Kedar Nath Agrawal (Dead) & Anr vs Dhanraji Devi (Dead) By Lrs. & Anr on 13 October, 2004

Bench: Arijit Pasayat, C.K. Thakker

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           CASE NO.:
Appeal (civil)  41 of 2003

PETITIONER:
KEDAR NATH AGRAWAL (DEAD) & ANR

RESPONDENT:
DHANRAJI DEVI (DEAD) BY LRs. & ANR

DATE OF JUDGMENT: 13/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
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J U D G M E N T Thakker, J.

The present appeal is filed by the tenant of disputed shop ka situate in Kasba Rasra, Paragana Lakhaneshuwar, District Ballia, against the order of eviction passed by the Prescribed Authority under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act'), in Case No.29 of 1983, confirmed by the District Judge, Ballia in Rent Control Appeal No.4 of 1984 and also confirmed by High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.19160 of 1985.

To appreciate the controversy raised in the appeal, few relevant facts may be stated.

An application under Section 21 of the Act was filed by Dhanraji Devi and Jagdeo Shah, stating inter alia that applicant No.2 was the owner of the suit property and applicant No.1 was her husband. Applicant No.2 purchased the property but due to his old age got the sale deed executed in the name of applicant No.1. It was also stated that applicant No.2 constructed a shop and carried on cloth business in the said shop for some time. He had also cloth business at Calcutta and since it was not properly managed, he decided to go to Calcutta. He let the suit shop to the opponents appellants herein for a period of one year. It was further stated in the application that due to riots in Bengal the applicants had to put an end to the business at Calcutta and they had to return at Ballia. The source of livelihood then remained in conducting business in the suit-shop. They had obtained licence to carry on hosiery business. They, therefore, bona fide required the suit property for doing the said business and to earn livelihood. It was also alleged that the opponents were not doing any business in the suit-shop and they had locked it only to harass the applicants. It was, therefore, prayed that an order of eviction may be passed against the opponents.

The opponents appellants herein filed a written statement denying the facts stated and averments made in the application. It was denied that the applicants required the suit-shop for their bona fide use for business. It was also stated that the opponents were paying rent regularly and doing their business since many years. It was asserted that the applicants had other properties also and hence their requirement could not be said to be bona fide. Moreover, the applicants had cloth business at Calcutta and they were not in need of the shop. It was, therefore, prayed that the application was liable to be dismissed.

On the basis of the pleadings of the parties and considering the evidence adduced by them, the Prescribed Authority allowed the application and held that the applicants were entitled to possession of the suit-shop as their need was bona fide. It further held that the applicants would suffer more hardship if the shop would not be released in their favour. Accordingly, an order of eviction was passed in favour of the applicants and against the opponents. Being aggrieved by the order passed by the Prescribed Authority, the appellants herein preferred an appeal before the District Judge, Ballia who also dismissed the appeal and confirmed the order of eviction passed by the Prescribed Authority.

Against the order passed by the District Judge, the appellants approached the High Court of Allahabad. As stated above, even the High Court dismissed the Writ Petition. Before the High Court certain subsequent events which had emerged during the pendency of the writ petition, namely, death of respondents No.3 and 4 (Original applicants) were brought to the notice of the court. The court, however, held that they could not be taken into consideration. Resultantly, the orders passed by the courts-below were confirmed.

Notice was issued by this Court on October 29, 1999 in view of the provisions of sub-section (7) of Section 21 of the Act as also in the light of the decision of three Judge Bench of this Court in Hasmat Rai & another vs Raghunath Prasad, AIR 1981 SC 1711: (1981) 3 SCR

605. In the meantime interim stay of decree for possession was also granted. On January 3, 2000, leave was granted, interim stay was ordered to be continued and hearing of appeal was expedited. An appeal was placed for final hearing on September 9, 2004 and since none was present, it was dismissed for default. It was then restored on February 17, 2003. On September 1, 2004, it was brought to the notice of the court that the possession of the disputed premises was taken over on October 22, 2002 after the appeal was dismissed for default and before an order of restoration was passed. The matter was, therefore, adjourned to obtain instructions. On September 29, 2002, when the matter was called out for hearing, the learned counsel for the respondents stated that the possession was with the respondents, while the said statement was disputed by the learned counsel for the appellants.

We have heard the leaned counsel for both the parties.

The learned counsel for the appellant submitted that the Prescribed Authority under the Act has committed an error of law and of jurisdiction in ordering eviction against the appellants. According to the learned counsel, it was not proved that the applicants bona fide required the property for

doing business as asserted by them. It was also submitted that irreparable hardship would be caused to the appellants-tenants if order of eviction would be passed against them and on that ground also, no order could have been passed by the authority. In any case, when both the applicant (husband and wife) died during the pendency of proceedings before the High Court, the High Court was incumbent to consider the subsequent event and ought to have dismissed the application filed by them. By not doing so, the High Court has committed an illegality which deserves interference by this Court. It was further contended that the High Court was under

> duty to consider the provisions of sub-section (7) of Section 21 of the Act and to decide whether the legal representatives of the applicants were entitled to contest the writ petition instituted by the petitioners- appellants. Regarding taking over possession by the respondents during the pendency of the appeal before this Court, it was submitted by the learned counsel that it is not correct and still the appellants herein are in possession of the suit-shop. It was, therefore, prayed that appeal may be allowed and the order of eviction passed by the Prescribed Authority and confirmed by the District Judge as well as by the High Court may be set aside.
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> Learned counsel for the respondents, on the other hand, supported the orders passed by the courts below. It was submitted that after considering the pleadings of the parties and evidence on record, the Prescribed Authority made an order in favour of the applicants which was confirmed by the District Judge and also by the High Court. The order was passed on the basis of the requirement when the application was instituted. It is settled law, submitted the counsel, that the relevant date for deciding the lis between the parties is the date of institution of suit/application and the High Court was wholly justified in not entertaining an argument of the appellants for taking into account subsequent events. The order, therefore, need not be interfered with. It was also submitted that the appeal has become infructuous inasmuch as the possession of the suit-shop has already been taken over by the respondents which is clear from the affidavit filed on behalf of the respondents as also from the photographs which have been produced before this Court. It was, therefore, prayed that the appeal may be dismissed.
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> Having heard the learned counsel for the parties and having considered the relevant provisions of law as also the decisions of this Court, in our opinion the appeal deserves to be partly allowed. So far as the finding recorded by the Prescribed Authority under the Act as to bona fide requirement of the applicants is concerned, in our opinion it is a pure finding of fact and cannot be disturbed by this Court. Similarly, regarding comparative hardship, the Prescribed Authority observed in the order that more hardship would be caused to the applicants if the order would not be passed in their favour than the hardship which would be caused to the opponents if the order of eviction would be passed against them. The said finding is also a finding of fact and cannot be upset. Hence, on both this counts, we are unable to uphold the contention of the learned counsel for the appellants.

The question then remains as to effect of subsequent event. It is not in dispute between the parties that during the pendency of the Writ Petition before the High Court, both the applicants died and their three daughters were brought on record. It is also not in dispute that all the three daughters are married and they are at their marital homes with their in-laws. In view of the said fact an argument was advanced on behalf of the tenants before the High Court that the said circumstance was an eloquent one and must be taken into account which had occurred during the pendency of the proceedings which would affect the final outcome. According to the tenants, in view of death of both the applicants, the requirement as pleaded by the applicants in the application did not survive and the application was liable to be rejected. It was the power and the duty of the High Court to take into account subsequent event which emerged during the pendency of the writ petition and pass an appropriate order taking into consideration such development. In support of the said contention, reliance was placed by the learned counsel on several decisions of this Court.

Per contra, it was argued on behalf of the respondents that the legality and the validity of the decree or order passed by the Prescribed Authority has to be tested on the basis of rights of the parties as stood at the time when the application was filed. Subsequent event could not take away accrued and vested right of the applicants.

The High Court held that the objection raised by the heirs of applicants was well founded and the Court could not take into account the subsequent event of death of applicants during the pendency of writ petition. It was also observed that a party could not be penalized for the delay in court and when the order of eviction was legally passed in favour of the applicants, it could not be set aside by considering the subsequent event of death of applicants. The High Court also observed that the decisions cited on behalf of the writ petitioners wherein subsequent events were taken into account were in appeals. According to the High Court, an appeal can be said to be a 'continuation of suit' but not a writ petition. It was observed that once the case was decided by the Prescribed Authority and appeal was dismissed by the District Judge, the High Court had no power to consider subsequent events in the proceedings under Article 226/227 of the Constitution and accordingly it dismissed the writ petition.

In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

(i) The relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or

(ii) It is necessary to take notice of subsequent events in order to shorten litigation; or

(iii) It is necessary to do so in order to do complete justice between the parties.

[Re: Shikharchand Jain vs Digamber Jain Praband Karini Sabha & Ors, (1974) 1 SCC 675 : (1974) 3 SCR 101] Let us consider relevant case law in this regard.

Before about a century in Ram Rattan vs Mohant Saha, (1907) 6 Cal LJ 74 : 11 Cal WN 732, the High Court of Calcutta observed that there are certain exceptions to the general rule that a suit must be tried in all stages on the cause of action as it existed at the date of its commencement. In Lachmeshwar Prasad Shukul vs Keshwar Lal Choudhury, 1940 FCR 84 : AIR 1941 FC 5, the Federal Court took into account the provisions of the new Act which came into force during the pendency of appeal before the Federal Court.

In the leading decision of Pasupuleti Venkateswarlu vs. Motor & General Traders, (1975) 1 SCC 770 : AIR 1975 SC 1409: (1975) 3 SCR 958, this Court considered a subsequent event. The plaintiff filed a suit for possession on the ground of personal requirement for starting business and an order was passed in his favour. An appeal against the said order was also dismissed. The tenant filed a revision petition in the High Court. During the pendency of revision petition, the plaintiff acquired possession of another non-residential building. An application for amendment, therefore, was made by the tenant. The High Court allowed the amendment. The landlord challenged the order in this Court. It was contended by the landlord that the High Court had committed an error in taking cognizance of subsequent event which was 'disastrous'. This Court, however, held that the High Court did not commit any illegality in considering the subsequent event.

Following Lachmeshwar Prasad, law of 'ancient vintage', Krishna Iyer, J. stated:

> "We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-`-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law

or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed." (Emphasis supplied) Pasupuleti Venkateswarlu was followed in many cases. In Gulabbai vs. Nalin Narsi Vohra & Others, (1991) 3 SCC 483 : AIR 1991 SC 1760, an order of eviction was passed against the tenant on the ground of bona fide need of the landlord. Subsequent event of shifting family of the landlord to a spacious bungalow constructed by him during the pendency of appeal, was considered by this Court.

In Ramesh Kumar vs Kesho Ram, (1992) Supp (2) SCC 623 :

AIR 1992 SC 700, this Court observed that a court can mould relief taking 'cautious cognizance' of subsequent events. The Court also observed that all these depend on factual and situational differences and 'there can be no hard and fast rule governing the matter'.

In Shadi Singh vs Rakha, (1992) 3 SCC 55 : AIR 1994 SC 800, a landlord sued a tenant for ejectment on the ground that the building required thorough repair. During the pendency of the suit, the tenant carried out necessary repair. Taking note of the event, this Court dismissed the suit of the landlord.

In Super Forgings & Steels (Sales) Pvt. Ltd. vs Thyabally Rasuljee (Dead) Through LRs, (1995) 1 SCC 410, dealing with power of this Court to take note of subsequent events in an appeal under Article 136 of the Constitution, this Court stated that "the power of this Court in an appeal under Article 136 of the Constitution to take cautious cognizance of events and developments subsequent to institution of eviction proceedings and grant, deny or mould the relief sought by a party, in consonance with justice and fair play is not restricted merely because it is exercising its power to deal with an appeal conferred upon it by the Constitution."

In P. Sriramamurthy vs Vasantha Raman (Mrs), (1997) 9 SCC 654 : AIR 1997 SC 1388, an order of eviction was passed in favour of landlord and against tenant on the ground of non-payment of rent. During the pendency of appeal before this Court, husband of the landlady retired from service and they needed the premises for personal occupation also. Though the ground was not set up earlier, taking note of subsequent event, this Court allowed the ground to be raised and granted the relief.

In Lekh Raj vs Muni Lal & Others, (2001) 2 SCC 762 : AIR 2001 SC 996, this Court indicated that the law on the subject is well settled. The court should not shut its door in noticing subsequent events. All laws and procedures including functioning of courts are all in aid to confer justice who knock its door. The court should interpret the law not in derogation of justice but in its aid. Bringing on record subsequent event, which is relevant, should, therefore, be permitted to be brought on

record to render justice to a party. But the court in doing so should be cautious not to permit it in a routine manner. It should refuse the prayer where party is doing so to delay the proceedings and to harass the other party or doing so for any other ulterior motive. The court should also examine whether the alleged subsequent event has any material bearing on issues involved or would materially affect the result of the suit.

In Om Prakash Gupta vs Ranbir B. Goyal, (2002) 2 SCC 256 :

> AIR 2002 SC 665, this Court stated: "The ordinary rule of civil law is that the rights of the parties stand crystallized 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, 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 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."
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> Strong reliance was placed by the contesting respondents on a decision of this Court in Rameshwar & Others vs Jot Ram & Another, (1976) 1 SCC 194 : (1976) 1 SCR 847, before the High Court as well as before us. In Rameshwar, the tenant had become 'deemed purchaser' under the Punjab Security of Land Tenures Act, 1953. During the pendency of appeal, the 'large' land owner died and his heirs became 'small' land owners. It was, therefore, contended on behalf of the land owners in appeal that since appeal is continuation of suit, subsequent event of death of the original owner should be considered. This Court, however, refused to take note of subsequent event on equitable considerations. Keeping in view the agrarian reforms, this Court said: "To hold that, if the landlord dies at some distant date after the title has vested in the tenant, the statutory process would be reversed if by such death, his many children, on division, will be converted into small landholders, is to upset the day of reckoning visualized by the Act and to make the vesting provision 'a teasing illusion', a formal festschrift to agrarian reform, not a flaming programme of 'now and here'. These surrounding facts drive home the need not to allow futurism, in a dawdling litigative scene, to foul the quick legislative goals." (emphasis supplied) In Gaya Prasad vs Pradeep Srivastava, (2001) 2 SCC 604 :
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> AIR 2001 SC 803, an eviction petition was filed in 1978 by the landlord on the ground of bona fide need for the use as a clinic by his son. The petition was allowed by the Rent Controller in 1982 and the order was confirmed by the Appellate Authority in 1985. During the pendency of the petition in the High Court, however, the son joined medical service. Relying on the said development, it was contended by the tenant before the High Court that the landlord was no more in need of the premises and the

petition was liable to be dismissed. The High Court dismissed the revision petition. The aggrieved tenant approached this Court. It was contended on behalf of the tenant that a subsequent development could not have been ignored by the High Court, particularly when the eviction was sought for personal use and the need no more continued in view of acceptance of service by the son of the landlord. This Court, however, negatived the contention and stated:

"We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendent lite, because the opposite party succeeded in prolonging the matter for such unduly long period."

We must now refer to Hasmat Rai. As already noted, notice was issued by this Court on October 29, 1999 in view of the decision of this Court in Hasmat Rai. In the said decision, three Judge Bench of this Court held that when eviction was sought on the ground of personal requirement of landlord, such requirement must continue to exist till the final determination of the case. Following the ratio laid down in Pasupuleti Venkateswarlu, Desai J. stated; "It is now convertible that where possession is sought for personal requirement, it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but also subsist till the final decree or order for eviction is made. If in the meantime events have crept up which would show that the requirement of the landlord is wholly satisfied then in that case his action must fail and in such a situation it is not incorrect to say that such decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration the subsequent events." (emphasis supplied) In view of the settled legal position as also the decisions in Pasupuleti Venkateswarlu and Hasmat Rai, in

our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in- laws, obviously, the said fact was relevant and material. The ratio laid down by this Court in Rameshwar, would not apply to the facts of this case as it related to agrarian reforms. Likewise, Gaya Prasad, does not carry the matter further. There during the pendency of proceedings the son for whom requirement was sought had joined Government Service. In the instant case, the requirement was for the applicants, who died during the pendency of writ petition. Gaya Prasad is thus clearly distinguishable.

There is yet another reason on which the order passed by the High Court is liable to be set aside. As stated earlier, notice was issued by this Court on October 29, 1999 in view of provisions of sub- section (7) of Section 21 of the Act. Sub-section (1) of the said section enables the landlord to get possession of the tenanted properly on certain grounds. One of such grounds is bona fide requirement by the landlord for residential purposes or for purposes of any profession, trade or calling. Sub-section (1) has to be read with sub-section (7) of Section 21. The relevant part of Section 21 reads as under; "21. Proceedings for release of building under occupation of tenant. (1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust ;

(7) Where during the pendency of an application under clause (a) of sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased."

Conjoint reading of clause (a) of sub-section (1) and sub- section (7) of Section 21 makes it clear that where the possession is sought by the landlord on the ground of bona fide requirement and during the pendency of the application, the landlord dies, his legal representatives can prosecute such application on the basis of their own need in substitution of the need of the deceased.

In the light of decisions referred to by us, particularly in Hasmat Rai and the provisions of sub-section (7) of Section 21 of the Act, the High Court has to consider the matter and record a finding.

For the reasons aforesaid, the appeal deserves to be allowed by setting aside the order passed by the High Court. The matter is remitted to the High Court with a direction that the High Court shall consider the subsequent event of death of both the applicants and also the provisions of sub-section (7) of Section 21 of the Act in the light of observations made hereinabove and pass an appropriate order in accordance with law after hearing the parties.

Regarding possession, as already noted earlier, according to respondents, after the dismissal of the appeal in default and before restoration, they have already taken over possession of the shop. According to the appellants, however, possession has remained with them. We express no opinion. When we are remitting the matter to the High Court with a direction that the High Court will decide the matter afresh according to law, appropriate order will be passed in consonance with the final decision by the High Court. Till then status quo as of today shall continue. There shall be no order as to costs.