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MOHD. ISMAIL

v.

DINKAR VINAYAKRAO DORLIKAR

(Civil Appeal No. 7206 of 2009)

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OCTOBER 28, 2009

**[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]**

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*Rent Control and Eviction – Eviction petition on the ground of bonafide requirement – Order of eviction without considering subsequent events, which negated claim of bonafide requirement – On appeal, held: Judgment since passed without considering subsequent events, matter remitted to High Court to decide taking into consideration, the same.*

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**Respondent-landlord filed application for eviction of the tenanted premises, against appellant-tenant on the ground of *bonafide* requirement, stating that he and his three sons required two shops for starting business. Rent Controller passed order of eviction and the same was upheld in appeal. High court in a writ petition, remanded the matter to appellate Court. Despite repeated remand (thrice) of the case by the High Court, appellate court decided in favour of landlord on the ground of bonafide requirement. Against the order of the appellate court, High Court in a writ petition held that the landlord proved his *bonafide* requirement. Hence the present appeal.**

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**Partly allowing the appeal, the Court**

**HELD: 1.1. After considering the subsequent events that had occurred during the eviction proceeding, in which it was brought to the notice of the Court that (1) one of his sons had expired (2) second son had**

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absconded for the last 8-9 years and (3) the tenant had constructed two shop rooms where he has been carrying on business of Kirana, no order for eviction could be passed without considering the aforesaid aspects of the matter which was duly brought to the notice of the Court. [Para 13] [547-F-G]

1.2. In spite of repeated orders of remand passed by the High Court as well as admissions made by the respondent in his deposition about the fact stated in the application for taking into consideration of subsequent events, it would not be possible to accept the impugned Judgment of the High Court, which had failed to consider the requirement of the respondent after the subsequent events had occurred. [Para 14] [547-G-H; 548-A-B]

2. The case is remanded to the High Court, who in turn, would frame issues to the extent whether in view of the subsequent events, the *bonafide* requirement of the landlord/respondent has already been satisfied or not. The High Court shall direct the Rent Controller, to complete the proceedings for taking up the matter, as directed. The High Court, after receiving the records along with evidence and documents from the Rent Controller, and the findings made thereon, shall decide the same finally. [Paras 15 and 18] [548-C-D; 549-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7206 of 2009.

From the Judgment & Order dated 28.09.2006 of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 5075 of 2005.

Subhash Chandra Jain (N.P.) for the Appellant.

Manish Pitale, Chander Shekhar Ashri, for the Respondent.

A The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J.** 1. Leave granted.

B 2. This appeal is directed against the Judgment and Order  
dated 28th of September, 2006 passed by a learned Single  
Judge of the High Court of Judicature of Bombay at Nagpur  
Bench in W.P. (c) 5075 of 2005, by which the High Court had  
dismissed the writ petition and affirmed the order of the  
C Additional Collector, Nagpur dated 22nd of July, 2005, which  
was filed against the order of the Rent Controller, Nagpur in  
Revenue Case No. 264/A-71(2)/92-93 dated 12th of  
November, 1999 thereby allowing the application of the  
respondent for grant of permission to issue quit notice under  
Clause 13(3)(vi) of the Rent Control Order, 1949.

D 3. The case made out by the respondents in his eviction  
petition may be summarized as follows :-

E The appellant is a tenant in respect of a Shop Room  
measuring about 10' x 26' (hereinafter referred to as "the shop  
in question") under the respondent for the last more than 20  
years at a monthly rental of Rs.600/- payable at the end of each  
English Calendar month. In the application for eviction, the  
respondent had alleged that since he was jobless and had to  
maintain a family of ten members and had no source of income,  
he wanted to start a 'kirana business' in the shop in question,  
F in which business the respondent had sufficient experience and  
funds to start the same. It was further alleged that he and his  
three sons required two shops for his bonafide need.  
Accordingly, the appellant was directed to vacate the shop in  
question and as he had failed to deliver possession to the  
G respondent, the eviction proceeding was started against the  
appellant on the ground of bonafide requirement.

H 4. The tenant/appellant appeared before the Rent  
Controller, Nagpur and contested the eviction proceeding by  
filing a written statement, in which he had denied the material

allegations made in the application for eviction. It was specifically denied by the appellant in the written statement that the respondent bonafide required the shop in question as the respondent was already in possession of sufficient accommodation. Accordingly, the appellant sought for dismissal of the eviction petition.

5. Parties adduced evidence in support of their respective claims and after taking oral and documentary evidence, the Rent Controller, Nagpur, by his order dated 12th of November, 1999 passed an order of eviction against the appellant.

6. Against the aforesaid order of eviction passed by the Rent Controller, Nagpur, an appeal was taken before the Additional Collector, Nagpur, which also affirmed the order of eviction passed against the appellant.

7. Feeling aggrieved, a writ petition was moved before the High Court of Bombay at Nagpur Bench which, by a final order, remanded the matter back to the Additional Collector for consideration afresh. After remand, the case was again decreed in favour of the respondent on the ground of bonafide requirement.

8. Again, a writ petition was filed against the aforesaid order of the Additional Collector, Nagpur before the High Court of Bombay at Nagpur Bench. During the pendency of the writ petition, it was brought to the notice of the Court that a similar eviction proceeding was started by the respondent against another tenant Mr. Lal Mohd. which was decreed and possession was taken from Lal Mohd. by the respondent and the respondent, thereafter, started using the same. This fact was in fact brought to the notice of the High Court and the High Court, having found it to be true, again remitted the case back to the Additional Collector, Nagpur, for consideration afresh but after the second remand, again the order of eviction was affirmed in favour of the respondent by the Additional Collector, Nagpur.

A 9. Against the aforesaid order of the Additional Collector,  
 Nagpur, again a writ petition was moved by the tenant/appellant  
 in the High Court of Bombay at Nagpur Bench. Again, by an  
 order dated 16th of January, 2004, the High Court had partially  
 allowed the writ petition and quashed the order dated 5th of  
 B November, 2003 passed by the Additional Collector, Nagpur  
 and directed the Additional Collector to hear and decide the  
 appeal afresh after affording an opportunity of being heard to  
 the parties and permitted the respondent to file reply of affidavit  
 filed by the appellant. It was further directed that the appeal shall  
 C be decided in the light of the law laid down by Bombay High  
 Court in *Janba Daulatrao Borkar vs. Rajesh Kumar Ramjiwan  
 Agarwal* [1975 MHLJ 746].

D 10. When the matter was remanded again by the High  
 Court, the Additional Collector, Nagpur again dismissed the  
 appeal by his order dated 22nd of July, 2005. Feeling aggrieved  
 by this order of the Additional Collector, Nagpur, a writ  
 application was moved before the High Court, which by the  
 impugned Judgment was dismissed inter alia on a finding that  
 the respondent had successfully proved his bonafide  
 E requirement of the shop in question and against the said order  
 of the High Court, this instant Special Leave Petition was filed,  
 which on grant of leave, was heard in presence of the learned  
 counsel appearing for the respondent only.

F 11. Unfortunately, at the time of hearing, the learned  
 counsel appearing for the appellant was not present in Court  
 to argue this appeal before us. Therefore, we were not  
 benefited by the argument of the learned counsel for the  
 appellant. However, we have heard the learned counsel for the  
 G respondent. In this appeal, in our view, the only question that  
 needs to be decided is whether the concurrent findings as  
 affirmed by the High Court in the writ application on the bonafide  
 requirement of the suit premises by the respondent was duly  
 proved or not. From the record, it appears to us that the  
 H appellant sought to argue that the bonafide need of the

respondent of the shop in question was non-existent inasmuch as during the proceedings, the respondent had constructed two shops and the need pleaded by the respondent for starting a business for one of his sons, who is dead and another son being absconding, could not be accepted.

12. On the other hand, the learned counsel for the respondent before the High Court had urged that since the landlord/respondent was the best judge of his need and that he had produced material documents on the record that he had sufficient experience in Kirana business and that he had sufficient funds to do that business, the respondent had discharged the burden of proving that the respondent bonafide required the shop in question to start a business of Kirana in the shop in question. Accordingly, the learned counsel appearing for the respondent before us argued that in view of the concurrent findings of fact arrived at by the Courts below, this Court is not in a position to interfere with such concurrent finding of fact on the question of requirement of bonafide need of the landlord respondent until and unless it is found that the findings arrived at were perverse or arbitrary.

13. Having perused the impugned Judgment of the High Court and the orders of the Additional Collector and the Rent Contoller, Nagpur, and after considering the subsequent events that had occurred in the eviction proceeding, in which it was brought to the notice of the Court that (1) one of his sons had expired (2) Second son had absconded for the last 8-9 years and (3) he had constructed two shop rooms where he has been carrying on business of Kirana, no order for eviction could be passed without considering the aforesaid aspects of the matter which was duly brought to the notice of the Court.

14. Unfortunately, in spite of repeated orders of remand passed by the High Court as well as admissions made by the respondent in his deposition about the fact stated in the application for taking into consideration of subsequent events,

A it would not be possible for us to accept the impugned  
Judgment of the High Court, which had failed to consider the  
requirement of the respondent after the subsequent events had  
occurred namely (1) death of one son of the respondent (2)  
B 9 years (3) two shops having been taken possession of and  
(4) possession was taken from another tenant Lal Mohd. in  
which, the third son has been running a Leatho Machine  
Business.

C 15. In our view, although such admitted facts had not been  
considered by the Courts below, we do not propose to allow  
the appeal in full but remand the case back to the High Court,  
who in turn, would frame issues to the extent whether in view  
of the subsequent events, as stated herein earlier, the bonafide  
D requirement of the landlord/ respondent has already been  
satisfied or not.

16. For this purpose, it would be open to the respondent  
to amend his pleadings of the eviction petition against which,  
additional objection may also be filed by the tenant/appellant.  
E Thereafter, both parties shall be allowed to adduce evidence  
in support of their respective cases and to reach a final finding  
of fact on the question whether the case of bonafide  
requirement of the respondent was duly proved and such  
findings along with records and the evidence to be adduced  
F for this purpose shall be transmitted back to the High Court,  
who will, after considering the evidence on record and the  
evidence that would be taken after remand along with the  
findings of the Rent Controller, finally decide whether the  
requirement of the landlord/respondent was satisfied by the  
occurrence of subsequent events either during the pendency  
G of the appeal before the Additional Collector, Nagpur or before  
the High Court.

17. For the reasons aforesaid, we set aside the Judgment  
of the High Court and send the case back to it for decision  
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afresh in the light of the observations and directions made  
hereinabove. A

18. The High Court shall direct the Rent Controller, Nagpur  
to complete the proceedings for taking up the matter, as  
directed, within three months from the date of supply of a copy  
of its order and the High Court, after receiving the records along  
with evidence and documents from the Rent Controller, Nagpur,  
and the findings made thereon, shall decide the same finally  
within three months from the date of receipt of the records from  
the Rent Controller, Nagpur, positively, without granting any  
unnecessary adjournments to either of the parties. B  
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19. The impugned Judgment of the High Court is thus set  
aside and the appeal is allowed to the extent indicated above.  
There will be no order as to costs.

K.K.T.

Appeal partly allowed. D