IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARASWATI,WD/O KUNVERBHAN GAMBHIR - Applicant
Versus
BHUPENDRA NAGINDAS SHAH – Respondents

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Appearance :
MR MEHUL S SHAH for Applicant: 1, 1.2.1,1.2.2 MR SURESH M SHAH for Applicant: 1, 1.2.1,1.2.2
None for Respondent : 1,
MRS SJ GAIKWAD for Respondents : 1.2.1, 1.2.2,1.2.3

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 31/07/2008

CAV JUDGMENT

1. The applicants have approached this Court

assailing the judgment and order of the Appellate Bench of the Small Causes Court, Ahmedabad Court No. 2 passed in Regular Civil Appeal No. 213 of 2000 dated 30.11.2005 confirming the judgment and decree passed by the Small Causes Court on 8.11.2000 ordering the appellants to vacate and handover peaceful possession of the suit premises to the plaintiffs.

2. Facts in brief deserve to be set out as under.

3. The original plaintiffs filed H.R.P.Suit No. 146 of 1990 against the defendants tenants for recovering arrears of rent and vacant possession of the suit premises. The plaintiff had rented the suit premises to the defendant at monthly rent of Rs.400/- and rent was not inclusive of municipal tax, education cess and electricity burning charges. These expenses were to be borne by the defendant tenants. The Landlord and Tenant are herein after referred to plaintiff and defendant respectively for the sake of convenience. The plaintiff contend that defendant tenant had paid rent up to 31.12.1981 and thereafter, from 1.1.1982 to 31.10.1989 for 94 months, rent had not been paid, which come to Rs.37,600/- and against that, defendants had deposited only Rs.18,000/- in the Court. Thus RS. 19,600/- remained due from the defendants as well as municipal tax and education cess from

1981-82 to 1988-89, which comes to Rs.9747-90.

4. It was further contended by the plaintiffs that defendants made an application for Standard Rent being Application No. 2013 of 1982, so on that basis the rent from 1.1.1982 to 31.10.1989 for 94 months comes to Rs.21,150/- as Rs./225 standard rent was fixed per month and as against that, the defendant had paid only Rs.18,000/- as it is stated hereinabove, and therefore, on this count also it could be said that the defendant had not paid the rent. It was further contended by the plaintiff that plaintiff No. 3 was deserted and divorced by her husband and therefore, under that compelling situation, she bona fide needs the suit premises for her personal usage. The plaintiff also urged that conduct of the defendant amount to nuisance and it caused annoyance to the plaintiff as well as the adjourning occupiers and therefore, the defendant and his family members were required to be ordered to hand over vacant and peaceful possession of the suit premises. The plaintiff issued notice on 1.10.1981 through his advocate demanding arrears of rent and possession of the suit premises. The defendants did not comply with the demand of the notice and gave evasive replies. The plaintiff therefore was constrained to file suit.

5. The defendants took up various contentions

resisting the suit. The trial Court framed as many as 12 issues and after assessing and appreciating the evidence on record, decreed the suit in favour of the plaintiff on the ground of non-payment of rent as well as on the ground of bona fide need of plaintiff No. 3 and ordered the defendant to vacate the premises and handover the vacant possession to the plaintiff on or before 15.11.2000 vide its judgment and decree dated 8.9.2000. Though the Trial Court has recorded findings in affirmation with regard the issue No.1 that whether plaintiff proved that the defendant was tenant in arrears of rent for more than six months, and in negative in respect of issue no. 2 that whether defendant is ready and willing to pay the arrears of rent and is he protected from eviction under Section 12 of the Rent Act but while deciding issue no.9 it has held that in view of the amount deposited in the Court nothing was due to from the defendant.

6. Being aggrieved and dissatisfied with the judgment and decree of the trial Court, the defendants preferred Civil Appeal No. 213 of 2000 before the Appellate Bench of the Small Causes Court. The plaintiffs also preferred cross-objection as the learned trial Judge did not pass decree for amount of rent and tax. The Appellate Bench of the Small Causes Court heard and decided the appeal as well as cross-

objections vide its judgment and order dated 30.11.2005 dismissing the appeal filed by the defendants and partly allowing the cross-objection filed by the plaintiffs and granted time to the defendants up to 30th June, 2006 to handover vacant and peaceful possession of the suit premises.

7. Being aggrieved and dissatisfied with the said judgment and order dated 30.11.2005, the appellants have preferred this Civil Revision Application.

8. Shri Shah, learned counsel appearing for the applicant has submitted that the orders of the trial Court as well as appellate Court are required to be quashed and set aside as both the courts have patently erred in decreeing the suit in favour of the original plaintiff.

9. The Counsel for the applicant further submitted that the bonafide requirement of plaintiff No. 3 cannot be said to be so germane as to order eviction of that original defendant. As per the settled position of law the case pleaded alone could be examined or considered and any new material not forming part of the pleadings cannot be examined for passing decree of eviction. The grounds mentioned in the pleadings and the grounds relied on by the trial Court for believing the personal bonafide needs are

altogether different and therefore, it can be said that the grounds, which have been pressed into service at the time of disposing of the suit in favour of the plaintiffs did not exist when the suit was filed. In the plaint it is mentioned that there is bonafide requirement on the part of plaintiff No. 3 as she was deserted by her husband but in the deposition, it has came out that as the plaintiff No. 1's son had married and his wife was quarreling with plaintiff No.3, she requires to reside separately. Thus this ground being a ground absolutely new and not pleaded in the plaint, cannot be said to be a ground for eviction of the tenant from the suit premises.

10. In the alternative, Shri Shah further submitted that learned trial Judge as well as Appellate Court have erred in not appreciating the fact that decree of eviction on the ground of comparative hardship could not have been passed in view of the fact that tenant’s entire family would be evicted against need of single lady plaintiff no.3. The tenant has a large family to support and against the need of tenant, the plaintiff No. 3, who is deserted divorcee, would not need the entire premises.

11. Without prejudice to the other submissions, Shri Shah submitted that partial decree of eviction would have taken care of bonafide need

of plaintiff No. 3. In fact looking to the circumstances of the case partial decree is the best solution to strike balance between the needs of plaintiff no.3 and the tenant. The Counsel for the applicant further submitted that without prejudice to his other submissions the decree may be modified and be made partial so as to accommodate the lady plaintiff no.3 for her limited personal needs along with the tenant and his family.

12. Shri Shah further submitted that tenant is also ready and willing to part with the possession of a portion of the premises in favour of the lady – plaintiff No. 3 so as to offer her an adequate accommodation, which will take care of her need of accommodation. He submits that the order of eviction therefore, need not be sustained. Shri Shah further submitted that from any angle, the point of hardship cannot be said to be rightly decided by the trial Court as well as confirmed by the Appellate Court and therefore, both the orders passed by trail Court as well as Appellate Court deserve to be quashed and set aside.

13. The Counsel for the applicant further submitted that plaintiff No. 3 lady cannot be said to be needing the entire premises for her bonafide need, as against the need of entire family of the defendant, as the defendant and his family

are residing there since many years and after so many years, it would cause tremendous hardship to the defendants and his family if the eviction order is effected.

14. The Counsel for the applicant further submitted that the findings with regard to tenant in arrears and appellate court finding with that regard also suffer from grave and unsustainable error requiring them to be quashed and set aside. The amount deposited during trial go to show that the findings in this behalf are erroneous and therefore deserve to be quashed and set aside.

15. Shri Gaekwad, learned counsel appearing for the respondent has submitted that decree assailed in this proceeding call for no interference and the Revision application therefore deserves to be dismissed.

16. The Learned counsel appearing for the respondent has further submitted the tenant filed Application No. 2031 of 1982 for fixing standard rent. Said application was decided on 10.10.1985 and the standard rent was fixed at Rs.225 per month exclusive of municipal tax and education cess. The Tenant was to pay for the electricity charges. The landlord preferred Revision Application against the said order and ultimately the said order become final qua the

parties.

17. The Learned counsel appearing for the respondent has further submitted The Tenant was in fact in arrears from 1.01.1982 to 31.10.1989 hence a notice was issued by the Landlord on 5.10.1981 demanding rent calculated at the rate of Rs.400 per month and in alternative also calculating rent at the rate of Rs.225 per month as it was fixed as standard rent.

18. The Learned counsel appearing for the respondent has further submitted the Tenant has admitted in his testimony that Standard Rent fixed by the Trial Court was accepted by him.

19. The Learned counsel appearing for the respondent has further submitted that the trial Court has calculated the arrears of rent at the pages 7 and 8 of the judgment while recording the findings in respect of the arrears of rent. By calculating the rent even at the rate of Rs.225/-p.m and the municipal taxes and 1/2 education cess, the trail Court recorded the finding that the tenant was in arrears of rent as alleged in the plaint and he failed to comply with the provisions of Section 12(3)(b) of the Rent Act. The tenant was in arrears of rent as alleged and he failed in deposit the arrears of rent on the first date of hearing, and therefore, the trial Court recorded the finding

that the tenant incurred liability for eviction for non-payment of rent u/s. 12(3)(b) of the Rent Act since he failed to show readiness and willingness to pay the rent. The question of the reasonable and bonafide requirement of the respondent No. 3 is concerned, the consistent stand of the landlords in the suit notice and the plaint is that the respondent No. 3 required the suit premises for her personal occupation. The trial Court recorded the finding that the respondent No. 3 Pravinaben Nagindas required the suit premises for her personal occupation. The appellate Court has confirmed these findings by giving detailed reasons. It is not correct that the trial Court and the appellate Court have not considered the question of greater hardship as per the requirement of Section 13(2) of the Rent Act. Section 13(2) of the Rent Act comes into play at the stage when the court is satisfied that the ground contained in Clause (g) of Sub-section (1) of Section 13 of the Rent Act has been made out. Therefore, the question of greater hardship is not required to be pleaded. The law in this respect is settled. Section 13(2) acts as a proviso to Section 13 (1)(g). The former having an overriding effect on the latter. The burden of proving availability of ground of eviction under Section 13(1)(g) lies on the landlord. The burden of proving greater hardship so as to deprive the landlord of his established right to seek

eviction lies on the tenant. He relies on the decision reported in (2003) 2 SCC 32.

20.The Learned counsel appearing for the respondent has further submitted that respondent No. 3 is the divorcee and she is getting hardly Rs.250/- p.m by way of maintenance. In the circumstances, she is not in a position to live separately in another rented premises. She is the co-owner of the suit premises. She is entitled to recover the possession of the suit premises for her personal occupation if the statutory requirements are satisfied. The tenant cannot suggest the landlord to occupy the portion of the suit premises in order to accommodate the tenant. The landlord is the best judge of his residential requirements. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. In support of this arguments, he relies on the decisions of the Supreme Court in case of (i) Pravita Devi (smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 (2) Meenal Eknath Kshirsagar Vs. Traders and Agencies, (1996) 5 SCC 344 and (3) Atma S. Berar Vs. Mukhtiar Singh, AIR 2003 SC 624 : (2003)2 SCC 3. (4) Shiv Sarup Gupta Vs. Mahesh Chand Gupta (1999) 6 SCC 222.

21.The Learned counsel appearing for the

respondent has further submitted that under Section 13(2) of the Act, the question of comparative hardship is required to be considered. Sub-section 2 of Section 13 falls more appropriately within the domain of equitable or social justice. Section 13(2) obliges the court in spite of the finding as to reasonable and genuine requirement having been arrived at in favour of the landlord to weigh in scales placing the hardship which would result to the landlord in case of denial of eviction in one balance pan and the hardship likely to be suffered by the tenant in case of his being evicted in the other and then to find out judiciously which way the balance tilts. An empty truism cannot be hardship. A failure of the landlord to make out a case for eviction under Section 13(1)(g) is not a hardship to the landlord so also on a case of eviction under Section 13(1)(g) having been made out the fact that the tenant will be liable to be evicted is not by itself hardship to tenant. In support of this submission, he place reliance in case of Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada reported in (2003) 2 SCC 320. The deposition of Pravinaben in respect of the fact that she requires the suit premises for her personal requirement is not specifically challenged by the tenants. Even no suggestion was made to Pravinaben in her cross-examination that she did not require the suit premises for

her personal occupation. The tenant has to lead evidence to prove his hardship. The suit premises consist of three rooms, verandah, latrine and bathroom. It is not practicable to pass the partial decree in favour of the landlords. The respondent No. 3 is a divorcee. She requires the suit premises for her own occupation since she wants to live separately. It is not in dispute that since from the beginning the consistent stand of the landlords is that Pravinaben requires the suit premises for her own occupation. The petitioner has not led any evidence to show that similar premises would not be available in the Ahmedabad city at the reasonable rate. The law is settled that the tenant cannot insist on getting an alternative accommodation of a similar nature in the same locality because it will be asking for impossible. What are to be weighed as relevant factors are the comparative inconvenience, loss, trouble and prejudice. In support of this contention, he relies on decision of the Supreme Court in case of Badrinarayan Chunilal Bhutada (supra). One of the contentions raised by the tenant is that the time barred amount of rent or taxes cannot be claimed and recovered by the landlord. The law is settled that in order to get the protection of Section 12(3)(b) the tenant is required to deposit all arrears, than due including the rent barred by the law of limitation. In support of this submission, he

relies on the decision of the Supreme Court in case of Bhimsen Gupta Vs. Bishwanath Prasad Gupta reported in (2004) 4 SCC 95, Vora Valibhai Vs. Dhan Laxmi reported in 1976 RCJ 475 (Guj.) and Khadi Gramdhyog Vs. Ramchandraji Temple reported in AIR 1978 SC 287. In respect of possible connection regarding taking the cognizance of the subsequent events, it is submitted that the events subsequent to the passing of the decree by the trial Court cannot be taken into consideration. In this respect, he relies on the decision of the Supreme Court in case of Gaya Prasad Vs. Pradeep Srivastava reported in (2001) 2 SCC, Pratap Rai Tanwani Vs. Uttam Chand (2004) 8 SCC 490 and decision of this Court in case of Babubhai H. kanara Vs. Natwarlal reported in 2003(4) GLR p.3411.

22. The Learned counsel appearing for the respondent has further submitted that the first date of hearing is the date of framing of the issues when the Court applied its mind to the facts of the case and placed reliance in case of Sudarshan Devi V/s. Sushila Devi reported in (1999) 8 SCC 31, para 27. the situation prevailing then is to taken into consideration for the question of tenant in arrears.

23. The Learned counsel appearing for the respondent has further submitted that the tenant cannot insist for acquiring alternative

accommodation in the same locality and place reliance in case of Dwarka Prasad Vs. Niranjan reported in (2003) 4 SCC p.349 para-12. He submitted that in exercise of powers under Article 227, conclusion of fact cannot be upset however erroneous they may be and reliance is placed in case of Rena Dringo Vs. Lal Chand Soni, reported in (1998) 3 SCC 431 para-4. He submitted that if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in less premises so as to protect the tenant's continued occupation in the tenancy premises and placed reliance upon (i) Siddalinghmma V. Mamtha Shenoy, reported in (2001) 8 SCC 561, para-9, (ii) Sarla Ahuja V. United India Issurance Co. Ltd., reported in (1998) 8 SCC 119 para-14 and 15, (iii) R.C. Tamarkar V. Nidhi Lekha, reported in (2001) 8 SCC 431, para-10 and (iv) Pravita Devi Vs. T.V. Krishnan, reported in (1996) 5 SCC 353, para-2. He has submitted that legal position is well settled that the bonafide need has to be examined on the date of institution of the proceedings and placed reliance in cases of Shakuntala Bai Vs. Narayan Das, (2004) 5 SCC p.772, para-11, 12, 15, Pratap Ray Tanvani Vs. Uttamchand reported in (2004) 8 SCC 490, para-7, Gaya Prasad Vs. Pradeep Shrivastava, reported in (2001) 2 SCC 604, and Babubhai H. Kanada Vs. Natvarlal, reported in 2003(4) GLR p.3411.

24.Shri Gaekwad has further submitted that the landlord in a suit for bonafide personal requirement is not supposed to have pleaded his own comparative hardship in the plaint itself and placed reliance in case of Heeralal Mulchand Doshi Vs. Barot Ramanlal Ranchhoddas, reported in (1993) 2 SCC p.458, para 25. He submitted that one of the co-owners can file suit for eviction of the tenant in the property generally owned by the co-owners and placed reliance on Mohnder Prasad Jain Vs. Manoharlal Jain, reported in (2006) 2 SCC 724 : 2006(1) Rent Control Journal 42 (SC) and Kanta Udharam Jagasia Vs. C.K.S. Rao reported in (1998) 1 SCC 403. He submitted that dispute regarding standard rent can be raised within one month of receipt of demand notice or that can be raised in the written statement also and placed reliance in case of Ramniklal Vs. Mohanlal Laxmichand, reported in 1977 GLR p.32. He submitted that the tenant has to deposit standard rent and permitted increases on the first day of hearing and place reliance in case of Bachiben Vs. Jayantilal, reported in 2005 (3) GLR p.2244, para-3.8A. He further submitted that it is well settled that the law of limitation bars the remedy only and placed reliance in case of Bhimsen Gupta Vs. Bishwanath Prasad Gupta reported in (2004) 4 SC p.95 & 97, Vora Valibhai Sakkarbhai Vs. Dhanlaxmi wife of Chimanlal

Gordhandas 76 Rent Control Journal, 475. He further submitted that no doubt even while exercising the revisional jurisdiction, reappraisal of evidence can be made but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact findings court is wholly unreasonable and placed reliance in case of Sarla Ahuja Vs. United India Insurance Co. Ltd., reported in (1998) 8 SCC p.119, para-11, Phiroze Bamanji Desai Vs. Chandrakant N. Patel, reported in (1974) 1 SCC 661, para 6 and Patel Valmik Himatlal Vs. Patel Mohanlal Muljibhai reported in (1998) 7 SCC 383 para-6.

25. Shri Gaekwad, learned counsel further submitted that when the landlord shows a prima-facie case a presumption that the requirement of landlord is bonafide is available to be drawn. It is not for the tenant to dictate the terms of the landlord as to how else he can adjust himself without giving possession of the tented premises and place reliance in case of Sarla Ahuja Vs. United India Insurance Co. Ltd., reported in (1998) 8 SCC p.119 and Sarup Gupta Vs. Maheshchand Gupta, reported in (1999) 6 SCC p.222 para-20. He has also submitted that landlord cannot split up the unity and integrity of tenancy and recover possession of the part of the premises from the tenant and placed reliance in case of Mohar Singh Vs. Devi Charan, reported

in (1998) 3 SCC p.63, S.Sanyal Vs. Gian Chand reported in AIR 1968 SC 338, Habibunnisa Begum Vs. G. Doraikunnu Chettiar, reported in (2000) 1 SCC p.74. He has also submitted that the law is that where there is an indivisible contract of tenancy, it cannot be split by a court unless there is statutory provision to that effect and placed reliance in case of Habibunnisa Begum Vs. G. Doraikannu Chettiar reported in (2000) 1 SCC 74 and S. Sanyal V. Gian Chand, reported in AIR 1968 SC 438. He has also submitted that contention contrary to the pleadings cannot be permitted to be raised and placed reliance in case of Swami Devasthanam Vs. K. Gopalswami Ayyangar, reported in AIR 1965 SC 338, Church of North India Vs. Laljibhai Ratanjibhai & Ors. Reported in JT 2005(5) SC 202.

26.This Court has heard learned counsel for both the sides and perused the records and proceedings.

27.The Court needs to be mindful that this being a Civil Revision Application, it has a very limited jurisdiction to examine the controversy in the matter. The trial Court's decision with regard to bonafide requirement of the premises on the part of plaintiff No. 3 and non-payment of rent appears to have been based upon the evidence adduced before the trial Court. The trail Court has accepted the version of

plaintiff No. 3 that she being a deserted lady, needs to leave separately and take a shelter in the suit premises.

28. The defendant's grace for sparing a room for deserted lady – plaintiff No. 3 to fulfill the bonafide need pressed into service by the petitioner Counsel plaintiff No. 3 cannot be accepted in view of the decisions of the apex court cited by the Ld. Counsel for the respondent.

29. The finding with regard to Tenant being in arrears of rent does not appear to be in any way erroneous as the fact remains to be noted that the Tenant did not deposit the amount of arrears as required under the law for seeking protection under the Rent Act.

30. The findings with regard to Bonafide personal need of Landlord plaintiff no.3 also seems to be quite just and proper based upon the evidence. This Court is unable to accept the submission of the Learned Counsel for the petitioner that the fact of quarreling with daughter in law of the Co-Owner's son being absent in pleadings at the time of filing suit cannot be made basis for eviction decree as it could be seen clearly that the plaintiff especially plaintiff no.3 had been separated from her husband and proper foundation was laid in the pleading itself. The subsequent

even of marriage of co-owner's and her quarreling with his wife is only a subsequent incident fortifying her requirement to live separately from her brother. This cannot be said to be an independent ground as sought to be submitted by the Counsel for the petitioner

31. The finding with regard to comparative hardship is also proper and justified. The passing of eviction decree in itself cannot be a hardship in absence of any other cogent circumstances. The Court need not examine the space requirement of Landlord once having come to the conclusion that the landlord needs premises for his personal bonafide need.

32. In view of the catena of the decisions of the apex court the Court may not pass partial decree so as to compel the landlord to accommodate the tenant and his family despite the fact that he had already established his ground for personal requirement.

33. The Court need not suggest as to how the Landlord should live or as to what space would be sufficient for a lady landlord. The findings of the Trial Court as confirmed by the appellate Court are based upon cogent evidence and in light of those findings in revision jurisdiction the High Court would not interfere.

34. In view of the aforesaid discussion this Court is of the considered view that no case is made out for making any interference with the impugned orders and decree.

35. In the result the Civil Revision Application deserves to be dismissed and is accordingly dismissed Interim Relief granted earlier stands vacated The tenant is ordered to vacate the premises and hand over the possession of the premises within 3 months from today.

(S.R.BRAHMBHATT, J.)

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