

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 20<sup>th</sup> OF APRIL, 2023**

**SECOND APPEAL No. 510 of 2000**

**BETWEEN:-**

**KRISHNA GOPAL KHANDELWAL, S/O SHRI  
AMBIKA PRASAD KHANDELWAL, AGED ABOUT  
52 YEARS, R/O 429, KOTWALI WARD, JABALPUR  
(MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI SANJAY AGRAWAL – SENIOR ADVOCATE WITH MS.NEERJA  
AGRAWAL - ADVOCATE)***

**AND**

- 1. POONAMCHAND PAHARIA, S/O LATE  
MOHANLAL PAHARIYA, AGEDA BOUT 70  
YEARS, R/O 813, KOTWALI WARD, BUDHAI,  
JABALPUR (MADHYA PRADESH) (DEAD)  
THROUGH LRS :-**
  - (i) SMT. PRABHAWATI W/O LATE  
POONAMCHAND PAHARIA, AGED ABOUT  
69 YEARS, H.NO. 813/1 KOTWALI WARD  
JABALPUR (MADHYA PRADESH)**
  - (ii) DR. RAKESH PAHARIA S/O LATE  
POONAMCHAND PAHARIA, AGED ABOUT  
45 YEARS, H.NO. 813/1 KOTWALI WARD  
(MADHYA PRADESH)**
  - (iii) AKHILESH PAHARIA S/O LATE  
POONAMCHAND PAHARIA, AGED ABOUT  
38 YEARS, LATE POONAMCHAND  
PAHARIA, H.NO. 813/1 KOTWALI WARD  
JABALPUR (MADHYA PRADESH)**
  - (iv) DR YOGESH PAHARIA S/O LATE**

**POONAMCHAND PAHARIA, AGED ABOUT  
30 YEARS, H.NO. 813/1 KOTWALI WARD  
(MADHYA PRADESH)**

- (v) **SMT SEETA PAHARIA D/O LATE  
POONAMCHAND PAHARIA 20 UNIVERSITY  
CAMPUS (MADHYA PRADESH)**
- (vi) **SMT. SUDHA MODI D/O LATE  
POONAMCHAND PAHARIA W/O  
R.K.MODI, R/O MODI CHIKITSALAYA BUS  
STAND PIRONA, DISTRICT JHALON  
(UTTAR PRADESH)**
- (vii) **SMT. SHASHI BARASAIYA D/O LATE  
POONAMCHAND PAHARIA W/O SHRI  
G.S.BARASAIYA, R/O SHUBHANGI  
GARMENTS NAYAK MARKET BADA  
BAZAR MAHURANIPUR, JHANSI (UTTAR  
PRADESH)**

**.....RESPONDENTS**

**(BY SHRI NAVAL GUPTA - ADVOCATE)**

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“Reserved on : 05.04.2023”

“Pronounced on : 20.04.2023”.

*This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following:*

### **JUDGMENT**

1. This Second Appeal under Section 100 of CPC has been filed against the Judgment and Decree dated 26-2-2000 passed by 8<sup>th</sup> Additional District Judge, Jabalpur in C.A. No. 172A/1999, arising out of Judgment and Decree dated 18-7-1999 passed by 6<sup>th</sup> Civil Judge Class 1 Jabalpur in C.S. No. 110/1998.

2. The facts necessary for disposal of present appeal in short are that the respondent filed a suit for eviction on the ground that the plaintiff is the owner of House No. 429 and 430 situated in Kotwali Ward,

Jabalpur which he had got in family partition on 21-12-1984. The Appellant is a tenant on monthly rent of Rs. 35/-. The Appellant is irregular in payment of rent. The son of the plaintiff Dr. Rakesh Pahadiya got married on 30-1-1990 and doesnot have any alternative and suitable accommodation in city of Jabalpur. Accordingly, the suit for eviction was filed on the ground of bonafide requirement for residential purposes.

3. The Appellant filed his written statement and denied the ownership of the plaintiff. He claimed that father of the defendant/appellant, namely Ambika Prasad Khandelwal was the tenant of father of the plaintiff namely Mohanlal. After the death of Ambika Prasad Khandelwal, his sons namely Vishnu Gopal, Madan Gopal, Govind Das and the defendant became the tenant. Similarly after the death of owner namely Shri Mohanlal all his children i.e., five sons and daughters became the owner. The defendant is a tenant of 2 rooms, one hall and 2 roofs and monthly rent is Rs. 38/-. There are total 6 members in the family of the plaintiff and at present are residing in three storey building. The ground floors have been let out to Ankit Traders and Sapna Garments who are carrying on business. All the necessary parties have not been impleaded and accordingly, it was prayed that the suit be dismissed.

4. The Trial Court after framing issues and recording evidence decreed the suit and it was held that the plaintiff is in bonafide requirement for residential purpose and has no alternative and suitable accommodation in the city of Jabalpur.

5. Being aggrieved by the Judgment and Decree passed by the Trial Court, the Appellant preferred an appeal which was dismissed by the impugned Judgment and Decree.

6. The appeal has been admitted on the following Substantial Question of Law :

“Whether the contract of tenancy being a single and individual contract, a decree for eviction of only portion of the tenancy, fell in the share of the plaintiff during the partition or family arrangements, can legally be passed?”

7. The Counsel for the Appellant could not point out any thing from the record to show that the suit was filed only in respect of a part of tenanted premises. It is the case of the plaintiff that he is the exclusive owner of the suit property, i.e., House No. 429 and 430 situated in Kotwali Ward, Jabalpur which he had got in the family partition. In fact the plaintiff has claimed himself to be the exclusive owner of the tenanted premises and the appellant/defendant had claimed that he is in possession of 2 rooms, one hall and two roofs as a tenant. It was the case of the defendant that the house in question went to all the legal heirs of Mohanlal, but the plaintiff has produced the partition deed, Ex. P1C. According to this partition deed Ex. P.1C, one part of house no. 429,430 situated in Kotwali Ward was given to the plaintiff. Thus, it is clear that the plaintiff had got a part of the house no. 429,430 and the defendant is the tenant in the part of the house which went to the share of the plaintiff. It is not the case of the defendant that half portion of the tenanted premises went to the share of plaintiff and remaining part of the tenanted premises went to the share of some other brother. Even

as per the evidence, the case of defendant Krishna Gopal (D.W.1) is that after the death of Mohanlal, all the legal heirs of Mohanlal became owner of the house in question. It is not his case that his tenanted portion has fallen to the share of different persons. Thus, in absence of any evidence that the tenanted premises fell to the share of more than one successor of Mohanlal, no further consideration is required. Therefore, the Substantial Question of Law is answered in **Negative**.

8. The appellant has filed I.A. No. 2514 of 2015, an application under Order 6 Rule 17 CPC for amendment in the written statement thereby pleading *inter alia* that during the pendency of the Appeal, the son of the plaintiff has purchased two different duplexes for his residence, therefore, the bonafide requirement for residential purposes of his son has come to an end. Similarly, I.A. No. 2515 of 2015 has been filed for taking subsequent events on record.

9. The respondent has filed his reply to the application for taking subsequent events on record and submitted that two duplexes have been purchased in the names of Dr. Rakesh Pahadiya and Smt. Prabha Pahadiya, therefore, Smt. Prabha Pahadiya is the joint owner. In fact Dr. Rakesh Pahadiya and Smt. Prabha Pahadiya are still residing in the house in question and other two major sons of the plaintiff namely Sidhant Pahadiya and Vedansh Pahadiya are residing in the duplexes. Sidhant Pahadiya is of marriageable age.

10. The next question for consideration is that whether the application filed under Order 6 Rule 17 CPC is liable to be allowed or not?

11. The basic averment behind the filing of application for amendment is that during the pendency of this appeal, the bonafide requirement of

the plaintiff has come to an end as his son Dr. Rakesh Pahadiya has already purchased two duplexes. Whereas the plaintiff, by pointing out that his two other major sons are residing in the duplexes and Dr. Rakesh Pahadiya and his wife Smt. Prabha Pahadiya are still residing in the house in question. Thus, the plaintiff has successfully pointed out that the bonafide need for residential purposes is still subsisting. Further, the appellant in his written statement had specifically stated that the family of the plaintiff consists of 6 members. Therefore, even if two duplexes have been purchased, still it would not have any impact on the merits of the case.

12. Now the question for consideration is that whether the bonafide requirement should subsist till the passing of final decree i.e., by the Appellate Court or not?

13. The Supreme Court in the case of **Shakuntala Bai v. Narayan Das**, reported in **(2004) 5 SCC 772** has held as under :

10.1 .....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.....

\* \* \* \*

**14.** Sub-section (1) of Section 12 of the Act says "no suit shall be filed in any civil court against a tenant for his eviction ...". The language employed does not say "no decree shall be passed ...". So the bar created is against filing of the suit except on one of the grounds enumerated in clauses (a) to (p) of the sub-section. Therefore what is to be

seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore the principle that “the need of the landlord must exist till the decree for eviction is passed by the last court and attains finality” can even otherwise have no application here in view of the express language used in the section.

**15.** As the preamble shows, the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a rent control legislation in such a manner, the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.

14. The Supreme Court in the case of **G.C. Kapoor v. Nand Kumar Bhasin**, reported in (2002) 1 SCC 610 has held as under :

**12.** Regarding the second finding of the withdrawal of the letter for franchise by BITS of the courts below, we find from the record that there is a clear averment made by the appellant that his son wanted to open a computer consultancy centre on his own and only to make the business viable, he

made an application for franchise after the eviction suit was filed. Merely because the franchise was withdrawn by BITS, it will be incorrect to come to the conclusion that the son of the appellant would not be able to start the business when he has the requisite qualification being a holder of postgraduate diploma in Computer Science and has the capacity to arrange funds. It was not the case of the appellant that his son would be able to start the business only after obtaining franchise. It has also been urged on behalf of the appellant that letter from BITS was produced before the court only to show the requirement of 2000 sq ft of space for the purpose of running the business in question. We are, therefore, of the opinion that the findings of the courts below are erroneous. Courts below have taken adverse note, as Rohit did not file any affidavit to show his technical know-how and inclination to run the business. Such an affidavit is not necessary as regards technical know-how, a copy of the diploma of Rohit has been filed and his father has made a categorical statement that his son would run the business in the suit premises.

**13.** Another reasoning of the courts below is that as Rohit did not start the business between the years 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the abovementioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in *Gaya Prasad v. Pradeep Srivastava* relying on early decisions of this Court held that the crucial date for deciding as to bona fides of requirement of landlord is the date of his application for eviction. It was a case of bona fide requirement of the premises in question for starting a clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined Provincial Medical Service and was posted at different places. The Court refused to take notice of the



subsequent event holding that the crucial date was the date of filing of the eviction petition.

15. The Supreme Court in the case of **Gaya Prasad v. Pradeep Srivastava**, reported in **(2001) 2 SCC 604** has held as under :

**11.** We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In *Ramesh Kumar v. Kesho Ram* a two-Judge Bench of this Court (M.N. Venkatachaliah, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)

“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.”

**12.** This Court reiterated the same principle in *Kamleshwar Prasad v. Pradumanju Agarwal* that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattanaik, JJ.) has held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench: (SCC p. 415, para 3)

“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 the 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 other son.”

**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* 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.”

**14.** The next three-Judge Bench of this Court, which approved and followed the above decision, in *Hasmat Rai v. Raghunath Prasad* has taken care to emphasise that the subsequent events should have “wholly satisfied” the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)

“Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. *If in the meantime*

*events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."*

(emphasis supplied)

**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.

**16.** Of course a two-Judge Bench (K. Ramaswamy and D.P. Wadhwa, JJ.) pointed out in another case *Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah* that the pendency of a lis for a record period of thirty-one years has transformed a middle-aged landlord to an advanced stage of gerentry (*sic* geriatry) and at that stage he could not start a new business venture. After lamenting over the system which caused a whopping delay of thirty-one years the Bench made two directions. The first was that the son of the landlord who by that time had four-and-a-half years more to go for reaching the superannuation age could consider starting the business in the tenanted premises after retirement. The second was that in the meanwhile the rent for the building would stand enhanced from Rs 101 to Rs 3500 per month.

**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.

16. The Supreme Court in the case of **Kamleshwar Prasad v. Pradumanju Agarwal**, reported in (1997) 4 SCC 413 has held as under :

3.....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.....

17. Thus, the crucial date for ascertaining the bonafide need is the date of institution of suit. However, the subsequent events should be such which may overshadow the bonafide need. Further this Court should not forget that the Civil Appeal was already decided in the year 2000 and this appeal is pending for the last 23 years. This Court cannot lose sight of the fact that **act of Court should not prejudice any one**. It was the appellant who approached this Court and prayed for stay on execution of the Judgment and Decree. It is not the case of the appellant, that the plaintiff has only one son namely Dr. Rakesh Pahadia, on the contrary, the appellant himself has pleaded in the written statement that the family of the plaintiff consists of 6 members.

The respondent in reply to application for taking subsequent events on record has specifically stated that the subsequently purchased two duplexes are in possession of his other two major sons. The plaintiff/landlord cannot be compelled to squeeze in a small accommodation along with his children and he cannot be compelled to wait for decision by spending his life in such a pathetic condition. If the plaintiff is compelled to make certain arrangements for the settlement of his family, then he cannot be non-suited for the same.

18. Under these circumstances, it is held that the application filed under Order 6 Rule 17 CPC is unwarranted. Accordingly, the same is rejected.

19. No other argument is advanced by the Counsel for the parties.

20. Ex consequenti, the Judgment and Decree dated 26-2-2000 passed by 8<sup>th</sup> Additional District Judge, Jabalpur in C.A. No. 172A/1999, and Judgment and Decree dated 18-7-1999 passed by 6<sup>th</sup> Civil Judge Class 1 Jabalpur in C.S. No. 110/1998 are hereby **affirmed**.

21. The Appeal fails and is hereby **Dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**