UNION OF INDIA AND ORS. A

v.

ADANI EXPORTS LTD. AND ANR.

OCTOBER 31, 2001.

[N. SANTOSH HEGDE AND ASHOK BHAN, JJ.] B

Constitution of India, 1950.

Article 226(2)—High Courts—Exercise of Territorial Jurisdiction—Held, entire facts pleaded in support of cause of action must be looked into—Facts pleaded must constitute a cause of action giving rise to dispute within the territorial jurisdiction of the concerned court—Facts pleaded must have nexus or relevance with dispute or lis involved in the case—Held, facts pleaded in support of cause of action have no connection with the dispute involved in the matter to confer territorial jurisdiction—Considerations for territorial jurisdiction in criminal and civil disputes not always similar—Existence of registered office, of company within territorial jurisdiction of Court would not confer automatic jurisdiction upon it. C D

Respondents filed Special Civil Applications in the Gujarat High Court at Ahmedabad seeking benefit of Pass Book Scheme found in paragraph 54 of Import Export Policy introduced by appellants w.e.f. 1st April, 1995 in relation to certain credits to be given on export of Shrimps. Appellants opposed the applications and specifically contended that only High Court at Chennai had jurisdiction and High Court at Ahmedabad did not have territorial jurisdiction to entertain the special applications. High Court rejected the said objection holding that application can be filed at the place where Registered Office of the Company is situated and allowed the special applications. Hence the present appeal by Union of India and others. E F

Appellants contended that High Court at Ahmedabad did not have jurisdiction to entertain the special civil applications since no part of the cause of action based on which the applications were filed arose within its territorial jurisdiction; and that factum of respondents having executed a bank guarantee and a bond at Ahmedabad has no direct nexus or bearing with disputes involved in the applications and has nothing to do with the G H

A cause of action for challenging the denial of benefit of the Pass-Book Scheme.

Respondents contended that a substantial part of cause of action had arisen within the territorial jurisdiction of the High Court at Ahmedabad in view of facts mentioned in the applications; that relief claimed for cancellation of guarantee and Bond executed at Ahmedabad gave rise to part of cause of action at Ahmedabad; and that since High Court had elaborately dealt with the merits of the case and given a finding, the same should not be interfered with, in the interest of justice.

C Allowing the appeal, the Court

HELD : 1. The view that the existence of the registered office of a Company would *ipso facto* give a cause of action to the High Court within whose jurisdiction the registered office of such Company is situated, is not correct. [636-H; 637-A]

D

Union of India & Ors. v. *Oswal Woollen Mills Ltd. & Ors.*, [1984] 2 SCC 646, distinguished.

2. It is an admitted fact that none of the appellants are stationed at E Ahmedabad. It is also an admitted fact that the pass book in question, benefit of which the respondent is seeking in the civil applications, is issued by an authority who is stationed at Chennai. The Designated Authority who is the competent person in respect of the matters concerning the Pass Book Scheme and who discharges various functions under the Scheme is F also stationed at Chennai. The entries in the pass book under the concerned Scheme are to be made by the authorities at Chennai. The export of prawn made by the respondents and the import of the inputs benefits of which the respondents are seeking in the applications, also will have to be made through the same Port i.e., Chennai. [638-B-C]

G 3.1. Article 226(2) of the Constitution of India speaks of the territorial jurisdiction of the High Court. In order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower H the court to decide a dispute which has, at least in part, arisen within its

jurisdiction. Each and every fact pleaded by the respondents in their application does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. [640-B-C] A B

Oil and Natural Gas Commission v. *Utpal Kumar Basu and Ors.*, [1994] 4 SCC 711 at 713, relied on.

3.2. None of the facts pleaded in the petition, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which would confer territorial jurisdiction on the courts at Ahmedabad. The fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denied of credit in the pass-book having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants. Inclusion of totally extraneous claim in the writ petition, with regard to bank guarantee and Bond executed by respondents, cannot be construed as being a factor giving rise to a cause of action. [640-D-F; 641-D] C D E F

4. The consideration that arises in deciding the question of territorial jurisdiction in cases involving criminal offences may not always apply to cases involving civil disputes like the present civil applications. [642-G]

Navinchandra N. Majithia v. *State of Maharashtra & Ors*, [2000] 7 SCC 640, distinguished. G

5. The impugned judgment being a judgment of a court having no territorial jurisdiction, the judgment has to be set aside. However, the special civil applications cannot be dismissed on this ground and are H

hereby directed to be transferred to the High Court of Madras at Chennai forthwith. [643-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6320-6321 of 2000.

From the Judgment and Order dated 17.2.2000/3.4.2000 of the Gujarat High Court in S.C. Application No. 3282 and 3279 of 1999.

Mukul Rohtagi, Additional Solicitor General, Jaideep Gupta, Tara Chand Sharma, S.N. Terdol and B.K. Prasad for the Appellants.

F.S. Nariman and Ashok Desai, Vikram Nankani, Subhash C. Sharma, Ms. Vanita Bhargava, Ms. Rakhi Roy and Ms. Bina Gupta, for the Respondents.

The Judgment of the Court was delivered by

SANTOSH HEGDE, J. These civil appeals are preferred by the Union of India and Others challenging the judgment and order of the High Court of Gujarat at Ahmedabad made in Special Civil Application Nos.3282/99 and 3279/99 wherein the High Court allowed the said civil applications and granted the relief as prayed for by the petitioner therein.

Though in these appeals, principal contention involved pertains to the entitlement of the respondents herein to the benefit of the Pass Book Scheme found in paragraph 54 of the Import Export Policy introduced by the appellants herein w.e.f. 1st April, 1995 in relation to certain credits to be given on export of Shrimps, the appellant firstly challenges before us the territorial jurisdiction of the High Court of Gujarat at Ahmedabad to entertain the civil applications and grant relief in favour of the respondents.

Mr. Mukul Rohtagi, learned Additional Solicitor General of India and Mr. Jaideep Gupta, learned counsel appearing for the appellants, contended that the High Court at Ahmedabad did not have the territorial jurisdiction to entertain the special civil applications since no part of the cause of action based on which the applications were filed arose within the territorial jurisdiction of the High Court at Ahmedabad. They contended that though this ground was specifically urged, the High Court wrongly placing reliance on a judgment of this Court in the case of *Union of India & Ors.* v. *Oswal Woollen Mills Ltd. & Ors.*, [1984] 2 SCC 646 rejected the said objection of the appellants and granted the relief which, of course, the appellants contend even on merits is

not liable to be granted. They contend that since the question of jurisdiction in this case goes to the root of the matter, this issue should be first decided and if it is held in favour of the appellants, then *ipso facto* the judgment under appeal is liable to be set aside as having been delivered by a court of no jurisdiction.

Per contra, Mr. Ashok Desai, learned senior counsel appearing for the respondents, contended that it is incorrect to say that no part to the cause of action arose within the territorial jurisdiction of the High Court at Ahmedabad. According to the learned counsel, a substantial part of the cause of action has arisen within the territorial jurisdiction of the High Court at Ahmedabad, hence, the judgment in question cannot be invalidated on this preliminary ground. He placed strong reliance on the judgment of this Court in the case of *Navinchandra N. Majithia* v. *State of Maharashtra & Ors.*, [2000] 7 SCC 640.

Having considered the arguments addressed on behalf of the parties and having perused the records, we are of the considered opinion that the question of jurisdiction should be first decided by us before going into the merits of the case in hand. As a matter of fact, we feel it would have been more appropriate on the facts of these cases if the High Court had proceeded under Order XIV Rule 2 of Civil Procedure Code by deciding the question of jurisdiction as a preliminary issue first instead of deciding the case on merit.

For deciding the above issue, it is necessary to first notice the contentions raised in the special civil applications to establish the territorial jurisdiction of the High Court. Contentions regarding the cause of action and the territorial jurisdiction of the High Court are pleaded in the applications at para 16 which read thus:

> "The petitioners carry on business of export and import from Ahmedabad. The orders for export and import are placed from and executed from Ahmedabad. The documents and payments for export and imports are sent/made at Ahmedabad. The credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad. The non-granting and denial of utilisation of the credit in the said Pass Book shall effect the business of the Petitioners at Ahmedabad. Respondent Nos. 1 to 3 have regional offices at Ahmedabad. A substantial part of the cause of action has arisen within the jurisdiction of this Honourable Court. This Honourable Court has

A therefore, jurisdiction to entertain, try and dispose of this Petition."

The appellants herein while opposing the civil applications had specifically pleaded that the courts at Ahmedabad did not have the territorial jurisdiction to adjudicate upon the claims of the respondents since no part of the cause of action has arisen within the territorial jurisdiction of the High Court B at Ahmedabad. In their statement of objection rebutting the pleadings of the respondents, the appellants had contended thus :-

> "With reference to para 16 of the petition, I say that since the Pass Book Licence was issued at Chennai by the designated authority at C Chennai and the transactions concerning the said pass book were made from Chennai port and cause of action is lying at Chennai, it is in order that the case is transferred to the jurisdiction of the Hon'ble High Court of Madras at Chennai notwithstanding the petitioners having their office at Ahmedabad from where the export import planning work was being executed".

D

From the above, it is seen that the appellants had taken a serious objection as to the territorial jurisdiction of the High Court at Ahmedabad, contending that it is the High Court at Chennai which alone had the jurisdiction to entertain the applications as no part of the cause of action had arisen within E the territorial jurisdiction of the High Court at Ahmedabad. Hence, the appellants had prayed for transfer of the case to the High Court at Chennai.

We will now consider how the High Court dealt with this issue. Having noticed the objection filed by the appellants in regard to its territorial jurisdiction, the High Court following the judgment of this Court in the case of *Union* F *of India* v. *Oswal Woollen* (supra) held that in view of the observations of this Court in the said case, a civil application can be filed at the place where the registered office of the Company is situated and having regard to the fact that the registered office of the respondent-Company is situated at Ahmedabad, it accepted the argument of the learned counsel for the respondent that it is not necessary to discuss this issue any further, meaning thereby it accepted the G contention of the respondent's counsel that the High Court at Ahmedabad had the territorial jurisdiction to decide the application.

We are unable to accept this finding of the High Court. The view of the High Court that this Court in the case of *Oswal Woollen* (supra) had held that H the existence of the registered office of a Company would *ipso facto* give a

cause of action to the High Court within whose jurisdiction the registered office of such Company is situated, is not correct. As a matter of fact, in the case of *Oswal Woollen* (supra), the question of territorial jurisdiction in the sense with which we are concerned now, did not arise at all. In that case, the observations of the Court were as follows :

> "Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against whom the primary relief is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi High Court. The writ petitioners, however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port... We do not desire to probe further into the question whether the writ petition was filed by design or accident in the Calcutta High Court when the office of the Company is in the State of Punjab and all the principal respondents are in Delhi."

It is in that context of noticing the motive of the parties concerned in that case in choosing a forum, the above observation as to the place of the registered office of the Company was incidentally made in the judgment. Having perused the judgment in *Oswal's* case (supra), we are of the opinion that that judgment is no authority to decide as to the requirement of law in regard to establishing the territorial jurisdiction of a court. We must say in all fairness, Mr. Desai, learned senior counsel, has not placed any reliance on this judgment nor on the basis of the finding of the High Court in this case in regard to its territorial jurisdiction. He, however, contends that from the facts narrated in the civil applications, more so in Paragraph 16 of the application, it is crystal clear that a substantial part of the cause of action has arisen within the jurisdiction of the High Court at Ahmedabad. He pointedly referred to the bundle of facts mentioned in Paragraph 16 of the application as also the additional fact pleaded in Paragraph 7 of the application in regard to the respondents having furnished a bank guarantee as also a Bond in favour of the appellants. He pointed out that the bank guarantee and the Bond were executed by the respondents at Ahmedabad, hence, at least on this count a part of the cause of action has arisen at Ahmedabad.

We will now examine whether any of the facts mentioned in Paragraph 16 of the applications or for that matter in the entire special civil applications

would give rise to any part of the cause of action at Ahmedabad, at least for the purpose of conferring territorial jurisdiction on the High Court at Ahmedabad. At this stage, it is relevant to mention that it is an admitted fact that none of the respondents in the civil applications (Appellants herein) are stationed at Ahmedabad. It is also an admitted fact that the pass-book in question, benefit of which the respondent is seeking in the civil applications, is issued by an authority who is stationed at Chennai. The Designated Authority who is the competent person in respect of the matters concerning the Pass Book Scheme and who discharges various functions under the Scheme is also stationed at Chennai. The entries in the pass-book under the concerned Scheme are to be made by the authorities at Chennai. The export of prawn made by the respondents and the import of the inputs benefit of which the respondents are seeking in the applications, also will have to be made through the same Port i.e. Chennai.

Inspite of the above admitted facts, the respondents herein plead that as per the plea raised by them in paragraph 16 of the special civil application, the following facts give rise to the cause of action conferring territorial jurisdiction on the Court at Ahmedabad. They are :-

(i) the respondents carry on their business of export and import from Ahmedabad ;

(ii) their orders of export and import are placed from and are executed at Ahmedabad ;

(iii) documents and payments for export and import are sent/made at Ahmedabad ;

(iv) the credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad ;

(v) non-granting and denial of utilisation of the credit in the pass-book will affect the business of the respondents at Ahmedabad;

(vi) respondents have executed a bank guarantee through their bankers at Ahmedabad as well as a Bond at Ahmedabad.

Though it is also contended in para 16 of the application that the appellants have their office at Ahmedabad, that contention has not been pressed since

it is clear from the records that none of these appellants have their office at Ahmedabad. De hors this fact, if we take into consideration the other facts enumerated hereinabove in support of the cause of action pleaded by the respondents, it is seen that none of these facts is in any way connected with the relief sought for by the respondents in their civil applications so as to constitute the cause of action at Ahmedabad.

Article 226(2) of the Constitution of India which speaks of the territorial jurisdiction of the High Court reads : -

> "The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

It is clear from the above constitutional provision that a High Court can exercise the jurisdiction in relation to the territories within which the cause of action, wholly or in-part, arises. This provision in the Constitution has come up for consideration in a number of cases before this Court. In this regard, it would suffice for us to refer to the observations of this Court in the case of *Oil and Natural Gas Commission* v. *Utpal Kumar Basu and Ors.*, [1994] 4 SCC 711 at 713) wherein it was held :

> "Under Article 226 a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. The expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Thus the question of territorial jurisdiction must be

A decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial."

It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the B cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in-part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction C unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in Paragraph 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause D of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad..

As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and E import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection what-soever with the actions of the appellants impugned in the application. The non-F granting and denial of credit in the pass-book having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.

G Mr. Ashok Desai, however, pleaded that the respondents have executed a bank guarantee and a Bond at Ahmedabad which in law the respondents are entitled to get cancelled through the intervention of the courts at Ahmedabad. This fact having been specifically pleaded in the application and a relief being sought for that purpose, would definitely give rise to a part of cause of action at Ahmedabad, but on behalf of the appellants, it is pointed out to us that the H subject-matter involved in the applications pertains to the denial of the benefit

of the import-exports scheme which ended w.e.f. 31.3.1997 while the bank guarantee and the Bond in question were not part of the Pass Book Scheme which is the subject-matter of the special civil applications with which we are concerned now. Execution of the bank guarantee was not with reference to the demand of the respondents to give it due credit in the pass book but the same was executed much later than 31.3.1997 in regard to certain disputes pending with the customs authorities in regard to the valuations made by the said authorities as to the value of the export and import of prawn and its inputs. It was also pointed out that these customs authorities, as a matter of fact, are not even parties to these special civil applications. Thus, it is contended that the factum of the respondents having executed a bank guarantee and a Bond at Ahmedabad will have no direct nexus or bearing on the disputes involved in these applications. It is pointed out to us by learned counsel for the appellants that in regard to the correctness of the valuation, separate proceedings have been initiated and against the findings in those proceedings, separate appeals are pending in this Court, therefore, the bank guarantee and the Bond executed by the respondents, as a matter of fact, have nothing to do with the cause of action that may arise to challenge the denial of the benefit of the Pass Book Scheme. Inclusion of this totally extraneous claim in the present writ petition cannot be construed as being a factor giving rise to a cause of action. In the case of *ONGC* (supra), this Court negatived the contentions advanced on behalf of the respondents therein that either the acquisition of knowledge made through media at a particular place or owning and having an office or property or residing at a particular place, receiving of a fax message at a particular place, receiving telephone calls and maintaining statements of accounts of business, printing of letterheads indicating branch offices of the firm, booking of orders from a particular place are not the factors which would give rise to either wholly or in part cause of action conferring territorial jurisdiction to courts. In the said case, this Court also held that the mere service of notice is also not a fact giving rise to a cause of action unless such notice is an integral part of the cause of action.

Mr. Desai, however, placed reliance on a recent judgment of this Court in *Navinchandra* v. *State of Maharashtra* (supra) wherein this Court had held that a part of the cause of action had arisen within the jurisdiction of the Bombay High Court. It is to be noted that in the said petition, among other reliefs, the writ petitioner had prayed for a writ of mandamus to the State of Meghalaya to transfer the investigation to Mumbai Police as also allegations of *mala fides* were made as to the filing of the complaint at Shillong. It was

A also averred in that case that the petitioner was primarily aggrieved by the criminal complaint filed at Meghalaya because the bulk of the investigation was carried on at Bombay. The said writ petition was dismissed by the Bombay High Court solely on the ground that since the complaint in question was filed in Shillong in the State of Meghalaya and the petitioner had sought for quashing of the said complaint, such a writ petition was not maintainable before the B High Court of Bombay. According to this Court, that finding was given without taking into consideration the other alternative prayers in the writ petition to which we have made reference hereinabove, which prayers according to this Court, gave rise to a cause of action to move the High Court at Bombay for relief. Therefore, in our opinion, this judgment does not help the writ petitioner C to justify its action in filing a writ petition before the Gujarat High Court. That apart, we must notice that the said judgment is delivered in a matter involving criminal dispute and consequences of such dispute have a direct bearing on the personal freedom of a citizen guaranteed under Article 21 of the Constitution. Therefore, the consideration that arises in deciding the question of territorial D jurisdiction in cases involving criminal offences may not always apply to cases involving civil disputes like the special civil applications with which we are concerned. Mr. Desai then urged that since the High Court has elaborately dealt with the merits of the case and given a finding in favour of the respondents in the interest of justice, we should not interfere with the said finding and uphold the same. We are not inclined to accept this argument of the learned E counsel because the appellants herein had taken objection to the entertainment of the special civil applications by the Gujarat High Court on the ground of lack of territorial jurisdiction in the first instance itself and the same was rejected, according to us, wholly on unsustainable grounds. As a matter of fact, the appellant on the entertainment of the civil application and grant of interim F order, had challenged the said order on the ground of want of jurisdiction by way of a civil appeal in this Court which appeal is pending consideration by this Court, therefore, the objection having been taken at the first instance itself and the court having not proceeded to decide this question of territorial jurisdiction as contemplated under Order XIV Rule 2 CPC, we think we cannot deny relief to the appellant solely on the ground that the High Court has chosen G to proceed to decide the case on merit. This being a judgment of a court having no territorial jurisdiction, the judgment has to be set aside. However, the special civil applications cannot be dismissed on this ground because it has been the contention of the appellants themselves in the objections filed by them before the High Court, that these applications ought to be transferred to the High Court H at Chennai, in the interest of justice, we agree with this plea.

For the reasons stated above, these appeals succeed and the same are hereby allowed. The impugned judgment is set aside. We further direct that Special Civil Application Nos. 3282/99 and 3279/99 filed by the respondents are hereby directed to be transferred to the High Court of Madras at Chennai forthwith and on receipt of the papers, we request the Chief Justice of the High Court of Madras to place them before an appropriate Bench for disposal in accordance with law. We are also of the opinion that since the parties have already undergone one round of litigation before the High Court at Ahmedabad and thereafter in these appeals before us, it is appropriate to request the High Court to dispose of these appeals as early as possible. The appeals are, accordingly, allowed.

A.K.T. Appeals allowed.

A SRI KEMPAIAH

v.

LINGAIAH AND ORS.

OCTOBER 31, 2001

B [R.P. SETHI AND S.N. PHUKAN, JJ.]

Rent Control and Eviction :

Karnataka Rent Control Act, 1961 :

C *Sections 21(1)(h) and 29(4)—Eviction petition—On ground of bonafide requirement—No evidence led to prove the same—Ground of default in payment of rent—Failure to show rate of rent—Held, the grounds of eviction not proved.*

D *Section 50—Revisional power of High Court—Held, are wider than the powers conferred under section 115 CPC—Civil Procedure Code, 1908—Section 115.*

Words and Phrases : 'Require'—Meaning of—In the context of Section 21(1)(h) of Karnataka Rent Control Act, 1961.

E

Appellant-landlord filed eviction petition on the ground of *bonafide* requirement and on the ground of arrears of payment of rent. During trial, the appellant himself did not appear as a witness and tried to prove the averments in the petition by production of PW 1, his son, as a witness.

F **Rent controller allowed the petition on the ground of *bonafide* requirement but with regard to default in payment of rent, it observed that in the absence of any material regarding rate of rent self-testimony of PW 1 cannot be accepted.**

G **High Court allowed the revision petition holding that there was no *bonafide* requirement and the case was not a case where partial eviction could have been ordered; and that the appellant was not able to show as to what actual amount each tenent was liable to pay when he issued notice.**

In appeal, this Court directed the respondents to pay arrears of rent.

H **Respondents paid the rent as per their own calculation.**

The appellant contended that findings of fact arrived at by the trial court could not be disturbed by the High Court in exercise of its revisional jurisdiction; and that the appellant landlord required the entire premises *bonafide*; and that since the respondents had failed to pay full arrears as per direction of this Court, they may be evicted in terms of Section 29(4) of the Karnataka Rent Control Act, 1961. A B

Dismissing the appeals, the Court

HELD : 1. Revisional powers of the High Court, under the Karnataka Rent Control Act, 1961 are wider than the powers conferred upon it under Section 115 of the Code of Civil Procedure. The High Court is not precluded to appreciate the evidence for arriving at the conclusion regarding the alleged reasonable *bonafide* requirement. There is no fault in the judgment of the High Court in so far as the scope of its powers under Section 50 of the Karnataka Rent Control Act, 1961 is concerned. [647-E-F] C

Bhoolchand & Anr. v. *Kay Pee Cee Investments & Anr.,* [1991] 1 SCC 343, relied on. D

2. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable *bonafide* requirement as contemplated under Section 21(1)(h) of the Act. The word "require" used in clause (h) of sub-clause (1) of Section 21 of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause (h) of sub-section (1) of Section 21 of the Act emphasizes the genuineness of the requirement of the landlord. The terms "reasonable and *bonafide* requirement" are complementary and supplementary to each other in the context. [648-C-E] E F G

Dattatraya Laxman Kamble v. *Abdul Rasul Moulali Kotkunde & Anr.,* [1999] 4 SCC 1, referred to.

3.1. The trial court, rightly held that "in the absence of any material regarding the rate of rent, the self-testimony of PW 1 cannot be accepted". [647-H] H

3.2. The Memo of Calculations filed by the appellant himself shows that the respondents had made the payment of the rent as per their own calculations and even according to the appellant a meagre amount is stated to have not been paid. Without determining the quantum of rent, particularly when the appellant himself was not sure about the monthly rate of rent, the direction of the court stands substantially complied with not requiring the invoking of powers under Section 29(4) of the Act. [649-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 15029-15033 of 1996.

From the Judgment and Order dated 9.8.96 of the Karnataka High Court in H.R.R.P. Nos. 121, 122, 123, 124, 125 of 1993.

S.N. Bhat for the Appellant.

E.C. Vidya Sagar for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. The appellant-landlord prayed for eviction of the respondents-tenants on the ground of his *bonafide* personal requirement within the meaning of Section 21(1)(h) of the Karnataka Rent Control Act (hereinafter referred to as "the Act"). He submitted that he had a large family and was residing in a rented premises. He intended to convert the entire premises, in the occupation of the respondents-tenants and some other tenants, into one portion by making suitable alterations. It was further contended that the respondents were in arrears of payment of rent.

The Trial Court allowed the petition holding that the appellant required the premises for his *bonafide* use and occupation but in revision filed by the respondents-tenants, the order of the Trial Court was set aside vide the common order impugned in these appeals. The appellant submits that the High Court was not justified in allowing the revision petitions and setting aside the order passed by the Trial Court allegedly without looking into the fact that the entire premises in question was to be made as one unit as per plan Exhibit P-8. It is further contended that the High Court was not justified in holding that there existed discrepancies in the statements of the witnesses produced by the appellant or that he had no reasonable *bonafide* requirement of the premises in occupation of the respondent-tenants. The conclusions arrived at by the High Court are termed to be not based upon the evidence led in the case and the

rejection of his prayer for eviction is causing great hardship to him. It is further submitted that the findings of fact arrived at by the Trial Court could not be disturbed by the High Court in exercise of its revisional jurisdiction.

Section 50 of the Act provides:

> "*50. Revision* (1) The High Court may, at any time call for and examine any order passed or proceeding taken by the Court of Small Causes or the Court of Civil Judge under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as it thinks fit.
>
> (2) The District Judge may, at any time call for and examine any order passed or proceeding taken by the Court of Munsiff referred to in sub-clause (iii) or clause (d) of Section 3 for the purpose of satisfying himself as to the legality or correctness of such order or proceeding and may pass such order in reference thereto as he thinks fit. The order of the District Judge shall be final.
>
> (3) The costs of and incidental to all proceedings before the High Court or the District Court shall be in the discretion of the High Court or the District Judge, as the case may be."

It has been held in *Bhoolchand & Anr.* v. *Kay Pee Cee Investments & Anr.*, [1991] 1 SCC 343 that the revisional powers of the High Court, under the Act, are wider than the powers conferred upon it under Section 115 of the Code of Civil Procedure. The High Court is not precluded to appreciate the evidence for arriving at the conclusion regarding the alleged reasonable *bonafide* requirement.

We do not find any fault in the judgment of the High Court in so far as the scope of its powers under Section 50 of the Act is concerned.

Regarding non payment of rent, the High Court has found that the landlord had not been able to show as to what actual quantum of amount each tenant was liable to pay when he issued the notice. Despite showing the total amount allegedly payable by the tenants, the landlord failed to show the rate of rent of the leased premises in occupation of each of the respondents-tenants. The Trial Court, therefore, rightly held that "in the absence of any material regarding the rate of rent, the self-testimony of PW1 cannot be accepted". It

A may be noticed that the appellant himself did not appear as a witness in the case and tried to prove the averments made in the petition by production of PW1, his son, as his witness. The aforesaid finding of fact was not disturbed by the High Court.

Regarding the reasonable *bonafide* requirement of the appellant, the B High Court, on appreciation of evidence, found that he had no *bonafide* reasonable requirement, the case was not a case in which partial eviction could have been ordered and if the eviction is ordered, greater hardships would be caused to the tenants who were all proved to be poor people.

Though it was pleaded that the appellant was under compulsion to vacate C the premises under his occupation as his landlord was insisting to vacate the same, yet no evidence was led in that behalf. It may have been a wish or desire of the appellant to occupy the leased premises but he failed to prove the reasonable *bonafide* requirement as contemplated under Section 21(1)(h) of the Act. The word "require" used in clause (h) of sub-section (1) of Section 21 D of the Act implies something more than a mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause E (h) of Sub-section (1) of Section 21 of the Act emphasizes to the genuineness of the requirement of the landlord. The term "reasonable and *bonafide* requirement" are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court in *Dattatraya Laxman Kamble* v. *Abdul Rasul Moulali Kotkunde & Anr.*, [1999] 4 SCC 1 held that when the F Legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy G is governed by the Rent Control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard.

Learned counsel for the appellant took us through the evidence produced in the case and we have also perused the order of the Trial Court as well as the High Court. We find no ground to interfere with the findings arrived at H by the High Court vide the order impugned in these appeals.

Learned counsel for the appellant also drew our attention to the orders passed by this Court in IA Nos.6 to 10 on 30th April, 2001 and prayed that as the respondents have failed to comply with the directions, eviction against them be directed in terms of Section 29(4) of the Act. The submission has no substance in view of the Memo of Calculations filed by the appellant himself which shows that the respondents had made the payment of the rent as per their own calculations and even according to the appellant a meagre amount is stated to have not been paid. Without determining the quantum of rent, particularly when the appellant himself was not sure about the monthly rate of rent, we are satisfied that the court order dated 30th April, 2001 stands substantially complied with not requiring the invoking of powers under Section 29(4) of the Act.

There is no merit in these appeals which are accordingly dismissed without any order as to costs.

K.K.T. Appeals dismissed.