

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3347 OF 1995

Sadanand Krishnaji Kirloskar  
(since deceased through his  
legal representatives)

Nirmala Sadanand Kirloskar & Ors.

.. Petitioners

VS.

Talakchand Gangaram Doshi  
(since deceased)  
through his legal representatives  
Amrutlal Talakchand Doshi  
(since deceased)  
through his legal representatives

Rajesh A. Doshi & Ors.

.. Respondents

**WITH  
CIVIL APPLICATION NO. 3107 OF 2010**

Mr. V. S. Gokhale i/b. Mr. T. D. Deshmukh for Petitioners.  
Mr. Sachin Dhakephalkar for Respondents.

**CORAM : M. S. SONAK, J.**

Date of Reserving the Judgment : 06 September 2017

Date of Pronouncing the Judgment : 14 September 2017

**JUDGMENT :-**

1] The petitioners (landlords) challenge the judgment, decree and order dated 22<sup>nd</sup> March 1995 made by the III Additional District Judge, Solapur (Appeal Court) in Civil Appeal No. 247 of 1991 and seek restoration of judgment, decree and order dated 29<sup>th</sup> June 1991 made by the Civil Judge, Junior Division, Solapur (Trial Court) in Regular Civil Suit No. 1439 of 1986 ordering the eviction of the respondents (tenants) from the commercial premises admeasuring

1511 sq. ft., Pofferin Chowk, Solapur (suit premises) on the ground of reasonable and bona fide requirement of the landlords, subletting, non user and acquisition of alternate accommodation.

2] The landlords case as pleaded in the suit seeking eviction is that the suit premises were let out to late Mr. Vishwanath Kanhale to undertake the business of grocery shop under the name and style of 'Anand Stores' some time in the year 1932. The said Mr. Kanhale, sold the goodwill of the grocery business along with the stock-in-trade to M/s. Mohanlal Doshi, which was a partnership firm comprising Mohanlal Doshi and Talakchand Gangaram Doshi (original defendant no. 1 in the suit) as partners. Thereafter the firm was dissolved and Talakchand continued the business of grocery in the suit premises.

3] The landlord, Sadanand Krishnaji Kirloskar (Kirloskar) in the year 1955 completed course of licentiate relating to manufacture of textiles. Kirloskar served with Jain Mills at Solapur as Spinning Technician and Assistant Spinning Master. In 1977 or thereabouts, there was a family partition in which the suit premises along with some other properties came to be allotted to Kirloskar.

4] The landlord Kirloskar on 19<sup>th</sup> December 1986 instituted

Regular Civil Suit No. 1439 of 1986 seeking eviction of the tenants *inter alia* on the grounds that the suit premises were required reasonably and *bona fide* for the use of the landlord and his two sons who intended to start the business from the suit premises; non user of the suit premises by the tenants, unauthorised subletting, default in payment of rents and acquisition of alternate accommodation by the tenants. In the suit, application was taken out for appointment of Court Commissioner to inspect suit premises and submit the report. The application was allowed and the Court Commissioner submitted his report on 22<sup>nd</sup> December 1986.

5] The tenants contested the suit by filing a written statement. Evidence was led in the matter and eventually, the trial Court, by judgment and decree dated 29<sup>th</sup> June 1991 decreed the landlords suit and ordered the eviction of the tenants on the grounds of reasonable and *bona fide* requirement of the landlords, unauthorised subletting, non user and acquisition of alternate accommodation.

6] The tenants instituted Civil Appeal No. 247 of 1991 before the appeal Court, which has, vide impugned judgment, decree and order dated 22<sup>nd</sup> March 1995, allowed the appeal and set aside the judgment, decree and order dated 29<sup>th</sup> June 1991 made by the trial

Court. Aggrieved by the impugned judgment, decree and order dated 22<sup>nd</sup> March 1995, the landlords have instituted the present petition.

7] Mr. Gokhale, learned counsel for the petitioners submits that the appellate Court has misdirected itself in law and overlooked vital and relevant evidence on record. Mr. Gokhale submits that it is settled position in law that a tenant cannot direct the landlord the manner in which the landlord is required to undertake his business or to assess his own requirement. Mr. Gokhale submits that such an exercise is also not within the province of a court. Yet, the appeal Court, has virtually indulged in such an exercise, which is *ex facie* in excess of jurisdiction vested in the appeal Court. Mr. Gokhale has placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Meenal Eknath Kshirsagar (Mrs) vs. Traders & Agencies & Anr.***<sup>1</sup> and ***Dattatraya Laxman Kamble vs. Abdul Rasul Moulali Kotkunde & Anr.***<sup>2</sup> and decision of this Court in ***Chotumal Bhiramal Sindho (since deceased through LRs.) vs. Baburao Vinayak Mohadkar (since deceased through Lrs.)***<sup>3</sup>.

8] Mr. Gokhale submits that the appeal Court has grossly erred in reversing the trial Court's eviction order on the ground that the

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1 (1996) 5 SCC 344

2 (1999) 4 SCC 1

3 2009 (5) ALL MR 342

landlords did not allegedly establish that they had the qualifications or sufficient experience in undertaking the business which they propose to undertake through the suit premises. Mr. Gokhale submits that the appeal Court further erred and acted contrary to the settled position in law in reversing the trial Court's eviction order, on the ground that the landlords failed to examine the Managing Directors of the Companies who had issued letters of intent or offers of work to the landlords, in case, the landlords commence the proposed business through the suit premises. Mr. Gokhale submits that the appeal court has failed to consider or give due credence to the overwhelming evidence on record which establishes that not only Kirloskar was well qualified and experienced to undertake the business of dealing in spare parts relating to textile nature but further, even the landlords two sons Shailendra and Amarendra were equally competent to undertake such business and further, the two sons, were in dire need of the suit premises to undertake / expand their existing business of sale of biscuits, noodles, tea etc. Mr. Gokhale submits that the approach of the appeal Court is contrary to several decisions of the Hon'ble Supreme Court as well as this Court in the matters of assessment of reasonable and *bona fide* requirement.

9] Mr. Gokhale further submits that the appeal Court's

judgment, decree and order is riddled with errors apparent on face of record. The appeal Court has taken cognizance of sale of an open plot of land by the landlords to Kadam and Shah in the year 1980, when in fact, the need for *bona fide* and reasonable requirement was pleaded as having arisen in the year 1986 when the suit for eviction was instituted. Further, the appeal Court, has denied decree on grounds of *bona fide* and reasonable requirement of holding that the landlords extended the period of lease with the Indian Oil Company (IOC), where the Company, had set up a petrol pump on an open plot. Mr. Gokhale submits that the petrol pump premises were already in possession of the IOC and the same were by no means useful for undertaking the business proposed through the suit premises. Mr. Gokhale submits that in any case, the choice in this regard had to be left to the landlords. The extension of lease in favour of IOC, was not required to be construed as making a dent to either the reasonableness or the *bona fides* of the landlords requirement in respect of the suit premises.

10] Mr. Gokhale submits that the appeal Court has also grossly erred in referring to the sale of five shop premises to the existing tenants. Mr. Gokhale submits that in the first place the shop premises did not belong exclusively to the landlords but belonged to the landlord and his brother. Secondly, the shops were sold to the

existing tenants, since, the eviction of such tenants was not agreed to by the landlord's brother and in any case, the same, may or may not have been feasible. Besides, Mr. Gokhale emphasized that these are matters which are best left to the judgment of the landlord. Mr. Gokhale submits that such sales in fact demonstrate that the landlords were in dire need of the suit premises so as to commence their own business from secure and vantage premises. Mr. Gokhale points out that the suit premises are located on a corner plot most suitable to undertake the business which the landlords proposed to undertake through the suit premises.

11] Mr. Gokhale submits that the appeal Court has also misconstrued the scope of the expression '*comparative hardships*'. He submits that the mere circumstance that the tenant will have to face eviction cannot, by itself, be regarded as a hardship sufficient to deny the landlords decree of eviction on the ground of reasonable and *bona fide* requirement. Mr. Gokhale submits that there is ample evidence on record that in fact the suit premises were not even being used by the tenants and the sole objective of the tenants was to stay put in the suit premises so as to deprive the landlords user / possession of their own premises. Mr. Gokhale points out that the tenant Talakchand Gangaram Doshi did not even step into the witness box and therefore, the trial Court, had

rightly, drawn an adverse inference against the tenants. The appeal Court, in such circumstances, was entirely unjustified in reversing the trial Court's eviction order on the ground of reasonable and *bona fide* requirement.

12] Mr. Gokhale, in response to certain alleged subsequent developments attempted to be placed on record by the tenants vide Civil Application No. 3107 of 2010 submits that there is total breach of the procedural requirements in the matter of production of an additional evidence on record. He submits that on this ground itself, the Civil Application should be dismissed and the alleged subsequent developments ignored. In any case, he submits that the Civil Application hardly makes any reference to significant subsequent developments. He submits that most of the developments have been noticed by the trial Court as well as the appeal Court. The sale of open plot to IOC, is hardly a subsequent development which can have any effect on the reasonability and *bona fides* of the landlords requirement. Some of the subsequent developments like recovery of additional premises are irrelevant, in as much as the recovered premises are residential and not commercial as in the case of the suit premises. Mr. Gokhale points out that certain chawl premises referred to by the tenants have no nexus whatsoever with the landlord or his sons and therefore, the

reference to such premises is totally irrelevant for deciding the issue of reasonable and bona fide requirement. In any case, Mr. Gokhale submits that subsequent developments must be of such nature as eclipse the *bona fide* and reasonable need of the landlord. He submits that in the course of a litigation which runs over decades some events are bound to take place. But, he submits that it is not the law that cognizance is required to take of all such events so as to deprive the landlord, for no fault on his part of the fruits of the decree of eviction already made by the trial Court on legal and cogent grounds. Mr. Gokhale placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***Nidhi vs. Ram Kripal Sharma (Dead) through Legal Representatives***<sup>4</sup> and ***Gaya Prasad vs. Pradeep Srivastava***<sup>5</sup>.

13] Mr. Gokhale submits that in this case there is overwhelming evidence regards non user of the suit premises. In particular, Mr. Gokhale stresses upon the Court Commissioner's report and upon orders made by authorities concerned with professional tax and income tax. Mr. Gokhale submits that the appeal Court, has virtually ignored orders made by the tax authorities which record that the tenants have discontinued their business from the suit premises. He submits that the appeal Court has misconstrued the Court

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4 (2017) 5 SCC 640

5 (2001) 2 SCC 604

Commissioner's report as merely holding that there was some dust on the grocery items in the suit premises. The Court Commissioner's report very graphically describes the state of the suit premises and on the basis of the same the only inference possible was that the tenants had ceased to use the suit premises for their business purposes. Mr. Gokhale submits that the trial Court had rightly made an order for eviction on the grounds of non user and there was no justification for the appeal Court to reverse the eviction order. Mr. Gokhale submits that the findings recorded by the appeal Court on the ground of non user constitute a perversity and warrants interference under Article 227 of the Constitution of India.

14] Mr. Gokhale submits that the suit premises had in fact been let out to the tenant. However, one of the licenses in respect of the suit premises was found to be in the name of the original defendant no. 3 i.e. the daughter-in-law of the original tenant. Mr. Gokhale submits that this documentary evidence constitutes sufficient evidence of unauthorised subletting. Mr. Gokhale submits that the onus of establishing the precise status of original defendant no. 3 lay upon the tenants and such onus, has not been discharged by the tenants and therefore the trial Judge was justified in making decree of eviction on ground of unauthorised subletting as well.

15] Mr. Gokhale submits that this is a fit case where a decree must be made on the grounds of reasonable and bona fide requirement of the landlords, non user and unauthorised subletting. Mr. Gokhale does not press any other grounds of eviction. He relies upon certain decisions including, the decision in the case of **Savita Chemicals (P) Ltd. vs. Dyes & Chemical Workers' Union & Anr.**<sup>6</sup> and **Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram**<sup>7</sup> to submit that findings if vitiated by perversity can always be interfered with by the High Court in the exercise of its jurisdiction under Article 227 of the Constitution of India. He submits that in this case the findings recorded by the appeal Court are vitiated by perversity as well as misdirection of law. He submits that the impugned judgment and order dated 22<sup>nd</sup> March 1995 made by the appeal Court warrants interference and may be set aside.

16] Mr. Sachin Dhakephalkar, learned counsel for the tenants submits that findings of record recorded by the appeal Court are backed by the material on record. There is absolutely no perversity in the record of such findings of fact. He submits that this Court, in exercise of its jurisdiction under Article 227 of the Constitution may not re-assess or re-evaluate the material on record, since, this

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6 (1999) 2 SCC 143

7 (1986) 4 SCC 447

Court, does not, under Article 227 of the Constitution exercise appellate jurisdiction. He submits that the appeal Court, normally, is the final Court in so far as findings of fact are concerned. He submits that in this case there is overwhelming evidence which establishes that the need of the landlords was neither reasonable nor *bona fide*. He submits that there is ample material on record which demonstrates that the landlords have several residential as well as commercial premises. He submits that the landlords have, during the pendency of the proceedings for eviction , transferred several residential as well as commercial premises and in these circumstances it can never be said any ground for eviction as contemplated by the Rent Control legislation was made out. He submits that there is admission on the part of the landlords that apart from the suit premises, the tenants have no other premises from which to undertake their business. In these circumstances, he submits that the issue of comparative hardship was quite rightly decided in favour of the tenants by the appeal Court. There is neither any error of jurisdiction nor any perversity in this regard.

17] Mr. Dhakephalkar submits that the subsequent developments referred to in Civil Application No. 3107 of 2010, in any case, establish that the need of the landlords is neither surviving nor was the same ever reasonable or *bona fide*. He submits that during the

pendency of the proceedings, the landlords have acquired several other premises, which they have chosen to dispose of. He submits that all this militates against both the *bona fides* as well as the reasonability of the requirement portrayed by the landlords. He submits that cognizance is required to be taken of such subsequent developments and in this regard, he relied upon ***Om Prakash Gupta vs. Ranbir B. Goyal***<sup>8</sup>, ***Shrirang Dharamraj Kale & Anr. vs. Najmunissa A. Rahimbee Shaikh***<sup>9</sup> and ***Kiran K. Gujar & Ors. vs. Pradip B. Kasavkar & Ors.***<sup>10</sup>

18] Mr. Dhakephalkar submits that there is absolutely no case made out for eviction on the ground of any alleged non user. He submits that the appeal Court has very rightly analyzed the report of the Court Commissioner as well as the other evidence on record and concluded that there was no non user without any reasonable cause. He submits that for some brief period, the grocery business may have been discontinued on account of serious health issues concerning the family members of the landlords. He submits that this is reasonable cause. He submits that voluminous documentary evidence in the form of admissions of 156 documents has been produced on record, which clearly establishes user of the suit premises. These documents relate to supplies and sales of

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8 (2002) 2 SCC 256

9 2003 3 All MR 51

10 2002 6 Bom. C.R. 109

groceries. At least three suppliers have been examined and the appeal Court, has rightly, taken all this material into consideration to conclude that the case of non user portrayed by the landlords was false and frivolous. He submits that the trial Court, had erred grossly in ordering eviction of the landlords on the ground of any alleged non user of the suit premises and the appeal Court, quite rightly, has reversed the learned trial Court in this regard.

19] Mr. Dhakephalkar submits that merely because one of the several licensees was found to be in the name of original Defendant No. 3, who, admittedly, is the daughter-in-law of the original tenant, can never be a ground for eviction of a tenant on the ground of subletting. The finding recorded by the trial Court were patently perverse and the same were rightly set aside by the appeal Court.

20] For the aforesaid reasons, Mr. Dhakephalkar submits that the impugned judgment, decree and order dated 22<sup>nd</sup> March 1995 made by the appeal Court warrants no interference whatsoever and prays that this petition may be dismissed with costs.

21] The rival contentions now fall for determination.

22] As regards ground of subletting, there is absolutely no case

made out to interfere with the impugned judgment, decree and order. There is virtually no evidence on record to sustain the finding of any subletting, much less, unauthorised subletting. Only one of the licenses out of several licenses in relation with the grocery business undertaken by the tenants in the suit premises was in the name of the original defendant No. 3, who, is admittedly the daughter-in-law of the original tenant. As against this, there is voluminous evidence on record which indicates that it is the tenant who was undertaking the grocery business from the suit premises. In such circumstances, the appeal Court, was entirely justified in interfering with the trial Court's order on the aspect of unauthorised subletting. There is absolutely no perversity in either the approach or in the record of findings of the appellate Court on the aspect of unauthorised subletting. Accordingly, Mr. Gokhale's contention on the aspect of unauthorised subletting is required to be and is hereby rejected.

23] Similarly, on the aspect of non user of the suit premises, again, it cannot be said that the findings recorded by the appeal Court are vitiated by any misdirection in law or perversity. The appeal Court, has taken cognizance of the orders made by the taxing Authorities. But at the same time, the appeal Court, has also taken cognizance all other documentary evidence like telephone

bills, electricity bills and most importantly almost 156 documents which relate to the actual conduct of the grocery business from the suit business. Initially, no leave was granted to produce these 156 documents. However, later on, such leave was granted and such documents were admitted in evidence. In support of such documents, even the three suppliers, namely, Prabhu Sopan, Shrikant Shamrao and Subhash Baburao came to be examined. All these witnesses deposed to the veracity of the documents and the transactions which said documents evidence. There is accordingly substantial evidence on record in the form of supply bills, sales bills, account books, telephone bills, electricity bills etc. in support of the appeal Court's reasoning that no case of non user of the suit premises without any reasonable cause or even otherwise was made out by the landlords. It is not for this Court to re-evaluate or re-assess the material on record, as if, it was exercising any appellate jurisdiction. In such circumstances, it is not possible to agree with the contentions of Mr. Gokhale that the impugned judgment, decree and order dated 22<sup>nd</sup> March 1995 made by the appeal Court warrants interference on the aspect of denial of eviction on the ground of non user of the suit premises by the tenants.

24] On the aspect of denial of eviction on the ground of

reasonable and *bona fide* requirements of the landlords however, there is much substance in the contention of Mr. Gokhale that the appeal Court has misdirected itself in law, ignored vital and relevant evidence on record and displayed perversity of approach.

25] In this case, the landlord, has made detailed pleadings in respect of reasonable and *bona fide* requirement. The landlord has pleaded that he along with his two sons, intends to undertake the commercial venture of dealing in sale of spare parts, accessories etc. needed for textile machinery. The landlord has pleaded that he has qualifications of licentiate in this line and further, he has experience on account of his service in textile mills. He has pleaded to various position he has held in the course of his service in the textile mills. The landlord has further pleaded that his son has taken agency of biscuits, soaps and cosmetics and has every intention of expanding this business activity. He has pleaded that on account of constraints of space, this is not possible. The landlord has pleaded that one of his sons has qualification of M.B.A. and the landlord and his son accordingly have the means and the necessary experience and capacity for undertaking the business proposed.

26] The evidence on record which has been marshalled by learned Trial Judge at paragraphs 22 to 24 of the judgment, decree

and order dated 29<sup>th</sup> June 1991 substantially supports the pleadings seeking eviction on the ground of reasonable and *bona fide* requirement. The original landlord has deposed to the size of his family. He has deposed to the qualifications and experience which he possessed. He has deposed to the qualifications and the experience of his two sons. He has deposed to the fact that his eldest son is an agent of Bakeman's Biscuits etc. He has deposed to the status of premises through which the son undertakes his business. He has deposed to the offers, which his son is receiving for expansion of business. He has deposed that expansion of business is not feasible on account of space constraints. He has deposed that the premises at Sahyadri Shopping Center through which the son undertakes his business is on inner side and there is no scope for expansion. He has deposed that his second son is also interested in joining the proposed business venture. He has deposed that he along with his two sons proposes to start of business of sale of spare parts, accessories and allied equipments required for textile machineries. He has deposed that the second son is already working as an Agent / Liaison Officer of Maratha Engineering Industry and Hindustan Textile Industries. He has produced certain documents which indicate the appointment. He has also produced certain documents, which are in the nature of Letters of Intent (LOI).

27] The landlord's son Shailesh Kirloskar has also been examined as PW-2. He has deposed that he has completed MBA qualification and his business activity from the premises at Sahyadri Shopping Center. He has deposed that he has received a notice from the Corporation requiring him to vacate the premises at Sahyadri Shopping Center.

28] In the cross-examination, the evidence of landlord (PW-1) and his son (PW-2) has really not been dented. Except for suggestions/denials, the tenants, have not succeeded in demolishing the deposition of PW-1 and PW-2. Learned Trial Judge has in fact accepted the evidence of the landlord. As will be noticed later, the Appeal Court for reasons which are neither germane nor relevant has chosen to discard such evidence and even overlooked such evidence in support of the ground of reasonable and *bona fide* requirement.

29] The tenants, examined one Gopal Zanvar as DW-2, who has deposed that he has own agency of Kasturi Tea and his cousin has agency of Bakeman's Biscuits. However, DW-2, however, in his cross-examination conceded that he has no personal knowledge about the agency of Bakeman's Biscuits and therefore, he is not in a

position to depose to any details in that regard. DW-2 was possibly examined to establish that the landlord's son (PW-2) had no agency of Kasturi Tea or Bakeman's Biscuits. In this, DW-2 has failed.

30] The Appeal Court, has reversed the Trial Court on the issue of reasonable and *bona fide* requirement, primarily on the following grounds:

a] That the landlords have not examined the Managing Director or any Officers of the industries like Maratha Engineering Industry, Hindustan Textile Industries and Visdhut Meters Pvt.Ltd. Etc., who had issued documents in the nature of LOI or assurances of work orders in case the landlords undertake business of dealing with spare parts of the machinery and allied equipments relating to textile industries (Exhibit.41, 42 and 43);

b] That the landlords have sold five shops premises at ground floor of CTS No.14/1 to 14/6 to Dilip Y. Pethe and others for Rs1,30,000/-. The Appeal Court reasons that if the need of the landlord was genuine, then the landlord and his two sons could have started business from these premises rather than sell these premises to Dilip Pethe and others;

c] That the landlords have extended the lease of the open plot, which they own, to the Indian Oil Company for the period of 20 years after the lease expired in the year 1968. The Appeal Court has reasoned that if the requirement of the landlords was *bona fide*, then, the landlords would not have extended these lease, but started the proposed business in the open plot or by putting up of a construction in the open plot. The Appeal Court has relied upon the decision of this Court in ***Smt Sabu Tai Tanna Vs. Kisen M. Borade – 1976 Bombay Rent Cases page 97***, where reasonable and *bona fide* requirements ground was rejected on the finding that the plaintiff had give on lease as room held by him, hardly a year before the institution of eviction proceedings; and

d] That the landlords have sold another open plot to one Mrs. Kadam, Advocate and Dilip Shah in the year 1980, which plot was adjacent to the suit premises.

31] On the aspect of comparative hardships, the Appeal Court has held that the landlord and his two sons have other properties. The Appeal Court has held that the landlord in his deposition has admitted to having commenced construction in property bearing

CTS No.8306/3 and 8306/4. The Appeal Court has reasoned that the landlord and his sons can always start their business activity from the said construction. The Appeal Court has faulted the Trial Court for drawing an adverse inference against the tenants for not stepping into the witness box. The Appeal Court has reasoned that even though the tenant may not have stepped into the witness box, his son has stepped into the witness box and that was sufficient. The Appeal Court has reasoned that there is some open space available in property bearing CTS No. 8306/3, 8306/4 and 8306/5 and the landlord and his sons can always make use of the said place for commencing their business instead of seeking recovery of possession of the suit premises. The Appeal Court has also held that apart from the suit premises the tenants have no other premises from which to undertake business. The Appeal Court has reasoned that Garud Bunglow which the tenants own is used for the residential purpose. The Appeal Court has reasoned that the landlord has not taken action against some other tenants like Puneekar – Kamathe, Sugar Juice Center, and Kona Stores and Vijay Medical Stores and such failure to take action against other tenants is relevant for determining the issue of comparative hardships.

32] Most of the reasons stated by the Appeal Court in the

impugned judgment, decree and order dated 22<sup>nd</sup> March 1995 are not valid or relevant reasons to deny the landlord a decree of eviction on the ground of reasonable and *bona fide* requirements. The reasons are in fact contrary to several decisions of the Hon'ble Supreme Court as well as this Court in the matter of evaluation of *bona fide* requirement and reasonable requirement.

33] The evidence on behalf of the landlords was not at all shaken in the course of cross-examination. On the aspect of LOI and proposed work orders in the form of Exhibit-41 to Exhibit-43 from various industries concerned in the textile business, the Appeal Court, was not at all justified in rejecting this evidence on the ground that the landlords failed to examine the Managing Directors or the Officers of the Companies, who had issued such LOI/proposed work order.

34] As regards the sale of five shops in CTS Nos.14/1 to 14/6, the Appeal Court has completely glossed over the evidence which indicates that the said five shops were not owned by the landlord exclusively but were owned by landlord and his brother. Further, there is evidence which establishes that the five shops were also tenanted and were ultimately sold to the tenants. In these circumstances, sale of five shops which were co-owned by the

landlords to the tenants who were occupying the said five shops is hardly a circumstance, which makes any dent to the reasonable and *bona fide* requirement pleaded and substantially established by the landlords. On the basis of such kind of a sale, the Appeal Court, was entirely unjustified in deciding the issue of comparative hardships against the landlords.

35] The extension of lease of the open plot in favour of the Indian Oil Company is also not relevant for determining the reasonable and *bona fide* requirement of the landlord. Admittedly, the suit premises is a constructed structure ready for use as commercial premises. In contrast, the lease which was extended in favour of Indian Oil Company was in respect of open plot, on which, the Indian Oil Company has put up a petrol pump. There can be no comparison between the open plot and the suit premises. Besides, the Appeal court, is not right in its observation that the landlords could have carried out their business by putting up some constructions on this open plot. The landlords, would, have to seek the eviction of IOC, which might not have been easy task in itself. If in such circumstances, the landlords chose to extend the lease of the plot or as has been stated by the tenants in Civil Application No. 3107 of 2010, the landlords ultimately sold the said plot to IOC, that by itself, does not make any dent to the reasonableness or the

*bona fides* of the requirement of the suit premises by the landlord. The Appeal Court has completely misdirected itself in both law and fact by taking into consideration this circumstance.

36] The decision in *Smt. Sabu Tai Tanna (supra)*, is completely distinguishable and was not at all applicable to the fact situation of the present case. Further, the sale of the open plot to Mrs. Kadam Advocate and Mr. Dilip Shah was in the year 1980 whereas, the suit for eviction on the grounds of reasonable and *bona fide* requirement was instituted in the year 1986. Again, what was sold to Mrs. Kadam and Dilip Shah was a open plot, which, is not comparable to the suit premises in respect of which eviction has been applied for.

37] The Appeal Court, has completely misdirected itself in law in returning findings on the aspect of comparative hardships. For reasons, which are neither germane nor relevant, the Appeal Court, has reversed the cogent findings recorded by the Trial Court on the aspect of reasonable and *bona fide* requirements and comparative hardships. The Appeal Court, in this case, has virtually advised the landlords what according to it, is the best manner for undertaking their proposed business. In *Meenal Kshirsagar (supra)*, the Supreme Court in no uncertain terms, has held that the landlord is the best judge of his requirement. If the landlord desires to

beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient, it is not for the Courts to dictate to him to continue to occupy such premises. It is for the landlord to decide how and in what manner he should live and he is the best judge of his requirement.

38] In ***Raj Kumar Khaitan and ors. vs. Bibi Zubaida Khatun and anr.***<sup>11</sup>, the Supreme Court ruled that the pleadings in a suit seeking eviction on the grounds of reasonable and *bona fide* requirement have to be construed liberally. In such a suit, it is not even necessary for the landlords to indicate the precise nature of the business which they intended to start in the premises. Further, even if the nature of business is indicated, nobody can bind the landlords to start the same business in the premises after it is vacated.

39] In *Dattatraya L. Kamble (supra)*, the Supreme Court has held that the expression “*reasonably and bona fide requirement by the landlord*” indicates that the requirements must be really genuine from any reasonable standards. However, the genuineness of the requirement is not to be tested on a par with the dire need of a landlord because the latter is a much greater need. The Hon'ble

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11 (1997) 11 SCC 411

Supreme Court set aside the decision of the High Court for having interfered with a finding of fact recorded by the Trial Court on the aspect of reasonable and *bona fide* requirement on the ground that the landlord had not placed material on record to show that he had the “*know how*” necessary for starting business in electrical goods. The Supreme Court observed that the contention that a person having no practical experience in a particular field, though academically qualified, expressing a wish to start a business in such a field reflects a lack of his *bona fides*, is fallacious and unpragmatic. The Hon'ble Supreme Court has gone to extent of observing that though there is no dispute that the landlord has to prove that he needs the building for his own occupation but there is no warrant for presuming that his need is not *bon fide*. The statute enjoins that the court should be satisfied about the requirement. In appropriate cases it is even open to the Court to presume that the landlord's requirement is *bona fide* and to place the burden of disproving the presumption on the tenant. The Hon'ble Supreme Court has ultimately held that the Courts ought not to take uncharitable view of the landlord when it comes to determining the reasonable and *bona fide* requirement.

40] In ***Ragavendra Kumar vs. Firm Prem Machinery and Co.***<sup>12</sup>, the Supreme Court reiterated that the landlord is the best judge of

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12 (2000) 1 SCC 679

his own requirement for residential or business purposes and has complete freedom in the matter. In this case, the landlord had admitted that he owns several other shops and houses, but had stated that they were not vacant and also that the suit premises were suitable for proposed business. In such circumstances, the Supreme Court allowed the landlord's eviction petition on the grounds of reasonable and *bona fide* requirement.

41] The reasoning of the Appeal Court is contrary to the settled position of law as enunciated by the Supreme Court in the aforesaid decisions. The Appeal Court has clearly misdirected itself in law in ignoring the relevant and vital material on record and further, failing to advert to settled position in law in the matters of evaluation of reasonable and *bona fide* requirement.

42] In Civil Application No.3107 of 2010, the tenant, has purported to place reliance upon certain alleged subsequent developments. In support of propositions that such subsequent developments have to be considered, Mr. Dhakephalkar has placed reliance upon the decisions of this Court in *Kiran Gujar (supra)* and *Shrirang Kale (supra)*.

43] In *Kiran Gujar (supra)*, this Court, in the peculiar facts and

circumstances of the said case, merely remanded the matter to the Appellate Court for reconsideration. The direction was also issued to consider the application for adducing additional evidence in accordance with law and on its own merits. This decision can hardly be of any assistance to the tenant in the fact situation of the present case. *Shrirang Kale (supra)*, in fact lays down that in absence of prayer for amendment of the pleadings and without such amendment subsequent events cannot even be considered.

44] In this case, except for filing Civil Application No. 3107 of 2010 and setting out therein certain alleged subsequent developments, the tenants have not even applied for any amendment to the pleadings. Even in *Om Prakash Gupta (supra)*, upon which reliance has been placed by Mr. Dhakephalkar, the Supreme Court has categorically held that the person wishing Court to take notice of subsequent events, must make out a case justifying such notice being taken. Further, the Supreme Court has held that subsequent events can be taken cognizance of only if the Court's attention is invited towards them according to established rules of procedure so that the prerequisites of affording the opposite party an opportunity of meeting the new case and of determining the real questions in controversy are fulfilled. Where, the appellant-defendant before the Supreme Court only filed an

affidavit stating certain facts and did not seek to amend the the pleadings, nor made a prayer regarding cognizance of subsequent events, nor prayed for appropriate relief, the Court would not be justified in taking into consideration the facts concerned.

45] Apart from the procedural obstacles, if Civil Application No. 3107 of 2010 is perused, then, it can hardly be said that developments referred to therein are really in the nature of subsequent developments, which are relevant for deciding the issue of reasonable and *bona fide* requirement or the issue of comparative hardship. The tenant has made reference to the age of landlord Kirloskar and the fact that he is bed ridden for 4 to 5 years and he is suffering from Kidney or other ailments. On this basis, Mr.Dhakephalkar urged that it is impossible for the landlord to undertake the proposed business in this state of his health. The submission deserves rejection. On account of litigative process, such subsequent developments are inevitable. In this case, the requirement pleaded was not merely of the landlord himself, but also of his two sons.

46] In the civil application, there is reference to recovery of some other tenanted premises from one Mr. Joshi in Kirloskar Chawl. It is stated that the sons of the landlord are now doing the business of

supply of machinery parts to textile industries and distribution of wholesale Tea from this new premises for the last 13 to 14 years. Again, this can hardly be said to be some subsequent developments which will impact the decree granted by the Trial Court. In any case, by way of reply, the landlords have pleaded that House No.40 in Kirloskar Chawl is the residential house of the landlords and on account of non-availability of the suit premises, the landlord and his son are forced to inconveniently carry on the business from the residential house. This means that this so called development strengthens the case of the landlord rather than weakens their case.

47] The civil application also makes reference to certain residential premises, the possession of which, the landlords have recovered in the meanwhile. Again, this is clearly irrelevant because the suit premises are being used for commercial purposes and the landlords have made out a case that they require the suit premises for commercial purposes.

48] The civil application, once again makes reference to sale of open plot to Indian Oil Company. For reasons, indicated earlier, this is an irrelevant circumstance insofar as the issue of reasonable and *bona fide* requirement of the suit premises is concerned. There is,

accordingly, no case made out to upset the decree made by the Trial Court on the grounds of so called subsequent developments referred to in Civil Application No. 3107 of 2010.

49] In *Gaya Prasad (supra)*, the Supreme Court has held that subsequent developments during pendency of eviction petition occurring because of slowness of process of litigation itself cannot be made use by the tenants for denying landlord reliefs, when the litigation at last reaches the final stages. Further, the Supreme Court has held that subsequent events should be of such nature and dimension as to completely eclipse such need and make it loose significance altogether. The developments in lives of landlord and his family, cannot be expected to come to a standstill during pendency of eviction petition, especially in view of tardiness and delays plaguing the legal system. *Bona fides* of the requirement have to be tested in relation to the date on which the eviction was applied for. Where premises were required for starting a son's business, the fact that during the years that the matter is pending, the son gets a job or moves out of town, cannot be used against the landlord. For these reasons also, there is no question of depriving the landlords reliefs on the grounds of the alleged subsequent developments referred to in Civil Application No. 3107 of 2010.

50] Upon cumulative consideration of the material on record as well as the legal position enunciated by the Supreme Court and this Court, the impugned judgment, decree and order dated 22<sup>nd</sup> March 1995 made by the Appeal court denying relief of eviction of the tenant on the ground of reasonable and *bona fide* requirement warrants interference. Accordingly, the impugned judgment, decree and order dated 22<sup>nd</sup> March 1995 made by the Appeal Court to the extent, it reverses the judgment, decree and order dated 29<sup>th</sup> June 1991 made by the Trial Court on ground of reasonable and *bona fide* requirement, is hereby set aside. This means that the judgment, decree and order dated 29<sup>th</sup> June 1991 made by the Trial Court ordering eviction of the tenants on the ground of reasonable and *bona fide* requirement of the landlords is hereby restored.

51] The respondents-tenants are directed to hand over the vacant and peaceful possession of the suit premises to the landlords within a period of three months from today. This time is granted subject to the tenants filing usual undertaking before the Trial Court within a period of four weeks from today after furnish of advance copy to the landlords or their advocates.

52] Rule is made absolute in the aforesaid terms. There shall

however, be no order as to costs.

53] Civil Application No. 3107 of 2010 is disposed of in the aforesaid terms.

**(M. S. SONAK, J.)**

Chandka/Sherla