

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.486 OF 2022

Shri Vijay Yeshwant Vedak, (deleted since deceased)
Asmit Vijay Vedak,
Adult, Age 42 years, Occ: Not Known,
Indian Inhabitant, residing at 1st floor,
480/482, Chira Bazar, J.S.S. Raod,
Bombay 400 002

... Applicant

Versus.

1. M/s. P. M. Shah & Co.
A Partnership Firm registered under
The Indian Partnership Act, carrying
on business at 80-82, Chira Bazar,
Bombay 400 002.
(since deceased)
- 2(a) Smt. Sunita Suryakant Vedak,
Adult, Age non known,
Indian Inhabitant of Bombay, residing
At A/20, Natwar Nagar, Raod No.5,
Jogeshwari (E), Bombay 400 060.
- 2(b) Mrs. Meghna Nishit Murdeshwar
Daughter of deceased Smt. Sunita
Suryakant Vedak, Age 65 years,
Residing at Purikshit Premium Park,
C-201, Agashi Raod, Near Parekh Commercial Centre,
Virar (W), Thane.
- 2(c) Ms. Charulata Suryakant Vedak,
Daughter of deceased Smt. Sunita Suryakant Vedak,
Aged about 63 years, Occ: Retired.
- 2(d) Ms. Neelam Suryakant Vedak,
Daughter of deceased Smt. Sunita Suryakant Vedak,

Aged about 66 Occ: Service, Both residing
At A/20, Natwar Nagar, Road No.5,
Jogeshwari (E), Mumbai 400 060.

3. Shri Jayant Suryakant Vedak,
Adult, Age not known, Both Indian
Inhabitant of Bombay, residing at
Natwar Nagar Road No.5,
Jogeshwari (W), Bombay 400 060.
4. Shri Narendra Yeshwant Vedak,
Adult, Age not known, Occ. Not known,
Residing at 1st Floor, 480/482, Chitra
Bazar, Bombay 400 002. (Deceased)
 - 4(a) Nilima Narendra Vedak (wife),
 - 4(b) Dhaval Narendra Vedak (Son),
 - 4(c) Jasmita Narendra Vedak (daughter),
6-A, 2nd Floor, Flat No.9,
Ekatmata Nagar, J.B.Nagar,
Andheri (E), Mumbai 400 059.
5. Kamalakant Yeshwant Vedak,
Adult, Age not known, Occ: Not known,
Residing at Flat No.B/13, 3rd Floor,
Mercantile Bank Employees
Co-operative Society Ltd., Hindustan
Friends Colony, Natwar Nagar,
Road No.5, Jogeshwari (E),
Bombay 400 060.
6. Shri Maheshchandra Yeshwant Vedak,
Adult, Age not known, Occ: Not known,
Residing at Room No.3, Chandrakant Rasal
Chawl, Ramchandra Pawaskar Marg,
Near Dahisar Market,
Next to Vithal Mandir, Dahisar (W),
Bombay 400 068.

7. Shri Dilip Yeshwant Vedak,
- 7(a) Asha Dilip Vedak (wife),
- 7(b) Mansi Dilip Vedak (Daughter)
Vandana Sadan Sahakari Gruh Sanstha Ltd.,
201, D-Wing, 2nd Floor,
Manvalpada Road, Taluka: Vasai,
Virar (E), Dist: Thane 401303.
8. Sarojini Yeshwant Vedak (deceased),
Unmarried (No legal heirs),
Sai Kripa Society, Block No.22/D,
2nd Floor, Eksar Road, Talepakhadi,
Borivali (W), Mumbai 400 068.
9. Yogesh s/o. Vijay Vedak,
Adult, Age 48 years, Occ: Not known,
480/482, Chira Bazar, J.S.S. Road,
Bombay 400 002, and Agasti Building,
3rd Floor, Jivdani Road, Virar (E),
District Thane.
10. Ms.Rupali Vijay Vedak
Adult, Age 45 years, Occ: Not known,
Indian Inhabitant of Bombay,
Having address at 480/482, Chira Bazar,
1st Floor, J-Shankar Seth Road,
Mumbai 400 002.
11. Smt. Vandana wd/o. Vijay Vedak,
Adult, age 75 years, Occ: Not known,
Indian Inhabitant of Bombay,
Residing at 1st Floor, 480/482,
Chira Bazar, J.S.S. Road,
Bombay 400 002.

...Respondents.

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Mr. Durgaprasad Sabnis a/w. Mr. Durgesh Kulkarni, Mr. Durgesh Rege,

Mr. Hiten Lala and Mr. Harsh Sukhramani for the Applicant.
Mr. Satyavan N. Vaishnav a/w. Ms. Nupur J. Mukherjee, Mr. Armaan Grewal and Ms. Jasmin Kaur i/b M/s. N. N. Vaishnawa & Co. for the Respondents.

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CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : NOVEMBER 09, 2023
PRONOUNCED ON : JANUARY 02, 2024.

JUDGMENT:

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of the parties.
2. Revisional jurisdiction of this Court has been invoked taking exception to the concurrent findings of the Appellate Court vide judgment dated 7th July, 2022 and the Trial Court vide judgment dated 2nd May, 2014 directing the Applicant to handover the vacant and peaceful possession of the suit premises.
3. The applicant herein is one of the legal heirs of original defendant No.5. R.A.E Suit No.631/1081 of 2002 was filed by respondent No.1 which was a partnership firm against the respondents herein for a decree of eviction. For sake of convenience the parties are referred to by their status before Trial Court.

4. The case of the plaintiff is that one Yeshwant Vedak was the monthly tenant in respect of the first floor premises situated at 480/82 Chira Bazar, J. S. S. Road, Bombay-400 002. Yeshwant Vedak had seven sons and in or about 1954, at the request of original tenant, the rent receipt of the suit premises was transferred in the name one of his sons Suryakant. In the year 1969, Suryakant shifted from the suit premises and relinquished his tenancy rights in favour of his other brothers.

5. It is pleaded that the plaintiff is a partnership firm having two partners viz. Premchand Kasturchand Jain and Mangilal Okchand Jain. Premchand Jain is occupying the second floor of the building whereas Mangilal Jain is occupying the third floor of the building. Premchand Jain has three sons viz., Satish, Subhash and Jitendra. Satish is married and has two sons aged about 15 and 11 years. Subhash has one son and one daughter aged 13 and 11 years respectively. That Jitendra is aged about 30 years. That the children do not have any studying facility and the three bedroom, kitchen and hall premises on the second floor was short in accommodation for Premchand's family. As regards Mangilal, it was pleaded that Mangilal had one son and 4 daughters. Mangilal's son is married and has one son and three daughters and that the son is studying and one

daughter is married and two daughters are unmarried. That Mangilal's premises on the third floor consisting of three rooms, kitchen and hall is insufficient for the family. That the suit premises were reasonably and *bona fide* required for the use of family members of the partners.

6. It appears that the plaint was thereafter amended and it was pleaded that Premchand's son Satish has shifted from the suit premises and is residing elsewhere with his family due to insufficient accommodation. That Subhash is married and has one daughter aged 14 years studying in Std X and one son studying in Std. VIII. That Premchand's other son Jitendra is married and has one son viz., Lavish and one daughter. That one room is used by Premchand and his wife and the second room is used by Jitendra and his wife and their children have no separate room for studies. That there are four children in the house and due to shortage of accommodation their studies are suffering. That their five daughters are married and they visit the house with their children and there is no proper accommodation.

7. As regards the requirement of Mangilal is concerned, by amendment it was pleaded that Mangilal and his wife have undergone bypass surgery and have been advised not to climb the staircase. That

Mangilal has one son Dinesh and four daughters. That Mangilal's son Dinesh is married and has three daughters, one of whom is married, and one son named Varsit aged 10 years. That premises on the third floor is consisting of three rooms and kitchen out of which one room is used by Mangilal and the other room is used by Dinesh and his wife, and, his two daughters and one son occupy one room. That Mangilal's daughters frequently visit him and the premises is insufficient for their accommodation.

8. The suit was contested by defendant Nos.1, 2 and 5 by filing their written statement. Defendant Nos.1 and 2 are the legal heirs of Suryakant and their defence was that Suryakant had not relinquished his tenancy rights and they had shifted from the premises but were coming to the suit premises. As far as defendant No.5 is concerned, he had filed his written statement and additional written statement. It was admitted by him that in 1954 the tenancy was transferred in the name of Suryakant for sake of convenience and that the same was only a family arrangement and no tenancy rights were created in favour of Suryakant and in fact it was a joint tenancy. It was contended that defendant No.5 along with his family member is residing with the original tenant and as such defendant No.5

alone is entitled to tenancy right.

9. The parties went to trial and the plaintiff examined PW-1-Premchand Jain and PW-2-Mangilal Jain. On behalf of defendant only defendant No.1A filed his affidavit of evidence and other defendants failed to participate in the hearing of the suit.

10. The Trial Court after considering the evidence on record decreed the suit. As against this, an appeal was preferred before the appellate Bench by the original defendant No.5. During pendency of the appeal defendant No.5 expired and his legal heirs were brought on record. The present revision applicant is one of the legal heirs of the deceased defendant No.5. During the pendency of the appellate proceedings, an application came to be filed under Order 41 Rule 27 of Civil Procedure Code seeking permission to produce additional evidence. In application under Order 41 Rule 27 it was contended that the appellant had received information that partnership firm has been dissolved, that Satish Jain had acquired a residential premises at Sea View Apartments, Building No.571-11th floor, J.S.S. Road, Chira Bazar, Mumbai-400 002, Jitendra Jain has shifted his residence to Lodha Veneza, G. D. Ambedkar Marg, Lalbaug, Ramwadi,

Mumbai-400 033 and Subhash has shifted to Darshan Towers, Elphinston Rd., Prabhadevi. It was contended that second floor of the building has been let out by Satish Jain to a person named Sheshmal Bhansali. An additional application was filed under Order 41 Rule 27 of CPC on 16th March, 2022 contending that wife of Mangilal Jain has expired on 1st June, 2022 and Dinesh-son of Mangilal has acquired residential premises at 78,79th floor, Lodha Park, Pandurang Budhkar Park, Worli, Mumbai 400 018. The applications came to be allowed by the appellate Court by its order dated 7/7/2022 and the Appellant was permitted to lead additional evidence. The appellate Court by its judgment dated 7/7/2022 dismissed the appeal upholding the judgment of the Trial Court directing eviction.

11. Heard Mr. Durgaprasad Sabnis, learned counsel for the Applicant and Mr. Satyavan N. Vaishnav, learned counsel for the Respondent.

12. During the hearing of the proceedings a query was posed by this Court as to whether any additional evidence as permitted by the order dated 7/7/2022 of the Appellate Court was led by the parties. This Court is informed that no additional evidence was led. However, Mr. Vaishnav

learned counsel appearing for respondents submits that the additional documents may be taken as proved as they have already been considered in the impugned judgment and even thereafter the decree of eviction on ground of reasonable and *bona fide* requirement is required to be upheld.

13. Mr. Sabnis contends that the subsequent events have completely eclipsed the requirement of the respondent-plaintiff, if any. He submits that during pendency of appellate proceedings, Mangilal as well as his wife passed away and his son Dinesh has acquired another residential premises. In so far as the other partner Premchand is concerned, he submits that the three sons of Premchand have acquired other residential premises and that the premises on the second floor has been let out by Satish to third party. He submits that the requirement with which the landlord has approached the Court was for the use and occupation of family members of Premchand and subsequent events would indicate that sons have acquired alternate premises and shifted there. He would further submit that as regards the requirement of Mangilal is concerned, the requirement was on the basis of medical illness which no longer survives as during the pendency of the proceedings Mangilal and his wife have expired. He further submits that in reply to the additional evidence, there is no denial to this factual

position as regards the subsequent events. He has invited the attention of this Court to the findings of the appellate Court and would submit that the Appellate Court did not appreciate the subsequent event in proper perspective that the need of Mangilal and Premchand stood extinguished. He further submitted that the appellate Court after holding that both Mangilal and his wife had expired erroneously observed that the relief claimed still continues to exist. In support he relies upon the following decisions:

- (i) **Kedar Nath Agrawal (Dead) vs. Dhanraj Devi (Dead) By Lrs. 2004 DGLS(SC) 970 (Supreme Court);**
- (ii) **Sheshambal (Dead) Through LRs vs. Chelur Corporation Chelur Building and Others. (2010) 3 SCC 470;**
- (iii) **Kiran K. Gujar & Others vs. Pradip B. Kasavkar & Others, (2002) 6 Bom CR 109;**
- (iv) **Gyasi Nayak vs. Gyanchandra Jain, 2010 (3) M.P.L.J.;**
- (v) **Vasant Mahadeo Gujar vs. Baitulla Ismail Shaikh & Anr., (2015) 5 Bom CR 415.**

14. *Per contra*, Mr. Vaishnav, learned counsel for respondent submits that applicant herein is one of the legal heirs of deceased defendant No.5. He points out the cause title of the plaint before Small Causes Court which shows the address of original defendant No.5 at Agasti Building, Jeevdani Road, Virar (E), District Thane. He submits that in the written

statement the defendant No.5 has not disputed about the premises at Virar. He points out the admission of DW-1 that Suryakant was residing at Dahisar, that all the other defendants had acquired alternate premises, that defendant No.5 had come to the suit premises after the others had acquired alternate premises and that the applicant's brother Yogesh had left the suit premises and resides in his own flat at Virar and Yogesh's flat consisted of 2-3 rooms and that the present applicant and his mother can stay at the Virar flat.

15. He would further submit that proceedings were initiated in the year 2002 and during the pendency of the proceedings Mangilal and his wife have expired. According to him, if the contention of the tenant is accepted, then in each and every case the trial will be deliberately prolonged so as to take advantage of the intervening events that take place. He submits that the requirement is not eclipsed as the evidence of PW-1 would indicate that there was a requirement for each and every family member of the landlord and it will have to be shown that requirement of each and every family member has been satisfied by the subsequent events. He further points out the cross examination of DW-1 in which DW-1 has admitted that due to overburden Satish was compelled to acquire another premises

and that DW-1 has further admitted that Dinesh has one son viz. Varsit who is of marriageable age and all daughters of Mangilal and Premchand time and again come to the house. He submits that the requirement for the suit premises therefore continues. He submits that the evidence does not show that Mangilal's family is not residing in the third floor premises. He submits that the first floor premises which were tenanted premises was sought not only of the ground of medical ailment of Mangilal but also for the *bona fide* use of Mangilal's family members which is not satisfied. He submits that there is no evidence to show that any efforts were taken by the tenant to acquire any additional premises. He submits that there is no cross-examination of defendant on the issue of comparative hardship as DW-1 has deposed that applicant Ashmit can go and stay at Virar. He submits that the requirement of Mangilal's family continues even though the premises on second floor which belonged to Premchand has been let out to some other person. He submits that there is no perversity shown to disturb the concurrent findings. He relies upon the following decisions:

- (i) **Prativa Devi (Smt) vs. T.V. Krishanan, (1996) 5 SCC 353;**
- (ii) **Bhimanagouda Basanagouda Patil vs. Mohd. Gudusaheb, (2003) 3 SCC 101;**
- (iii) **Mohd. Ayub and Another vs. Mukesh Chand, (2012) 2 SCC 155;**
- (iv) **Atma S. Berar v. Mukhtiar Singh, (2003) 2 SCC 3;**

- (v) **Gaya Prasad vs. Pradip Srivastava, (2001) 2 SCC 604;**
- (vi) **Pratap Rai Tanwani and Another vs. Uttam Chand and Another, (2004) 8 SCC 490;**
- (vii) **Hukum Chandra (Dead) through Legal Representatives v. Nemi Chand Jain and Others, (2019) 13 SCC 363;**
- (viii) **D. Sasi Kumar v. Soundararajan, (2019) 9 SCC 282;**
- (ix) **Mahavir Singh and Others v. Naresh Chandra and Another, (2001) 1 SCC 309;**
- (x) **Tejibai w/o Dhanji Chavan (died) through L.Rs. v. Mohanlal s/o Devram Parmar (died) through L.Rs. Gouribai w/o.Mohanlal Parmar and Others, 2019 (6) MhLJ 60;**
- (xi) **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 78.**

16. In rejoinder learned counsel for respondent submits that the suit is filed by partnership firm and not by separate individual. He submit that there is no pleadings about Satish's need and that the second floor premises which have been let out could have been utilized and that it is not the case of the landlord that alternate premises is not suitable and as such the need subsists.

17. Considered the submissions and perused the record.

18. The issue arising for consideration is whether the subsequent

events can be stated to have completely eclipsed the reasonable and bonafide requirement of the landlord. Mr. Vaishnav, learned counsel for the respondent has conceded that the documents as regards the subsequent events can be taken as proved. The suit for eviction has been filed by the partnership firm on the ground of reasonable and bonafide requirement of its partners and their family members. Section 16(1)(g) of Maharashtra Rent Control Act, 1999 (Rent Act) provides that the landlord is entitled to recover possession of any premises for the reason that the premises are reasonably and bonafide required by the landlord for occupation for himself or by any person for whose benefit the premises are held. As such although the suit was by the partnership firm, the recovery of possession of the suit premises was for the benefit of its partners and their family members.

19. The landlord tenant relationship has been admitted. Premchand, one of the partners of the landlord firm was occupying the second floor and the other partner Mangilal was occupying the third floor. The suit premises is situated on the first floor. R.A.E suit was filed in the year 2002 and out of the seven defendants the present revision application has been preferred by one of the legal heirs of deceased defendant No.5 Vijay.

20. At the time of the institution of the suit, the requirement pleaded was that the current residences were insufficient for the family members of Premchand and Mangilal as well as on account of the by-pass surgery undergone by Mangilal and his wife as they were advised not to climb the stairs. The second floor premises admeasuring about 850 sq. ft. consisting of three rooms and kitchen was occupied by Premchand. Premchand has three sons Satish, Subash and Jitendra and five daughters, all of whom are married. Satish has 2 sons, Subhash has a son and a daughter and Jitendra has a son and daughter. Satish and his family members had already shifted from the current residence due to paucity of space. As such in the second floor premises consisting of three bedrooms, kitchen and hall there were ten people residing.

21. As regards Mangilal, the requirement of the first floor premises was on account of their surgery as they were advised not to climb the stairs. Apart from the need of Mangilal and his wife, it was pleaded that Mangilal's son Dinesh was married and they have one son and three daughters and one of the daughter is married. As such the premises on the third floor occupied by Mangilal ad-measuring 900 sq. ft. consisting of three rooms, kitchen and hall was insufficient to accommodate the family members.

22. The Trial Court considered the evidence of PW-1 Premchand who deposed that the current residence was not sufficient to accommodate the family members, which evidence was not shaken in the cross examination. As regards the requirement of the other partner Mangilal and his family members, the Trial Court considered the evidence of PW-2 Mangilal who deposed as to the requirement of the suit premises for himself and his wife on account of their surgery as well as for their family members and that the same was insufficient for their accommodation. In the cross examination there is nothing elicited to shake the version of PW-2. The Trial Court noted that during the pendency Premchand and his wife expired, however the requirement of their family members as well as the requirement of the other partner survived. The Trial Court observed that in the cross examination PW 1 has admitted that his sons are having shop premises and rightly concluded that the shop premises are different than the residential premises. On the basis of evidence, the Trial Court held that the suit premises is required by the Plaintiff's partners reasonably and bonafide for their occupation.

23. On the issue of comparative hardship, the Trial Court considered the evidence of DW-1 that DW-1 was residing at Jogeshwari and

that his uncles Mahendra and Narendra are residing in their own premises and Vijay-the father of Defendant No 5 has expired and Yogesh-brother of Defendant No 5 is residing in his own premises at Virar. The Trial Court held that as alternative premises were acquired by the Defendants no hardship would be caused to them if the suit is decreed.

24. The findings of the Trial Court demonstrate correct appreciation of the evidence produced on record. At the appellate stage, the Appellate Court has permitted additional evidence to be produced on record. The subsequent events which have come on record is that Mangilal and his wife has expired and that the sons of Premchand have acquired their own residential premises and the second floor premises which was earlier occupied by Premchand and his family members has been let out to third person. As regards Mangilal's son Dinesh, he has also acquired his own residential premises.

25. As regards the death of Mangilal and his wife, the Appellate Court held that the death of the party does not amount to his need for bonafide requirement being wholly satisfied and if the defence is accepted, the tenant would drag the case till death of landlord. As regards the letting

out of the second floor premises, the Appellate Court held that the suit premises was on first floor and Mangilal and his wife resided on the third floor and suit property was required for their medical ailments which relief still continues to exist. As regards the sons of Premchand and Mangilal having acquired other residential premises, the Appellate Court held that the longstanding litigation has compelled them to settle elsewhere and these subsequent events does not washout plaintiff's case. The Appellate Court held that there is no evidence that the alternative accommodation available to the Plaintiff's firm are in vicinity of the suit premises and in fact they are far away from the suit premises and not suitable for the partners and their family members. On the issue of comparative hardship, the Appellate Court held that the Defendants have acquired alternate premises and the Plaintiff will suffer greater hardship.

26. It cannot be disputed that longer the litigation more the occurrence of intervening events and the intervening events should be shown to have wholly satisfied the bonafide need of the Plaintiff. At the date of institution of suit, the bonafide requirement pleaded was for the growing need of the partners Mangilal and Premchand and their family members and subsequently on account of the medical ailments of Mangilal and his

wife as the suit premises were situated on the first floor and Mangilal and his wife were advised not to climb stairs. During the pendency of the suit, Premchand and his wife expired but the requirement of their family members as well as the requirement on account of illhealth of Mangilal and his wife as also for the residence of their family members subsisted. It was on that basis that the Trial Court has rightly concluded that the need of the Plaintiff is reasonable and bonafide.

27. At the Appellate stage, the subsequent events which were brought on record is that Mangilal and his wife had expired and the children of Premchand as well as Mangilal have shifted to other premises and the second floor premises was let out to third party. In the case of ***Kedarnath Agarwal vs Dhanraj Devi (supra)***, the applicants therein required the suit premises for doing their business and during pendency of the proceedings, the original applicants expired. The Apex Court held that the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit, and this, however, does not mean that events happening after institution of suit cannot be considered at all. The Apex Court held that in that case the requirement was for applicants who died during the pendency of the Petition and allowed the Appeal. In the instant

case, the suit premises situated on the first floor was required for the residence of Mangilal and his wife on account of their ill-health. Subsequently Mangilal and his wife expired. Considering the death of Mangilal and his wife, their requirement visa vis the first floor suit premises stood extinguished.

28. The Appellate Court failed to consider the subsequent event of death of Mangilal and wife in proper perspective and committed an error while holding that even though both are dead, the relief claimed by them till continues to exist. This is sought to be supported by Mr. Vaishnav by submitting that the Appellate Court has referred to the need of the family members of Mangilal. The findings of the Appellate Court at paragraph 29 of the impugned judgment does not indicate so as the Appellate Court was considering the need of Mangilal and his wife for the suit premises.

29. Now coming to the bonafide requirement of the family members of Premchand and Mangilal, as far as Premchand's family members is concerned, the sons of Premchand Subash, Satish and Jitendra have acquired other premises and have also let out the second floor premises to third party. The Appellate Court has brushed aside this subsequent event by

holding that even if the second floor premises is let out, the suit premises is situated on the first floor. The requirement pleaded was that the family of Premchand was growing and the suit premises was required for the residence of the family members. It is trite that the landlord has every right to choose the property for its beneficial enjoyment, however, in the instant case the area of second floor premises and the first floor premises are almost similar in area. It cannot be argued that the family members of Premchand desire to reside on the first floor as by letting out the second floor the requirement of insufficient accommodation will continue. By letting out the second floor premises and acquiring other residential premises by the sons of Premchand, in my view, the need of the family members of Premchand has been wholly satisfied.

30. As far as the family members of Mangilal is concerned, his son Dinesh has acquired other residential premises. The Appellate Court has refused to consider the acquisition of alternate premises as having wholly satisfied the need for the reason that the alternate accommodation are not in the vicinity of the suit premises. After the death of Mangilal and his wife, the third floor premises is available to Dinesh, however, Dinesh has chosen to acquire other premises and reside there. The submission of Mr. Vaishnav

is that there is no evidence to demonstrate that Dinesh is residing there. The acquisition of other premises is not disputed and there is no material to demonstrate that Dinesh is residing on the third floor. This indicates that there is no requirement of Dinesh either for the first floor premises or even the third floor premises. Mr. Vaishnav would contend that Dinesh's son Varsit is of marriageable age and the requirement still continues. The third floor premises is still available for Varsit's residence and considering the third floor premises as well as the alternate premises acquired by Dinesh, the need on account of insufficient accommodation stands satisfied. It is no doubt true that during the long pending litigation, the sons of Premchand and Mangilal cannot be expected to not acquire alternate accommodation considering the growing needs of their family members. However to sustain the reasonable and *bona fide* need it must be demonstrated that despite acquiring alternate premises, the need for the suit premises subsist. The plaintiff, in my view, has failed to demonstrate this position.

31. The Appellate Court without any material on record has come to a finding that the alternate accommodation available to the Plaintiffs are far away from the suit premises and not suitable for the partners and their family members. The finding of the Appellate Court is without any evidence

on record. Despite the second and third floor premises being available for family members of Premchand and Mangilal, they have chosen to reside in the alternate premises acquired by them. There is no case put forward that the suit premises were required due to the proximity of the premises either to their workplaces or the educational institutions of their children. The requirement pleaded was that the current residences were insufficient for the growing needs of their family members. As such there was no evidence on record for the Appellate Court to come to the conclusion that the alternate premises was not suitable for the partners and their family members.

32. The Apex Court in case of ***M. M. Qasim vs. Manohar Lal Sharma, 1981 AIR 1113*** in paragraph No.18 held thus:

“18..... When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison d'etre of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact

that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant.....”

33. Now coming to the decisions relied upon by the learned counsel for the Respondent-landlord, in the case of ***Prativa Devi vs. T.V. Krishanan (supra)***, the Apex Court held that the landlord is the best judge of his residential requirement and it is no concern of the Court to dictate the landlord in what manner he should live or to prescribe him a residential standard of their own. In that case the Court has observed that the landlord was an old lady and has no one to look after her and therefore, she should continue to live with the family friend of her late husband. The decision rendered in different fact situation is not applicable to the facts of the present case.

34. In the decision in the case of ***Bhimanaagouda Basanagouda Patil vs. Mohd. Gudusaheb (supra)***, the Apex Court has considered the issue of comparative hardship and has held that the affluence of the landlord cannot be the sole ground to hold against the landlord while deciding the issue of comparative hardship. In the present case, the issue is whether the subsequent events have eclipsed the bonafide requirement of the landlord and as indicated above, I have held that the requirements were wholly

satisfied. In that case, the landlord has no other residence other than the suit premises and was occupying in the rented premises and is factually distinguishable.

35. The next decision is in the case of *Mohd. Ayub vs. Mukesh Chand (supra)*, in which the Apex Court has held that the landlord's requirement need not be a dire necessity and the Court cannot direct the landlord to do the particular business. In the facts of that case, the Apex Court has held that the fact the person has a capacity to purchase the property cannot be the sole ground against the person while deciding the question of the comparative hardship. The decision in that case turns on the issue of comparative hardship and in the present case, as the requirement itself is held to be wholly satisfied, there is no question of considering the issue of comparative hardship.

36. In the case of *Atma S. Berar v. Mukhtiar Singh, (supra)*, in the facts of that case, the landlord was owner of residential building situated at Moga which was let-out to the respondent-tenant and he had initiated proceedings on the ground that he has decided to finally to settle in Moga and live peacefully. In that case, there are no other premises owned by the

landlord. The Apex Court considered the subsequent event of the landlord having negotiated the sale with the tenant as also the entries which were contained in the passport showing the landlord's frequent movement between India and Canada, and held that the power of the Court to take note of subsequent events is well settled and undoubted, provided that the subsequent event should be brought promptly to the notice of the Court and consistently with the rules of procedure enabling the Court to take note of such event and enabling the opposite party an opportunity of explaining such events and thirdly, the subsequent events must have material bearing on the right of relief of any party. In the instant case, there is a concession given by the learned counsel for the Respondent that the additional evidence as to the subsequent events should be taken as proved. Considering the subsequent events the same have a material bearing on right to relief of the parties as to the *bona fide* requirement of the landlord due to insufficiency of current residences.

37. The next decision is in the case of *Gaya Prasad vs. Pradip Srivastava*, (*supra*), in that case the Apex Court held in paragraph 10 as under:

"10. We have no doubt 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. 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 bona fides 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 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. 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 finale, 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.”

38. The Apex Court held that the subsequent events to overshadow the genesis of the need must be of such nature and such dimensions that the

need propounded by the petitioning party should have been completely eclipsed by such subsequent events. Considering the facts of that case, the Apex Court held that the subsequent event did not overshadow the bonafide relief, as in that case, the requirement was for the suit premises for the son and in the meantime, the son had taken up a job. It is in facts of that case, the Apex Court held that the subsequent event did not overshadow the *bona fide* need.

39. In *Pratap Rai Tanwani vs. Uttam Chand, (supra)*, the Apex Court held that the Appellate Court is required to examine and evaluate and adjudicate the subsequent events. The said decision follows the earlier decisions of the Apex Court, that the subsequent events do not eclipse the *bona fide* need and the same must continue to subsist. There is no quarrel with this proposition.

40. The next decision is in the case of *Hukum Chandra v. Nemi Chand Jain, (supra)*. In that case the Apex Court considered the earlier decisions on the issue and held that in appropriate cases, Court can take note of all the subsequent events. The Apex Court noted the decision in the case of *Gaya Prasad (supra)* and observed that in that case the *bona fide*

requirement was for starting of a clinic by son of landlord and during the pendency of the litigation, the son of the landlord joined the provincial medical service and was posted at different places and that the Court refused to take notice of the subsequent events holding that the crucial date is the filing of the eviction petition. The Apex Court held that the landlord therein had acquired premises which was for the requirement of his other son and the suit premises therein was required for the another son of the landlord and the requirement was not satisfied.

41. *D. Sasi Kumar v. Soundarajan, (supra)*, has been pressed by Mr. Vaishnav to support his submission that the possession of the alternate premises has been admitted by the tenant in the cross-examination. In the instant case, DW-1 has admitted that the other members of the family had acquired alternate premises. However, the said issue acquires relevance while deciding the issue of comparative hardship.

42. The next decisions of *Mahavir Singh v. Naresh Chandra, (supra)*, and in *Tejibhai v. Mohanlal, (supra)*, are on the scope of application under 41 Rule 27 which in lieu of the concession made by the learned counsel for the Respondents have no application to the facts of the present

case.

43. The next decision which have been relied upon in the case of *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, (supra)* is on the scope of revision. The Apex Court held that in exercise of its revisional jurisdiction under the Rent Control Act does not entitle the High Court to interfere with the findings of facts because on re-appreciation of evidence its view is different from the Court below and the High Court is entitled to satisfy itself that the decision is according to law and in the process to consider whether the order impugned suffers from any procedural illegality or irregularity.

44. The settled position of law is that the rights of the parties are required to be determined on the basis of the position as is existing on the date of the institution of the suit or proceedings. It is also settled that subsequent events happening after institution of Suit which have a relevant bearing must be taken into consideration and if the events show that requirement of landlord is wholly satisfied then in that case no decree of eviction should follow. In the present case, the Appellate Court has refused to consider the subsequent events as eclipsing the need of the landlord and has held that despite the death of Mangilal and his wife, need still subsists thereby committing jurisdictional error. The observation of the Appellate Court is contrary to the decision of the Apex Court in the case of *Kedarnath Agarwal (Dead) vs. Dhanraj Devi (Dead) (supra)*. In my view the Appellate

Court has committed an error of jurisdiction by not appreciating the subsequent events in the proper perspective and as such warrants interference in exercise of revisional jurisdiction.

45. Resultantly, the Revision Application is allowed. The judgment of the Appellate Court and the trial Court is quashed and set aside. RAE Suit No.631/1081/2002 stands dismissed. Rule is made absolute.

(SHARMILA U. DESHMUKH, J.)