

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5865 OF 1998

Messrs. Indian Scientific Glass Industries)
a firm carrying on business and having its)
office at 32, Apollo Street, Mumbai 400 001)...Petitioners
(Org.Defendants)

Versus

M.K. Mahipalsingh)
Indian Inhabitant having his address)
C/o Cricket Club of India, Churchgate,)
Mumbai and also Dungarah, Rajasthan.)...Respondent
(Org.Plaintiff)

*Mr.Vineet Naik, Senior Advocate, with Mr.Sumanth Aanchan,
Mr.Ravi Suryawanshi and Ms.Mansi Nair for the Petitioners.*

*Mr.Satyan N. Vaishnav with Ms.Nupur J. Mukherjee and
Mr.Kirtika S. Kothari i/b. Mr.Karim Vakil for the Respondent.*

CORAM : G.S.Kulkarni, J.

Reserved on : 3rd August,2017

Pronounced on : 22nd January, 2018

JUDGMENT:

1. This is a classic case where the petitioner, who is not an ordinary but an affluent tenant engaged in several businesses, has kept away the respondent now 87 years of age, from his only residential premises situated at Mumbai since last more than 40

years. The eviction suit of the respondent/landlord against the petitioner/tenant is of the year 1978, instituted on the ground of bonafide requirement of the respondent. The respondent succeeded before the trial Court as also the appellate Court in proving his bonafide requirement of the suit premises, however, is unfortunately required to wait for all these years to receive the fruits of the decree.

2. The petitioner is a registered partnership firm occupying residential premises at Malbar Hill, Mumbai as a tenant of the respondent-landlord. The respondent had instituted an eviction Suit No.962/3355 of 1978 before the Small Causes Court at Bombay against the petitioner on the ground of bonafide requirement. The suit was partly decreed by the learned trial Judge thereby dividing the suit premises between the respondent-landlord and the petitioner-tenant. Both the parties had assailed the judgment of the trial Judge by approaching the appellate bench of the Small Causes Court. The appellate bench by its judgment and order dated 7 August 1998 confirmed the findings of the learned trial Judge on bonafide requirement and has fully decreed the respondent's eviction suit and dismissed the petitioner's appeal. The petitioner/tenant being aggrieved by the eviction decree and the concurrent findings of both the Courts below has preferred this petition.

3. In brief the facts are:

The respondent/landlord is the owner of Flat No.12 on the 3rd floor of the building named 'Park View' situated at Little Gibbs Road, Malbar Hill, Mumbai (for short 'suit premises') and a garage on the ground floor. The case of the respondent as set out in the plaint is that the respondent had agreed to grant to the petitioner/tenant, which is a partnership firm carrying on its business/office at 32, Apollo Street, Mumbai – 400 001, the suit premises on leave and licence from 1st December 1970, for which the petitioner had agreed to pay to the respondent, compensation at the rate of Rs.1950/- per month. The suit premises were fully furnished with costly furniture, fixtures, air conditioners and other articles. The terms and conditions of licence were reduced in writing and signed by the parties on 1st December 1970 on which date the petitioner was put in possession. The period of licence under the leave and licence agreement expired by efflux of time on 1st August 1974. There was a renewal option, however, there was no renewal of the licence. The Petitioner asserted to be a tenant of the respondent and not a licensee. Although the respondent in paragraph 4 of the plaint disputed the tenancy, however subsequently accepted that the petitioner was in

occupation of the suit premises as on 1st February 1973 and by virtue of the incorporation of section 15-A by an amendment to the Bombay Rents Hotel And Lodging House Rates Control Act, 1947 (for short, “the Bombay Rent Act”), the petitioner was at the most a statutory tenant. Apart from the leave and licence agreement, there was no other tenancy agreement between the respondent/landlord and the petitioner.

4. The respondent by his Advocate's notice dated 29 January 1974 terminated the tenancy of the petitioner and called upon the petitioner to vacate the suit premises, as also to pay arrears of compensation from 1st June 1973 at the rate of Rs.1950/- per month. This notice though was duly served on the petitioner, was not replied. The respondent therefore instituted the suit in question (RAE Suit No.962/3355 of 1978) seeking a decree of eviction and possession against the petitioner on the ground of bonafide requirement as section 13 (1) (g) of the Bombay Rents,Hotel and Lodging House Rates Control, Act 1947 (for short the Rent Act) would provide. Section 13 (1)(g) reads thus :

13 (1) Notwithstanding anything contained in this Act (but subject to the (the provisions of sections 15 and 15A) a landlord shall be entitled to recover possession of any premises if the Court is satisfied---

a.....

b.....

c.....

d.....

e.....

f.....

g. that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held (or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust ; or)

5. The case of the respondent as made out in the plaint was that the respondent required the suit premises reasonably and bonafide for his own use and occupation as also of his family members, and that no hardship would be caused to the petitioner if a decree for possession is passed in favour of the respondent as also the respondent would suffer greater hardship if a decree for possession was refused. By an amendment to the plaint, paragraph 6 (a) came to be incorporated by which the respondent contended that the respondent was residing at Dungarpur in Rajasthan, and had no premises in Bombay where he can live with his family. It was stated that his family consisted of himself, his wife and son Harshavardhan. It was stated that the respondent was helping his father in managing his property. It was stated that the respondent required the suit premises *interalia* on four grounds; **firstly**, the respondent wanted to come and settle down at Bombay permanently with his wife and son; **secondly**, his son and himself were offered a job in Mumbai; **thirdly**

his son Harshvardhan was of marriageable age and the respondent wanted him to settle down in Mumbai, as also the son wanted to settle down in Mumbai permanently; **fourthly**, the respondent as well as his wife are required to be medically treated at Mumbai and his son Harshvardhan was suffering from chronic dysentery and as such, home cooked food was a necessity for him. It is on these grounds the respondent made prayers that the suit be decreed and the petitioner be directed to forthwith vacate and hand over vacant and peaceful possession of the suit premises to the respondent and further the petitioner be ordered and decreed to pay to the plaintiff mean profits, at such rate as the Court may fix from the date of filing of the suit till possession of the suit premises is handed over by the petitioner to the respondent.

6. The petitioner/tenant resisted the suit by filing a written statement and by an additional written statement to the amended plaint. The petitioner did not dispute the execution of the leave and licence agreement dated 5 December 1970. The petitioner contended that the petitioner was the tenant of the suit premises and was fully protected under the Bombay Rent Act. In reply to paragraph 6 of the plaint, the petitioner disputed the respondent's case, of the respondent requiring the suit premises reasonably and bonafide. As

can be seen from the written statement, the petitioner has proceeded on mere denial. The petitioner pleaded greater hardship if called upon to vacate. In the additional written statement, the petitioner merely denied that the respondent had no premises in Bombay where he could reside with his family, however with no particulars of the respondent's alternative premises if there were to be any. It was stated that the respondent was residing comfortably at Dungarpur for managing his father's property at Dungarpur and the respondent did not intend to come back to Bombay. It was contended that the suit was filed with ulterior motives. The petitioner contended that the petitioner was not aware about the number of family members of the respondent. The petitioner denied the respondent's case that the respondent wanted to settle down in Bombay with his wife and son, as averred by the respondent in the plaint. It was also denied that the respondent and his son were offered jobs in Bombay and that the respondent wanted his son to settle down in Bombay permanently. It was also denied that respondent and his wife are required to be medically treated at Bombay as asserted by the respondent. The petitioner contended that the respondent and his wife can live a healthier life at Dungarpur. The petitioner also denied the ailment suffered by the respondents' son Harshvardhan. It was further contended that even the petitioner's son Harshvardhan was living a

healthier life at Dungarpur.

7. The learned trial Judge considering the rival pleas of the parties, framed the following four issues:-

“ 1. Does plaintiff prove that he required the suit premises reasonably and bonafide for his own use and occupation, as alleged in the plaint ?

2. Whether a greater hardship would be caused to the defendants by passing a decree in respect of the premises decreed than one to the plaintiff in the event of its refusal ?

3. Is plaintiff entitled to possession sought

4. What order, What decree”

8. Issue nos.1 to 3 were answered in favour of the respondent-plaintiff. The learned trial Judge in his judgment and order dated 9th January 1986 held that the respondent proved that he required the suit premises reasonably and bonafide for his own use and occupation. The learned trial Judge, however, and surprisingly, partly decreed the suit, by dividing the suit premises by demarcating specific rooms in the suit premises between the respondent and the petitioner, to which the decree of possession would be confined. As regards the issue of hardship, the learned trial Judge held that the greater hardship would be caused to the respondent/plaintiff. The learned trial Judge partly decreed the suit in the following terms:-

“The plaintiff do recover from the defendants vacant and peaceful possession of the portion of the suit premises as

marked A-B-C-D-F-H-I-J-K-L-M & A being the northern part of the suit flat consisting of room Nos.1, 3, 4 and the balcony marked 2 in the plan by me to-day after three months on the following conditions that (a) that the plaintiff at his own cost divide the portion of the hall and kitchen namely Nos.1 & 4 in the plan alongwith the line A-B & C indicated in the plan so as to provide 4' passage by either providing entrance or demolishing the portion of the hall B G at point X as indicated by me in the plan Ex.9 to-day.

(b) that the plaintiff shall at his own cost provide two entrances to the two portions at the points E1 and E2 marked by me to-day in the plan Ex.9

(c) that the plaintiff shall block the portion and the passage alongwith the line marked in red as Y, Y1 and Y2 in the plan Ex.9

(d) that the entrance at the point 'entry' in the plan and 4' portion carved out by reducing the drawing-cum-dining and kitchen would be used as the common entrance and the common passage by both plaintiff and the defendants.

The said work shall be carried out after the expiry of the period of three months from the date of this Judgment and be completed before the expiry of six months of this Judgment, whereupon the above said decree would become executable.

The defendants and the members of their partners' family are directed to co-operate the plaintiff in carrying out the said work, as indicated in the order, as stated above.

Liberty to the plaintiff to put additional entrance and kitchen facility in the southern portion of the flat to facilitate the user of the said flat and to the defendants to put kitchen platform and a sink in the portion marked 5 admeasuring 6'.5" x 18'.4".

The suit in respect of the part of the suit flat marked as J-I-H-D-O-Q-R-S-T i.e. to say room No.6, 7, and 8 in the plan Ex.9 the passage abutting the said rooms and the common passage incidentally proposed to be created as indicated above by putting the partition wall alongwith the line A-B- & C as mentioned in the directions (a) is dismissed. Suit in respect of one of the two garages let out to the defendants is also dismissed.

In view of the peculiar circumstances of the case, the parties to bear their respective costs."

9. Both the parties being aggrieved by the judgment and decree of the learned trial Judge dated 9 January 1986, preferred

their respective appeals bearing Appeal Nos.383/1986 (respondent's appeal) and Appeal No.309/1986 (petitioner's appeal), before the appellate bench of the Small Causes Court (for short, "appellate Court"). The petitioner was aggrieved by the trial Court not dismissing the suit whereas the respondent was also aggrieved to the extent that the suit ought to have been fully decreed.

10. The appellate Court by the impugned judgment and order dated 7 August 1998, allowed the respondent's appeal and dismissed the petitioner's appeal. The appellate Court held that considering the evidence on record the respondent's intention to settle down in Bombay was genuine and bonafide. It was further held that the learned trial Judge had appropriately held that all the essentials for an eviction decree to be passed by the Court under Section 13(1) (g) of the Bombay Rent Act for the respondent to recover possession on the ground of a reasonable and bonafide requirement, stood established on evidence. Also on the issue of hardship, it was held that there was no hardship to the petitioner partnership firm, and greater hardship would be caused to the respondent. The appeal was allowed in the following terms:-

"Appeal No.309 o 1986 is dismissed.

Appeal No.383 o 1986 is allowed.

The suit is decreed in respect of entire suit premises.

The time is granted to the defts till 31-10-1998 till this concession the defts are directed not to create any third party interest in whatsoever manner. Notices stand disposed of accordingly. Parties to bear their own costs at both Stages.”

11. Initially when this petition was taken up for admission on 28 January 1999, an adjournment was sought by the parties on the ground that the parties were exploring a possibility of settlement and if some reasonable time is granted, there is likelihood of the matter being settled, as recorded in the order dated 28 January 1999. However, it is seen from the record that thereafter the petition was heard for admission on 14 July 1999 whereby the petition came to be admitted and *interalia* stay to the execution of the decree in terms of prayer clause (b) on usual terms came to be granted.

Submissions on behalf of the petitioner-tenant

12. The learned Senior Counsel for the petitioner in assailing the impugned judgments has made the following submissions:-

- (i) The respondent/landlord had failed to establish his bonafide requirement. It is submitted that the case of bonafide need and requirement as pleaded by the respondent did not inspire confidence. The “social standing” and “status” of the landlord must have a material bearing in considering the grant of a decree, as it is the petitioner's contention that it was inconceivable that the respondent's son would come to Bombay

on an assurance of a job of a commission agent in his brother's company. It is further inconceivable that his son would also come to Bombay on an assurance of a job at a salary of Rs.1200/- per month offered at the relevant time. The respondent is the owner of large estates at Dungarpur. Even at the stage of recording of evidence, looking at the age of the respondent, the theory of shifting to Bombay did not inspire confidence. All these facts would not inspire confidence to warrant an eviction decree against the petitioner. The bonafide requirement of the suit premises has also not been substantially established. In supporting this submission, reliance is placed on the decision of the Supreme Court in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*¹; *Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon*²; *Deena Nath Vs. Pooran Lal*³.

(ii) It is submitted that the bonafide requirement of the respondent/landlord stands eclipsed by the subsequent events as established before the learned trial Judge. It is submitted that normally, the right to relief must be judged to exist as on the date of institution of suit, however, in case of a bonafide requirement, such requirement shall continue to subsist till the passing of a decree and therefore, a cautious cognizance of such subsequent events having a material bearing was required to be taken, in passing the decree and even before this court, such consideration is relevant. It is submitted that by an additional affidavit, the petitioner has brought on record

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(1999) 6 Supreme Court Cases 222

2 (1998) 4 Supreme Court Cases 49

3 (2001) 5 Supreme Court Cases 705

subsequent events which according to the petitioner would eclipse the *substrato* of the respondent's case. It is submitted that the respondent/ landlord himself is at an advanced age of about 87 years and his wife at an advanced age of 85 years and therefore, it cannot be said with certainty that after living their entire lives in Dungarpur in palatial surroundings, they would now chose to live in a flat in Mumbai of 1800 sq. ft. and that the landlord himself, notwithstanding his social status, would do a job in Mumbai. As regards the medical condition namely diabetes (suffered by the respondent/landlord) and psychic condition (landlord's wife), these diseases are treatable at Dungarpur. It is submitted that regard must be had to the fact that, admittedly from 1970 till today, which is now about 47 years, the respondent along with his family members was living in Dungarpur without any difficulty of medical treatment. The other case of the son being of a marriageable age and getting a job of Rs.1200/- as a Management Trainee would loose its efficacy as today the son is not only married, but divorced and again remarried in the year 2001 who himself is a senior citizen today at the age of 64 years. Therefore, it cannot be said with certainty that the son who is now managing the properties and the hotels of the respondent at Dungarpur, to which he is naturally going to succeed would shift to Bombay for some job. Thus, the subsequent events are important which are required to be taken into consideration. In supporting these submissions that subsequent events are required to be taken into consideration, the learned Counsel for the petitioner has placed reliance on the decision in *Pasupuleti*

*Venkateswarlu vs. The Motor & General Traders*⁴; *Om Prakash Gupta vs. Ranbir B. Goyal*⁵ and *Sheshambal (Dead) Through Lrs. Vs. Chelur Corporation Chelur Building and Others*⁶. Further in supporting the contention that the bonafide requirement must subsist till the final decree and that an appeal being a continuation of the suit, the bonafide requirement shall continue to subsist, reliance is placed in *Hasmat Rai and Another vs. Raghunath Prasad*⁷. The learned Senior Counsel further relied on the decision of *Kedar Nath Agrawal (Dead) and Another vs. Dhanraji Devi (Dead) by Lrs. And Another*⁸ to contend that in the writ jurisdiction, High Court can consider the subsequent events that had arisen during the pendency of such petition.

(iii) It is next submitted that the appellate Court had failed to appreciate the comparative hardship which would be caused to the petitioner. It is submitted that the additional affidavit as filed by the petitioner brings to light the fact that respondent is aged 84 years and his son Harshvardhan is aged 61 years. Further son Harshvardhan was divorced and has remarried in 2001. It is further submitted that the respondent has inherited all the palatial property at Dungarpur one of which is converted into a luxurious hotel which provides for substantial income to the respondent and his family. The respondent has failed to establish that the bonafide requirement subsisted even when the petitioner filed the present petition. It is not that the

4 (1975) 1 Supreme Court Cases 770

5 (2002) 2 Supreme Court Cases 256

6 (2010) 3 Supreme Court Cases 470

7 (1981) 3 Supreme Court Cases 103

8 (2004) 8 Supreme Court Cases 76

petitioner is dictating terms to the landlord, but is merely reiterating the comparative need and hardship.

Submission on behalf of Respondent/landlords:

13. The learned Counsel for the respondent has submitted that it is not in dispute that the respondent has no other residential accommodation in Mumbai, except the suit flat/premises. It is submitted that in the year 1959, the respondent had purchased the suit premises and that from 1961 to 1969, the respondent had resided in the suit premises along with his wife and children. In the year 1969 *interalia* for circumstances as they existed, the respondent had shifted from Bombay to Dungarpur in Rajasthan. Thus, on 1 December 1970, a leave and licence agreement was executed with the petitioner/tenant with options of renewal. In fact, the respondent had issued a letter dated 8 September 1972 stating that the leave and licence agreement dated 1 December 1970 had expired on 30 September 1972 and that the respondent required the suit premises for his personal use and occupation, and therefore, called upon the petitioner to remove himself and hand over unobstructed possession of the suit premises to the respondent on or before 30 September 1972. Again a letter to the same effect was addressed on 10 October 1972 recording that the suit premises were required for

respondent's personal use and occupation. However, by a reply dated 15 October 1972, the petitioner refused to accept the respondent's request and vacate the premises. Thus the occupation of the suit premises by the petitioner on 1st February 1973 on which date the amended section 15A of the Rent Act conferred deemed tenancy was illegal and unauthorised. It is submitted that again a notice dated 13 November 1973 was issued by the respondent to the petitioner calling upon the petitioner to hand over possession of the suit premises and to pay the rent. The petitioner however, filed a Standard Rent Application bearing RA No.190/SR of 1974. It is submitted that in these circumstances the respondent was required to file the suit in question, seeking ejectment of the petitioner on the four grounds of bonafide requirement as set out in the plaint. It is submitted that there was no attempt on the part of the petitioner to look for suitable accommodation, except for bare words in the pleadings. It is submitted that although the respondent had inherited valuable property at Dungarpur, but that does not eclipse or satisfy the respondent's requirement of occupying, his own flat/suit premises at Mumbai and to which he would be entitled as per the settled position in law as laid down by the Supreme Court. The respondent was receiving a meager amount of Rs.10,000/- to Rs.15,000/- as income from the properties at Rajasthan at the relevant time.

14. The learned Counsel for the respondent submits that the learned trial Judge has held in favour of the respondent that he was in bonafide requirement of the suit premises as also that greater hardship would be caused to the respondent, if a decree of possession is not granted in favour of the respondent. It is submitted that in paragraph 32 of the judgment of the learned trial Judge, it is observed that the petitioner firm was financially well-off. Further in paragraph 35, it was observed that the petitioner has means to purchase premises on ownership basis. However, the learned trial Judge was in a serious error when he decided to divide the premises contrary to the well settled principles of law, which was as good as the Court dictating the landlord in which manner the landlord must use the suit premises. It is submitted that however, the appellate Court rightly reversed the finding of the learned trial Judge in upholding the bonafide requirement of the respondent, as also has taken into consideration subsequent events and has observed that it has not changed the complexion and outcome of the proceedings before the trial Court as noted in paragraph 15 of the judgment of the appellate Court. It is submitted that the appellate Court has also recorded a finding that greater hardship would be caused to the respondent. It is submitted that the appellate Court has also

confirmed the findings of the learned trial Judge that greater hardship would be caused to the respondent, and that the petitioner is financially in a better position than the respondent/landlord as also no attempts were made by the petitioner to find out alternate premises. It is, thus, submitted that both the Courts have concurrently held that there was a bonafide requirement of the respondent/landlord as also there was a greater hardship to the respondent. It is further submitted that whatever be the nature of the respondent's property residential or otherwise at Dungarpur in Rajasthan, in no way satisfies his requirement of occupying his own flat in Mumbai. It is further submitted that the contention as urged on behalf of the petitioner that on account of advance age, the bonafide requirement has eclipsed also cannot be accepted. In fact, it is more a necessity and requirement at the age of the respondent.

15. The learned Counsel for the respondent submits that the intention of the respondent to settle down at Mumbai cannot be termed as a mere wish or a flimsy ground as Mumbai is a city of opportunities. It is thus, genuine and bonafide requirement that the respondent settles down in Mumbai for all purposes. It is submitted that the position in law as laid down in judgments would establish that longer the period of litigations, intervening events which may

have occurred would not dilute the bonafide requirement unless these intervening events are so grave so as to wholly take away the bonafide need. In support of the above submissions, the learned Counsel for the respondent has placed reliance on the decisions of the Supreme Court in *(i) Atma S. Berar Vs. Mukhtiar Singh*⁹; *(ii) Gaya Prasad Vs. Pradeep Srivastava*¹⁰; *(iii) Pratap Rai Tanwani and Another Vs. Uttam Chand and Another*¹¹; *(iv) Maganlal son of Kishanlal Godha Vs. Nanasaheb son of Udhaorao Gadewar*¹²; *(v) Bhimanagouda Basanagouda Patil Vs. Mohd. Gudusaheb*¹³; *(vi) Mohd. Ayub and Another Vs. Mukesh Chand*¹⁴; *(vii) Krishna Kumar Rastogi Vs. Sumitra Devi*¹⁵; *(viii) Raghunath G. Panhale (Dead) by Lrs. Vs. Chaganlal Sundarji And Co.*¹⁶; *(ix) G.C. Kapoor Vs. Nand Kumar Bhasin and Others*¹⁷; *(x) Maganlal son of Kishanlal Godha Vs. Nanasaheb son of Udhaorao Gadewar*¹⁸; *(xi) Krishna Kumar Rastogi Vs. Sumitra Devi*¹⁹; *(xii) Shamshad Ahmad and others Vs. Tilak Raj Bajaj (Deceased) through Lrs. And Others*²⁰ *(xiii) Bhatumal Raichand Oswal Vs. Laxmibai R.Tarta &*

9 (2003) 2 Supreme Court Cases 3

10 (2001) 2 Supreme Court Cases 604

11 (2004) 8 Supreme Court Cases 490

12 (2008) 13 Supreme Court Cases 758

13 (2003) 3 Supreme Court Cases 101

14 (2012) 2 Supreme Court Cases 155

15 (2014) 9 Supreme Court Cases 309

16 (1999) 8 Supreme Court Cases 1

17 (2002) 1 Supreme Court Cases 610

18 (2008) 13 Supreme Court Cases 758

19 (2014) 9 Supreme Court Cases 309

20 (2008) 9 Supreme Court Cases 1

*Anr.*²¹; (ixv)*Celina Coelho Pereira(Ms) and Ors. Vs. Ulhas Mahabaleshwar Kholkar & Ors.*²²

Discussion and Conclusion

16. I have heard the learned Counsel for the parties. With their assistance, I have perused the judgment of the learned trial Judge as also the judgment of the learned appellate Court. I have also gone through the pleadings, written submissions and the record and proceedings before the Courts below.

17. It is not in dispute that the respondent is the owner and landlord of the suit premises. The genesis on which the petitioner came in occupation of the suit premises was a leave and licence agreement. The petitioner/tenant was initially inducted as a licensee of the suit premises under a leave and licence agreement dated 1 December 1970 entered between the respondent and the petitioner according to which the petitioner had approached the respondent to allow it to use and occupy the suit premises for some time, as the petitioner had represented that he was looking for suitable residence and would vacate the same as and when desired by the respondent.

It is also not in dispute that the parties had agreed that the leave and

21 (1975) 1 SCC 858

22 (2010) 1 SCC 217

licence agreement did not confer any exclusive right of entry or upon the premises in favour of the petitioner and that such licence would not create a tenancy or a lease or any right or interest or transfer under provision of Section 105 of Transfer of Property Act on the petitioner. It was further agreed between the parties that it was merely a licence under Section 52 of the Indian Easement Act which was granted to enter and make use of the premises. It is not in dispute that the respondent had addressed notices dated 8 September 1972 and 10 October 1972 calling upon the petitioner to vacate and hand over possession of the suit premises to the respondent on the ground that the premises were required for personal use and occupation of the respondent. However, by reply dated 15 October 1972, the petitioner disputed the claim of the respondent and refused to comply with the request to hand over and vacate the premises. Subsequent to this, the Bombay Rent Act was amended by Maharashtra Act No.17 of 1973 whereby Section 15A was inserted by virtue of which. by operation of law any person in occupation of any premises as a licensee on the deemed date namely 1st day of February 1973 who would be a deemed tenant for the purposes of the Act. Section 15A reads thus:-

“15A. (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the

1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."

18. It is on this background, the petitioner continued in occupation of the suit premises and continued to occupy the suit premises as a deemed tenant. It is not in dispute that there is no other document creating tenancy in favour of the petitioner and that by operation of law, the petitioner had become the tenant of the suit premises. Having assumed this position, the petitioner resisted the request of the respondent to vacate the suit premises, as also resisted the suit in question.

19. In considering the contentions as urged on behalf of the petitioner, it would be the endeavor of the court to consider whether there is any perversity in the findings as recorded by the courts below when the petitioner calls upon the Court to exercise jurisdiction of this Court under Article 226 and 227 of the Constitution. The following would be the discussion on this aspect. It may be observed that the respondent's suit in question was instituted in the year 1978, for recovery of possession of the suit premises from the petitioner

claiming reasonable and bonafide requirement of himself and the members of his family as permissible under Section 13(1)(g) of the Rent Act. It needs to be noted that on the issue of bonafide requirement of the respondent, as also in regard to the comparative hardship which would be caused to the respondent there are concurrent findings of facts both the Courts in favour of the respondent and against the petitioner. It is also not in dispute that the respondent does not have any other residential premises in Bombay, except the suit premises. A perusal of the observations made by the learned trial Judge and more particularly as made in paragraphs 9 to 18 of the judgment clearly demonstrates that on the correct appreciation of the evidence oral and documentary, the trial Court has come to the conclusion that the claim of the respondent of a reasonable and bonafide requirement of the suit premises for himself and his family members was proved. The respondent desirous of settling down in Bombay for his own needs and that of his family would be deprived of his own premises when such need was proved to be bonafide. There were reasons of medical treatment for himself and his wife as also the requirement of his son who wished to settle down at Bombay for employment and otherwise after completion of his graduation in the year 1978. Even the son of the respondent Harshvardhan has deposed that he wanted to settle down

in Bombay with his wife after marriage and that he was not interested to settle down at Dungarpur. He also stated that at the relevant time he had an offer for a job from Priya Packaging Private Limited, though the same may not be relevant today. However, his intention to settle down in Mumbai cannot be suffocated and extinguished merely because the petitioner's contend that for all these years, the son was also staying at Dungarpur and he may have a comfortable life at Dungarpur. This is certainly not the requirement of law as would be discussed hereafter. Even as regards the comparative hardship, the learned trial Judge has held that the substantive hardship would be caused to the respondent, if decree is refused to the respondent as the respondent was completely deprived of his residential house in Mumbai. It was observed that the hardship of the respondent was certainly greater than the one which would be caused to the petitioner. The learned trial Judge however completely misdirected himself in undertaking an exercise to divide the suit premises between the parties and partly decreeing the suit. The learned trial Judge though decided to divide the suit premises, however in so doing, has made some observations on the basis of evidence, which are required to be noted, which read thus:-

“32. Therefore, the only topic that remains to be discussed concerning the financial position of the two

families in relation to the relative hardship either to the plaintiff or to the defendants in the even of the refusal or passing of the decree. It appears that the plaintiff's father alongwith the plaintiff and his brothers have agricultural land and the same has been divided amongst all the three brothers and each brother has an land in his possession about 135 bighas of agricultural land. Besides this, they have two palaces at Dungapur. The plaintiff's brothers have their residential premises at Bombay and they stay in their respective premises in Bombay. The cross-examination of the plaintiff does not show in any way that he has substantial financial income as such. The income from the suit flat would be around Rs.2000/- per month. The part of the said income would be reduced because of the decree that would be passed in the matter. There is no evidence about the value of the agricultural property or the palaces etc. of the plaintiff and his father at Dungarpur. Therefore, considering all these things, it cannot be stated that the plaintiff is a wealthy person.

33. As against this, there is quite considerable evidence led on behalf of the defendants i.e. the two brothers who are the partners of the defendant firm. Certain assessment orders have been got produced at Es.4,5,6,7 and 8 colly, which disclose the figures of the assessed income of the two brothers, and therefore, considering the same in the light of the cross-examination, it will be seen that they are financially quite well placed in life. First of all in the course of the cross-examination, it has been brought on record that Krishna Kumar Khemka was the Proprietor of the concerns by name 'Jagdamba Trading Corporation'. He was also connected with the business of "P.D.Khemka & Co." Besides, he was also assessed individually as a partner of the defendant firm and the Proprietor of Jagdamba Trading Corporation, as well as in as a capacity of "H.U.F." in KK.K.Khemka & Co. The said H.U.F. constituted of himself, his wife and children. There was one 'P.D.Khemka H.U.F.' who had an interest in the business of K.N. Industries at Bombay. A reference has also come about the factory at Vapi (Gujarat State) and about the extent of the business and the investment for which there is also some evidence. The last one is a business by name "Electromet Engineering Enterprises" in which Krishna Kumar Khemka, his wife – Pushpa Khemka are stated to be the partners. Therefore, these two brothers eigther themselves or with the help of H.U.F. or their wives appear to be doing at least 4/5 businesses at different places.

36. Therefore, in order to consider the hardship of the defendants i.e. the two brothers (one of whom would be required to search for the premises as the decree is being passed for some part of the suit premises) considering the

wealth tax returns brought on record, it is clear that both the brothers are financially well off and they would be able to purchase an alternative accommodation of around 700 sq.ft. which they would be missing on account of the decree. Such a conclusion arises because of the cross-examination, or because of the inferences from their withholding evidence.

37. So far as the plaintiff's financial position is concerned, even taking broad general view of the matter that the plaintiff, who appears to be a son of one time ruler of Dungarpur, at present cannot be compared with the defendants' two partners whose financial position arose for consideration in the context of the relative hardship of the parties, in the event of the grant or refusal of the decree. I think even considering that aspect of the case, the finding has to be recorded in favour of the plaintiff that greater hardship would be caused to the plaintiff if a decree for part of the suit premises is not passed against the defendants, as stated above.

(emphasis supplied)

20. The appellate Court has confirmed the above findings on bonafide requirement of the respondent as also on the ground of comparative hardship being greater to the respondent. The appellate Court held that the learned trial Judge had appropriately considered the evidence and had correctly recorded findings on these issues. The appellate court however held that the approach of the learned trial Judge in partly decreeing the suit thereby dividing the suit premises between the parties was completely erroneous considering the oral and documentary evidence on record. It was observed that the respondent having proved the bonafide requirement and once the hardship was greater to the respondent, then the respondent was entitled to a decree for recovery of possession of the suit premises.

As observed in paragraph 11 of the judgment of the appellate Court, it is clearly seen that the Court has applied the principles of law in regard to the application of Section 13(1)(g) of the Rent Act and carefully considering the evidence which has come on record and the factual antecedents, the appellate Court has held that the bonafide requirement of the respondent was genuine. It was also *interalia* held that in regard to a proper medical treatment to be availed at Mumbai, the suit premises were required for the residence of the respondent. The evidence in regard to ailment of respondent himself and his wife are elaborately discussed by the appellate Court and that such medical facilities can never be available at Dungarpur in Rajasthan. It was also observed that the respondent had no other accommodation in Mumbai. Further, as regards the intention of the respondent's son to reside and to settle down at Mumbai for various reasons as placed on record including marriage etc. were accepted to be a part of the bonafide requirement. The evidence in regard to the respondent's son having a job offer at Mumbai was also held to be proved and thus it was held that the respondent wanting his son to settle down in Mumbai was surely a bonafide requirement and being the only residential premises, a decree on this count would be the requirement of law. It was observed that the intention of the respondent to come down to Mumbai and occupy the suit premises,

was thus genuine. It was further observed that it was not what the petitioner would expect and think as to how the respondent should live is life and at what place. The case of the respondent that if he shifts to Mumbai, he can do some business or his family members can work for gain, also was taken into consideration and accepted on the basis of the evidence. The appellate Court in paragraphs 14 and 15 made the following observations:-

14. Lastly and in fact the main case of the plff is that he also wants to settle down in Bombay. We have accepted the case that plff's wife can get better treatment in Bombay. Plff is suffering from diabetes so in the given state of affairs the plff has to accompany his wife. Now, till this date the plff is not having any occupation. It is also admitted that plff's father is no more and he has inherited all the property. But the land which the plff is holding is at Dungapur's managed by the Manager, employed by the plaintiff. There are servants and casual labourers employed. The plaintiff has to pay salary, to them. In these state of affairs at the age of 68 (today) when the plff want to come down to Bombay, it cannot be said that his intention to come down to Bombay is not genuine. As a matter of fact, the life which the plff has lead is to assist his father in managing the property of his father. It is not expected that according to the tenants thinking landlord must lead his life. The plff has stated that if he comes to Bombay, he can do some business as an agent in my brothers' sister concerned. I do not have any independent income of my own. It s also evidence on record that plff owns 3 houses at Dungapur expecting 6 rooms in one place, he is not in occupation of any premises. Ld.advocate MR.Shah submitted that in these given situation it is the case of the plff that he wants to come down to Bombay is not acceptable. We have already hold that as soon as plff establish that is for better medical treatment he wants to come down to Bombay, then to manage his state of affairs in his own way cannot be the tenant's outlook and prorogative. Therefore, we hold that on these three particulars the plff has established that he has bonafide intention to settle down in Bombay. We therefore answer point No.1 and 6 accordingly.

15. After we hold that plff proved the subsequent events that plff's father expired, plff's son got married and divorced,

does not change the complexion of outcome of trial court's proceedings. And this being admitted fact does not require to be tested therefore remand is also not called for. Hence, we on our own reasoning concur with the finding of 13(i)(g) and answer the points accordingly." (emphasis supplied)

21. Further the appellate Court also observed that it has clearly come on record that after receipt of the notice to vacate, the petitioner had not taken any efforts to find out an alternate accommodation. It was observed that the documents as placed on record on behalf of the petitioner clearly established that the petitioner was a partnership firm of a HUF business and mainly having business at Kolkata, Mumbai and factory at Vapi (Gujarat). The partners of the petitioner occupying the suit premises was one Krishnakumar Khemka and his sons, Kumar Khemka who had traveled abroad on the expenditure of partnership firm and he was also proprietor of Jaydane Trading Corporation and also was Karta of HUF Krishnakumar Khemka. He was further a member of W.I.A.A. Club and also P.J. Hinduja Gymkhana. He was holding Diamond Club card. His wife was also a partner. They were all income tax payers. Considering the entire evidence on record, the appellate Court held that the petitioner though was occupying the suit premises had not made any efforts to acquire any alternate premises. It was observed that on the other hand, the respondent had no premises of

his own in Bombay except the suit premises, therefore, more hardship would be caused to the respondent if the decree was to be refused. It was thus observed that taking overall view of the matter it was necessary to hold that no hardship would be caused to the petitioner and thus, the finding as recorded by the learned trial Judge on the issue of hardship, was offending the provisions of Section 13(2) of the Bombay Rent Act, when the trial Court had decided to divide the suit premises. Considering the evidence on record, I do not find any perversity qua these findings as recorded by the appellate Court.

22. The next contention as urged on behalf of the petitioner is that the events which have taken place or the change of circumstances during the pendency of the proceedings, in any case would preclude this Court from confirming the decree as granted by the appellate Court. The contention of the petitioner is that the bonafide requirement of the respondent has ceased to subsist for the reasons as noted above and in view of the changed circumstances as pointed out by the petitioner in the additional affidavit. It is submitted that the subsequent events would show that the principal case of the respondent stands eclipsed by passage of time in as much

as the respondent is now at an advance age of 87 years and his wife is 85 years old and therefore, it cannot be said that after living at Dungarpur in Rajasthan for all these years, they would live in a flat at Mumbai. The petitioner contends that also the social status of the respondent of enjoying palatial house at Dungarpur would not befit the stay at Mumbai in the suit premises. It is contended that as regards the medical condition and psychic condition of the respondent's wife, there is no material or evidence to suggest that none of these ailments can be treated at Dungarpur. It is the next contention of the petitioner that the need of the respondent's son to have a job at Mumbai and to reside at Mumbai would also not survive in as much as his son is also 61 years of age and who is already in business at Dungarpur. There is least possibility that he would like to shift to Mumbai for an employment. These events, according to the petitioner, would thus eclipse the need of the respondent for the requirement of the suit premises. In my opinion, these submissions as urged on behalf of the petitioner cannot be accepted. In this context, it may be observed that these submissions as made on behalf of the petitioner completely overlook the basic factual premise on which the Courts below have accepted the contention of the respondent to repossess the suit premises on a reasonable and bonafide need and requirement. The basic premise

being firstly that the respondent did not have any other premises at Mumbai and secondly the premises were required for the respondent to stay alongwith the members of the family interalia for the purpose of medical treatment of the respondent himself and also of his wife. It cannot be said that merely because the respondent, his wife and other members of the family were kept away from the suit premises and more particularly left in a state compelled to confront the present litigation as foisted by the petitioner that the reasonable and bonafide need to possess the suit premises, for the purpose of medical treatment of the respondent at his age of 87 and his wife who is 85 years respectively would stand extinguished. The petitioner definitely cannot take advantage of the pendency of this litigation and make an argument of such nature by keeping the respondent entangled in litigation since the year 1978 and now raise an argument on passage of time and change of the circumstances. Such contention on the face of it, is unsustainable apart from being grossly unreasonable.

23. Now coming to the decisions as relied on behalf of the petitioner that the bonafide requirement should be genuine and not spurious and not a mere desire of the landlord. It is also well-settled that the concept of bonafide need is required to be

considered on a practical approach instructed by realities of life. These principles are laid down in the decision in ***Shiv Swarup Gupta vs Dr.Mahesh Chand Gupta*** (supra). This was a case of a tenant suffering a decree of eviction approaching the Supreme Court. The Supreme Court in upholding the eviction decree accepted the landlord's contention that there was nothing unreasonable for the landlord to contend that he required the suit premises for himself, his son who was also a practicing doctor, daughter-in-law and two grand-children who were gradually growing in their age. The tenanted premises were on the first floor premises and the landlord was residing on the ground floor. It is in these context, the Supreme Court had examined and also made observations that the requirement of the landlord was genuine in view of the growing needs of the family, despite the fact that the need of the premises as included in the plaint was also for the ailing mother-in- law and the respondent's wife, no more survived, on account of their death. This decision would not assist the petitioner in the facts of the present case for this Court to come to a conclusion that the respondent-landlord, who has no other premises in Bombay

would not require the suit premises at this advanced age for medical treatment or for the needs of the growing family. It thus, cannot be said that the need of the respondent-landlord is not genuine and a bonafide requirement.

24. The decision of the Supreme Court in *Deena Nath vs. Pooran Lal* ²³ would also not assist the petitioner. In this decision the question which fell for consideration was the application of section 12 (1) (f) of the M.P. Accommodation Control Act, 1961 which enabled the landlord to seek eviction of the tenant of non-residential premises on a bonafide requirement of the landlord for starting his business or that of any of his major son and that the landlord or such person has no other reasonable and suitable non-residential accommodation of his own in his occupation in the city or town concerned. Considering the said statutory provision, the Court observed that the requirement of the landlord should not be a fanciful desire and a requirement in praesenti but also it must be manifested by actual need. The requirement of the said statutory provision

²³ (2001)5 Supreme Court Cases 705

was that the landlord has no other reasonable or suitable non-residential accommodation. It is in this context, the Court held that the landlord at the time of the filing of the suit had one vacant shop - room in his occupation and in the course of the proceedings, one more shop - room had come in his occupation. The Court thus held that the requirement of the landlord was not bonafide.

25. Similarly, the decision in ***Rahabhar Productions Pvt.Ltd vs Rajendra K.Tandon*** (supra) would also not assist the petitioner. The Supreme Court in the said decision was considering the provisions of section 14 (c) of the Delhi Rent Control Act, 1958 which dealt with a category of a landlord who was or who would be retired employee of the Central Government or Delhi Administration. It was held that his requirement should be genuine, honest and conceived in good faith even for the purpose seeking an eviction under section 14-C of the Delhi Rent Control Act, 1958. There can be no dispute on this proposition of law as discussed and reiterated in paras. 17 to 20 of the said decision. However, in view of the clear

observations in para nos. 39 and 40 of the decision, the Court has clearly held that though the landlord owned another house in Delhi, he explained and established his need for this particular premises. The Court held that the need for additional accommodation of one room or the ground floor, which would also include the facility of car-parking had arisen after the retirement of the landlord. It was held that the plea of the tenant of an alternate accommodation being available with the landlord had disentitled him from recovering the suit premises was untenable, while observing that the landlord had clearly stated in his petition that although he owned one more house, he wanted this particular premises for his own need. The Court accepted the need of the landlord to be bonafide.

26. On behalf of the petitioner reliance is also placed on the decision of the Supreme Court in ***Pasupuleti Venkateswarlu vs The Motor & General Traders*** (supra) in support of the contention that the right to relief to the respondent-landlord ought to be considered on the day, the suit was instituted. There can be no dispute on this proposition as laid down in the

said decision. This case was concerning a tenant who had taken a plea that the landlord during the pendency of the proceedings had acquired another accommodation, which had a bearing on the right of the landlord to evict the tenant on the ground/inhibition contained in section 10 (3) (iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. However, the present case is not a case of the respondent-landlord having acquired alternate premises at Bombay or that the need for the suit premises can be said to have effaced/ceased to subsist or exterminated by any stretch of imagination.

27. The decision in *Hasmat Rai and another vs Raghunath Prasad* (supra) would also not assist the petitioner. This was a case where the landlord had acquired the possession from the tenant firm of adjacent accommodation which was reasonable and suitable for a business which the landlord wanted to start and for which the decree of eviction against the tenant was claimed. It was held that since the landlord had acquired vacant possession of a major portion of the building in

which he can start his business of Chemists and Druggists, he would not be entitled for another space under section 12 (1) (f) of the M.P.Accommodation Control Act, 1961. It is in this context, the Court referring to the earlier decision in ***Pasupuleti Venkateswarlu vs The Motor & General Traders*** (supra) held that the right to relief as it existed on the date the suit was instituted had ceased to subsist in view of the changed circumstances. Further the facts of the present case are completely different so as to apply the ratio as laid down in this decision.

28. The decision in ***Variety Emporium vs. V.R.M. Mohd.Ebrahim Naina*** (supra) is relied on behalf of the petitioner to support the case that subsequent events are required to be taken into consideration. Again as noted above, there cannot be any dispute on this proposition. However, as discussed in detailed in the foregoing paragraphs, in the facts of the case the subsequent events as referred above are not of a nature which can be considered to have extinguished the respondent's right to a eviction decree against the petitioner.

Both the Courts below have recorded findings that the respondent has clearly proved his bonafide requirement of the suit premises. As per the principles of law as laid down by the Supreme Court taking a practical approach and considering the realities of life, it cannot be suggested that the need of the respondents in the present case, is not genuine. The petitioner-tenant cannot foist upon the landlord his own perception and to dictate to the landlord as to what should be the requirement of the landlord and in the present case more particularly considering the age of the landlord as also his wife to have medical treatment and medical attention as available in a place like Bombay. These realities can never be over-looked. The arguments advanced on behalf of the petitioner are quite astonishing namely that there is nothing placed on record that such medical facilities are not available at Dungarpur and thus even if there are any medical requirements of the respondent, the same be met at Dungarpur. This argument is wholly misconceived for the petitioner to compare the large specialized medical facilities which are available in a metropolitan city like Bombay to those available at Dungarpur, in the absence of any

material to support this argument. Further, the petitioner cannot dictate to the respondent as to the nature and quality of the medical needs, vocation which the respondent intends to avail and for that matter occupy his only premises in Mumbai being the suit premises. The entire approach on the part of the petitioner is a greedy approach by hook or crook retain the suit premises and to deprive legitimate requirement of the respondent for which the respondent is struggling since last about forty years. Considering these circumstances, the decision in ***Omprakash Gupta vs Ranbir B.Goyal*** supra would also not assist the petitioner.

29. On the other hand, learned counsel for the respondents would be correct in relying on the decision of the Supreme Court in ***Gaya Prasad vs Pradeep Srivastava***. (supra) wherein it is held that subsequent events which overshadow the genuineness of the need must be of such a nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. In the facts of the present case, it is clear that the

bonafide requirement is not completely eclipsed by the subsequent events as being pointed out on behalf of the petitioner namely of the respondent's son having completed the age of education, and the employment call received at the relevant time being of no relevance, and/or for many years the respondents and his family members having stayed at Dungarpur. It may be true that the employment call as stated in the plaint as instituted in the year 1978 may not be relevant, however, that does not mean that the petitioner or his son would not explore any other avenues or a vocation/business or profession and for that purpose occupy the respondents only premises in Bombay. Human requirements and needs are not stagnant or can never remain crystallized. As noted above for the bonafide requirement to eclipse and/or to extinguish the circumstances are required to be of such a nature that any reasonable body of persons prudently would believe that the requirement can never survive in the changed circumstances. For illustration and on a hypothesis if in the present case the landlord during the pendency of the litigation was to acquire alternate residential accommodation at Bombay or there was to

be some material to show that in some proceedings he had made a solemn statement that he does not intend to move out of Dungarpur then such circumstances would have been fatal to the landlords case as pleaded in the plaint. If the material was to be such then no reasonable body of persons would come to a conclusion that the bonafide requirement would subsist. However, as seen from the evidence, there is no material whatsoever much less convincing which would displace the wisdom of the findings recorded by both the Courts below that the respondent's requirement of the suit premises is bonafide and genuine. In this context, the observations of the Supreme Court in ***Gaya Prasad vs Pradeep Srivastava*** (supra) in paragraph nos. 10, 13 and 19 are significant so to reject the arguments of subsequent developments as argued on behalf of the petitioner. The Supreme Court observed thus :

10. *“We have no doubt that the crucial date for deciding as to the bonafides 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 bonafides 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 period 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 finalise, 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 *Pasupuleti Venkateswarlu v. Motor and General Traders* which pointed to the need for remoulding 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: (SCC pp.772-773 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 proceeding provided the rules of fairness to both sides are scrupulously obeyed."

19. The above is not an advice, but only a suggestion. If any alternative suggestion would appear better the same can be resorted to. The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to

resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the country.”
(emphasis supplied)

30. In *Atma S.Berar vs Mukhtiar Singh* (supra) the Supreme Court referring to the decision in *Prativa Devi vs T.V.Krishnan* held that the landlord is the best judge of his residential requirement. He has a complete freedom in the matter and it is of no concern of the courts to dictate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own.

31. Applying the above salutary principles, the petitioner cannot dictate to the respondent on the suitability and choice of the respondent of either the place he and his family members should avail the medical treatment or of his choice of residence. In fact the argument on behalf of the petitioner is so peculiar and adominable that it peeps into all possible personal issues of the respondent namely the respondent's and his wife's health, the son's personal life, his marriage, re-marriage, his livelihood and what is best suited for him. In my humble opinion the

petitioner cannot stretch things to this extent nor the law would permit this.

32. The contention of the petitioner that the respondent is a affluent person having valuable property at Dungarpur, can also be no ground to defeat the fruits of the decree as granted in favour of the respondent and more particularly when the bonafide and genuine requirement, of the only premises, the respondent owns in Bombay has been recognized by both the Courts below. In making this argument, the petitioner is forgetting that the petitioner is also an affluent partnership firm. In this context, the learned counsel for the respondent would be justified in relying on the decision of the Supreme Court in *Bhimanagouda Basanagouda Patil vs Mohd.Gudusaheb*. The Supreme Court in para 8 and 9 has made the following observations:

8. " We have perused the material on record based on which the Courts below have given the findings as to comparative hardship in favour of the respondent. The learned District Judge while coming to the conclusion of this question held that because the landlord has purchased the premises in question, he should be deemed to be an affluent person, while the tenant who has a large family whose earning capacity is about Rs.20 per day ought to be held to suffer greater hardship, if an eviction is ordered. Therefore, the learned District Judge held comparative

hardship in favour of the tenant solely on the basis of affluence of the parties,. If this is the correct approach then an affluent landlord can never get possession of his premises even if he proves all his bonafide needs. The fact that a person has the capacity to purchase the property cannot be the sole ground to hold against the landlord while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be given due weightage unless of course the purchase is actuated by collateral consideration. In the instant case both the High Court and the District Court having upheld that claim of the landlord as to his bona fide need under section 21 (1) (h) they could not have denied the relief solely on the ground that he is an affluent person. (Emphasis supplied)”

33. In ***Mohd.Ayub and another vs. Mukesh Chand***

supra the Supreme Court in paras 16 and 17 observed thus:

16.” We also find that the courts below were swayed by the fact that the financial position of the appellants was better than the respondent. The District Court has erroneously gone on to observe that the appellants can buy another building and start business. It has also observed that the appellants had purchased the building to make profit. In this connection we may usefully refer to the judgment of this court in *Bhimanagouda Basanagouda Patil* where the District Judge decided the issue of comparative hardship in favour of the tenant solely on the basis of affluence of the parties,. This Court observed that if this is the correct approach then an affluent landlord can never get possession of his premises even if he proves all his bonafide requirements. This Court further observed that the fact that a person has the capacity to purchase the property cannot be the sole ground against him while deciding the question of comparative hardship. If the purchase is pursuant to a genuine need of the landlord the said purchase has to be give due weightage unless of course the purchase is actuated by collecteral consideration. This Court rejected the High Court's finding that the landlord had secured the premises apparently in a game of speculation. Somewhat similar observations are made in this case by the District court which in our opinion are totally unsubstantiated.”

17. It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any

alternative accommodation. We specifically asked the learned counsel for the respondent to point out any evidence to establish that the respondent made any such genuine efforts. He was unable to answer this query satisfactorily.”

34. Now as regards the issue of comparative hardship. In ***Shamshad Ahmad & ors vs Tilak Raj Bajaj (deceased) through Lrs & ors*** the Supreme Court dealt with both the issues namely of comparative hardship and the argument of affluence of the landlord. The tenant had raised a defence that the landlords were having huge property in Dehradun and that they were enjoying high status and were a reputed family in the city. They were very rich and were having business in timber wood. They did not require the shop for doing business in readymade garments and thus there was no hardship to the landlord. The Supreme Court rejecting these contentions, in para nos. 16, 47 and 50 the Court observed thus :

“16. Regarding comparative hardship, the appellate court noted that no attempt whatsoever had been made by the tenant for getting alternative accommodation and hence it could not be said that if the order of eviction would be passed and the application of landlords would be allowed, greater hardship would be caused to the tenant. Accordingly, the order passed by the prescribed authority was set aside and direction for eviction of tenant was issued.”

“47 In the case on hand, a finding had been recorded by the appellate authority that requirement of the landlords for doing business by Matloob Ahmed, husband of

Applicant 6 was bona fide and genuine. Thus, the requirement of the landlords was established. The said finding stands today. The High Court by a cryptic order without disturbing the said finding which was based on appreciation of evidence set aside the order of eviction against the tenant inter alia, observing that Matloob Ahmad was a “retired person” and was getting pension and was living in his village at a distance of five kilometers from Dehradun. It is no doubt true that the tenancy was created before about fifty years but, that should not be a ground for depriving the landlord for doing business if the requirement of the landlord is bona fide and reasonable.

50. Regarding comparative hardship, nothing has been stated by the tenant as to whether any attempt has been made by him to get alternative accommodation and he failed to get such accommodation. In the circumstances, in our opinion the appellate authority was right in observing that there was no evidence to show that no shop was available to the tenant. It is quite possible, as noted by the appellate authority that the tenant might have to pay more rent,. But that would not preclude the landlords from getting possession of the suit shop once they had proved genuine need of the property.” (Emphasis supplied)

35. Applying the above principles of law to the facts of the present case, it is to be noted that there are clear findings of fact that the petitioner had not made any effort to find out any alternate accommodation and thus the comparative hardship was greater to the respondent. The argument of the respondent being rich and affluent is also of no consequence and relevance considering the above decisions of the Supreme Court.

36. In the circumstances, I find no perversity in the

findings as recorded by both the Courts. The appellate Court has appropriately exercised its jurisdiction confirming the findings of the trial Court on the bonafide requirement of the respondent. It is well-settled position in law that the High Court in exercise of jurisdiction under Article 226 and 227 of the Constitution of India would not correct errors of fact however, grave they may appear to be, it would only correct the errors of jurisdiction committed by the inferior Court or Tribunals where the orders are passed without jurisdiction or in excess of jurisdiction. Only an error of law on the face of the record can be corrected but not the error of fact. (See Sayed Yakoob vs K.S.Radhakrishnan & ors.²⁴⁾

37. Before parting, as the facts have unfolded, it cannot be overlooked by a judicial mind to note that the basic object and purpose of the Rent legislation which was to protect the weaker sections of the community namely the tenants, against unreasonable eviction and against being charged with excessive rent and consequently to bring about an equilibrium in the

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society on the housing front, certainly remained exploited by the undeserving petitioner by enjoying the premises for more than forty years, which has definitely caused severe hardship and injustice to the respondent-landlord.

38. Resultantly, there is no merit in the writ petition. It is accordingly dismissed with costs.

39. The possession of the suit premises shall be handed over by the petitioner-tenant to the respondent, within a period of eight weeks from today.

(G.S. Kulkarni)