

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5672 OF 1998
WITH
CIVIL APPLICATION NO.1173 OF 2008
IN
WRIT PETITION NO.5672 OF 1998

Yashodabai w/o. Gopalrao Khedkar (since deceased)
through L.R. Rajendra Govindrao Hatwalne ...Petitioner
Vs.
Godavaribai Balkrishna @ Chatusheth
Sinnarkar and others ...Respondents

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Mr. S. S. Kulkarni a/w. Mr. R. M. Purandare for Petitioner.
Mr. M. M. Sathaye for Respondents No.1B to 1F and 1H.
.....

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 1, 2019

ORAL JUDGMENT :

1. Heard Mr. S.S. Kulkarni, learned Counsel for the petitioner and Mr. Sathaye, learned Counsel for the respondents No.1B to 1F and 1H, at length.
2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and decree dated 07.04.1998 passed by the learned III Additional District Judge, Nashik in Civil Appeal No.135 of 1993. By that order, the learned District Judge allowed the appeal preferred by the respondents and set aside the judgment and decree dated 26.02.1993 passed by the V Joint Civil

Judge, Junior Division in Regular Civil Suit No.98 of 1988. The learned District Judge dismissed the Suit. The relevant and material facts that are necessary for disposal of the present Petition, briefly stated, are as follows.

3. On 25.01.1988, Yashodabai Gopalrao Khodkar (for short 'Yashodabai') had instituted Regular Civil Suit No.98 of 1988 against Chotusheth @ Balkrushna Keshav Sinnarkar (for short 'Chotusheth') for recovery of possession of shop situate on the ground floor of Municipal House No.1474 in C.T.S. No.2116-A, more particularly described in paragraph 1 of the plaint under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Rent Act'). Chotusheth filed written statement dated 12.09.1989 resisting the Suit. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues on 16.11.1990. The learned trial Judge decreed the Suit only under Section 13(1)(g) of the Act. Aggrieved by that decision, Chotusheth preferred Civil Appeal before the District Court. During the pendency of the appeal, Chotusheth died leaving behind the respondents herein. By the impugned order dated 07.04.1998, the learned District Judge allowed the appeal as indicated earlier. It is against this order, Yashodabai instituted this Petition.

4. During the pendency of this Petition, Yashodabai filed Civil

Application No.1173 of 2008. In paragraph 1 of that application, she asserted that respondents are having shop on ownership basis on the ground floor, which is about 80 ft. away from the suit premises .On account of acquisition of the shop premises, respondents do not require the suit premises for their business any further. That apart, the suit premises was closed for over 2 years. In view thereof, the ground of non-user became available as an additional ground for eviction. Rajendra Govindrao Hatwalne (for short 'Rajendra') filed affidavit dated 20.11.2008 in that application. In paragraph 1a, he stated that since 1980 or even earlier, he has been residing with Yashodabai. Yashodabai was staying in a rented house, which is a trust property known as “Abhinav Bharat Mandir Trust”. He further stated that he is looking after his old grand mother as she has crossed 90 years of her age. Yashodabai has no issue or heir excepting Rajendra.

5. In paragraph 1d, it is stated that one of the heirs of Chotusheth namely, Prabhakar retired from Hindustan Aeronautic Limited. He had been in the occupation of the suit premises. Prabhakar has acquired another shop bearing No.9 on the first floor on ownership basis since about 6-7 years. The said shop is 60-70 ft. away from the Goldsmith Alankar Market at Nashik. In support of these contentions, he relied upon, (i) latest photographs, (ii) demand register extract for the

year 2008, and (iii) light bill dated 10.11.2008 showing name of Prabhakar in respect of shop No.9. Thus, the need of the respondents is lesser than the need of Yashodabai that is to have a general provision store in the suit premises. He further stated that Yashodabai was staying on the 3rd floor of Abhinav Bharat Mandir Building and she has no other place to stay in her own Wada (mansion) excepting the suit premises as desired by her in her own house. It was, therefore, submitted that in view of the latest developments, respondents did not require the suit premises for themselves and are trying to expand their business at the cost of Yashodabai's desire.

6. On behalf of respondents No.1B to 1F and 1H, Bhaskar Balkrishna @ Chhotusheth Sinnarkar (for short, 'Bhaskar') filed affidavit in reply dated 20.11.2008. He denied that all the respondents have shop of 80 sq.ft. on the ground floor on ownership basis. The said shop is not owned by him but is owned the respondent No.1D - Prabhakar Balkrishna @ Chhotusheth Sinnarkar (for short 'Prabhakar'). In the said shop, Yogesh P. Sinnarkar, son of Prabhakar is carrying on gold smith business. Along with the reply, (i) Registration Certificate under Bombay Shops and Establishments Act, 1948 and (ii) agreement dated 23.02.1995 were enclosed. In paragraph 3 of that reply, he contended that he is a petty goldsmith and is in possession of the suit premises after

the death of Chhotusheth. He is not a big wealthy jeweler who can afford to have alternate shop. He requires the suit premises for carrying on business of goldsmith. He has no other premises of his own where he can shift his goldsmith business. Bhaskar also filed affidavit dated 21.11.2008. He denied that Prabhakar is in occupation of the suit premises. After the death of Chhotusheth, he has been in possession of the suit premises till date as a tenant. He denied that Yashodabai has no other place to stay in her own Wada except the suit premises. The suit premises are commercial premises in the form of shop and cannot be used for staying / residing as suggested by Rajendra. Yashodabai never contended that she requires the suit premises for residence. Yashodabai had kept two rooms separately with all amenities in the building where suit premises is situated for her use and occupation. In addition to this, she is residing with Rajendra, his wife and two kids in about 900 sq.ft. space in Abhinav Bharat Mandir Trust with all the amenities. Thus, Yashodabai has sufficient premises at her disposal. In addition, Yashoda has booked two flats elsewhere, details whereof are not available with him. It was further contended that Yashodabai cannot be permitted to agitate altogether new ground for the first time in the Petition. Reliance was placed upon **Vasant Vs. Kamlakar, 1995 (2) Mh.L.J. 44.**

7. On the same day i.e. 20.11.2008, Bhaskar also filed affidavit

in the main Petition. In paragraph 2, it was contended that Rajendra, who is son of Yashodabai's cousin (sister) is running business of lodge / hostel on her behalf on the 2nd floor of the building where the suit premises is situate. He is running that business since 1996. In addition to 25 rooms, Rajendra is also in possession of one room admeasuring 150 sq.ft. on the ground floor where he is running office of the said lodge / hostel. The requirement pleaded by Yashodabai of earning more income from the suit premises is therefore satisfied as Rajendra is running lodge / hostel on behalf of Yashodabai.

8. In paragraph 4, it was reiterated that Yashodabai is earning sufficinet money through Rajendra. She is running profitable business of hostel / lodge having as many as 25 rooms. The alleged requirement of Yashodabai at the time of filing of the Suit is completely eclipsed and satisfied as on date in view of the fact that in the year 1996, 25 rooms were made available to her from a public school, her erstwhile tenant. In paragraph 6, it is contended that he is in possession of the suit premises which is only 56 sq.ft.. He is ready and willing to increase the rent to a suitable higher amount.

9. In paragraph 7, it is contended that having regard to the availability of the premises namely 56 sq.ft. to him vis-a-vis availability of 25 rooms on the first and second floors along with one office on the

ground floor in all admeasuring 4000 sq.ft. at the disposal of Yashodabai, a comparative hardship is in his favour. Along with the affidavit, he has enclosed - (i) letter dated 17.11.2006 issued by the Information Officer, Municipal School Board, Nashik to Prakash Sinnarkar. In that application, it is stated that premises of municipal school were handed over to Yashodabai on 01.10.1996; and (ii) the registration certificate under the Bombay Shops and Establishments Act, 1948.

10. Rajendra filed affidavit in rejoinder dated 25.11.2011 in the main petition. In paragraph-2 it is stated that Chotusheth was staying in the premises which is 100 meters from the suit premises. Pending the petition one of the sons of Chotusheth, Prabhakar has purchased a shop in his name. He is running said shop in the name and style of “Sinnarkar & Sons” through his son Yogesh. The contention of the respondents that Bhaskar is not concerned cannot be accepted as it is purely internal arrangement among the respondents.

11. In paragraph-3 it is denied that Bhaskar is in possession of the suit premises as he is carrying on business of screen printing and graphic designs in the name and style of “Apurva Screen Printers and Graphic Designers”. In support of this contention, reply dated 9.5.2004 is annexed.

12. In paragraph-5 it is stated that the suit premises is the only

premises available to him and his family to carry on business. His wife Rashmi wants to start the business of imitation jewelery and cutlery to cater the need of his family. He, therefore, requires the suit premises for said purpose.

13. In support of this Petition, Mr. Kulkarni strenuously contended that the learned District Judge committed several errors of law apparent on the face of record while allowing the appeal. The learned District Judge failed to appreciate that Chotusheth did not step into the witness box to prove his case and thus he did not prove the case set up in the written statement. There is no legally admissible evidence on record to consider his defence.

14. He submitted that during pendency of the Petition, Yashodabai had filed Civil Application No.1173/2008 to bring on record the fact that the respondents have acquired the shop premises on ownership basis on the ground floor. Said shop is just 80 sq. ft. away from the suit premises. The respondents have shifted to that premises. He further submitted that the suit premises is closed for more than two years. He conceded that the said ground cannot be considered for the first time in this Writ Petition. However, this aspect will have bearing while considering the comparative hardship. He has taken me through the application as also affidavit dated 20.11.2008 made by Rajendra in

support of that application as also the photograph, electricity bill, assessment made by Nashik Municipal Corporation. All these documents show that the respondents have acquired the shop remises and, therefore, no hardship will be caused in case the eviction decree is passed. The contentions raised by the respondents in the reply that it is not owned by Bhaskar but is owned by respondent No.1(d) Prabhakar where Yogesh, son of Prabhakar is carrying on business is their internal matter. He further submitted that the contention advanced by the respondents that on account of death of Yashodabai her need is eclipsed cannot be accepted.

15. He submitted that in the affidavit-in-rejoinder, Rajendra has specifically pleaded that his wife Rashmi wants to start the business of imitation jewellery and cutlery in the suit premises and, therefore, he requires the suit premises reasonably and bonafide. Thus he submitted that even after death of Yashodabai the need exists. While exercising the powers under Article 227 of the Constitution of India, this Court can mould the relief claimed by Yashodabai. Alternatively he submitted that the impugned order may be set aside and the matter may be remitted with liberty to the plaintiff to amend the plaint and permitting the parties to adduce evidence.

16. In support of the contention that after the death of

Yashodabai the need still subsists and the subsequent events did not eclipse the bonafide requirement, he relied upon following decisions:

- (i) **Kamleshwar Prasad Vs. Pradumanju Agarwal (Dead) by L.Rs., (1997) 4 SCC 413;**
- (ii) **Gaya Prasad Vs. Pradeep Shrivastava, 2001(2) Mh.L.J. 581;**
- (iii) **Shakuntala Bai and others Vs. Narayan Das and others, (2004) 5 SCC 772; and**
- (iv) **Baldev Krishan Vs. Satya Narain, (2013) 14 SCC 179.**

17. On the other hand, Mr. Sathaye supported the impugned order. He submitted that a perusal of the plaint and in particular paragraphs-3 and 4 shows that the requirement pleaded by Yashodabai was for herself alone. She did not plead the requirement of family members, let alone of a distant relative (Rajendra) who is now continuing this Petition. He submitted that Narayan is the cousin of Yashodabai. Rajendra is the grand-son of Narayan. Rajendra is running business of hotel/lodge under the name of “Ji Guest House” in the suit building on 1st and 2nd floor having 25 rooms capacity. He is also in possession of 150 sq. ft. office on the ground floor which is used as a office for the hotel/lodge.

18. Mr. Sathaye submitted that after the death of Yashodabai her requirement in the suit is completely eclipsed and is not in existence as of date. He submitted that Yashodabai died on 3.8.2009. During her lifetime, she took out Civil Application No.1173/2008 on 24.3.2008.

Rajendra filed affidavit on 20.11.2008. He also filed affidavit-in-rejoinder on 25.11.2011 in the main Petition. However, neither Yashodabai nor Rajendra disclosed the fact that Municipal School Board, Nashik had handed over possession of 25 rooms to Yashodabai in the year 1996. Even during pendency of the appeal, acquisition of 25 rooms was not disclosed by Yashodabai. It was also not disclosed that Rajendra is running a hotel/lodge in these 25 rooms situate on 1st and 2nd floor. That apart, Rajendra is also using 150 sq. ft. on the ground floor for the office of hotel/lodge. He, therefore, submitted that this is not a fit case for exercising powers under Article 227 of the Constitution of India.

19. In support of his submission that the need originally pleaded by Yashodabai is eclipsed, he has placed reliance on the decision of **Seshambal (dead) through L.Rs. Vs. M/s. Chelur Corporation, Chelur Building and others, AIR 2010 SC 1521.**

20. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the suit instituted by Yashodabai was decreed by the trial Court only under Section 13(1)(g) of the Act. The Appeal preferred by Chotusheth was allowed by the District Court on 7.4.1998. It is no longer in dispute that during pendency of the appeal, the Municipal School Board, Nashik had

surrendered possession of 25 rooms situate on the 1st and 2nd floor, which were in possession of Municipal School No.4, to Yashodabai. Even otherwise, this is evident from the communication dated 17.11.2006 addressed by Information Officer of Municipal School Board, Nashik to Prabhakar Sinnarkar. Equally, it is evident from record that Yashodabai did not disclose acquisition of these premises before the District Court. That apart though the affidavits are filed by Rajendra in Civil Application as also affidavit-in-rejoinder in the petition, said fact was also not disclosed.

21. Be that as it may. A perusal of the plaint and in particular paragraphs-3 and 4 thereof shows that Yashodabai contended that her husband died in the year 1982. In her family there is no male member as also there is no one having earning capacity. The amount received from rent, after deduction of maintenance and taxes, is also not sufficient for her survival. The plaintiff is also not carrying on any business. She has no other source of income. In her building, where the suit premises is situate, the Corporation is running a Girl's school. In view thereof, Yashodabai has no other alternative but to start her business for her survival. She proposes to start the business in the suit premises by selling biscuits, stationary, cutlery etc.. It was further contended that if the possession of the suit premises is not received by her, she will suffer

starvation.

22. A perusal of paragraphs-3 and 4 of the plaint does not disclose that the plaintiff pleaded the requirement of any family member. In fact in paragraph-3 she specifically contended that there is no one in her family to look after her, let alone Rajendra. In other words, the requirement pleaded by Yashodabai is her personal requirement. As mentioned earlier, in 1996 Rajendra has started his business of hotel/lodging in 25 rooms situate on the 1st and 2nd floor from a building where the suit premises is situate. In other words, Rajendra is not dependent on Yashodabai. A perusal of the affidavit-in-rejoinder dated 25.11.2011 shows that for the first time the requirement of his wife Rashmi is pleaded. In other words, the requirement pleaded in the affidavit-in-rejoinder cannot be said to be the requirement of Yashodabai and this is totally independent and a new cause of action.

23. Mr. Kulkarni submitted that the need pleaded by Yashodabai is not eclipsed on account of her death and that the Court can mould the relief while exercising the power under Article 227 of the Constitution of India. In support of this proposition, he relied upon the decisions in **Kamleshwar Prasad** (supra), **Gaya Prasad** (supra), **Shakuntala Bai** (supra) and **Baldev Krishan** (supra).

24. In the case of **Kamleshwar Prasad** (supra), the respondent-

landlord had instituted a petition for eviction of the appellant under Section 21(1)(a) of the U.P. Act XIII of 1972 invoking the ground of bona fide requirement. The Prescribed Authority dismissed the petition. The landlord preferred appeal. The Appellate Authority after re-appreciating the entire evidence on record, reversed the conclusion of the Prescribed Authority and held that in the facts and circumstances of the case the requirement of the landlord to start a cloth business must be a bona fide requirement entitling him to get an order of eviction under Section 21(1)(a) of the Act. Aggrieved by that decision, the tenant carried the matter to the High Court by instituting a writ petition. During pendency of the Writ Petition in the High Court, the landlord died and was substituted by his legal heirs, namely, his widow, two sons and the married daughter. On behalf of the tenant, it was urged before the High Court that the landlord having died, the bona fide requirement which was found to have existed by the Appellate Authority no more survives. The High Court cannot take into consideration any subsequent event in the proceedings under Article 227 of the Constitution of India.

25. In paragraph-3, the Apex Court held that in the facts and circumstances of this case, the case does not warrant interference under Article 136 of the Constitution. It was further held that even though the landlord died during the pendency of the writ petition in the High Court

the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. The Apex Court, therefore, did not think it appropriate to interfere under Article 136 of the Constitution.

26. In the case of **Gaya Prasad** (supra), the respondent-landlord filed an application under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 on a twin need. One was that his son who passed his medical examination wanted to carry on medical practice and this building was needed for housing his clinic. The other was, the landlord himself had just retired from Railway service and he too did not want to waste his time, talent and energy and hence he wanted to start a radio repairing work which he thought could be performed by using a portion of the building. The Prescribed Authority allowed the application and ordered eviction on 25.3.1982. The appellant filed appeal, which was dismissed on 10.10.1985. These orders were challenged before the High Court of Allahabad by filing a Writ Petition in 1985. Before the High Court it was contended that the son of the landlord who joined the Provincial Medical Service was posted at a place situated 200 kilometers from Agra and was getting a pay of Rs. 15,000/- per month.

27. In paragraph-10, the Apex Court observed that the crucial

date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum.

28. In paragraph-11, reference was made to the decision in **Ramesh Kumar Vs. Kesho Ram, 1992 Suppl. (2) SCC 623** and the relevant portion of that decision was extracted, which is to the following effect :

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

29. In paragraph-12, reference was made to **Kamleshwar Prasad's** case (supra) and Apex Court reproduced the relevant portion from paragraph-3 of that decision. In paragraph-13, the Apex Court observed

thus :

“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.”

30. The Apex Court also made reference to the a three-Judge Bench decision of Apex Court in **Pasupuleti Venkateswarlu vs. Motor and General Traders: (1975) 1 SCC 770** and relevant portion therefrom was extracted, which is to the following effect :

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

31. In paragraph-14, decision of **Hasmat Rai Vs. Raghunath Prasad, (1981) 2 SCC 103** was referred and relevant passage was extracted, which is to the following effect :

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

to take into consideration subsequent events."

32. In the case of **Shakuntala Bai** (supra), the suit was instituted on 31.3.1962 by Girdhari Lal Gattani (husband of appellant no.1 and father of appellants no.2 to 4) for eviction of Magan Lal (father of respondents) from a non-residential premises. The suit was decreed by the trial Court. During pendency of the appeal preferred by Magan Lal, Girdhari Lal died and the appellants were substituted as his heirs and legal representatives. The appellants amended the plaint and set up their requirement for carrying on business. Magan Lal also sought amendment in the written statement to the effect that after the death of Girdhari Lal, the bona fide requirement of the premises for carrying on business pleaded in the suit came to an end. The lower appellate Court allowed the amendments and remanded the matter to the trial Court for fresh consideration.

33. During pendency of the suit, the plaint was further amended and the fact that appellants No.2, 3 and 4 have attained majority and they wanted to start a cloth business in the premises in dispute was pleaded. The trial Court dismissed the suit. During pendency of the appeal, Magan Lal died and his sons, respondents no.1 and 2 were substituted in the plaint. The appellate Court allowed the appeal and decreed the suit for eviction. Against that, the respondents preferred

Second Appeal in the High Court which was allowed.

34. In paragraph-8, the Apex Court reproduced the amended paragraph (5-B) of the plaint where the requirement of Giridhari Lal's widow and the fact that respondent No.3 Laxminarayan would be shortly attaining majority and his requirement was pleaded. The Appellate Court remanded the case to the trial court for fresh consideration. During the remand, the respondents again applied for amendment of the plaint and said amendment was reproduced in paragraph-8.1 of the decision. In paragraph (5-B), the fact that the plaintiffs No.3 and 4 also attained majority during pendency of the suit and the requirement of plaintiffs no.2 to 4 to start business of ready made garments after receiving vacant possession of accommodation, was pleaded. It is in that context, the Apex Court considered the question whether the requirement set up by Giridhari Lal subsists till the appeal filed by the tenant is finally decided and pending need set up by him must subsist till the appeal filed by the tenant is finally decided and that a tenant can always take advantage of subsequent event like death of the landlord at a later stage during the pendency of the appeal etc.

35. In my opinion the facts obtaining in the present case and the facts in the case of **Shakuntala Bai** (supra) are materially different.

36. In the case of **Baldev Krishan** (supra), the Apex Court was

considering the provisions of Section 13(1)(h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. In paragraph-3, the averments in the plaint were reproduced. In paragraph-3 of the plaint, it was contended that the plaintiff wanted to start a business of Papad, badi and spices in the disputed shop to be looked after by his wife. The wife of the Plaintiff also wanted to do the same and the plaintiff after his retirement himself wanted to pursue and keep up his source of income. In these situations since the plaintiff and his wife and children would also require place for their residence for which he wanted to vacate and utilise two rooms, store and varandah as are built on the first floor which was presently with Jaiprakash on rent. The plaintiff and his wife also needed rooms built at the second floor of the house for the business and industry of Papad, badi etc., and for their residential purposes and for other needs. In this way, the Plaintiff had legitimate, reasonable and bonafide need of the disputed shop and room which is at second floor for himself and his family members. Thus, the requirement pleaded in this case also was of the plaintiff, his wife and his children. In view thereof, the facts obtaining in this case as also the facts obtaining in the present case are materially different.

37. The decisions in **Shakuntala Bai** (supra) and **Baldev Krishan** (supra) are, therefore, not applicable to the facts of the present case.

38. Insofar as the decisions in **Kamleshwar Prasad** (supra) and **Gaya Prasad** (supra) are concerned, the same were considered by the Apex Court in **Seshambal's** case (supra). In the case of **Seshambal** (supra), late Shri K. Sachindanda Iyer and his wife late Smt. A. Sheshambal Sachindanda Iyer owners of the premises in dispute had let out the same to respondent No. 1. The premises were leased for a period of three years from 12.4.1983. After expiry of the lease period, the owners instituted the proceedings before the Rent Controller at Ernakulam on the ground that they require the same for their bona fide personal occupation within the meaning of Section 11(3) of the Kerala Buildings (Lease and Rent Control Act), 1965.

39. The Rent Controller dismissed the proceedings. Aggrieved by that order, the owners appealed to the Appellate Authority and said decision was affirmed by the Appellate Authority. Aggrieved by these orders, the owners preferred Revision Application before the High Court of Kerala. During pendency of the Revision Petition before the High Court, Shri K. Sachindanda Iyer died leaving behind his wife. The High Court set aside the concurrent findings recorded by the authorities below.

40. Aggrieved by that decision, the tenant preferred S.L.P. before the Apex Court. During pendency of the appeal, Smt. A. Sheshambal

Sachindanda Iyer also passed away and her L.Rs., namely, three daughters, were brought on record. It was noted that two of the daughters were living in India, one each at Coimbatore and Bihar and the third daughter is settled in America.

41. In paragraph-9, the Apex Court observed that in the eviction proceedings, the owners had pleaded their own requirement for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the owners leave alone any member of their family who were dependent upon them. The parties went to trial before the Rent Controller on the basis of the case pleaded in the petition and limited to the requirement of the owners for their personal occupation. Neither before the Rent Controller nor before the Appellate Authority it was argued that the requirement in question was not only the requirement of the petitioner-owners of the premises but also the requirement of any other member of their family whether dependent upon them or otherwise. Not only that, even in the petition filed before the Apex Court the requirement pleaded was that for the deceased-widowed owner of the demised premises and not of any member of her family.

42. In paragraph-9, Apex Court observed thus :

“9. It is not in dispute that in the eviction petition the owners had pleaded their own requirement for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the owners- petitioners leave alone any member of their family who was dependent upon them. That being so the parties went to trial before the Rent Controller on the basis of the case pleaded in the petition and limited to the requirement of the owners for their personal occupation. Neither before the Rent Controller nor before the Appellate Authority was it argued that the requirement in question was not only the requirement of the petitioner-owners of the premises but also the requirement of any other member of their family whether dependent upon them or otherwise. Not only that, even in the petition filed before this Court the requirement pleaded was that for the deceased-widowed owner of the demised premises and not of any member of her family. Super added to all this is the fact that the legal representatives who now claim to be the family members of the deceased are all married daughters of the deceased couple each one settled in their respective matrimonial homes in different cities and at different places. That none of them was dependent upon the deceased- petitioner is also a fact undisputed before us. Even otherwise in the social milieu to which we are accustomed, daughters happily married have their own families and commitments financial and otherwise. Such being the position we find it difficult to see how the legal representatives of the deceased-appellant can be allowed to set up a case which was never set up before the Courts below so as to bring forth a requirement that was never pleaded at any stage of the proceedings. Allowing the legal heirs to do so would amount to permitting them to introduce a case which is totally different from the one set up before the Rent Controller the Appellate Authority or even the High Court. The position may indeed have been differentiated if in the original petition the petitioner-owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case the demise of the original petitioners or any

one of them may have made little difference for the person for whose benefit and bona fide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement.”

43. The Apex Court also referred to the decision of **Hasmat Rai** (supra). In paragraph-10 it was observed that while it is true that the right to relief has to be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. Reference was made to the decision of **Pasupuleti Venkateswarlu's** case (supra) as also the decision of **Om Prakash Gupta v. Ranbir B. Goyal, AIR 2002 SC 665**, wherein the Apex Court observed as under :

“..... although the ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit yet the Court has power to mould the relief in case the following three conditions are satisfied:

“...(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice

of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise....”

44. In paragraph-17, after referring to several decisions, it was observed that said decisions did not lend any support to the proposition that subsequent developments cannot be noticed by the Court especially when such developments have an impact on the right of a party to the relief prayed for. In paragraph-18, the Apex Court considered whether right to sue survive to the members of the family of the deceased landlord and observed that the requirement pleaded in the eviction petition by the owners was their own personal requirement and not the requirement of the their own family whether dependent or otherwise.

45. In my opinion, said decision applies on all fours to the facts of the present case. I have already dealt with the requirement pleaded by Yashodabai in paragraphs-3 and 4 of the plaint. As mentioned earlier, during pendency of the petition unfortunately Yashodabai died on 3.8.2009. In view of this subsequent development, namely, the death of Yashodabai on 3.8.2009 overshadows the genuineness of the need and also is of such a dimension that the need propounded by Yashodabai is completely eclipsed on account of her death. Rashmi, wife of Rajendra was not even remotely dependent upon Yashodabai.

46. That apart, in the year 1996 Yashodabai also secured the

possession of 25 rooms situate on the 1st and 2nd floor and a office premises admeasuring 150 sq. ft. which is situate on the ground floor. Though the possession of 25 rooms was obtained in the year 1996, Yashodabai did not disclose said fact during pendency of the appeal. Even thereafter during her lifetime she did not disclose said fact in the present proceedings. That apart, even Rajendra in his affidavit filed in the Civil Application as also in the affidavit-in-rejoinder did not disclose said fact. As mentioned earlier, in the affidavit-in-rejoinder, for the first time, Rajendra has claimed that his wife Rashmi requires the suit premises for carrying on business of imitation jewelery and cutlery. In my opinion, this was not the requirement pleaded by Yashodabi. If at all Rajendra wants the possession of the suit premises, he will have to file a suit invoking the grounds that are available under the Rent Control Legislation. He cannot be allowed to super-impose the requirement of his wife pleaded for the first time in this petition.

47. In view thereof, I cannot accept the request made by Mr. Kulkarni to set aside the impugned order and permit the plaintiff to amend the plaint and adduce evidence. This will amount to almost a denovo fresh trial. After considering the assertions made in paragraphs-3 and 4 of the plaint and applying the principles laid down by the Apex Court in **Seshambal's** case (supra), it has to be held that the need

pleaded by Yashodabai is totally eclipsed and is not in existence as of date. It will be open to Rajendra to file a suit, if so advised, for recovery of possession of the suit premises. If such a suit is filed, the concerned Court will decide the same on its own merits and in accordance with law uninfluenced by the observations made in this order. All contentions of the parties in that regard are expressly kept open. Subject to above, petition fails and the same is dismissed with no order as to costs. Rule is discharged. In view of dismissal of the petition, Civil Application No.1173/2008 does not survive and the same is also disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)