

HUKUM CHANDRA (D) THR. LRS.

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v.

NEMI CHAND JAIN & ORS.

(Civil Appeal No. 3827 of 2014)

DECEMBER 14, 2018

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[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Madhya Pradesh Accommodation Control Act, 1961: s.12(1)(f) – Eviction from shop on the ground of bonafide need – Eviction suit filed by respondent-landlord on the ground of bonafide requirement to settle his son – Trial court dismissed the suit – However, first appellate court as well as High Court held that landlord had established bonafide requirement for establishing business of his son – In the instant appeal, contention of tenant was that the son of the landlord was already in the business of utensils from the shop in the same building and this aspect was not considered by High Court and that High Court also failed to consider the additional evidence adduced by appellant that another tenant had vacated the shop occupied by him, and the same was available for son of respondent – Held: Mere fact that the son of the landlord for whose requirement instant suit was filed was involved in the business of utensils would not render bona fide need for the premises as doubtful – It is not expected that the landlord’s son would sit idle without doing any work till the eviction petition is decided – If there is categorical averment by the respondent that the premises is required for his son, his engaging in the business of utensils in the meanwhile, would not be a ground to deny decree for eviction – Further, vacation of another shop by another tenant and owned by the landlord cannot be said to be available to respondent’s son as the same was vacated for the bona fide requirement of another son – Rent Control and Eviction.

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Subsequent event: Rights of the parties stand crystallised on the date of institution of the suit – However, in appropriate cases, court can take note of all the subsequent events – The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation – Whenever, there is subsequent events of fact or law, which have a material bearing on the rights of the parties to relief

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- A *or on the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognizance of the subsequent changes of fact and law to mould the relief.*

Dismissing the appeal, the Court

- B **HELD : 1. Rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. Whenever, there is subsequent events of fact or law, which have a material bearing on the rights of the parties to relief**
- C **or on the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognizance of the subsequent changes of fact and law to mould the relief. The shop vacated by other tenant is for the bona fide requirement of respondent-landlord's another son. In that view of the matter,**
- D **the court would not be justified in taking notice of such a subsequent fact sought to be projected by the appellant to oppose the relief granted by the courts below. In the facts and circumstances of the instant case, the subsequent event relied upon by the appellant-tenant cannot be taken cognizance. Respondent-landlord has four sons and the other shop vacated**
- E **by tenant was meant for the bona fide requirement of another son. If that shop is not actually occupied by the other son, the other tenant has a right to initiate the proceedings against the landlord for his re-entry in the said adjacent shop in terms of the provisions contained in Section 17 of the Act. Therefore, it cannot**
- F **be said that alternative accommodation was available for the respondent-landlord's son due to vacation of the said adjacent shop by another tenant. [Paras 15, 16, 18, 19][917-D; 918-D-E, H; 919-A-B, D]**

- G *Om Prakash Gupta v. Ranbir B. Goyal* (2002) 2 SCC 256 : [2002] 1 SCR 359 ; *Ramesh Kumar v. Kesho Ram* (1992) Supp 2 SCC 623 ; *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 : [2001] 1 SCR 923 – relied on

- H **2. The High Court rightly held that there was no ground to entertain the additional documents and no substantial question**

of law arose. The first appellate court and the High Court recorded concurrent findings of fact upon consideration of oral and documentary evidence that the suit shop was required *bona fide* for the son of the landlord for the purpose of doing business and that the respondent-landlord had no other reasonably suitable non-residential accommodation for the business of his son. There is no ground warranting interference with the impugned judgment. [Para 20][919-E-G]

Bishanswaroop v. Rajkumar Kuchata & Ors. 2015 (1) M.P.A.C.J.-151 ; *Deena Nath v. Pooran Lal* (2001) 5 SCC 705 : [2001] 3 SCR 925 ; *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 : [2001] 1 SCR 923 ; *T. Sivasubramaniam and Others. v. Kasinath Pujari and Others.* (1999) 7 SCC 275 : [1999] 2 Suppl. SCR 143 ; *Hameedia Hardware Stores, represented by its partner S. Peer Mohammed v. B. Mohan Lal Sowcar* (1988) 2 SCC 513 : [1988] 3 SCR 384 – referred to

Case Law Reference

2015 (1) M.P.A.C.J.-151	referred to	Para 3
[2001] 3 SCR 925	referred to	Para 5
[2001] 1 SCR 923	referred to	Para 6
[1999] 2 Suppl. SCR 143	referred to	Para 11
[1988] 3 SCR 384	referred to	Para 11
[2002] 1 SCR 359	relied on	Para 15
(1992) Supp 2 SCC 623	relied on	Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3827 of 2014.

From the Judgment and Order dated 25.04.2012 of the High Court for Madhya Pradesh at Gwalior in Second Appeal No. 279 of 2007.

Sushil Kumar Jain, N. K. Mody, Sr. Advs., Puneet Jain, Ms. Ankita Gupta, Bikash Chandra, Harsh Jain, Pankaj Sharma, Ms. Pratibha Jain Ankur Mody, Santosh Sharma, Ms. Siddhi Padia, Ms. Nikita Chitale, Sumit Kumar Sharma, Niraj Sharma, B. S. Banthia, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

R. BANUMATHI, J.

1. This appeal arises out of the judgment dated 25.04.2012 passed by the High Court of Madhya Pradesh in Second Appeal No.279 of 2007 affirming the judgment and decree passed by the first appellate court for eviction of appellant from the suit premises.

2. The appellant is a tenant in the shop measuring 6.3 feet x 15 feet on the ground floor of a building located at Sarrafa Bazar, Muraina, Madhya Pradesh. The respondent No.1 filed a civil suit under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 (the Act) seeking eviction of the appellant from the suit shop on the ground of bona fide requirement to settle his son Rajendra Kumar Jain. By judgment dated 30.06.2004, the trial court dismissed the suit holding that Rajendra Kumar was already doing an independent business of utensils and he was not unemployed and also found that respondent-landlord has not established the genuine bona fide requirement. The trial court dismissed the suit by finding that there is no ground for decree of eviction against the appellant herein under Section 12(1)(f) of the Act. So far as the arrear of rent is concerned, the trial court found that no ground for eviction was made out under Section 12 (1)(a) of the Act.

3. The respondent - landlord appealed against the judgment of the trial court. The first appellate court set aside the judgment of the trial court by holding that the documents produced by the appellant that they pertain to the year 1996, 2000 and 2001 and those documents do not show that Rajendra Kumar was engaged in the business on the date of filing of the suit i.e. on 22.01.1992. The first appellate court held that the bona fide requirement of the suit shop is to be examined on the date of filing of the suit i.e. 22.01.1992. After referring to the judgment of the Madhya Pradesh High Court in ***Bishanswaroop v. Rajkumar Kuchata & Ors.*** 2015 (1) M.P.A.C.J.-151, the first appellate court held that it would be inappropriate to expect that the land owner should sit idle and not to perform any work till the suit for eviction is decided on the basis of bona fide requirement. Observing that the landlord has established the bona fide requirement for establishing business for his son Rajendra Kumar, the first appellate court set aside the judgment of the trial court and allowed the first appeal.

4. The second appeal preferred by the appellant was dismissed upholding the judgment passed by the first appellate court that once

landlord establishes the bona fide requirement by evidence on the standard of preponderance of probabilities under Section 12 (1)(f) of the Act, technicalities raised by the defendant – tenant should be ignored. Insofar as the application filed under Order 41 Rule 27 CPC to bring on record the additional documents to show that the respondent - landlord on 14.11.2006 obtained vacant possession of the adjacent shop from tenant Babulal is concerned, the High Court held that the same is of no avail to the appellant – defendant. Being aggrieved, the appellant - defendant has preferred this appeal. A B

5. The learned senior counsel for the appellant submitted that the conditions required for exercise of jurisdiction under Section 12 (1)(f) of the Act was not proved in as much as, the son of the respondent - landlord was already in the business of utensils from the shop in the same building and this aspect was not properly considered by the High Court. It was submitted that the High Court has not appreciated the additional evidence adduced by the appellant that the other tenant Babulal has vacated the shop occupied by him. Placing reliance upon *Deena Nath v. Pooran Lal* (2001) 5 SCC 705, it was contended that the requirement of the landlord which has not been established in the case must continue to exist till the final decision of the court. C D

6. Per contra, the learned senior counsel appearing for the respondent - landlord placed reliance upon *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 and submitted that the crucial date for deciding the bona fide requirement of the landlord, is the date on which the suit was filed for eviction and that the subsequent event cannot eclipse the said bona fide requirement unless the subsequent event overshadows the requirement of the landlord. The learned senior counsel further submitted that after detailed analysis of the evidence adduced by the parties, the first appellate court rightly held that the requirement of the suit shop for the utensils business of landlord's son Rajendra Kumar is genuine and bona fide which was rightly affirmed by the High Court. It was urged that when there are concurrent findings of fact arrived at by the courts below that there is bona fide requirement and that the respondent has no suitable accommodation other than the suit shop, the same cannot be interfered by this Court. E F G

7. We have considered the submissions of the parties and perused the impugned judgment and materials on record.

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A 8. The respondent - landlord sought eviction under Section 12 (1)(f) of the Act, on the ground of bona fide requirement for use of his son Rajendra Kumar Jain. Section 12(1)(f) of the Act under which the eviction of the tenant was sought reads as follows:-

B “**12. Restriction on eviction of tenants.**—(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(a)-(e) * * *

C (f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;”

D 9. Considering the scope of Section 12(1)(f) of the Act, this Court in *Deena Nath’s* case held as under:-

E “15.... The section, on a plain reading, is clear and specific. The criteria to be fulfilled for an order of eviction under the provision are:

(i) that the non-residential accommodation is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons; and

F (ii) that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.”

G The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is

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made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available....”

10. Based on the documents Exs.D-13 to D-15 and Ex.D-25, the trial court held that the documents show that Rajendra Kumar was doing the business under the name “*Rajendra Bartan Bhandar*” and that Rajendra Kumar cannot be said to be unemployed. After referring to the ration card of Rajendra Kumar, the trial court held that in the ration card which was issued by the Chief Municipal Corporation Officer to Rajendra Jain S/o. Nemichand Jain, Ward No.21/121, Lohiya Bazar, Muraina, it is mentioned that Rajendra Kumar is in the business for utensils. Likewise, in the insurance - Ex.D-27 in the name of Rajendra Kumar, it is stated that he is presently having a business of “*Bartan Ki Dukaan*” and his annual income is Rs.30,000/- per year. The trial court also referred to Ex.D-13 - the summary case presented before the Chief Judicial Magistrate for violation of provisions of the Weight and Measurement Act, 1976 in which Rajendra Kumar was imposed with a penalty of Rs.1,000/-. Upon consideration of various documents, the trial court held that Rajendra Kumar is already carrying a business of utensils and cannot be said to be unemployed and, therefore, held that the respondent - landlord has not established bona fide and genuine requirement of the suit premises for business of Rajendra Kumar.

11. Contention of the appellant is that when the trial court recorded the findings of defendant that Rajendra Kumar was already in the business of utensils, this aspect was not properly appreciated by the first appellate court and the High Court. The learned Senior Counsel submitted that there is a distinction between a mere desire and need of the landlord and mere desire cannot be equated with the genuine requirement. It was submitted that, since Rajendra Kumar was already in business, there was no bona fide and genuine requirement of the suit premises and the

A High Court ought not to have affirmed the order of eviction. In support of his contention, the learned senior counsel placed reliance upon two judgments *T. Sivasubramaniam and Others. v. Kasinath Pujari and Others.* (1999) 7 SCC 275 and *Hameedia Hardware Stores, represented by its partner S. Peer Mohammed v. B. Mohan Lal Sowcar* (1988) 2 SCC 513.

B 12. The first appellate court considered the various documents produced by the appellant - tenant and held that those documents do not relate to the date of filing of the eviction petition. So far as Exs.D-13, D-14 and D-15, the first appellate court held that those bills were issued in the year 1996, 2000 and 2001 and that they do not show that Rajendra Kumar was engaged in the business on the date of filing of the suit for eviction i.e. on 22.01.1992. Insofar as, the levy of fine of Rs.1,000/- in the criminal case for the violation of provisions of the Weights and Measurements Act, the first appellate court held that the said penalty was of the year 1988 and not relating to the period of 1992 - the time of filing of the eviction petition. So far as Ex.D-25, application made to the telephone department, the first appellate court pointed out that the date below the signature of Rajendra Kumar has been mentioned as 08.06.1996 and not relating to the year 1992. Likewise, regarding Exs.D-26 and D-27, the documents concerning the life insurance policy, the first appellate court pointed out that the insurance was taken for the year 1994 and not for the year 1992. Likewise, referring to the other documents filed by the appellant/defendant, the first appellate court held that those documents are not related to the time of filing of the suit i.e. 1992 and they do not show that Rajendra Kumar was engaged in the business of utensils in the year 1992 i.e. at the time of filling of the eviction petition. Upon consideration of the documents, the first appellate court and the High Court recorded concurrent findings that the respondent landlord has clearly established that Rajendra Kumar was not employed on the date of filling of the eviction petition i.e. 22.01.1992 and the bona fide requirement has been proved.

G 13. In the present case, mere fact that Rajendra Kumar was involved in the business of utensils – “*Rajendra Bartan Bhandar*” a bona fide need of the premises cannot be doubted. It would be inappropriate to expect the son of the respondent – landlord to sit idle without doing any work till the eviction petition is decided on the basis of the bona fide requirement. If there is categorical averment by the respondent that the premises is required for his son Rajendra Kumar;

engaging in the business of utensils in the meanwhile, cannot be a ground A
to deny a decree for eviction.

14. The other contention of the appellant is that respondent – B
landlord had obtained possession of the adjacent shop from another tenant
- Babulal subsequently and the landlord, therefore, has an alternative
shop in the same building in the same market and, therefore, the condition
precedent for exercise of jurisdiction under Section 12(1)(f) of the Act
was not satisfied. Before the High Court, the appellant – tenant had
filed I. A. No.18652/09 under Order 41 Rule 27 CPC to bring on record
the eviction of the tenant Babulal as per judgment in S.A. No.472/2002
dated 01.09.2005, pursuant to which the respondent – landlord has C
obtained vacant possession on 14.11.2006 of another shop by vacating
another tenant – Babulal. The contention of the appellant is that the
availability of another shop by subsequent event was not properly
appreciated by the High Court and the requirement of the landlord was
not *praesenti*.

15. Rights of the parties stand crystallised on the date of institution D
of the suit. However, in appropriate cases, court can take note of all the
subsequent events. Observing that the court may permit subsequent event
being introduced into the pleadings by way of amendment as it would be
necessary to do so for the performance of determining the rule in
controversy for the parties provided certain conditions are being satisfied, E
in *Om Prakash Gupta v. Ranbir B. Goyal*, (2002) 2 SCC 256, it was
held as under:-

“11. The ordinary rule of civil law is that the rights of the parties
stand crystallised on the date of the institution of the suit and,
therefore, the decree in a suit should accord with the rights of the
parties as they stood at the commencement of the lis. However, F
the Court has power to take note of subsequent events and mould
the relief accordingly subject to the following conditions being
satisfied: (i) that the relief, as claimed originally has, by reason of
subsequent events, become inappropriate or cannot be granted;
(ii) that taking note of such subsequent event or changed G
circumstances would shorten litigation and enable complete justice
being done to the parties; and (iii) that such subsequent event is
brought to the notice of the court promptly and in accordance
with the rules of procedural law so that the opposite party is not
taken by surprise. In *Pasupuleti Venkateswarlu v. Motor & H
General Traders* (1975) 1 SCC 770, this Court held that a fact

- A arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other
- B disentiing factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal
- C remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

- D 16. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. Whenever, there is subsequent events of fact or law, which have a material barring on the rights of the parties to relief or on the aspects of moulding appropriate relief to the parties, the court is not
- E precluded from taking cognizance of the subsequent changes of fact and law to mould the relief (vide **Ramesh Kumar v. Kesho Ram** (1992) Supp 2 SCC 623)

- F 17. In **Gaya Prasad** relying on earlier decisions, this Court held that the crucial date for deciding as to bona fide 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
- G petition.

- H 18. In the light of the above principles and considering the case in hand, the fact remains that the present case is of a landlord – tenant dispute. As discussed infra, the shop vacated by other tenant – Babulal is for the bona fide requirement of respondent – landlord’s another son Rajesh Kumar Jain. In that view of the matter, the court would not be

justified in taking notice of such a subsequent fact sought to be projected by the appellant to oppose the relief granted by the courts below. In the facts and circumstances of the present case, the subsequent event relied upon by the appellant – tenant cannot be taken cognizance. A

19. Admittedly, respondent – landlord obtained vacant possession of the adjacent shop from the other tenant – Babulal on 14.11.2006 in pursuance of an order dated 01.09.2005 passed by the High Court in Second Appeal No.472 of 2002. But the learned Senior Counsel appearing for the respondent – landlord submitted that the decree for eviction of the said tenant – Babulal was on the ground of bona fide requirement of Rajesh Kumar Jain (other son of respondent – landlord) as envisaged under Section 12(1)(f) of the Act. It was submitted that respondent – landlord’s another son Rajesh Kumar Jain has occupied the said adjacent shop and doing the business of “Sara”. Respondent – landlord has four sons and the other shop vacated by tenant – Babulal is meant for the bona fide requirement of another son Rajesh Kumar Jain. If that shop is not actually occupied by the other son Rajesh Kumar Jain, the other tenant Babulal has a right to initiate the proceedings against the landlord for his re-entry in the said adjacent shop in terms of the provisions contained in Section 17 of the Act. Therefore, it cannot be said that alternative accommodation was available for the respondent – landlord’s son Rajendra Kumar due to vacation of the said adjacent shop by another tenant Babulal. B C D E

20. Considering the pleadings and evidence on record, the High Court rightly held that there is no ground to entertain the additional documents and no substantial question of law arises. Upon consideration of oral and documentary evidence, the first appellate court and the High Court recorded concurrent findings of fact that the suit shop is required bona fide for the son of the landlord for the purpose of doing business and that the respondent – landlord has no other reasonably suitable non-residential accommodation for the business of his son. We do not find any good ground warranting interference with the impugned judgment and this appeal is bound to fail. F

21. In the result, the judgment passed on 25.04.2012 in Second Appeal No.279 of 2007 by the High Court of Madhya Pradesh is confirmed and this appeal is dismissed. The appellant – tenant is granted three months’ time to vacate and handover the possession of the suit property. No costs. G