

Pallavi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7109 OF 2021

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M/s. Govindram Shobharam and Company ... Petitioner
Versus
Shri. Ajitnath Tatyasaheb Shetti and Anr. ... Respondents

- Mr. S.S. Diwan i/b. Mr. Ashutosh M. Kulkarni, for the Petitioner.
- Mr. Wasim Najirahamed Samlewale, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATE : 16th MARCH 2023

PC.:

1. Heard Mr. Diwan, learned counsel appearing for the Petitioner and Mr. Samlewale, learned counsel appearing for the Respondents.
2. Suit bearing Reg. Civil Suit No.267 of 2010 was filed *inter alia* on the ground of non-user and reasonable and bonafide requirement. There are other grounds of eviction also raised. However, the learned Trial Court has decreed the suit only on the ground of bonafide requirement and non-user.
3. The defendant filed Appeal and during the pendency of the Appeal, filed application bearing Exh.29, *inter-alia*, praying that the Commissioner be appointed for the purpose of bringing on record the subsequent events that the premises have become dilapidated and therefore, decree need not be passed on the ground of bonafide

requirement. He has also prayed for several other reliefs in the said application. The said application was rejected by the impugned order dated 1st March 2021 passed by the learned District Judge-3, Sangli. Learned Advocate appearing for the Respondent states that building in which the suit premises was situated stands demolished by Sangli Municipal Corporation.

4. Learned counsel appearing for the Petitioner relied on the judgment of Supreme Court in the matter of *Ram Kumar Barnwal Vs. Ram Lakhan (dead)*¹. He relied on paragraph 11 of the said judgment to point out that subsequent events can be brought to the notice of the Court. Said paragraph 11 reads as under :-

“11. To Similar effect is the decision of this Court in Om Prakash Gupta v. Ranbir B. Goyal. It was, inter alia, observed in that case as follows:-

11. The **ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit** and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. **However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu v. The Motor & General Traders* (1975**

1 (2007) 5 SCC 660

(1) SCC 770), this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentiing factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

(Emphasis added)

5. Admittedly, the suit premises are now demolished and therefore, in fact, prayer sought in the application bearing Exh.29 *inter alia* seeking appointment of Court Commissioner to bring on record dilapidated condition of the suit premises has become infructuous. Although Writ Petition is disposed of on the said ground, liberty is granted to the Petitioner to bring on record subsequent events as per the provisions of law.

6. Writ Petition is disposed of subject to above clarification with no order as to costs.

(MADHAV J. JAMDAR, J.)