

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|             |              |
|-------------|--------------|
| RESERVED ON | DELIVERED ON |
| 05~02~2019  | 11~02~2019   |

**CORAM :**THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR****C.R.P. (NPD)No.2069 of 2013**

Mani @ Masilamani

.. Revision Petitioner/Appellant/Respondent

Vs.

1. L.Kuppursamy (died)
2. Pangujavally
3. C.Nagaraj
- 4.K.Thiruvengadaperumal
- 5.K.Kamalakanna
- 6.Lakshmi Devi
- 7.Gomeshwari

[R2 to R7 brought on record as LRs of the deceased sole respondent vide court order dated 07/02/2017 in MPs.1 to 3 of 2015]

.. Respondents/Respondent/Petitioner

**PRAYER:** Civil Revision Petition filed under section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 against the order dated 26.03.2013 passed in R.C.A.No.26 of 2012 on the file of the Third Additional District Judge at Pondicherry, confirming the order of the eviction dated 13.09.2012 passed in H.R.C.O.P).No.11 of 2008 on the file of the Rent Controller, Pondicherry.

For Petitioner : Mr. Subbiah  
Senior Counsel  
for M/s.Elizabeth Rani

For Respondents : Mr.P. Dinesh kumar  
for Mr/s.D. Ravichander

### **ORDER**

Aggrieved over the findings of the learned Rent Control Appellate Authority, confirming the order of eviction by the Third Additional District Judge, Pondicherry the present Civil Revision came to be filed. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

2. The brief facts leading to file this Civil Revision is as follows:

2.(a) The Respondent is the owner of the premises, in which the Revision Petitioner is a tenant, running a two wheeler motor cycle work shop. In the first floor Respondent is living with his family. The shop bearing Door No.19 in the Ground Floor was leased out to the Revision Petitioner. There was a lease agreement between the landlord and tenant only for the period of 11 months i.e.,from 1.5.2006 to 31.3.2007. After the expiry of the lease period, it is specifically admitted that the vacant possession of the property should

hand over to the landlord. After the expiry of lease deed the petitioner informed tenant orally that he requires the premises for his own use and occupation. Further, he also intends to start Internet Browsing Centre for his second son namely Deva @ Thiru Vengada Perumal, who is graduate in Business Management and completed the computer courses and he is unemployed. The leased premises is the only suitable place for the said business comparing to other portions of the building. Therefore, the landlord issued legal notice dated 06.09.2007 calling upon the Revision Petitioner to vacate and handover the possession.

2.(b) In the meanwhile the tenant has filed suit in O.S.No.131/2007 before the II Additional District Munsif, Pondicherry for permanent injunction not to disturb his possession and enjoyment for running workshop in the lease premises. The tenant also filed H.R.C.O.P.No.55/2007 before the Rent Controller for depositing the rents. However, he has not deposited any rent in the Court. Hence, the Respondent/landlord filed H.R.C.O.P.11/2008.

2.(c) Admitting the lease agreement, it is the contention of the tenant that he is a tenant in the premises from the year 1982

and every year, the lease agreement was renewed after 11 months. Three months notice should have been issued to him as per the lease deed. It is the further contention of the tenant that every year at the end of the lease agreement, the landlord used to insist him to vacate the premises to increase the rent. It is the habit of the landlord for the past 26 years. Therefore, he filed suit for injunction not to evict from the suit premises, besides he also filed a petition before the Rent Controller to deposit the rent before the Court. He has also denied that he was informed orally that the premises required for his own occupation of the landlord and also for business purpose of his son.

2.(d) Learned Rent Controller allowed the H.R.C.O.P.No.11/2008 filed by the landlord, ordered eviction and granted one month time for eviction. The Appellate authority, III Additional District Judge, Pondicherry also confirmed the finding of the Rent Controller in R.C.No.26 of 2012, as against which the present Revision came to be filed.

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3. The learned Senior Counsel appearing for the Revision Petitioner contended that the application has been filed under Section 10(3)(a)(iii) of the Pondicherry Building (Lease and Rent Control) Act,

1969 by the landlord requiring the building for the purpose of business of his second son on the ground that he has not carrying any other business or not occupied any other premises. Whereas, during the evidence it is categorically admitted by the Respondent/landlord that his son was employed in a private shop, which itself clearly shows that there is no *bona fide* on the part of the landlord for seeking eviction of the tenant premises. The subsequent events clearly show that the building is not required for his own occupation or the occupation of the family members for the business. It is the further contention of the learned Senior Counsel that the Court below has not taken into consideration of the subsequent event whether the requirement of the landlord is no longer in existence. The subsequent development have a bearing on the right to relief claimed by the landlord. The courts below have not considered the above fact. Hence, submitted that when the original requirement itself on the basis of unemployment of the petitioner's son, after employment of the son the building is no longer required for the said purpose. He also submitted that the need of the landlord must be real, genuine and the same many not be a pretext to evict the tenant only for increasing rent. Hence submitted that the courts below have not considered these aspects. It is the further contention of the learned Senior Counsel that there are other

aspects also available. The conduct of the landlord in his evidence clearly show that his need is not a *bona fide* one. He shown ignorance of the number of shops left vacant. This fact also clearly indicate that there is no *bona fide* on the part of the landlord to seek eviction of the premises. In support of his contention he relied upon the following judgements:

1. *Dinesh Kumar v. Yusuf Ali* **[2010-4-L.W.783]**
2. *Hasmat Rai and Another v. Raghunath Prasad* **[(1981) 3 Supreme Court Cases 103]**
3. *Kedar Nath Agarwal (dead) and Another v. Dhanraji Devi (dead) by Lrs. and Another* **[(2004) 8 SCC 76]**
4. *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd., and others* **[(1985) 1 SCC 260]**
5. *Sheshambal (dead) Through Lrs. v. Chelur Corporation Chelur Building and others* **[(2010) 3 SCC 470]**
6. *Kotti v. A.M.Rangabhashyam* **[2004(3) CTC 256]**

4. Learned counsel appearing for the Respondent submitted that the Respondent/landlord after the expiry of 11 months period has informed the requirement of the building for his own purpose and also for the purpose of the business of his second son and the landlord is also filed documents to show that his son has obtained necessary qualification in the computer course and the building is required for setting up Internet Browsing Centre. Merely because at

that time of evidence, the landlord has admitted that his son has joined in a private shop that cannot be construed as subsequent event to deny the eviction. The subsequent development during the pendency of the eviction petition occurred because of slowness of process of litigation, that cannot be made basis for denying the landlord's relief. It is the contention of the learned counsel for the Respondent that subsequent event must be in such events or of such a nature and dimension as to completely eclipse the need and make it insignificant altogether only relevant for the purpose of assessing the *bona fide*. Merely because during the pendency of the eviction petition the landlord's son joined in a private shop, it cannot be said there was no requirement at all. Hence, submitted that the contention of the learned Senior Counsel in this regard has no basis and further it is for the landlord to choose which portion of the building is suitable for his business, the tenant cannot dictate terms to the landlord. Absolutely there is no denial in the entire counter petition as to the pleadings of the landlord. Hence submitted that the Rent Controller and the Appellate Authority considered the entire factual aspects and ordered eviction. Hence, prays for dismissal of the revision. In support of his contention he relied the following judgements:

*1. Sait Nagjee Purushothaman & Co. Ltd., v. Vimalabai Prabhulal and others [(2005) 8 SCC 252]*

2. *V. Radhakrishnan v. S.N.Loganatha Mudaliar* **[1998 (III) CTC 108]**

3. *Akileshwar Kumar and others v. Mustaqim and others* **[(2003) 1 SCC 462]**

4. *Gaya Prasas v. Pradeep Srivatsava* **[(2001) 2 SCC 604]**

5. I have perused the entire materials. it is not in dispute that the Revision Petitioner was a tenant under the Respondent in Door No.19 Ground Floor on a monthly rent. It is also admitted by the parties that there was rental agreement for the period of 11 months. Though it is the contention of the tenant that he was tenant from 1982, the factum of agreement dated 1.5.2006 till 31.07.2006 has not disputed. It is also not in dispute that legal notice issued by the landlord immediately after the expiry of the agreement which is not replied. In the legal notice Ex.P.2, the landlord has clearly expressed his intention that the building is required for his own use and also for the occupation of his son's business, who is intended to set up Internet Browsing Centre. To show his *bona fide* he also filed Ex.P.5 to Ex.P.7 quotation for purchase of computers and proposal for obtaining broadband connection from BSNL, besides education certificates of his son are also filed. Ex.P.9 is also filed by the landlord to prove the necessary educational qualification of his son in the computer course.

No doubt, *bona fide* of the landlord seeking non-resident premises must be established by the landlord. The landlord is the best person to decide his need. However, the *bona fide* would be real and genuine and it should not be mere allegation to evict the tenant. The Rent Controller and the Appellate Authority have considered the evidence of P.W.1 and documents and found that the landlord established *bona fide* and the premises is required for the business of his son. It is the specific averment of the Revision Petitioner that the building is required for his own occupation and also for the business of his second son to start Internet Browsing Centre in the premises. The above aspects are not seriously denied in the entire counter except the denial in para 11 and 12. These averments of the landlord have not been specifically denied by the tenant in his counter.

6. P.W.1 in his chief examination has clearly spoken about the bonafideness and the need of the building. Further in his cross examination he has admitted that his son was working in a private shop, however, he did not know where he was working. It is relevant to note that at the time of filing of application his son was unemployed and therefore he required for the building for setting up for his business. Whereas during the evidence in the year 2012, it is admitted

by the landlord that his son was joined in a private shop. Merely because the person on whom behalf the building sought for took up some employment temporarily during the pendency of the eviction petition, that cannot be construed to mean that original need of the requirement has become ineffective or useless. No doubt, it is normal for any person to take any business or job temporarily to eke out his livelihood during the pendency of the proceedings. Therefore, merely because the son of the landlord joined temporarily in a private shop, it cannot be said that his unemployment problem is attended and he become employed permanently. Slowness of process of litigation may be reason for any person to take any other job eke out their livelihood. Therefore, this Court is of the view that merely the landlord's son joined in a private job during the pendency of the eviction petition that cannot be construed as subsequent event, which over shadows the genuineness of the landlord's need. Subsequent events such as appointing permanently in a Government job or the person settled in some other state and engaged in some other business can be said that those events have completely eclipse such need and original requirement become insignificant altogether. Therefore, the contention of learned counsel for the petitioner that subsequent event has intact over shadow the *bona fide* of the landlord cannot be

countenanced.

7. It is not the case of the tenant that the son of the landlord has occupied some other building and doing business. In the entire counter petition, he not even denied specifically the pleadings of the landlord. The main contention of the tenant before the rent controller and the Appellate Authority was that three months notice has not been issued. only in the first time in the revision such contention has been raised. From the above judgments cited by the Learned counsel for the Revision Petitioner, it can be seen that only such subsequent developments which are of such nature and dimensions as to completely eclipse such need and make it insignificant alone to be taken note of and not every insignificance developments. Therefore, the judgements cited by the learned counsel for the revision Petitioner, will not help the facts of the present case. In the judgment reported in **Akhileshwar Kumar's case** (supra) in para it is held as follows:

*3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of justice. Overwhelming evidence is available to show that the plaintiff No.1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No.1 and his father both have deposed to this*

*fact. Simply because the plaintiff No.1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial Court too, that the husband of plaintiff No.4, i.e. son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left to be done by the three sons.*

*4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No.2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No.2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No.1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the*

need of plaintiff No.2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No.1, another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them.

8. In Sait **Nagjee Purushotham's case** (supra) the Honourable Supreme Court in Para 7 and 8 has held as follows:

7. In the case of **Pratap Rai Tanwani & Anr. vs. Uttam Chand & Anr.** reported in (2004) 8 SCC 490, it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition. Their Lordships further observed that the normal rule is that the rights and obligations of the parties are to be determined on the date of the petition and that subsequent events can be taken into consideration for moulding the reliefs provided such events had a material impact on those rights and obligations. It was further observed by their Lordships that 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. Therefore, the courts have to

*take a very pragmatic approach of the matter. It is the common experience in our country that specially landlord-tenant litigation prolongs for a long period. It is true that neither the person who has started the litigation can sit idle nor the development of the events can be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed unless the subsequent event materially changed the ground of relief.*

8. In the case of **Gaya Prasad vs. Pradeep Srivastava** reported in (2001) 2 SCC 604, their Lordships observed that the landlord should not be penalized for the slowness of the legal system and the crucial date for deciding the bona fide of the requirement of the landlord is the date of his application for eviction. Their Lordships also observed that the process of litigation cannot be made the basis denying the landlord relief while litigation at least reaches the final stages. However, their Lordships further added that subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord's need but only if they are of such nature and dimension as to completely eclipse such need and make it lose significance altogether.

9. In **V. Radhakrishnan's case** (supra) the Honourable Apex Court held thus:

6. It has been found as a fact that the landlord had filed the eviction petition on the ground that the premises in question were bonafide required by him for setting up the business of his son. It has also been found that the son of the

landlord was earlier doing his business in a shop belonging to his Uncle (brother of the landlord) on payment of a monthly rent of Rs. 300/-. It has further been found, as a fact, that the son of the landlord had to leave that shop and he started to do business along with his father in a non-residential premises owned by the father. The courts below have also found that the son did not occupy or own any non-residential building of his own.

7. ... ..

8. ... ..

9. In A.S. Kannan's case 100 L.V. 213 (Mad), it has been laid down that when a premises is sought for by the landlord for the benefit of any member of his family, it is only that member of the family for whose benefit the premises are required who should not be occupying the premises of his or her own and the fact that the landlord occupies premises of his own, can not disentitle him from claiming eviction for the benefit of a member of his family, who does not occupy any premises of his own.

सत्यमेव जयते

10. Considering the above judgments and the facts of the case, merely because the landlord's second son on whose behalf the building was required, appears to have taken job in a private shop in my view cannot be held to be a subsequent development to contend that need of the landlord cannot *bona fide*. Accordingly, the revision

lacks merits and the order of the Appellate Authority is to be confirmed.

11. In the result, the findings of the court below is confirmed and the Civil Revision Petition is dismissed. No costs.

**11.02.2019**

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Index : yes/no  
Speaking Order/Non Speaking Order



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**N. SATHISH KUMAR, J.**

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order in:  
**CRP.(NPD) No.2069 of 2013**

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**11.02.2019**