- per month and also that he requires the premises for his own use and occupation. It was stated that the respondent is unemployed and wanted to run his own business of selling the milk in the shop in question. The only ground that survives is with regard to the personal need and occupation of the demised premises by the respondent as this ground for eviction was accepted by both the Courts below. The eviction

petition filed by respondent is dated 25.3.1998.

2. The petitioner denied that the shop in question was required by respondent-landlord for his own use and occupation for selling milk. It was further pleaded that earlier also an application for eviction was filed on the ground of non-payment of rent and that the premises was unfit and unsafe for human habitation. That petition was, however, dismissed as withdrawn on 29.11.1991. It was further stated that the respondent-landlord has many other shops in the urban area of Malerkotla which he rented out to the tenants. He also has landed property in the Municipal Limits of Malerkotla. The respondent also filed rejoinder and the learned Rent Controller framed the followings issues from the pleadings of the parties:-

“1. Whether the petitioner requires the shop in dispute on the ground of personal necessity?
OPA

2. Whether the present petition is not maintainable in the present form? OPR

3. Whether the petitioner has concealed the material facts from the court and has not come to the court with clean hands? OPR

4. Relief.”

3. I have heard learned counsel for the parties and perused the orders passed by both the Courts below as well as the records.

4. Learned petitioner's counsel vehemently contended that the respondent-landlord was about 60 years old when he appeared in the

witness-box on 12.10.1999 as AW-1 in support of his case. In cross-examination, the respondent stated that he rented out the premises to the petitioner about 10-15 years ago. The eviction petition was filed in the year 1998. The respondent also stated in the cross-examination that he is selling milk for the past about 40 to 50 years. According to learned counsel for the petitioner, the respondent wanted to start his business of selling milk in the shop in question which he is already carrying on from his residential house. Learned counsel for the petitioner further submits that when the previous application for eviction was filed in the year 1991, this ground was available to the respondent but in the said eviction petition, the only ground for eviction taken was that the premises was unfit and unsafe for human habitation. Copy of that eviction petition is Ex. R-4 instituted on 27.10.1988. However, that petition was dismissed as withdrawn on 29.11.1991 on the basis of compromise reached between the parties whereby rent of the premises was increased to ₹ 100/- per month from the initial rate of rent. Copy of order dated 29.11.1991 on the basis of said compromise is Ex. R-6.

5. The bone of contention of leaned petitioner's counsel, however, is that the learned Appellate Authority has not taken note of the subsequent event despite the admission made by respondent before the Appellate Authority. The respondent had constructed three shops in the Municipal Limits of Malerkotla during the pendency of appeal. The petitioner filed an application under Order 26 Rule 9 of the Code of Civil Procedure (CPC) for appointment of Local Commissioner and in reply thereto, the respondent admitted the construction of shops and also

having rented out the same to the tenants but learned Appellate Authority has failed to take note of this fact in the judgment and also did not decide the said application. The perusal of record of the Appellate Authority, would show that an application dated 25.4.2003 was filed by the petitioner under Order 26 Rule 9 CPC, on the allegation that the respondent-landlord owns three shops which have been rented out to Mohd. Yamin and Mohd. Salim. Mohd. Yamin is carrying on the S.T.D. and fertilizer business under the name of style of M/s Thind S.T.D. and Thind Seed and Khad Store in two shops whereas Mohd. Salim is doing auto service business in the third shop. In reply thereto, the respondent admitted these allegations but it was stated that those shops were constructed two years back during pendency of appeal and the same were in possession of the tenants. It was stated that the business of milk cannot be run in these shops as there is no *abadi* nearby and those shops have been constructed in the agricultural land. There is no remote reference to the aforesaid admission made by the respondent in the judgment of Appellate Authority. As per statement of the petitioner-tenant as RW-3, the land which belongs to the respondent-landlord is at a distance of about 1 km. from Malerkotla locality. These were so prominent factors which were supposed to be discussed by the Appellate Authority when these have been brought on record by way of admission of the respondent.

6. There is another subsequent factor which arose during the pendency of instant revision i.e. the death of respondent taking place on 21.4.2013 as brought on record by filing CM-25635-CII-2014. Learned

counsel for the petitioner contended that the *bona fide* requirement was pleaded by the landlord for supporting his own business for sale of milk and not by any other family member of the respondent.

7. Learned counsel for the respondent contended that need of landlord is to be seen on the date of filing of the application for eviction. However, in *Seshambal (dead) through LRs Vs. M/s Chelur Corporation Chelur Building and others, 2010 (1) Rent Control Reporter 230*, by referring to the case law on the subject, it was held by Hon'ble Supreme Court that on the death of the petitioners (landlord) in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time. Hon'ble Supreme Court held as under:-

10.While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date

the relief is actually granted. That proposition of law is, in our view, fairly settled by the decisions of this Court in *Pasupuleti Venkateswarlu*¹ case (supra). Krishna Iyer J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:

“.....If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or 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 fairplay 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. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for

1 Pasupuleti Venkateswarlu vs. Motor and General Traders, 1975 (1) SCC 770.

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 proceeding provided the rules of fairness to both sides are scrupulously obeyed.....”

11. To the same effect is the decision of this Court in *Om Prakash Gupta's*² case (supra) where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit yet the Court has power to mould the relief in case the following three conditions are 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

2 Om Parkash Gupta vs. Ranbir B. Goyal, 2002 (2) SCC 256.

surprise.....”

12. In *Hasmat Rai’s*³ case (supra), this Court observed that if the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the court, including the appellate court, has to examine, evaluate and adjudicate upon the same.

13. To the same effect is the decision of this Court in *Baba Kashinath Bhinge’s*⁴ case (supra) where relying upon the decision in *Hasmat Rai’s* case (supra) this Court held that in a case of bona fide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal for revision no decree will be justified. For that purpose the Court should take all the subsequent events into consideration and mould the relief accordingly. Following passage provides a complete answer to the question raised before us:

“Equally it is settled by this Court in series of judgments and a reference in this behalf would

3 Hasmat Rai vs. Raghunath Parsad, 1981 (3) SCC 103.

4 Baba Kashinath Bhinge vs. Samast Lingayat Gaveli, 1994 Supp. (3) SCC 698.

be sufficient by citing *Hasmat Rai v. Raghu Nath Prasad* that in a case of bona fide requirement, it is always necessary, till the decree of eviction is passed that the landlord should satisfy that the need is bona fide and the need subsists. In a case where the need is available at the time of filing the petition, but at the time of granting decree it may not continue to subsist, in that event, the decree for eviction could not be made. Similarly pending appeal or revision or writ petition, the need may become more acute. The court should take into account all the subsequent events to mould the relief. The High Court may not be justified in omitting to consider this aspect of the matter but that does not render the judgment illegal for the subsequent discussion we are going to make.”

(emphasis supplied)

14. Reference may also be made to *Ramesh Kumar v Kesho Ram, 1992 (1) RCR (Rent) 370 : (1992 Supp (2) SCC 623)* where Venkatachaliah, J. (as His Lordship then was) expressed a similar view in the following words:

“The normal rule is that in any litigation the rights and obligations of the parties are

adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

15. Similarly, in ***Maganlal's***⁵ case (supra) all that this Court held was that if the litigation keeps extending and number of developments sprouting up during the long interregnum, the Court should adopt a pragmatic approach in the matter and determine whether or not the development pending finalization of the litigation is such as would completely non-suit the party concerned. This decision is, in our view, no authority for this proposition that subsequent developments having material impact on the rights and obligations of the parties can be ignored by a Court simply because such rights and obligations have to be determined by reference to the date on which the litigation was instituted.

16. The decision of this Court in ***Kedar Nath Agrawal (dead) and Anr. v. Dhanraji Devi (dead) by***

5 *Maganlal vs. Nanasaheb*, 2008 (13) SCC 758.

LRs. and Anr. 2004(2) RCR (Rent) 498: (2004 (8)

SCC 76) has reiterated the legal position after a detailed review of the case law on the subject. That was also a case where two applicants seeking eviction of the tenant had passed away during the pendency of the eviction petition and the question was whether the three married daughters left behind by the couple could continue with the same. This Court observed:

“31. In view of the settled legal position as also the decisions in ***Pasupuleti Venkateswarlu*** and ***Hasmat Rai***, in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material....”

8. In **Seshambal's case (supra)** it was also held that the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the requirement of the members of their family whether dependent or otherwise. Indeed if the deceased landlords had any dependent member of the family it could be

assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. It was found that the deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.

9. The respondent as AW-1 stated in cross-examination that he has 5 sons and 5 daughters. Two of his sons are settled abroad and other two sons were still studying and residing with him.

10. In view of the subsequent event of the death of respondent-landlord and the factum that respondent-landlord having constructed three shops and rented out during the pendency of appeal which the learned Appellate Authority had not considered at all, the matter needs to be remitted to the learned Appellate Authority for decision afresh in accordance with law. The instant revision is accepted and order of the Appellate Authority is set aside and the matter is remitted to the Appellate Authority to decide the same afresh by taking into account the aforesaid subsequent events and also to consider the plea taken in the application filed by the petitioner-tenant under Order 26 Rule 9 CPC and the above-stated admission of respondent-landlord in reply thereto and proceed further to decide the appeal afresh in accordance with law. The parties are directed to appear before the Appellate Authority on 9.2.2015.

January 14, 2015
rishu

(R.P. NAGRATH)
JUDGE