

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2529/2021

- PETITIONERS** :
1. Narendra s/o Nirmalkumar Jain,
Aged about : 60 years, Occ. Business.
 2. Mrs. Sukriti w/o Narendra Jain,
Aged about : 52 years, Occ. Business.

Both doing the business in the name and style as "S. K. Mens", House No. 228, Buty Wada, Main Road, Sitabuldi, Nagpur.

...VERSUS...

- RESPONDENT** :
- Shrikrishna s/o Prafulla Buty,
Aged about : 52 years, Occ. Business/
Agriculturist, R/o. Shradhanand Peth,
South Ambazari Road, Nagpur-22

WITH

WRIT PETITION NO.2310/2021

- PETITIONERS** :
1. Sudhir S/o Nirmal Kumar Jain,
(Original Defendants)
Aged about : 52 years, Occ. Business.
 2. Mrs. Sapna W/o Sudhir Jain,
Aged about : 48 years, Occ. Business.

Both doing business in the name and style of "Astha Garments", House No. 228, Buty Wada, Main Road, Sitabuldi, Nagpur.

...VERSUS...

- RESPONDENT** :
- (Original Plaintiff) Shrikrishna s/o Prafulla Buty,
Aged about : 49 years, Occ. Business and
Agriculturist, R/o Shradhanand Peth,
South Ambazari Road, Nagpur-22.

Mr. J.M.Gandhi, Advocate for the petitioners in WP No.2529/2021
Mr. R.M.Bhangde, Advocate for petitioners in WP No.2310/2021
Mr. C.S.Samudra, Advocate for respondent in both petitions

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 02/05/2023

Date of pronouncing the judgment : 05/06/2023

1. Heard Mr. J.M. Gandhi, learned counsel for the petitioners in Writ Petition No.2529/2021 and Mr. R.M. Bhangde, learned counsel for the petitioners in Writ Petition No.2310/2021 and Mr. C.S. Samudra, learned counsel for the respondent. Rule. Rule made returnable forthwith with the consent of the learned counsel for the rival parties. Advocate Mr. C.S. Samudra waives service of notice for the respondent on merits.

2. Writ Petition No.2529/2021, challenges the judgment and decree for eviction as passed by the learned Small Causes Court under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999, dated 22/04/2017 in Regular Civil Suit No.371/2014 (Shri Shreekrishna s/o Prafulla Buty Vs. Shri Narendra s/o Nirmal Kumar Jain and another), granting eviction, which has been confirmed by the learned Appellate Court, by the judgment and decree dated 30/03/2021 in Regular Civil Appeal No.381/2017,

(Narendra s/o Nirmalkumar Jain and another Vs. Shrikrishna s/o Prafulla Buty). Writ Petition No.2529/2021, also challenges the order dated 30/03/2021 as passed by the learned Appellate Court, below Ex.45, 49, 50 and 53, which sought to bring subsequent events on record of the respondent/landlord having instituted proceedings for eviction and fair rent against his other tenants. Writ Petition No.2310/2021, challenges the judgment and decree for eviction as passed by the learned Small Causes Court under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999, dated 22/04/2017 in Regular Civil Suit No.370/2014, (Shri Shreekrishna s/o Prafulla Buty Vs. Shri Sudhir s/o Nirmal Kumar Jain and another), granting eviction, which has been confirmed by the learned Appellate Court, by the judgment and decree dated 30/03/2021 in Regular Civil Appeal No.382/2017 (Sudhir S/o Nirmalkumar Jain and another Vs. Shrikrishna S/o Prafulla Buty). Writ Petition No.2310/2021, also challenges the orders dated 30/03/2021 as passed by the learned Appellate Court, below Ex.42, 46, 47 & 50, which sought to bring subsequent events on record of the respondent/legal representatives having instituted proceedings for eviction and fair rent against his other tenants.

3. Though arguments have been advanced on merits by the learned counsels for both the sides, however, without going into the merits of those arguments, as any discussion would cause prejudice to either of the parties, as I am remanding the matter back to the learned Appellate Court, I am not going into the merits and demerits of them.

4. The basic ground canvassed by Mr. Gandhi, learned counsel for the petitioners in Writ Petition No.2529/2021 and of Mr. R.M. Bhangde in Writ Petition No.2310/2021, is that though subsequent events, which had a material bearing on the ground of eviction were sought to be brought on record vide the applications at Exh.45, 49, 50 and 53, in Writ Petition No.2329/2021 and Exh.42, 46, 47 & 50, in Writ Petition No.2310/2021, the learned Appellate Court by rejecting these applications has caused prejudice to the petitioners, as the subsequent events, sought to be brought on record, directly reflected upon the plea of bona fide need as canvassed by the respondent and therefore the rejection of these applications was not proper and the orders of rejection have to be set aside and the applications have to be allowed and the matter remanded back to the learned First Appellate Court.

5. Mr. Samudra, learned counsel for the respondent /landlord though admits the filing of proceedings for eviction and fair rent against the other tenants by the respondent/landlord, he however submits that these proceedings were in respect of properties which were joint family properties and therefore had no bearing whatsoever upon the claim for eviction made as against the present petitioners which was in respect of the individual properties of the respective respondents, apart from which it is his contention that possession was not received in those proceedings due which also their consideration was clearly not required.

6. To appreciate this position, it is necessary to note that the premises in occupation of the petitioner/tenant in Writ Petition No.2529/2021 is an area admeasuring 32.32 sq. mtrs (347 sq. feet) with loft on the ground floor of House No.228, situated at Buty Wada, Main Road, Sitabuldi, Nagpur, under a lease deed dated 31/08/2001 for which a decree for eviction has been granted as indicated above. In Writ Petition No.2310/2021, the petitioner was a tenant of the respondent in respect of an area admeasuring 32.32 sq. mtrs., each on the ground and first floor of House No.228, Main road, Sitabuldi, Nagpur under a lease deed dated 31/08/2001, which was to be renewed automatically for a similar period of time.

7. During the pendency of the appeal, an application at Exh.45 came to be filed by the petitioner/tenant, in Writ Petition No.2529/2021, under Order 41 Rule 27 C.P.C for producing additional evidence on record, on the ground that the respondent/landlord, had also initiated another suit namely Regular Civil Suit No.329/2014 against another tenant, which came to be decreed on 09/08/2018 and the respondent had received possession of the same, and the same had been then let out by the respondent to KFC, which was a subsequent event having a material bearing on the bona fide need pleaded by the landlord/respondent and therefore the application ought to be allowed. In his reply, the respondent/landlord admitted filing of Regular Civil Suit No.329/2014 against another tenant and the same being decreed, however denied to have received possession as an appeal against the same was claimed to be pending. It was also claimed that the shop which was the subject matter of Regular Civil Suit No.329/2014 was not solely owned by the respondent, but was a Hindu joint family property. The learned Appellate Court vide order dated 30/03/2021 (pg.184) rejected this application on the ground that no document was placed on record that the respondent/landlord had actually

been put in possession and the said property was not solely owned by the respondent /landlord and the judgment and decree passed in Regular Civil Suit No.329/2014 would not have any effect as its passing would not mean that the need of the respondent/landlord was satisfied.

8. Another application under Order 41 Rule 27 of CPC came to be filed by the petitioner in Writ Petition No.2529/2021 before the learned Appellate Court at Ex.49, for producing additional evidence on the ground that during the pendency of the appeal, in M.J.C. No.59/2016 filed by the respondent/landlord against another tenant namely Raghunath Patil, the tenant had passed away and his son had vacated the property and put the respondent/landlord in possession, which position had come to the knowledge of the petitioners on 15/10/2020 and the same was having a direct bearing on the need pleaded by the respondent/landlord, and was required to be produced on record. The filing of the above proceedings was not disputed by the respondent/landlord in his reply, however the receipt of possession of the said premises was disputed, on the ground that an application for bringing on record the legal heirs of the tenant was pending. The learned Appellate Court vide order dated 30/03/2021 (pg.186)

rejected the same on the ground that no document showing delivery of possession was placed on record (pg.187).

9. Another application was also filed by the petitioner in Writ Petition No.2529/2021, before the Appellate Court at Ex.50, under Order 6 Rule 17 of CPC to bring on record by way of amendment, the position that the tenant M/s SOLO, who was occupying an area admeasuring 2480 sq. ft. on the ground floor in the building known as “Bhojraj Multipurpose Hall”, in Regular Civil Suit No.329/2014 had lost the suit, had vacated the property which had been let out by the respondent to KFC, and so also the position as regards M.J.C. No. 59/2016, which was in consonance with Exh.45 and Exh.49, however this application too came to be rejected by the order dated 30/03/2021 (pg.188) on the same ground that no document was placed on record that the respondent/landlord had received possession of those properties.

10. Yet another application at Exh.53 filed by the petitioner in Writ Petition No.2529/2021 before the Appellate Court which was on similar lines as Exh.50 for amendment also came to be rejected by the order dated 30/03/2021 (pg.191), on the same ground that no document was filed to indicate receipt of possession, and the property was not solely owned by the respondent/landlord.

11. It is a settled position of law that the bona fide need of a landlord is required to be addressed, having regard to the position which existed as on the date of filing of the eviction suit. At the same time, it cannot be lost sight of the fact that the dispute between a landlord and tenant is a living dispute, till it reaches its logical end, on account of fluctuations caused due to intervening changes in the circumstances. Subsequent events may also change the original position of the parties *qua* each other. It is equally trite that the subsequent event must have material bearing on the landlords right to evict. In ***Ramesh Kumar Vs. Kesho Ram AIR 1992 SC 700*** while considering this position it has been held as under :

“6. 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. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [AIR 1941 FC 5 : 73 CLJ 51 : 53 MLW 373] Chief Justice Sir Maurice Gwyer observed: (AIR p. 6)

“But, with regard to the question whether the court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In Patterson v. State of Alabama [(1934) 294 US 600], Hughes C.J. said:

'We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered'."

And in *Pasupuleti Venkateswarlu v. Motor & General Traders* [(1975) 1 SCC 770 : (1975) 3 SCR 958] Justice Krishna Iyer said : (SCC p. 772, para 4)

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad."

These principles have since been reiterated and reaffirmed in *Hasmat Rai v. Raghunath Prasad* [(1981) 3 SCC 103 : (1981) 3 SCR 605] .

9. When subsequent events are pleaded in the course of an appeal or proceedings of revision, the court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order XIX CPC. The court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The court, if it finds that having regard to the nature of the allegations, it is necessary to

record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for an enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities."

Same position has been reiterated in *Gaya Prasad Vs. Pradeep Srivastava (2001) 2 SCC 604* and *Parashram Tuljaram Belhekar since deceased through his Lrs. Vatsalabai w/o Parashram Belhekar and others Vs. Tejmal @ Kankamal Mulchand Jain deceased by his legal heirs Shantabai Kankamal Chandedia and others, 2006 SCC OnLine Bom 1209 : 2007 (2) Mah LJ 610.*

12. In the instant matter, the subsequent events sought to be brought on record, clearly had a material bearing upon the need as pleaded by the respondent as they sought to bring on record other litigations initiated by the landlord against his other tenants, under which it was claimed that the respondent/landlord had already received possession. Though the position of having received possession was denied by the respondent/landlord, it is necessary to note that the filing of the proceedings for eviction against his other tenants were admitted by him, however it was equally a fact that the

filing of these proceedings was not brought on record by the respondent/landlord which he had a duty to do, towards the Court.

13. The learned Appellate Court, while considering the applications under Order 41 Rule 27 of CPC was enjoined to examine the satisfaction of the parameters as laid down therein. In case it came to the conclusion that those were satisfied, then it had to permit filing of the documents on record and thereafter to embark upon an exercise to determine whether in light of the position pleaded therein, the need as pleaded by the respondent/landlord, still existed or stood satisfied. Same was the position in respect of the applications under Order 6 Rule 17 of CPC.

14. Whether the passing of the judgment and decree in Regular Civil Suit No.329/2014, had any effect on the appeal and whether the need of the respondent/landlord still survived was a question which the learned Appellate Court could not have decided while considering the issue as to whether the document was to be required to be placed on record or not. This issue could have been considered after the document would have been permitted to have been placed on record only.

15. However, the impugned orders as passed below Ex.45, 49, 50 and 53 would indicate that without determining whether the bringing of the document on record was necessary, the learned Appellate Court, went on to reject the application and while doing so, even determined the sufficiency/insufficiency of the plea as sought to be raised vis-a-vis the documents sought to be filed and pleadings sought to be raised in that respect, resulting in determining the efficacy of the documents sought to be produced and the pleading sought to be brought on record, while rejecting the application for doing so. Whether the property from which eviction was ordered of the other tenants was joint family property and whether it could be taken into consideration for deciding the need pleaded also was something which could have been taken into consideration only after the position in that regard having been permitted to be brought on record and not otherwise.

16. This, in my considered opinion, has clearly caused a miscarriage of justice, and has resulted in prejudice to the petitioners as the position of the respondent having filed the above proceedings for eviction of his other tenants; passing of a decree and receiving possession which was disputed, was definitely a plea which had a

material bearing upon the need pleaded by the respondent/ landlord for seeking eviction of the petitioner/tenant, resultant to which the orders dated 30/03/2021 as passed by the learned Appellate Court, below the applications at Exh.45, 49, 50 and 53 as filed by the petitioners, which are also challenged in this petition are hereby quashed and set aside. The impugned judgment and decree dated 30/03/2021, as passed by the learned Appellate Court is also quashed and set aside and the matter is remanded back to the learned Appellate Court to hear and decide afresh the applications below Exh.45, 49, 50 and 53 and thereafter the appeal on its own merits.

17. In Writ Petition No.2310/2021, the position is similar, and the applications are at Exh.42, 46, 47 and 50 on which the orders have been passed on 30/03/2021, which reflect the same position as indicated above, resultant to which the same are also hereby quashed and set aside and the consequent judgment and decree dated 30/03/2021 passed by the learned Appellate Court is also quashed and set aside and the matter is remanded back to the learned Appellate Court to hear and decide afresh the applications

below Exh. 42, 46, 47 and 50 and thereafter the appeal on its own merits.

18. The Learned Appellate Court is directed to hear and decide the applications as well as the appeals within a period of three months from 12/06/2023, on which date the parties hereto shall appear before the learned Appellate Court and present a copy of this order before it, so as to apprise it of the same.

19. Rule is made absolute in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar