

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

CIVIL REVISION APPLICATION NO.231 OF 2022

Sulochana Divakar Parkar

Age 86 years, Occ. Housewife,
of Bombay Indian inhabitant
Residing at 34, Miranda Chawl,
Dadar, Bombay – 400 028.

....Applicant

V/S

Shamrao Dinanath Bhatte

(Deleted)

1) Ashok Shamrao Bhatte
(Deleted since deceased)

1a) Mrs. Leena Ashok Bhatte
widow, age 78 years,
Occ. Housewife

1b) Prashant Ashok Bhatte
Age 53 years, Occ. Service
as Driver,
Both residing at 29,
Giridhari Sadan
D.L. Vaidya Road,
Dadar (West),
Mumbai – 400 028.

1c) Supriya Amit Mhatre
Age 47 years, Occ. Housewife,
residing at 4-Rohini Mahendra Nagar,
Dhaya Bhai Patel Road,
Malad (East),
Mumbai – 400 097.

....Respondents

**WITH
INTERIM APPLICATION NO.8527 OF 2024
IN
CIVIL REVISION APPLICATION NO.231 OF 2022**

Ashok Shamrao Bhatte
(since deceased through
legal heirs and representatives)

1. Mrs. Leena Ashok Bhatte
widow, age 82 years,
Occ. Household

2. Prashant Ashok Bhatte
Age 56 years, Occ. Driver,

Both residing at 29,
Giridhari Sadan
D.L. Vaidya Road,
Dadar (West),
Mumbai – 400 028.

1c) Supriya Amit Mhatre
Age 51 years, Occ. Household,
residing at 4-Rohini Mahendra Nagar,
Dhaya Bhai Patel Road,
Malad (East),
Mumbai – 400 097.

....Applicants

V/S

Sulochana Divakar Parkar

Age 86 years, Occ. Housewife,
Indian inhabitant
Residing at 34, Miranda Chawl,
Dadar, Mumbai – 400 028.

....Respondent

Mr. R.M. Haridas with Mr. Kishor Patil I/b Mr. Pratik B.
Rahade *for the Applicant in CRA and for Respondent in IA.*

Mr. Sudhir Sadavarte *for Respondents in CRA and for
Applicants in IA.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 21 OCTOBER 2024.
PRONOUNCED ON : 25 OCTOBER 2024.

J U D G M E N T

1 Revisionary jurisdiction of this Court is invoked under provisions of section 115 of the Code of Civil Procedure, 1908 (**the Code**) for setting up a challenge to the decree dated 13 November 2021 passed by Appellate Bench of Small Causes Court in Appeal No.35 of 2013, by which the Appellate Court has allowed the Appeal and has set aside the decree of the Small Causes Court dated 31 January 2013 passed in RAE & R Suit No.613/1164 of 1998. The Appellate Court has decreed the suit directing the Applicant/Defendant to vacate the possession of the suit premises. The Revision Applicant/Defendant is aggrieved by the eviction decree passed by the Appellate Bench of Small Causes Court and has accordingly filed the present Revision Application.

2 Facts of the case in brief are that Shop No.13 situated on Plot No.177, TPS-IV, Mahim Division, Mumbai, admeasuring 38.21 square feet carpet area located in Miranda Chawl were the original suit premises. It appears that original Plaintiff Shamrao Dinanath Bhatte was the tenant in respect of the said Shop No.13 in Miranda Chawl. It appears that Defendant was inducted in the suit premises by Plaintiff Shamrao Dinanath Bhatte for conducting the business of cycle repairing in the year 1962. Defendant filed a declaratory suit in Small Causes Court, Mumbai seeking a declaration that she is the tenant in respect of the suit premises on the basis of her possession as on the cut of date of 1 February 1973. By decree dated 2 April 1980, the Small

Causes Court declared Defendant as deemed tenant in respect of the suit premises. It appears that during pendency of the said suit, Miranda Chawl was demolished by Shri Shiv Sena Trust, which proposed construction of the new building at site. The Small Causes Court therefore directed the Trust to handover possession of alternate premises in the newly constructed building to the Defendant. Appeal preferred by the Plaintiff against declaratory decree dated 2 April 1980 was dismissed by the Appellate Bench on 13 August 1981. Writ Petition preferred by Plaintiff before this Court was also dismissed on 26 February 1997. It appears that in the newly constructed building, Shop No.2 was given in possession of the Defendant.

3 In the above background, Plaintiff instituted RAE & R Suit No.613/1164 of 1988 for eviction of Defendant on the grounds of *bonafide* requirement and default in payment of rent. During pendency of RAE & R Suit No.613/1164 of 1988, the reconstructed building by Shri Shiv Sena Trust was again required to be demolished on 4 March 2004 and new building has been constructed at the site in which suit premises are allotted and put in possession of the Defendant.

4 Plaintiff pleaded that he required suit premises for *bonafide* need of carrying out cycle repair shop with the help of his son as the cycle repairing shop conducted by him in another licensed premises was not suitable and he wanted to shift the said business to the suit shop. Plaintiff also pleaded that Defendant failed to pay any rent or compensation in respect of

the suit premises. He relied upon order dated 2 April 1980 passed in RAD Suit No.5472 of 1975 under which Defendant was declared as a deemed tenant in respect of the suit shop and Plaintiff was declared as deemed landlord. It appears that the Plaintiff was amended as Shri Shiv Sena Trust once again decided to rebuild the structure and executed Agreement dated 4 March 2004 with the Plaintiff for handing over permanent alternate accommodation admeasuring 38.21 square meters in the newly constructed building of the Plaintiff on tenancy basis. This is how Plaintiff sought recovery of possession of the suit premises from the Defendant on the ground of *bonafide* requirement and default in payment of rent. The suit was resisted by the Defendant by filing Written Statement denying the ground of *bonafide* requirement as well as non-payment of rent. Based on the pleadings raised by the parties, the Small Causes Court framed various issues and ultimately decided issues relating to (i) maintainability of suit in view of demolition of original suit premises, (ii) arrears of rent, (iii) subsistence of old tenancy on account of demolition and reconstruction, (iv) valid termination of tenancy, (v) *bonafide* requirement, (vi) comparable hardship, and (vii) plaintiff's entitlement to secure possession of the premises in new building. Both sides lead evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Trial Court proceeded to dismiss the suit by its judgment and decree dated 31 March 2013. The Trial Court held that the suit was maintainable notwithstanding demolition and non-existence of original suit premises. The Trial Court further held that the old tenancy in respect of old premises

existed despite demolition and new construction. The Trial Court rejected the grounds of arrears of rent as well as *bonafide* requirement. The Trial Court therefore held that Plaintiff was not entitled to seek recovery of possession of the suit premises and accordingly dismissed Plaintiffs' suit.

5 Heirs of original Plaintiff (**Plaintiffs**) filed Appeal No.35 of 2013 in Appellate Bench of Small Causes Court challenging the eviction decree dated 31 January 2013. The Appellate Court has allowed the Appeal by its judgment and decree dated 13 November 2021 and has decreed the Suit on the ground of *bonafide* requirement directing the Defendant to handover possession of the suit premises to Plaintiffs. Aggrieved by the eviction decree passed by Appellate Bench of Small Causes Court, Defendant has filed present the Revision Application.

6 By order dated 17 October 2023, this Court recorded statement on behalf of the learned counsel appearing for Plaintiffs that they shall not proceed in the execution proceedings, which arrangement continues to operate till the date. Plaintiffs have filed Interim Application No.8527 of 2024 seeking direction for depositing interim compensation of Rs. 14,40,000/- as a condition for non-execution of eviction decree during pendency of the Revision Application. Instead of deciding the said Interim Application, this Court directed that the Revision Application itself shall be taken up for decision.

7 Mr. Haridas, the learned counsel appearing for Applicant/ Defendant would submit that the Appellate Bench of Small

Causes Court has erred in reversing the decree passed by the Trial Court. He would submit that the ground of *bonafide* requirement was rightly rejected by the Trial Court and that the Appellate Bench has grossly erred in upholding the ground of *bonafide* requirement. He would submit that original Plaintiff's pleaded case in the plaint was running of bicycle repair shop in the suit premises with the help of his son as he was unable to bear license fees of Rs.1,000/- per month in respect of another premises in his occupation. He would submit that Plaintiff passed away during pendency of the suit and even his son passed away during pendency of the Appeal. That thus the pleaded case of *bonafide* requirement got completely eclipsed on account of subsequent events. He would submit that *bonafide* requirement of widow or grandchildren of Plaintiff were not pleaded and that therefore the Appellate Court has erroneously accepted the ground of *bonafide* requirement after death of Plaintiff and his son. He would submit that it was necessary for widow of Plaintiff's son and grandchildren to plead their own *bonafide* requirement and in absence of any pleading of their own *bonafide* requirement, the suit could not have been decreed by the Appellate Bench. In support Mr. Haridas would rely upon judgments of Apex Court in ***Sheshambal (Dead) through L.Rs. vs. M/s. Chelur Corporation, Chellur Building and Ors.***¹ and of this Court in ***Natwarlal Dahyabhai Shah (D) through L.Rs. vs. Smt. Jadaobai Mishrimal Lalwani (D) through L.Rs.***² and ***Yashodabai Gopalrao Khedkar (since deceased) through L.Rs. Rajendra Govindrao Hatwalne vs.***

¹ 2010 (3) SCC 470

² 2015 (1) MhLJ 365

Godavaribai Balkrishna @ Chatusheth Sinnarkar and others³.

8 Mr. Haridas would further submit that the Appellate Bench has erred in holding that *bonafide* requirement of Plaintiff and his family has to be tested on the date of filing of the suit. He would submit that the settled position of law is such that subsequent events occurring during pendency of the suit which have impact on the very *bonafide* requirement pleaded in the plaint must be taken into consideration. He would submit that the Trial Court had rightly held that Plaintiff had another premises to carry on the business. That the Appellate Court has erred in holding that Plaintiff has to decide which premises are suitable for his business. He would submit that the Appellate Court has erred in going into the issue of Mr. Suresh Panchal conducting the business of photo-frames in the suit premises. He would submit that unless *bonafide* requirement of Plaintiff was proved, the issue of comparable hardship becomes irrelevant. That the suit is not filed on the ground of unauthorized sub-letting and that therefore the alleged conduct of business by Mr. Suresh Panchal is absolutely irrelevant for the purpose of deciding *bonafide* requirement of Plaintiff. Mr. Haridas would pray for setting aside the decree passed by the Appellate Bench of the Small Causes Court.

9 The Revision Application is opposed by Mr. Sadavarte, the learned counsel appearing for Respondents/Plaintiffs. He would

3 Writ Petition No.5672 of 1998, Decided on 1 February 2019

submit that the Appellate Court has rightly reversed erroneous decree of the Small Causes Court. That mere death of Plaintiff and his son does not eclipse the *bonafide* requirement of the family. That Defendant is no longer using the suit premises and allowing the third person to conduct the business of sale of photo-frames in the suit premises and is earning hefty profits in respect of suit premises located in one of the prominent locations in Dadar area of Mumbai city. He would submit that the *bonafide* need of Plaintiff, as it existed at the time of filing of the suit, is required to be taken into consideration and subsequent deaths during pendency of proceedings become irrelevant. That cause of death of parties during pendency of proceedings cannot enure to the benefit of Defendant for the purpose of illegally occupying the suit premises. He would rely upon judgment of the Apex Court in ***Kamaleshwar Prasad vs. Pradumanju Agrawal (Dead) By Lrs.***⁴ in support of his contention that the crucial date for existence of landlord's requirement is the date of filing of eviction application. He would also rely upon judgment of the Apex Court in ***Gaya Prasad vs. Prdeep Shrivastava***⁵ in support of his contention that the landlord cannot be penalized for slowness in legal system and that crucial date for deciding *bona fides* of requirement of landlord is the date of his application for eviction. He would also rely upon judgment of the Apex Court in ***Shakuntala Bai and others vs. Narayan Das and others***⁶ in support of his contention that death of original landlord during pendency of the Appeal against eviction decree has no effect on

4 1997 (4) SCC 413

5 2001 (2) SCC 604

6 2004 (5) SCC 772

bonafide requirement. Lastly, he would rely upon judgment of the Apex Court in ***Satish Chander Aggarwal (Dead) By Legal Representatives vs. Shyam Lal Om Prakash Arhti & Anr***⁷ in support of his contention of subsistence of *bonafide* requirement even after death of the original landlord.

10 Mr. Sadavarte would contend that Plaintiff's son Ashok Shamrao Bhatte was alive at the time of filing of the Appeal and this is not a case where *bonafide* requirement of the Plaintiff has completely eclipsed. That after death of Plaintiff's son Ashok, the other members of family consisting of Ashok's widow as well as son and daughter also require the suit premises for their own *bonafide* requirement. That by taking disadvantage deaths in the family of Plaintiff owning delay in decision of proceedings, Defendant cannot be permitted to profiteer at the cost of Plaintiffs who have been litigating for the last 26 long years. He would submit that the *bonafide* requirement of Plaintiff is genuine whereas Defendant has long since discontinued the cycle repairing business and has handed over the suit premises to an outsider, who is conducting business of selling photo-frames. By inviting my attention to the averments made in Interim Application No.8527 of 2024, Mr. Sadavarte would submit that the neighbouring shops are attracting huge license fees and has placed reliance on Leave and License Agreement in respect of neighbouring premises near Shiv Sena Bhavan building wherein a licensee is paying license fees of Rs.85,000/- for shop admeasuring 170 sq.ft. That Defendant is earning more than

⁷ (2017) 14 SCC 497

Rs. 2,00,000/- per month from the suit shop to the deprivation of Plaintiffs. He would accordingly pray for dismissal of the Revision Application.

11 Rival contentions of parties now fall for my consideration.

12 The case involves slightly unique fact situation where original Plaintiff is not the owner in respect of the suit premises. Plaintiff himself claims to be a tenant of Shiv Sena Trust. Defendant was apparently inducted in the suit premises by the original Plaintiff–Shamrao Dinanath Bhatte for conducting his cycle repairing business for 10 years. It appears that since Defendant was found occupying the suit premises as on the cut-off date of 1 February 1972, she instituted declaratory suit (RAD Suit No.5472 of 1975) seeking declaration of her status as a deemed tenant. It appears that the said RAD Suit No.5472 of 1975 was decreed on 2 April 1980 and Defendant came to be declared as a deemed tenant. Plaintiff claims that his right as the main tenant of the landlord in respect of the suit premises is not disturbed even after declaration of Defendant's status as a deemed tenant. It appears that this Court, while upholding the declaratory decree in favour of Defendant, has upheld the above position. Thus, the suit proceeded on footing that Defendant is a protected sub-tenant of Plaintiff, who is tenant of Shiv Sena Trust. Accordingly, both the Courts have considered Plaintiff's case of *bonafide* requirement for recovering possession of the suit premises on merits without going into the issue of right of original Plaintiff as the main tenant. The short point that arises

for consideration is entitlement of Plaintiff to recover possession of the premises on the ground of *bonafide* requirement.

13 It appears that original Plaintiff Shamrao Dinanath Bhatte was serving in Food Corporation of India on the post of Clerk since 1959 and he retired on 31 May 1995. Plaintiff pleaded in his plaint that suit premises were required for conducting cycle repairing business in the suit premises with the help of his son. Plaintiffs pleaded case in paragraphs 4 and 5 of the Plaint reads thus:

“4. The Plaintiff say that the plaintiffs only source of income today is from cycle repair work that plaintiff is carrying on with help of his son from the premises situated at Laxmi Niwas, Behind Olympus 'x' building, Near Station Road. Mahim, Mumbai-16 as a licensee on payment of licence fee of Rs.1.000/- P.M. the plaintiff operates his business from said licence premises as plaintiff own ship is in possession and occupation of Defendant who was put in possession of the said shop by landlord Shree Shiv Sena Trust under orders of this Hon'ble court in suit No.5372 of 1975 filed by Defendant against Plaintiff and Trustees of said Shree Shiv Sena Trust. The plaintiff craves leave to refer to and rely upon the papers and proceedings in Suit No.5472 of 1975 when produced. Hereto annexed and marked as Exhibit 'C' Colly are last two receipts for Rent paid by plaintiff in respect of suit premises for the month of January, 1998 to April, 1998. The plaintiff crave leave to rely upon the receipts for payment of Rent of suit premises until today.”

5. The Plaintiff submit that Plaintiff requires the suit premises bonafide for his own use and occupation for conducting of his bicycle repair business and in fact plaintiff is presently carrying on his business of cycle repair from another premises situated at Laxmi Niwas, Behind Olympus Building, Near Station Road, Mahim, Mumbai-16 as stated above on payment of a large amount of licence fees. The plaintiff says that work of cycle repair is the only source of income of Plaintiff and his family. The plaintiff say and submit that plaintiff has no other premises from where plaintiff can conduct his business of cycle

repair and requires the suit premises bonafide for his own use and occupation. The plaintiff say though the Defendant was given possession of suit premises of plaintiff for conducting existing cycle repair shop of Plaintiff in Old shop No.13. The Defendant has wrongfully converted the business of cycle repair shop and has started conducting business of Library without the consent and permission of the plaintiff on possession of suit premises being Shop No.2 handed over by Landlords of the suit premises, in lieu of old shop No.13 on Old Mirandha Chawl in circumstances stated here in above. The plaintiff say that presently plaintiff and his family are without any roof over them to earn their livelihood.”

14 Defendant disputed the claim of Plaintiff's *bonafide* requirement contending that Plaintiff was carrying out his cycle repairing business from another premises situated at Laxmi Niwas, near – Building, near Station Road, Mahim. Defendant also pleaded that Plaintiff himself was serving and after his retirement, drawing good amount of pension.

15 Thus, the *bonafide* requirement expressed by Plaintiff was for conducting cycle repairing business in the suit premises alongwith his son. It appears that Plaintiff passed away during pendency of the suit and his son Ashok Shamrao Bhatte was brought on record, who prosecuted the suit. The Plaintiff pleaded bonafide requirement of Ashok as well. However, the Trial Court did not accept bone fide requirement of Ashok and dismissed the Suit. After the suit was dismissed, Plaintiff's son Ashok Bhatte filed appeal but unfortunately, he also passed away in the year 2015. Therefore Ashok's widow Leena Ashok Bhatte, son Prashant Ashok Bhatte and daughter Supriya Amit Mhatre were brought on record, who continued to pursue the Appeal. In the

light of death of original Plaintiff and his son, the issue before the Appellate Bench of the Small Causes Court was about subsistence of *bonafide* requirement for ordering eviction of the Defendant from the suit premises.

16 Mr Sadavarte has contended that subsequent deaths of original Plaintiff and his son during pendency of proceedings is irrelevant and that the bonafide requirement which existed at the time of institution of the suit must be considered. Mr. Sadavarte has relied upon series of judgments in support of his contention that mere death of the Plaintiff does not bring about any change in circumstances as the crucial date for existence of landlord's requirement is the date of filing of eviction application. In ***Kamaleshwar Prasad*** (supra) the Apex Court held in paragraph 3 as under:

“3. Mr Manoj Swarup, learned counsel appearing for the appellant in this Court urged that the person, for whose bona fide requirement the order of eviction has been passed by the appellate authority, having died during the pendency of the writ petition, the said bona fide requirement no longer subsists and consequently the High Court should have taken that fact into consideration and should have interfered with the order passed by the appellate authority for the eviction of the tenant. The learned counsel further urged that no doubt the proceedings under Article 226 of the Constitution is not a continuation of the eviction proceedings under the Act, but all the same the High Court while exercising its power of supervision under Article 226 of the Constitution is not denuded of its power to take into consideration the subsequent event that had happened which is necessary to be taken into consideration in the interest of justice. Accordingly, the High Court committed serious error in not taking into account the facts of the death of the landlord for whose bona fide requirement the order of eviction had been passed by the appellate authority, and therefore, this Court should interfere with the said order of the High Court. Having given an anxious

consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of the Constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and a decree of a competent court having become final cannot be interfered - with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (sic other) son. In this view of the matter, we find no force in the contention of Mr Manoj Swarup, learned counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs.”

17 In ***Gaya Prasad*** (supra) the Apex Court held that subsequent events may in some situation be considered to have overshadowed the genuineness of landlord's need, but only if they are of such nature and dimension as to completely eclipse such need and make it use significance altogether, that the Courts need to rely upon such subsequent events. In the facts of the case the Apex Court held that the events relied upon by the tenant were insufficient to overshadow the *bonafide* need concurrently found by the true Courts of fact. The Apex Court held in paragraphs 10, 13, 15, 17 and 19 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.

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. A three-Judge Bench of this Court in ***Pasupuleti Venkateswarlu v. Motor and General Traders***, (1975) 1 SCC 770 which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

"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 proceeding provided the rules of fairness to both sides are scrupulously obeyed."

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact-finding courts.

19. The above is not an advice, but only a suggestion. If any alternative suggestion would appear better the same can be resorted to. The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra-legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the country."

18 In ***Shakuntala Bai*** (supra) the Apex Court has reiterated the principles in ***Gaya Prasad*** (supra) and held in paragraph 10 as under:

"10. The effect of death of a landlord during the pendency of the proceedings has been considered in several decisions of this

Court. In *Phool Rani v. Naubat Rai Ahluwalia*, (1973) 1 SCC 688 : AIR 1973 SC 2110, the landlord filed an ejectment application under Section 14(1)(e) of the Delhi Rent Control Act and eviction of the tenant was sought on the ground that the premises were required by the plaintiff "for occupation as a residence for himself and members of his family". The Additional Rent Controller dismissed the application on a preliminary ground that the notices to quit were not valid, without examining the case on merits. The plaintiff died during the pendency of the appeal preferred by him and his heirs were substituted. The case was remanded and the Rent Controller passed an order of eviction. In appeal a contention was raised that the right to sue did not survive to the heirs of the plaintiff, which was rejected by the Rent Control Tribunal but was accepted in appeal by the High Court. This Court held that different results may follow according to the stage at which the death occurs. One of the situations considered in para 13 of the Report is as under: [SCC p. 694, para 13(i)]

"13. (i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour, say, during the pendency of an appeal filed by the unsuccessful tenant;"

10.1. With regard to this category of cases, it was held that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and, therefore, the legal representatives are entitled to defend further proceedings, like an appeal, which constitutes a challenge to that benefit. Even otherwise, this appears to be quite logical. In normal circumstances after passing of the decree by the trial court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate court. In such a situation, the well-known maxim "*actus curiae neminem gravabit*" that "an act of the court shall prejudice no man" shall come into operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant and claim possession of the premises on the cause of action which had been originally pleaded and on the basis whereof the lower court had decided the matter and had passed the decree for eviction. However, in regard to the case before the court it was held that the requirement pleaded in the ejectment application on which the plaintiff founded his right to relief was his personal

requirement and such a personal cause of action must perish with the plaintiff. On this ground it was held that the plaintiff's right to sue will not survive to his heirs and they cannot take the benefit of the original right to sue."

19 In **Satish Chander Aggarwal** (*supra*) the Apex Court has held in paragraph 6 as under:

"6. The crucial question is, whether the bona fide requirement, as established by the original landlord Mr Satish Chander Aggarwal, would meet the requirement under Section 21(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 as far as surviving legal heirs are concerned. It is not in dispute that the business that had been carried on by late Mr Satish Chander Aggarwal is being continued by his legal heirs. It is a family business. If that be so, the requirement, as established and which has been upheld by the appellate authority after conducting even a spot inspection, in our view, satisfies the requirements of bona fide need of the landlord. No doubt, in a given case the bona fide requirement of the original landlord and that of the surviving legal heirs may vary. But in the case before us, since it is family business and since the landlord has established the requirement of the premises for the family business, we are of the view that it is not necessary to relegate the legal heirs for another round of litigation for eviction."

20 On the other hand, Mr. Haridas has contended that for maintaining the suit on the ground of bona fide requirement, there has to be a pleading in the Plaint about subsistence of need of the surviving Plaintiff. He has relied upon judgment of the Apex Court in **Sheshambal** (*supra*) which is rendered by the Apex Court after considering various judgments which are relied upon by Mr. Sadavarte, particularly the judgments in **Gaya Prasad** (*supra*), **Kamaleshwar Prasad** (*supra*) and **Shakuntala Bai** (*supra*). In case before the Apex Court in **Sheshambal**, the owners and landlords had let out the premises

to the tenant for a period of three years and on expiry of the lease, owners filed proceedings for recovery of possession of the premises on the ground that they required the same for their *bonafide* personal occupation within the meaning of section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Controller dismissed the proceedings holding that owners had already shifted their residence out of Cochin and were living with their daughter and son-in-law at Ernakulam. The owners appealed before the Appellate Authority, who confirmed the decision of the Rent Controller. The owners filed Appeal before the High Court challenging the orders of Rent Controller and Appellate Authority. The High Court however rejected the Appeal, and this is how the proceedings reached before the Apex Court. During pendency of the proceedings before the High Court, the landlord passed away on 24 April 1996 leaving behind his wife, who filed Appeal before the Supreme Court. However, during pendency of the said Appeal, the wife also passed away. Application was filed to bring on record daughters of the couple for prosecuting the Appeal before the Supreme Court. Two out of the three daughters were settled in Coimbatore and Bihar and the third daughter was settled in America. In the light of this factual position, the issue before the Apex Court was whether daughters could continue the eviction proceedings before the Apex Court. The Apex Court discussed the ratio laid down in various judgments and held in paragraphs 28 and 29 as under:

“28. As noticed earlier, the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the requirement of the members of their family whether dependent or otherwise. Indeed if the deceased

landlords had any dependent member of the family we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.

29 In the light of what we have stated above, we have no hesitation in holding that on the death of the petitioners in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time.”

21 Mr. Haridas has relied upon judgment of the Single Judge of this Court in ***Natwarlal Dahyabhai Shah*** (supra), in which this Court relied upon judgment of the Apex Court in ***Sheshambal*** and held in paragraphs 8, 11, 12, 13, 14, 15 and 16 as under:

“8. In the light of above, the contention of the petitioner is that bona fide need of the plaintiff and her husband has extinguished and as such, the orders passed by the Courts below needs to be quashed and set aside. In support of this contention, the learned Counsel for the petitioner has relied upon the judgment delivered by the Apex Court in the case of *Sheshambal (Dead) through LRs. v. Chelur Corporation Chelur Building*, (2010) 3 SCC 470. The Apex Court, according to the petitioner, mandates that subsequent developments which has direct bearing over the pleadings in the petition of the bona fide need is required to-be looked into and the same needs to be re-assessed.

11. From perusal of the pleadings raised by the landlady in support of her bona fide need as reflected in the suit demonstrates that bona fide need of landlady namely Smt. Jadaobai and her husband is pleaded in clear terms. It is stated in paragraph-3 of the said plaint that the premises in question are required by the landlady so as to

establish business along with her husband. There are no pleadings as regards bona fide requirement of the son.

12. The perusal of evidence of husband of the plaintiff who has entered into witness box in clear terms admits that other legal heir namely son who is presently pursuing the petition was not staying with the landlady or her husband.

13. The fact remains that the landlady has expired during pendency of the appeal whereas her husband who was brought on record as one of the legal heirs has expired during pendency of the present petition. The Apex Court in the matter of *Sheshambal (Dead) through LRs. v. Chelur Corporation Chelur Building* (supra) has laid down parameters particularly in paragraphs-12, 13, 15, 16 and 17 as regards subsequent developments to be taken into account while deciding the claim of the landlord and tenant for bona fide need. The said observation reads thus:

xxx

14. It is required to be taken a note of the fact that other legal heir i.e., son is pursuing the present petition. There are no pleadings in support of the bona fide need of the son. What is pleaded in the plaint is bona fide need of the husband of the landlady. The evidence also speaks about the bona fide need of the husband of the landlady. There is no word in the evidence about the bona fide need of son.

15. It is worth to observe here that if the legal heir intend to continue the proceedings much less the proceedings wherein possession of the property is sought under the clause 'bona fide need' of the Rent Act, the judgment of the Apex Court cited supra mandate that the bona fide need of legal heir should be pleaded and established. Just because he is legal heir, that does not *ipso facto* given him right to claim the possession of the property on the ground of bona fide need, that was established by the original plaintiff. In the eviction proceedings which were initiated for the possession of the property, the landlady or her husband has pleaded their own requirement that the premises to be occupied by them for the purpose of carrying out the business. In the said civil suit or even in the evidence, there is no whisper about bona fide need of any member/L.R. of the plaintiff and the claim of bona fide need was restricted to that of landlady and her husband, who have expired way back.

16. In view of the above observations, subsequent developments i.e., death of landlady and death of her legal heir whose bona fide need was pleaded if taken into account, the judgment decreeing the suit for possession for bona fide need needs to be set aside.”

22 Thus, in ***Natwarlal Dahyabhai Shah*** (supra) Single Judge of this Court (*Justice Nitin W. Sambre*) has taken a view that if the original Plaintiff has passed away during pendency of proceedings, *bonafide* need of legal heir must be pleaded and established.

23 The judgment of the Apex Court in ***Sheshambal*** is also followed by another Single Judge of this Court (*R.G. Ketkar, J*) in ***Yashodabai Gopalrao Khedkar***, in which this Court held in paragraphs 45, 46 and 47 as under:

“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.”

24 Thus, in ***Yashodabai Gopalrao Khedkar*** this Court not only held that *bonafide* requirement pleaded by Yashodabai Gopalrao Khedkar was overshadowed by her death and got completely eclipsed, it also rejected the prayer made by the Petitioner therein to permit him to amend the plaint and set up *bonafide* requirement of Rajendra. This Court instead granted leave to Rajendra to file fresh suit for recovery of possession on *bonafide* requirement.

25 In my view, the judgments relied upon by Mr. Haridas in ***Sheshambal, Natwarlal Dahyabhai Shah*** and ***Yashodabai Gopalrao Khedkar*** apply squarely to the facts of the present case. Original Plaintiff pleaded the *bonafide* requirement of himself and his son to run cycle repairing shop in the suit premises. Both original Plaintiff as well as the son Ashok Bhatte have unfortunately passed away during pendency of proceedings. Plaintiff passed away during pendency of the suit, which was then prosecuted by his son Ashok Bhatte. After the suit was dismissed, Ashok Bhatte lodged Appeal before the Appellate Bench of Small Causes Court but passed away during pendency of the Appeal and the Appeal was thereafter prosecuted by his wife Leena Ashok Bhatte, son Prashant Ashok Bhatte and daughter Supriya Amit Mhatre. While prosecuting the Appeal, Ashok Bhatte's legal heirs did not seek to amend the plaint and set up their own *bonafide* requirement. Thus, there is no pleading that Leena Ashok Bhatte, Prashant Ashok Bhatte and Supriya Amit Mhatre have their own particular *bonafide* requirement in respect of the suit premises. Mr. Sadavarte has attempted to salvage the situation by contending that bonafide requirement of the whole family was pleaded in the plaint and has relied upon the judgment in ***Satish Chander Aggarwal***, which is rendered post the judgment in ***Sheshambal***. The contention of Mr. Sadavarte about bonafide need of entire family is referable to the averment in the Plaint that “*The plaintiff says that work of cycle repair is the only source of income of Plaintiff and his family.*” However, I am unable to agree that bonafide requirement of entire family in respect of the suit shop is pleaded

in the plaint. The pleaded case is requirement of Shop for running of cycle repair shop by Plaintiff and his son-Ashok. Only those two persons wanted to conduct the business. Dependency of family members on income is a different concept than requirement by a particular member of family to conduct business in the premises. These are not residential premises where every member of family would need the premises. In respect of commercial premises, specific case of bonafide requirement of Plaintiff or particular member of his family must be pleaded as proved.

26 Therefore, in view of law laid down by Apex Court in ***Sheshambal*** as followed by this Court in ***Natwarlal Dahyabhai Shah*** and ***Yashodabai Gopalrao Khedkar***, heirs of Ashok Bhatte (Leena Ashok Bhatte, Prashant Ashok Bhatte and Supriya Amit Mhatre) will have to file a fresh suit setting up their own *bonafide* requirement in respect of the suit premises for recovery of its possession. The eviction decree passed by the Appellate Bench is in ignorance of the law expounded by the Apex Court in ***Sheshambal*** as followed by this Court in ***Natwarlal Dahyabhai Shah*** and ***Yashodabai Gopalrao Khedkar***. In my view therefore, the eviction decree passed by the Appellate Bench is unsustainable in law and is liable to be set aside. The Appellate Court has committed jurisdictional error in decreeing the suit in absence of pleading on behalf of the three Appellants before it in respect of their own *bonafide* requirement. The Appellate Court failed to appreciate that the three Appellants before it do not have right to seek recovery of

possession of suit premises on the basis of *bonafide* requirement pleaded by the deceased parties. It was incumbent on them to plead their own *bonafide* requirement by seeking amendment of the Plaint. As held by this Court in ***Yashodabai Gopalrao Khedkar***, it would not be appropriate to permit Respondents to now amend the suit to set up their own *bonafide* requirement. Instead, they can file a fresh suit for recovery of possession of the suit premises by setting up their own *bonafide* requirement. In such suit, they can also agitate grievance of Defendant allegedly handing over the premises for use to a third party. If and when the suit is filed, the Small Causes Court can be requested to give priority for its expeditious disposal, considering the fact the present round of litigation ensued between the parties for 26 long years.

27 The Revision Application accordingly succeeds, and I proceed to pass the following order:

i) Judgment and decree dated 13 November 2021 passed by Appellate Bench of Small Causes Court in Appeal No.35 of 2013 is set aside and the decree passed by Small Causes Court on 31 January 2013 dismissing RAE & R Suit No.613/1164 of 1998 is confirmed. With the result RAE & R Suit No.613/1164 of 1998 is dismissed.

ii) Respondents would be at liberty to file a fresh suit on all available grounds including the ground of their own *bonafide* requirement for recovery of possession of the suit

premises and if such suit is filed by the Respondents, the Small Causes Court shall grant due priority for its expeditious disposal.

28 With the above directions, Civil Revision Application is **allowed**.

29 On account of disposal of Civil Revision Application, nothing would survive in the Interim Application No.8527 of 2024 and the same is also **disposed of**.

(SANDEEP V. MARNE, J.)

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