

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL REVISION APPLICATION NO.124 OF 2015
WITH
CIVIL APPLICATION NO.2068 OF 2017**

Shri Ramdas Kisan Sonwane,
Age 85 years, Occu: Pensioner,
Resident of : House No. 145,
CTS No.2552/2, Shani Peth,
Jalgaon, Dist. Jalgaon

..APPLICANT

VERSUS

Shri Onkar Vishwanath Malegaonkar,
since deceased, hence
thr. Legal representatives

1. Shri Vinod Onkar Malegaonkar,
Age: 50 years, Occu: Painter
2. Shri Kishore Onkar Malegaonkar,
Age: 45 years, Occu: Private Service
3. Shri Rajesh Onkar Malegaonkar,
Age: 40 years, Occu: Business

All residents of House No. 145, Shani Peth,
Jalgaon, Dist. Jalgaon

(Dismissed against Resp. Nos.
1 to 3 vide Court's order dtd.
16/06/2017)

4. Sau. Meena Ramesh Ahirrao,
Age: 53 years, Occu: Household,
Resident of : C/o Ramesh Waman Ahirrao,
At Bhivandi, Taluka and Dist. Thane
5. Sau Bharati Vikar Sonar,
deceased before appellate Court
6. Shri Nitin Dattatraya Sonar,
Age: 41 years, Occu: Agri.,
R/o. Parola, Taluka Parola,
Dist. Jalgaon

..RESPONDENTS

(2)

Mr Mukul Kulkarni, Advocate for applicant;
Mr Girish Rane, Advocate for respondent No. 6

CORAM : NITIN W. SAMBRE, J.

DATE : 17th July, 2017

ORAL ORDER

This revision is by tenant, who was defendant in Regular Civil Suit No.317 of 1998, instituted before the Court of Civil Judge Senior Division, Jalgaon, under the provisions of the Bombay Rent Act (for short "Act") by plaintiff-landlord, seeking eviction of the applicant-defendant on the grounds of arrears of rent, acquiring alternate accommodation, nuisance, carrying out permanent construction, repairs without written permission of the landlord and *bona fide* requirement.

2. The suit came to be decreed by judgment and decree dated 13th December, 2004, delivered by 2nd Joint Civil Judge Junior Division, Jalgaon, which was subject-matter of challenge in Regular Civil Appeal No.5 of 2005 before the learned Principal District Judge, Jalgaon. The appeal came to be dismissed by Principal District Judge by judgment and decree dated 9th January, 2015. Thus, the present Civil Revision Application.

3. Mr Kulkarni, learned Counsel appearing on behalf of the applicant submits that the Courts below have committed an error in recording findings that there was arrears of rent and the premises were required for

(3)

bona fide need of the respondent. According to him, the original landlord, who has instituted the suit in question, based on his *bona fide* requirement, has already expired and as such, the *bona fide* need no more exists and on this count alone, the impugned judgments and decrees deserve to be set aside.

4. Mr Kulkarni then would invite attention of this Court to an application being Civil Application No.2068 of 2017, seeking to produce on record copy of registered sale deed dated 22nd December, 2014, executed by respondents no.1 to 3. According to him, the said event is required to be appreciated in the background of subsequent development, that the legal representatives of original plaintiff have already transferred the suit property in favour of respondent no.4.

5. Drawing support from the judgment of this Court in the matter of **Laxmibai Gangaram Bachal and anr. vs. Yashwant Moreshwar Rajwade**, reported in **(1997) 99 Bom. L.R. 83**, Mr Kulkarni, learned Counsel appearing on behalf of the applicant would urge that in view of above undisputed position viz. transfer of the property by the legal representatives of original landlord and the suit for eviction being based on reasonable and *bona fide* requirement, decree therein is not sustainable. He would draw support from the observations made in paragraphs 5, 6 and 7 of the said judgment. In addition, Mr Kulkarni would urge that the Apex Court from 1991 has taken a consistent view that in a claim for decree for eviction on the ground of reasonable and *bona fide* requirement, same has to be ascertained based on the requirement on the date of deciding the suit

(4)

and not on the date of filing. For the said purpose, he would draw support from the judgment of the Apex Court in the matter of **Gulabbai vs. Nalin Narsi Vohra & others**, reported in **1991 (3) Bom. C.R. 174**. He would also draw support from the judgment of the Apex Court in the matter of **Amarjit Singh vs. Smt. Khatoon Quamarain**, reported in **AIR 1987 Supreme Court 741**.

6. Per contra, Mr Rane, learned Counsel appearing on behalf of respondent no.6 would urge that the Courts below have concurrently held against the applicant, wherein the respondent-landlord has established his *bona fide* need. According to him, the findings of fact recorded by the Courts below, upon appreciation, do not warrant any interference. So as to substantiate his contentions, Mr Rane would take me through the findings recorded on the issue of arrears of rent as also *bona fide* requirement. By relying upon the judgment of the Apex Court, in the matter of **Shakuntala Bai and others vs. Narayan Das and others**, reported in **(2004) 5 Supreme Court Cases 772**, Mr Rane would urge that the Apex Court has considered the crucial date for deciding *bona fide* requirement of the landlord, is the date of institution of the proceedings and not the date of decree. He would also draw support on the aforesaid line from the judgment of the Apex court in the matter of **Nidhi vs. Ram Kripal Sharma (D), Through L.Rs.**, rendered on 7th February, 2017 in Civil Appeal No.1008 of 2017 (arising out of Special Leave Petition (C) No.19117 of 2013), wherein certain guidelines are laid down. Learned Counsel then would urge that in the present case though the applicant has tried to bring

(5)

on record copy of the sale deed, still the fact remains that the application already stood dismissed against legal representatives of original plaintiff viz. respondents no.1 to 3 to the present revision. According to him, in view thereof, the revision application abates and is liable to be dismissed. Apart from above, he would urge that this Court should cautiously appreciate the sale deed, in absence of the original landlord. According to him, the revision, as such, is liable to be dismissed.

7. Considered rival claims.

8. The suit property consists of C.T.S. No.2552/B-2, House No.145 at Shani Peth, Jalgaon.

9. It is claimed that the monthly tenancy of the suit premises was at the rent of Rs.40/- per month, which was to begin from 1st day of each English calendar month.

10. In the backdrop of contention of the arrears of rent, it is specific case of the present respondent that in notice dated 20th August, 1998 he has given details about the arrears of rent and the applicant-tenant has failed to honour the same within the time stipulated. While countering the said claim, the applicant has come out with a case that he had sent money orders of Rs.760/- towards remittance of rent, in reply to the notice. He claims that he has deposited an amount of Rs.1,240/- in the Court. The applicant-tenant also denied the *bona fide* requirement of respondent-landlord.

(6)

11. In order to establish the claim, the respondent-plaintiff – landlord examined himself at Exh.44, his witness P.W.2 Milind at Exh.55 and filed documents along with list at Exh.3.

12. The applicant-defendant examined himself at Exh.57 and filed certain documents.

13. Through evidence of plaintiff, it is brought on record that area to the extent of 55 Sq. Mtrs. is in possession of the applicant-defendant at the rent of Rs.40/- per month. It is established that the rent was paid only up to May, 1997 and thereafter defendant was irregular in payment of rent. He has proved Exh.48 – notice dated 20th August, 1998.

14. The applicant-tenant has brought on record money order receipts at Exhs.58/1, 58/2, 59/2, 60/2, 61/1 and 61/2. However, the fact remains that the present applicant has not proved the said documents by examining Postman.

15. The Trial Court noticed that the applicant-defendant has not deposited the amount of rent regularly, even during pendency of the suit and, as such, proceeded to record finding on issue of arrears of rent in favour of the respondent-landlord.

(7)

16. In the wake of the aforesaid position, even though the defendant has tried to establish through his evidence that, from time to time, he had sent money orders and produced receipts thereof, which were not admitted by the respondent – plaintiff, it was defendant's duty to prove the same by adducing appropriate evidence in support thereof, which he has failed to.

17. In view of above, no perversity could be noticed in the findings recorded by the Courts below on the issue of arrears of rent, warranting any interference in the impugned judgments and decrees.

18. It is also required to be noted that there is a statutory obligation on the applicant to deposit the rent regularly during pendency of the suit and there is material on record to infer that the finding recorded by the Trial Court, that the amount of rent was not deposited regularly during pendency of the suit, appears to be a correct finding of fact, which was not interfered with by the lower appellate court.

19. So far as the finding recorded *qua* the *bona fide* requirement of the respondent-landlord is concerned, a copy of the plaint placed on record depicts that when the suit was filed, the landlord was a pensioner and his family consisted of three sons of which the eldest was married, having two children. It is specifically pleaded that younger two sons were still to be married. However, their marriages had got delayed because of insufficiency of accommodation. According to him, the entire family

(8)

consisting of seven members, at the relevant time, was residing in a very congested premises. The said fact in clear terms was established by the plaintiff in his evidence at Exh.44 with P.W.2 Milind. From the findings recorded by the Trial Court on *bona fide* requirement, it is to be noted that it is not individual *bona fide* requirement of the landlord alone, but was requirement of the family also.

20. In the wake of above, the Court below has proceeded to record finding on issue of *bona fide* requirement in favour of the present respondent, being *bona fide* requirement of family and not that of individual plaintiff. The evidence is brought on record to substantiate the said findings, as is apparent from the discussion in the judgments rendered by the Courts below.

21. In the aforesaid background, if the law cited by the learned Counsel appearing on behalf of the applicant is to be appreciated, particularly based on the judgments of this Court in the matters of Laxmibai (supra), the said judgment and the other judgment of the Apex Court in the matter of Gulabbai (supra) and Amarjit Singh (supra) would hardly be applicable to the instant case, because the *bona fide* requirement was established based on the requirement of the family members and not only based on the individual requirement of the original plaintiff-landlord.

22. It is to be noted that though the applicant has sought to place on record copy of the sale deed executed by respondents no.1 to 3, still the

(9)

fact remains that he has not taken steps to restore the application against respondents no.1 to 3 and as such, there is nothing on record to ascertain whether such transfer was effected by respondents no.1 to 3. The applicant has tried to establish his case of subsequent development of transfer of the property by assuming that the said fact is not in dispute. However, at this stage, in absence of respondents no.1 to 3 before this Court, against whom the application is dismissed, in my opinion, this Court need not go into that issue of the matter.

23. So far as issue of consideration of bona fide need is concerned, the only contention of the applicant – tenant that same has to be considered as on date of the judgment and not on the date of institution of the suit is liable to be rejected in view of following latest view expressed by the Apex Court. The case of the respective parties if analyzed in the backdrop of guidelines mentioned in the following judgment, it has to be inferred that the bona fide need of the landlord has to be considered as on date of the filing of the suit and not on the date of decision. Learned Counsel appearing on behalf of the respondent, in my opinion, was right in inviting attention of this Court to the decision of the Apex Court, in the matters of Nidhi and Shakuntala Bai (supra). In the matter of Nidhi (supra), the Apex Court in paragraphs 12, 13, 14 and 15 has observed thus :-

“12. In the facts of present case, the -landlady herein was living in a small house with her family comprising four members and was not able to accommodate her ailing grandparents who used to visit them frequently for

medication purposes and were willing to reside with them permanently as they were living alone in their village where nobody was there to look after them. In order to accommodate her grandparents with them and in the light of growing needs of her and her younger sister (who were then studying) filed the release application before the prescribed authority and the release order was granted by the prescribed authority in favour of the /landlady directing respondent-tenant to handover vacant possession of suit premises to the . As noticed earlier, during the pendency of appeal, preferred by the respondent-tenant, the got married and settled with her husband. The first appellate court as well as the High Court took note of this as subsequent development and held that the requirement no longer subsists and the claim of personal requirement has disappeared. Of course, during the pendency of lis between the parties, situation underwent a change and the got married to an Indian Revenue Service Officer and started residing with him in Delhi and Mumbai etc. Though the is married and settled with her husband, her bona fide requirement cannot be said to have ended as she wanted the premises not just for herself but to accommodate her parents and grandparents in the suit premises so that they can live together. The family of the is still said to be residing in rented premises in Moradabad, despite having their own suit premises to reside in. In the facts of present case, the change in subsequent events is not such that would deprive the of her right to vacant possession of suit premises as it is a natural event that the daughter of the house would get married and settle with her husband. Though the has got married and shifted to different accommodation with her husband, the actual bona fide requirement of premises is still the same, since her

(11)

parents and grandparents are still residing separately from each other with no one to look after them. More so, the got married but the family stays where it is and the bona fide requirement of premises for accommodation of parents remains the same. Being married and shifting to other place does not automatically result in extinguishing of bona fide requirement of the as being the owner of property, she alone is to decide what she wants to do with her property.

13. The legislations made for dealing with such landlord-tenant disputes were pro-tenant as the court tends to bend towards the tenant in order to do justice with the tenant; but in the process of doing justice the Court cannot be over zealous and forget its duty towards the landlord also as ultimately, it is the landlord who owns the property and is entitled to possession of the same when he proves his bona fide beyond reasonable doubt as it is in the case before this Court.

14. First appellate court as well as the High Court observed that during the pendency of the appeal, the got married, her husband a member of Indian Revenue Service (IRS) posted at Delhi, Mumbai and other places and this subsequent event has extinguished the personal requirement of the . In the impugned judgment, the High Court referred to number of judgments [Hasmat Rai and Another vs. Raghunath Prasad](#) (1981) 3 SCC 103; [Ramesh Kumar vs. Kesho Ram](#) (1992) Suppl. (2) SCC 623 and other judgments.

15. Ordinarily, rights of the parties stand crystallised on the date of institution of the suit. However, the court has

(12)

power to take note of the subsequent events and mould the relief accordingly. Power of the court to take note of subsequent events came up for consideration in a number of decisions. In [Om Prakash Gupta vs. Ranbir B. Goyal](#) (2002) 2 SCC 256, this Court 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.

(13)

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.

Om Prakash Gupta's case was referred with approval in [Ram Kumar Barnwal vs. Ram Lakhan \(Dead\)](#) (2007) 5 SCC 660."

24. Apart from above, in the judgment of Shakuntala Bai (supra), the Apex Court, in paragraphs 10 and 11, has observed thus :-

"10. The effect of death of a landlord during the pendency of the proceedings has been considered in several decisions of this Court. In Smt. Phool Rani v. Naubat Rai Ahluwalia AIR 1973 SC 2110, the landlord filed an ejectment application under [Section 14\(1\)\(e\)](#) of the Delhi Rent Control Act and eviction of the tenant was sought on the ground that the premises were required by the plaintiff "for occupation as a residence for himself and members of his family". The Additional Rent Controller dismissed the application on a preliminary ground that the notices to quit were not valid, without examining the case on merits. The plaintiff died during the pendency of the appeal preferred by him and his heirs were substituted. The case was remanded and the Rent Controller passed an order of eviction. In appeal a contention was raised that the right to sue did not survive to the heirs of the plaintiff, which was rejected by the Rent Control Tribunal but was accepted in appeal by the High Court. This court held that different

(14)

result may follow according to the stage at which the death occurs. One of the situations considered in para 13 of the reports is as under : "(i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour; say, during the pendency of an appeal filed by the unsuccessful tenant."

With regard to this category of cases it was held that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and, therefore, the legal representatives are entitled to defend further proceedings, like an appeal, which constitute a challenge to that benefit. Even otherwise this appears to be quite logical. In normal circumstances after passing of the decree by the trial Court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate Court. In such a situation, the well known maxim 'actus curiae neminem gravabit' that 'an act of the Court shall prejudice no man' shall come into operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant and claim possession of the premises on the cause of action which had been originally pleaded and on the basis whereof the lower Court had decided the matter and had passed the decree for eviction. However in regard to the case before the court it was held that the requirement pleaded in the ejectment application on which the plaintiff founded his right to relief was his personal requirement and such a personal cause of action must perish with the plaintiff. On this ground it was held that the plaintiff's right to sue will not survive to his heirs and they cannot take the benefit of the original right to sue.

11. In [Shantilal Thakordas v. Chimanlal Maganlal Telwala](#) 1976 (4) SCC 417, a larger Bench overruled the decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of *Shantilal Thakordas* (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In [Kamleshwar Prasad v. Pradumanju Agarwal](#) 1997(4) SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In [Gaya Prasad v. Pradeep Srivastava](#) 2001 (2) SCC 604 it was

(16)

held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in [G.C. Kapoor v. Nand Kumar Bhasin](#) 2002 (1) SCC 610. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

25. In view of above referred observations, respondents no.1 to 3 being legal heirs of the original plaintiff, whose *bona fide* requirement was also established while decreeing the suit for eviction, in my opinion, are required to be held to be entitled to possession of the premises in question, particularly when their *bona fide* requirement was very much considered by the Courts below.

26. In the backdrop of above, I hardly notice any material irregularity or infirmity in the findings recorded by the Courts below. No case for interference is made out. Civil Revision Application fails and stands dismissed.

(17)

27. In view thereof, pending Civil Application does not survive and stands disposed of accordingly.

(NITIN W. SAMBRE, J.)

amj