

## **Gulabbai vs Nalin Narsi Vohra And Ors on 15 July, 1991**

**Equivalent citations: 1991 AIR 1760, 1991 SCR (2) 941, AIR 1991 SUPREME COURT 1760, 1991 (3) SCC 483, 1991 AIR SCW 1971, (1991) 3 JT 112 (SC), (1991) 1 CURLR 798, (1991) 1 GUJ LR 179, 1991 (1) GUJLH 1, 1991 BOMRC 447, 1991 HRR 427, 1993 ( ) BOM CJ 63, (1991) IJR 442 (SC), 1991 (2) UJ (SC) 372, 1991 (2) ALL CJ 1013, 1991 (3) JT 112, (1991) 2 SCR 941 (SC), (1991) 2 MAD LJ 28, (1991) 2 RENCER 453, (1991) 2 RENTLR 151, (1992) 1 CIVLJ 562, (1991) 3 BOM CR 174**

**Author: B.C. Ray**

**Bench: B.C. Ray, M. Fathima Beevi**

PETITIONER:

GULABBAI

Vs.

RESPONDENT:

NALIN NARSI VOHRA AND ORS.

DATE OF JUDGMENT 15/07/1991

BENCH:

RAY, B.C. (J)

BENCH:

RAY, B.C. (J)

FATHIMA BEEVI, M. (J)

CITATION:

1991 AIR 1760

1991 SCR (2) 941

1991 SCC (3) 483

JT 1991 (3) 112

1991 SCALE (2) 60

ACT:

Bombay Rents, Hotel and Lodging House Rates Control Act. 1947-Section 12(2) read with Section 12(3)(a) and Section 13(1)(a)-Eviction of tenants on ground of bona fide need-Additional evidence brought on record subsequent to filing of Suit to determine the question of bona fide need-Held admissible "reasonable requirement"-Element of need-Necessity for.

HEADNOTE:

The appellant-plaintiff instituted a Regular Civil Suit in the court of Joint Civil Judge, J.D., Ahmednagar for vacant possession of the suit property and also for arrears of rent. It was pleaded by the appellant that the defendants were in possession of the suit shop on the monthly rent and the tenancy commenced from the first day of every month and ended on the last day of the said month according to English calender. The plaintiff based his suit primarily on two grounds viz., that the defendants had committed default in the payment of statutory rent and were thus defaulters and secondly the appellant required the premises for bona fide need for setting up an office for her husband, who is tax consultant. It was asserted by the plaintiff that the defendants had acquired alternative business placed both in the vicinity of the suit premises, being partners of the firms named in the plaint and also elsewhere and they no longer required the premises. It was also added that the suit premises remained mostly locked and no business was carried on there; defendants 1 to 3 having shifted from Ahmednagar to Pune were doing business there. The defendants denied the allegations contained in the plaint, stating that the suit property was in their possession since last 20 years at the annual rent of Rs.255.36 ps; that an receipt of the notice they had sent the rent amounting to Rs.517-92 ps. by Money Order which the appellant refused being not correctly calculated; then again the defendants sent Rs.960 by Demand Draft which was also refused by the appellant as miscalculated. Thereafter the defendants sent Rs.658.55 ps. by Money Order which was accepted by the appellant. According to the tenants they are always to pay the rent and in fact the appellant's husband had been accepting the rent without issuing any receipt therefore. According to the defendants, the requirement of the plaintiff was neither bona fide nor reasonable; her husband, an

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Income-Tax and Sales/Tax Practitioner was working with Mr. Gandhi as one of his partners and also having his own office. Further the plaintiff was in possession of an area 15ft. x 25ft. on the ground floor facing towards west, adjacent to the suit premises and also complete first floor 45ft. x 15ft.

The Trial Court held that the defendants failed to prove that the suit premises were leased to them at annual rent and as such they were held to be defaulters as the deposits of rent were not made within the meaning of Section 12(3)(a) and 12(3)(b) of the Rent Act. The Trial Court further found that as the plaintiff has no other accomodation at Ahmednagar except the suit premises and the partnership of the plaintiff's husband with with S.B. Gandhi had been dissolved, the plaintiff reasonably required the suit premises for the purpose of opening office of her husband as Tax Consultant. Accordingly the Trial Court

decreed the suit and directed the defendants to hand over the vacant possession of the suit premises within one month of the date of order. Being aggrieved, the defendants filed an appeal before the Additional District Judge, Ahmednagar. The Additional District Judge, held that the trial court was right in holding that the defendant No. 1 was paying the rent monthly and he was a monthly tenant but there were no arrears for the statutory period in order to hold that the defendants were defaulters for which their tenancy was liable to be determined. On the question of bona fide requirement of the appellant, the Additional District Judge also considered the application for additional evidence which disclosed that the plaintiff's husband had purchased a plot and constructed a big bungalow covering about 2000 sq. ft. and held that it was not known whether the Municipality had given permission for habitation and furthermore the requirement of the plaintiff was especially for conducting her husband's profession of Tax Practitioner at the required suit premises, which is not for residential purposes. On this reasoning the Additional District Judge held that the subsequent circumstances have not much relevance and the requirement of the plaintiff-appellant was a bona fide and genuine one. Accordingly he affirmed the decree passed by the Trial Court.

The Respondent tenant being aggrieved filed a writ petition under Article 227 of the Constitution praying for setting aside the decree of ejectment passed against him. The High Court, on a consideration of the additional evidences which have been expressly mentioned in the application for additional evidence, held that the husband of the appellant had required a plot in T.P. Scheme No. III, Ahmednagar and constructed a big bungalow thereon during the pendency of the appeal

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and has been residing there. The said premises consisted of a 2000 sq. ft. covered area and the appellant was using the same for residence and office purpose also. The High Court held that the said bungalow can be conveniently used for the residence of the plaintiff and her family members as well as for the purpose of opening of office of Tax Consultant by her husband. That apart, the entire first floor of the suit premises can be conveniently utilised for opening the office of Tax Consultant by the plaintiff's husband. The High Court therefore on that reasoning allowed the writ petition and set aside the judgments and decrees passed by the Courts below.

Hence this appeal by the appellant-landlord by special leave.

Dismissing the appeal, this Court

HELD: The lower Appellate Court, after considering the evidences held that the defendant are not defaulters as there were no arrears for the statutory period. Thus, the question of the default on the part of the defendants in the

payment of rent was not at all raised nor agitated before the Court of Appeal below by the plaintiff. [952F-G]

It is now beyond the pale of any doubt that in appropriate cases events subsequent to the filing of the suit can be taken notice of and can be duly considered provided the same is relevant in determining the question of bona fide requirement. The High Court was right in duly considering the new facts and circumstances that have been brought to the notice of the Court by the application for additional evidence filed under Order 41 Rule 27 of the Code of Civil Procedure. [957H-958A]

In the appeal it has been rightly held by the High Court after considering the subsequent facts and materials brought out by the application for additional evidence that the plaintiff failed to prove reasonable and bona fide need for her occupation of the suit premises for the purpose of opening the Tax Consultancy office of her husband, Amritlal Mutha. Considering the facts and circumstances as well as the subsequent materials brought out by the application for additional evidence, we have no hesitation in our mind to hold that the aforesaid findings arrived at by the High Court is totally unexceptionable and so the same cannot be interfered with in this appeal. [958F-G]

The words ``reasonable requirement'' undoubtedly postulatethat there must be an element of need desire or wish. The distinction between desire and need should doubtless be kept in

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mind but not so as to make even the genuine need as nothing that a desire.

M/s. Variety Emporium v. V. R.M. Mohd. Ibrahim Naina, [1985] 2 SCR 102; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, [1986] 3 SCR 866; Pasupuleti Venkateswarlu v. The Motor & General Traders, [1975] 3 SCR 958; Hasmat Rai & Anr. v. Raghunath Prasad, [1981] 3 SCR 685; Amarjit Singh v. Smt. Khatoon Quamarain, [1987] 1 SCR 275; and Begum and Ors. v. Abdul Ahad Khan and Ors., [1979] 2 SCR 1;

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4236 of 1988.

From the Judgment and Order dated 13.4.1988 of the Bombay High Court in W.P. No. 1689 of 1987.

V.M. Tarkunde, Mrs. Nandini Gore, Ms. Aditi Chaudhary and Mrs. M. Karanjawala (NP) for the appellant. Dr. Y.S. Chitale, Shishir Sharma and P.H. Parekh for the Respondents.

The Judgment of the Court was delivered by RAY, J. This appeal leave is directed against the judgment and order passed by the High Court at Bombay in Writ Petition No. 1689 of 1987 allowing

the writ petition, setting aside the judgment and decree passed by the Trial Court and affirmed by the lower appellate court and thereby dismissing the suit by filed by the plaintiff (appellant in this appeal) for eviction of the tenant-respondents. The matrix of the case as appears from the pleadings of the parties is as follows:

The plaintiff-appellant, Gulabbai instituted Regular Civil Suit No. 19 of 1979 in the court of Shri S.S. Patil, III Jt. Civil Judge, J.D., Ahmednagar at Ahmednagar for vacant possession of the suit property consisting of part of survey No. 3576 in the city of Ahmednagar and also for the arrears of rent and the costs of the suit. Originally the said property belonged to the Imarat Company Private Limited. The plaintiff purchased the said property from Imarat Company Private Limited bearing numbers on the front on the eastern as 81 to 83 and rear part on the West 89 to 91, for a consideration of Rs. 34,000 on August 12, 1976. At the time of purchase of the premises the said Amritlal Mutha in the name of his wife. Gulabbai, the plaintiff. The defendants were in possession of a part of the said premises bearing Nos. 81 to 83 on eastern side whereas the western part on the ground floor bearing Nos. 89 to 91 was possessed by the brother of Amritlal Mutha i.e. kanhyalal Mutha who has been running a provision store under the name and style of 'Mutha Provision Store' for the last 15 years. The defendant Nos. 1 and 4 i.e. Nalin Narsi Vohra and Mulji Narsi Vohra are the brothers whereas defendant Nos. 2 and 3 are the wife and son of the defendant No. 1 respectively. According to the plaintiff, the defendants are in possession of the suit shop Nos. 81 to 83 and measuring 21ft. x 15ft. on the monthly rent of Rs. 21.28 ps. plus education cess Rs. 2.55 ps. The tenancy commences from the first day of every month and ends on the last day of the said month according to the English calendar. Prior to the purchase of the suit premises, the tenancy is in the name of defendant No. 1 i.e. Nalin Narsi Vohra and the rent receipts too were in the name of the defendant No. 1 only. According to the plaintiff, the original agreement of defendant with Imarat Company Pvt.

Ltd. is to pay rent from month to month. After purchase of the said property. Imarat Company intimated to the tenant- defendant No. 1 about the said purchase by the plaintiff. It has been pleaded by the plaintiff that the defendant No. 1 assured the plaintiff after purchase of the suit house, that he would vacate the said premises. However, the defendants demanded 'Pagadi' amounting to Rs. 25000 in order to vacate the suit premises. It was alleged by the plaintiff that the defendants were in arrears of rent since 12.8.1975 till 15.12.1977. The plaintiff, therefore, issued a notice dated 15.12.1977 of ejectment and thereby demanded No. 1 after receipt of the notice sent Rs. 571.92 ps. by Money Order. But it was refused by the plaintiff as the rent was not correctly calculated. The defendants again sent Rs. 960 by Demand Draft which was also refused by the plaintiff as miscalculated. The defendants sent thereafter Rs. 658.55 ps. by Money Order which was accepted by the plaintiff. According to the plaintiff the defendants are monthly tenants and so according to her, defendants are defaulter for non-paying the rent of the suit premises for more than six months.

The plaintiff also stated that her husband, Amritlal Mutha is a Taxation Consultant and the suit premises are required for the purpose of office for her husband as her husband has no other suitable

accommodation except the suit premises to open his office. It has also been pleaded in the plaint that the defendants no longer require the suit premises for the purpose of business because the defendant Nos. 1 to 3 are at present residing at Pune and doing the business at Pune under the name and style of 'Ashok and Company' which deals with the sale and purchase of machine tools. It has further pleaded by the plaintiff that the defendants are in possession of three other business at Nagar which are situated near the suit premises. The defendants have purchased one shop in front of Kohinoor Cloth Store in the year 1964 and defendant Nos. 1 to 4 are partners in the shop 'Liberty Dresses' which deals with Reddy made garments and Hosiery. The defendant Nos. 1 to 4 have also purchased the premises for Rs. 13,000 in the year 1972 from Imarat Company Private Ltd. which is also situated in front of the suit premises. The defendants have also purchased one premises from Imarat Company Private Ltd. In the year 1974 for 12,000. The defendants have removed the middle wall in between the two properties mentioned above and opened a big shop and are carrying the business of readymade garments and woolen hosiery called as 'Madura Stores'. It is the case of the plaintiff that the defendants no more require the suit premises for business purposes and prayed for an order of eviction of the defendants from the suit premises on the ground of bona fide requirement. It has also been pleaded that greater hardship would be caused to the plaintiff if the possession did not hand over the suit premises to the plaintiff after the receipt of the notice and the instant suit was filed on January 8, 1979.

The defendant-respondent Nos. 1 to 4 filed a written statement exhibit 10 denying all the material allegations made by the plaintiff. According to the defendants, the description of the suit house was not made properly in the plaint and hence on that ground the suit is liable to be dismissed. The defendants has stated that the suit property is in their possession since the last 20 years at the annual rent of Rs. 255.36 ps. They have further stated that the rent of the suit premises is to be given after every 1 year which the defendants had been regularly paying to Imarat Company Pvt. Ltd. The defendants admit that the suit premises has been purchased by the plaintiff in the year 1975 and the defendants offered the rent to the plaintiff on several occasions but the plaintiff refused to accept the same. Ultimately, they sent the rent by Money Order which was also refused by the plaintiff. Again, in order to show their willingness the defendants sent an amount of Rs. 960 by Demand Draft but it was also refused by the plaintiff. The defendants thereafter have sent Rs. 658.58 ps. which was accepted by the plaintiff on December 27, 1977. Thus, the rent was paid upto 30.11.1977 and again from 1.12.1977 to 30.9.1978, the defendants paid the rent of the suit premises to the plaintiff and husband of the plaintiff accepted the same, but he did not give the receipt of the same. The defendants further remitted an amount of Rs. 238.35 ps. by Money Order to the plaintiff and it was accepted by the plaintiff. The defendants submit that they were always ready and willing to pay the rent to the plaintiff but the plaintiff was not accepting the same. The defendants also replied to the said notice. According to the defendants the requirement of the plaintiff is neither bona fide nor reasonable. The defendants further pleaded that the husband of the plaintiff is Income tax and State tax Practitioner and working with S.B. Gandhi as one of his partners and also having his own office which is situated in Ghas Gali, now called as Shahaji Road on the first floor and the said premises is suitable for plaintiff's husband to open to his office there. The plaintiff is in possession of area 15 fts. x 25 fts. on the ground floor facing towards west, adjacent to the suit premises and also complete first floor 15 fts. x 15 fts. The said area is suitable for plaintiff's husband for his office if he so desires. It has been pleaded by the defendant No. 1 that greater hardship would be caused to him if premises

are vacated and handed over to the plaintiff. The defendants submit that they are residing at Ahmednagar and carrying the business of Ready-made garments in the suit shop. It has been further pleaded that accommodation is not easily available in the Ahmednagar City for the purpose of business and Kapad Bazar area where the suit premises exist is the only good market of hosiery and so prayed for dismissal of the plaintiff's suit. On the above pleadings ten issues were framed of which the relevant issues are:

Issue No. 2 : Whether the plaintiff proves that he is lawful defaulter in payment of monthly rent?

Issue No. 3 : Whether the plaintiff proves that she bona fide requires possession of the suit premises for the office of her husband Amritlal?

Issue No. 4 : To whom the greater hardship would be caused by passing the decree for eviction than by refusing to pass it?

Issue No. 7 : Whether the defendant No. 1 proves that suit premises were leased to him at annual rent of Rs. 255.36 ps.?

The Trial Court held with regard to Issue No. that at the time of purchases there was ground floor and first floor to the suit premises. The defendant were in possession of shop Nos. 81 to 83 on the eastern side and on the western side of the ground floor shops bearing Nos. 89 to 91 were in possession of the brother of the plaintiff's husband, Kanhyalal Mutha who he had been running a provision store since the last 13 years. The family of Amritlal Mutha, i.e. husband of the plaintiff considered of his wife, his 3 children, the eldest son aged about 16 years was studying in the 12th standard in the year 1981. His second son aged about 13 years was in 7th standard and 3rd son in 3rd standard in the year 1981. The plaintiff had been residing on the first floor of the suit premises, which consisted of 4 rooms, first one bed room towards west admeasuring 7 fts.

x 12 fts. and next room kitchen admeasuring 7 fts. x 11 fts. and 3rd room admeasuring 7 fts. x 11 fts. which is used for the studies of the children. One other room admeasuring 15 fts. x 15 fts. was used as a bed room. It has been found that first floor premises is not sufficient for his office purposes because he requires at least 25 fts. x 30 fts. area for the purpose of office in order to keep the records and for the sitting arrangement for his clients and also for his cabin. It has further been found that the ground floor shop Nos. 89 to 91 adjacent to the suit premises is not available for the plaintiff's husband for opening his office as Kanhyalal Mutha, brother of the plaintiff's husband, has been running there Mutha Provision Store for the last about 15 years, the evidence of Amritlal is also consistent with the evidence of Kanhyalal Mutha on this point. The Trial Court therefore, found that as the plaintiff has no other accommodation at Ahmednagar except the suit premises and the partnership of the plaintiff's husband with S.B. Gnadhi has been dissolved, the plaintiff reasonably requires the suit premises for the purpose of opening of office of her husband as Tax Consultant. The demand of the plaintiff is therefore, reasonable and bona fide. It was also found that the

defendant No. 1 was in possession of a number of premises which are near the suit premises and the defendants were carrying on the hosiery business in those premises under the name and style of 'Liberty Dresses' and 'Madura Stores'. It has been further held that the defendant No. 1 was shown as partner in the firm M/s Vohra and Company, 94/97 Budhwar Peth, Pune 2, and the residence of defendant No. 1 is known as Krishnakripa, Mukund Nagar, Pune-9 where the suit summons were served on the defendant No. 1. It was also found that it was evident from exhibit 105 that the son of defendant No. 1 and wife of son of defendant No. 1 are the partners in M/s Ashok and Company and both are residing at 7/3-C-Vanshree Apartment, Rambag Colony, Sadashiv peth. It has also been found that the defendant No. 1 has admitted in his cross-examination that he has vacated his residential premises at Ahmednagar and he is in search of other residential accommodation. It was, therefore, held that the plaintiff has proved his bona fide requirement of the suit premises and thus issue No. 3 had been decided in the affirmative.

As regards Issue No. 4, the Trial Court held that except the suit premises and first floor on it, no other premises was available to the plaintiff at Ahmednagar. The Trial Court held further that the first floor premises is not suitable for the plaintiff's husband to open his office and greater hardship will be caused to the plaintiff if the suit premises be not handed over to the plaintiff than by denying him the vacant possession of the suit premises. Issue No. 4 was thus held in favour of the plaintiff. It was further held that the suit premises were properly described in the plaint.

As regards Issue Nos. 2 and 7 it was held that the defendant No. 1 is a monthly tenant and the monthly rent in respect of such premises is Rs. 21.28 ps. plus education cess Rs. 2.55 ps. i.e. Rs. 23.83 ps. It was also held that the tenancy commenced from the first day of every month and ended on last day of the same month as per the English calendar. The Trial Court held that the defendants failed to prove that the suit premises were leased to them at annual rent of Rs. 255.36 and hence that issue was decided against the defendants. The defendants were also to be held as defaulters as the deposits of rent were not made within the meaning of Section 12(3)(a) and 12(3)(b) of the Rent Act. The Trial Court thus decreed the suit and directed the defendants to hand over vacant possession of the suit premises within one month of the date of order. Against the said Judgment and decree, the defendant No. 1 Nalin Narsi Vohra filed an appeal being Regular Civil Appeal No. 430 of 1985 in the court of Addl. Distt. Judge, Ahmednagar, The learned Additional District Judge held that the Trial Court was right in holding that the defendant No. 1 was paying the rent monthly and he was a monthly tenant. It was further held that there are no arrears for the statutory period in order to hold that the defendants are defaulters for which their tenancy is liable to be determined. As such the Addl. District Judge found against the plaintiff holding that the defendants had not defaulted in payment of rent and there could not be any decree of ejectment on this ground. The learned Addl. District Judge further held that there was nothing which shattered the evidence of Amritlal when he speaks about the bona fide requirement of the plaintiff for having the suit property to open his office and the argument that plaintiff can acquire the premises of Kanhyalal could not be accepted as it was neither possible nor feasible in the near future to expect that Kanhyalal would surrender the premises to plaintiff. The construction on the second floor of the suit premises was a temporary one and as such the same could not be used for residential purposes. The Addl. District Judge also considered the application for additional evidence which disclosed that the plaintiff's husband had purchased a plot at Chahurana Bk. at the T.P. Scheme No. 3 within the municipal limit



of Ahmednagar and constructed a big bungalow covering about 2000 sq. ft. The Addl. District Judge held that it was not known whether the Municipality has given permission for habitation and furthermore the requirement of the plaintiff was especially for conducting her husband's profession of Tax Practitioner at the required suit premises, which is not for residential purposes. The suit premises are situated in Kapad Bazar area where the trading communities have their shops and business establishments, and is fit for the opening of Tax Consultant's office. The bungalow constructed by the plaintiff's husband was not suitable for starting the office of Tax Practitioner as it is at a remote place. It was, therefore, held that the subsequent circumstances have not much relevance and the requirement of the plaintiff was a bona fide and genuine one. As such, the Additional District Judge affirmed the judgment and decree passed by the Trial Court. It was further held by the learned Additional District Judge that there was no possibility of any hardship being caused to the defendants in case the possession of the suit premises was granted to the plaintiff. The Addl. District Judge therefore, dismissed the appeal and affirmed the judgment and decree of the Trial Court.

Feeling aggrieved the respondent-tenant, Nalin Narsi Vohra filed a writ petition under Article 227 of the Constitution being registered as Writ Petition No. 1689 of 1987 in the High Court of Judicature at Bombay. The High Court issued a Rule on the said writ petition and after hearing the parties and considering the facts and circumstances including the evidences on record, the High Court held that in a petition under Article 227 of the Constitution of India the High Court does not generally interfere with regard to the concurrent findings of facts arrived at by the courts below but in appropriate cases the High Court has jurisdiction under Article 227 of the Constitution to consider facts subsequent to the filing of an application for eviction which have a great bearing on the question of bona fide and reasonable requirement of the landlord for a decree for eviction of the suit premises. The High Court has referred to some decisions rendered by this Court in this respect. It has been held by the High Court that of the subsequent facts which are relevant and admissible can be taken into considerations by the High Court in order to come to a finding as to the reasonable and bona fide requirement of the landlord for passing a decree of eviction from the suit premises. The High Court has held on a consideration of the additional evidences which have been expressly mentioned in the application for additional evidence stating in detail that the plaintiff's husband, Amritlal Mutha after passing of the decree for eviction under section 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has acquired a plot being No. 47/1 situated in T.P. Scheme No. III at Ahmednagar. The total area of the plot is 3025 sq. ft. and after getting the permission from the Municipal Council of Ahmednagar, the plaintiff's husband constructed a big bungalow thereon during the pendency of the appeal and had been residing there. The said premises consists of a covered area of 2000 sq. ft. and the plaintiff is using the same for residence and office purpose also. These facts were not properly considered by the lower appellate court while finding about the reasonable and bona fide requirement of the plaintiff in passing a decree of eviction of the defendants from the suit premises. The High Court held that the said bungalow can be conveniently used for the residence of the plaintiff and her family members as well as for the purpose of opening of office of Tax Consultant by her husband. That apart, the entire first floor of the suit premises can be conveniently utilised for opening the office of Tax Consultant by the plaintiff's husband, Amritlal Mutha. The lower appellate court totally failed to consider this aspect of the case. It has, therefore, been held that:

``..... Even otherwise the finding is manifestly so unjust and unsupported by the evidence that its validity cannot be sustained even in this limited field, more so, since there is utter mis-reading of the evidence and non-application of mind on material features and there is also an error apparent on the face of the record." The High Court, therefore, allowed the writ petition and made the rule absolute and set aside the judgments and decrees made by the courts below.

It is against this judgment and order, the instant appeal on special leave has been filed at the instance of the plaintiff in this court.

Three question were raised before the courts below. The first question was whether the suit property was properly described in the plaint or not.

On this point, both the Trial Court as well as the lower appellate court have concurrently found that the suit premises being part of Survey No. 3576 which was previously owned by one Imarat Company Private Limited from whom the plaintiff's husband Amritlal Mutha purchased for a sum of Rs. 34, 000 was properly described in the plaint and the respondents-defendants have been occupying an area admittedly 20fts. x 15fts. being shop Nos. 81 to 83 on the eastern side of the said premises. This finding of the courts below has neither been challenged before the High Court nor before this Court in the instant appeal. The next point that was urged by the plaintiff in the courts below was that on the ground of default in payment of arrears of rent the defendant No. 1 was liable to be ejected from the suit premises in accordance with the provisions of Section 12(2) read with Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 hereinafter to be referred in short as the said Act. On this point, the Trial Court held that:

``..... the defendant by depositing rent for the first time on 8.6.80, for the period 1.10.78 to 31.12.80 committed breach of above mentioned ruling and is defaulter within the meaning of Section 12(3)(a) and 12(3)(b) of the Rent Act." The lower Appellate Court, however, after considering the evidences held that the defendant are not defaulters as there were no arrears for the statutory period. Thus, the question of default on the part of the defendants in the payment of rent was not at all raised nor agitated before the Court of Appeal below by the plaintiff.

The only question that was agitated with great vehemence by the learned counsel on behalf of the appellant is about the finding arrived at by the High Court to the effect that there was no reasonable bona fide requirement for the plaintiff-appellant to obtain a decree for eviction of the defendants-respondents from the suit premises for the purpose of opening of office of Tax Consultant by the appellant's husband, Amritlal Mutha on the ground floor of the said premises. Mr. Tarkunde, learned counsel appearing in support of the case of the appellant has with great vehemence urged before us that the bungalow that has been constructed by the appellant's husband within Ahmednagar Municipal area is at a distance of about 1-2 Kms. from the suit premises whereas the suit premises is situated in the Kapad Bazar area where the traders have their shops and

establishments and as such the ejectment of the respondents from the suit premises was necessary for opening the office of Tax Consultancy in the suit premises by the husband of the appellant. It has been further urged in this connection by Mr. Tarkunde that the bungalow that has been constructed and comprises of a covered area of 2000 sq. ft. is entirely necessary for occupation of the appellant's eldest son, Abhey Amritlal Mutha who passed MBBS in 1988 and obtained certificate of registration. It has also been submitted in this connection that permission to start dispensary and consulting clinic/residence in the said premises has been obtained from the Town Planner and Chief Officer, Ahmednagar Municipal Council. It has also been urged with great vehemence by Shri Tarkunde that the respondent has not been residing at all in Ahmednagar but has shifted to Pune as will be evident from the fact that the summons of the suit were served on the respondent No. 1 at his residence at Krishnakripa, Galli No. 3, 3rd Floor, Mukund Nagar, Pune- 411009. It has been further stated that the respondent No. 1, Nalin Narsi Vohra has started a business under the name and style of M/s Vohra and Company since February, 94/97, Budhwar Peth, Pune-2. It is a partnership firm business and the partners, are Nalin Narsi Vohra, Krishnakripa, Mukand Nagar, Pune-9 and Mrs. Bhanu Ashok Vora, 41/166, Lokamanya Nagar, Pune-30. This business has been started since July, 1979 as per the partnership deed and the copy of the register of firms. It has also been stated that the respondent No. 1, Ashok Nalin also started a business of machine tools known as M/s Ashok & Company at 94/97, Budhwar Peth, Pune-2 vide partnership deed dated 12.2.1982. It has further been urged on behalf of the appellant that the suit premises remained under lock and key for about ten years and no business was transacted in the said premises. It has also been urged in this connection that besides the suit premises the respondents purchased the Municipal Premises No. 2733/6 and has been running 'Madura Stores' for selling ready-made garments. In 1972, the respondent No. 1 Nalin Narsi Vohra and his brother, respondent No. 4, Mulji Narsi Vohra jointly purchased the ownership rights from Imarat Company Pvt. Ltd. the premises No. 733/9 and open 'Liberty Dresses' therein for sale of hosiery goods. Similarly the respondent No. 1 also purchased another premises opposite to Kohinoor Cloth Store and after removing the wall in between two shops, has been running the business of ready made garments known as 'Madura Stores'. It has, therefore, been contended that the suit premises being closed for a period of ten years and no business being carried on there, the appellant is entitled to get decree of ejectment of the respondents from the suit premises under the provisions of the said Act.

The contention that the respondents kept the suit premises under lock and key for about ten years without opening the shop, running the business of ready-made garments therein, has not at all been proved by any evidence whatsoever as has been held by the High Court. Therefore, this contention is wholly untenable. Moreover the ground of ejectment of the ground of non-payment of rent for over six months under Section 12(2) and 12(3)(a) of the Bombay Rent Act has not been mentioned in the eviction suit nor any issue was framed on this score.

It has been on the other hand contended by the learned counsel appearing on behalf of the respondents that the submissions made in the application for additional evidence bring further materials before the lower appellate court on the question that the appellant has alternative accommodation and as such she did not reasonably and bona fide require the suit premises for the opening of the office of Tax Consultant for her husband, Amritlal Mutha therein. It is convenient to note in this connection that the statements as well as the subsequent facts that have been brought to

the notice of the court by the application for additional evidence under Order 41, Rule 27 of the Code of Civil Procedure and filed before the lower appellate court have not been controverted at all. As such, the appellant or her husband, Amritlal Mutha did not deny those subsequent facts brought before the court by the said application. The lower appellate court that admitted the application for additional evidence failed to consider at all the fact that a very specious bungalow comprising of about 2000 sq. ft. covered area had already been built within the Ahmednagar Municipal Area by the plaintiff's husband, Amritlal Mutha. After purchasing the plot and constructing the bungalow during the pendency of the appeal before the lower appellate court, the appellant with the members of her family had been residing there and the husband of the appellant had started the office of Tax Consultancy in that bungalow. The lower appellate court merely by-passed this relevant fact on the plea that that bungalow is at a distance from the Kapad Bazar area where the shops of the traders are situated. The lower appellate court also did not at all consider whether the first floor of the suit premises as well as the second floor which though claimed to be a shed, could be conveniently utilised for the purpose of the said Tax Consultancy Office. The lower appellate Court simply considered that the second floor being a temporary shed could not properly be used for opening the Tax Consultancy Office and the first floor which consisted of 4 rooms of which 2 are used as bed rooms and 1 is used as a kitchen and 1 as study room of the sons of the appellant, cannot be conveniently utilised for the said office as there was no space for the same without considering at all that the appellant with members of his family had been residing already in the spacious bungalow referred to hereinbefore. It has been urged with great vehemence on behalf of the appellant that both the Trial Court as well as the Lower Appellate Court having found that the appellant reasonably and bona fide required the suit premises for the opening of the office of Tax Consultant of the appellant's husband, Amritlal Mutha, the decree of eviction of the suit premises should not have been set aside by the High Court under Article 227 of the Constitution by taking into consideration subsequent facts and evidences. This submission, in our considered opinion, is without any substance and same is to be rejected. Reference may be made in this connection to the decision in the case of *M/s Variety Emporium v. V.R.M. Mohd. Ibrahim Naina*, [1985] 2 SCR 102 wherein it has been observed that:

"No authority is needed for the proposition that, in appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the list of those events. We may, however, draw attention to a decision of this Court in *Hasmat Rai v. Raghunath Prasad*, [1981] 3 SCR 605 the ratio of which may be stated thus:

When an action is brought by a landlord for the eviction of a tenant on the ground of personal requirements, the landlord's need must not only be shown to exist at the date of the suit, but it must exist on the date of the appellate decree, or the date when a higher Court deals with the matter. During the progress and passage of proceedings from court to court, if subsequent events occur which, if noticed, would non-suit the landlord, the court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subse-

quent events, to the court, including the appellate court. In such a situation, it would be incorrect to say that as a decree or order for eviction is passed against the tenant, he cannot invite the Court to take into consideration subsequent events. The tenant can be precluded from so contending only when a decree or order for eviction has become final. (Pages 606-607).

Justice R.S. Pathak, who concurred with Justice D.A. Desai and Justice Venkataramiah, expressed the same view thus:

It is well settled now that in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the requirement must continue to exist on the date when the proceeding is finally disposed of either in appeal or revision, by the relevant authority. That position is indisputable. (Page 624).

In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, [1986] 3 SCR 866 it has been observed that: "In exercise of jurisdiction under Article 227 of the Constitution, the High Court can go into the question of facts or look into the evidence if justice so requires it. But it should decline to exercise that jurisdiction in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. It also should not interfere with a finding within the jurisdiction of the inferior tribunal or court except where the finding is perverse in law in the sense that no reasonable person properly instructed in law could have come to such a finding or there is any misdirection in law or a view of fact has been taken in the teeth of preponderance of evidence or the finding is not based on any material evidence or it has resulted in manifest injustice. Except to that limited extent the High Court has no jurisdiction."

In *Pasupuleti Venkateswarlu v. The Motor & General Traders*, [1975] 3 SCR 958 it has been observed by this Court 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 development subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into s. 10(3)(iii) itself. The High Court was right in taking into consideration the facts which came into being subsequent to the commencement of the proceedings."

Similar observation has been made in *Hasmat Rai & Anr. v. Raghunath Prasad*, [1981] 3 SCR 685.

"It is immaterial that the amendment was sought more than three years after possession of the portion had passed to the respondent. The High Court was bound to take the fact into consideration because, as is well settled now, in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary the requirement must continue to exist on the date when the proceeding is finally disposed of either in appeal or revision, by the relevant authority. The position, to my mind, is indisputable. The High Court should have allowed the amendment."

In *Amarjit Singh v. Smt. Khatoon Quamarain*, [1987] 1 SCR 275 it has been observed by this Court that:

"Administration of justice demands that any changes either in fact or in law must be taken cognizance of by the Court but that must be done in a cautious manner of relevant facts. Therefore, subsequent events can be taken cognizance of if they are relevant and materiel."

On a conspectus of all these decisions rendered by this Court, it is now beyond the pale of any doubt that in appropriate cases events subsequent to the filing of the suit can be taken notice of and can be duly considered provided the same is relevant in determining the ques-

tion of bona fide requirement. Therefore, the High Court was right in duly considering the new facts and circumstances that have been brought to the notice of the Court by the application for additional evidence filed under Order 41 Rule 27 of the Code of Civil Procedure and in coming to a firm finding that the plaintiff-appellant having constructed a spacious bungalow where she with the members of her family had been residing, there is no reasonable and bona fide requirement for the plaintiff to get a decree of ejectment of the defendants from the suit premises in as much as the first floor of the suit premises as well as the second floor could be conveniently used for opening the office of Tax Consultancy of plaintiff's husband who previously worked with one Mr. Gandhi in a partnership firm which partnership had been dissolved after Mr. Gandhi's son came to practice with his father.

It is also relevant to consider in this connection the observations of this Court in *Bega Begum and Ors. v. Abdul Ahad Khan and Ors.*, [1979] 2 SCR 1 as regards the meaning of the words 'reasonable requirement and own occupation' as used in Section 11(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966. It has been held that the words 'reasonable requirement' undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

In the instant appeal it has been rightly held by the High Court after considering the subsequent facts and materials brought out by the application for additional evidence that the plaintiff failed to prove reasonable and bona fide need for her occupation of the suit premises for the purpose of opening the Tax Consultancy Office of her husband, Amritlal Mutha. Considering the facts and

circumstances as well as the subsequent materials brought out by the application for additional evidence, we have no hesitation in our mind to hold that the aforesaid findings arrived at by the High Court is totally unexceptionable and so the same cannot be interfered with in this appeal. It will not be out of place to mention in this connection that Amritlal Mutha, husband of the appellant has stated in the additional affidavit filed in this Court that Dr. Abhey A. Mutha, son of the appellant had purchased a flat on ownership basis in Co-partnership Society, named Amrita Kunj Cooperative Housing Society Ltd. situated at 324/5 Shivaji Nagar, Pune-410005. This, if taken notice of, will affirm the finding of the High Court that the appellant failed to prove her bona fide and reason-

able need for the suit premises for opening the Tax Consultancy Office for her husband.

Besides the contentions referred to hereinbefore, no other contention has been advanced before this Court. Therefore, this appeal fails and is hereby dismissed. The judgment and order of the High Court is upheld. In the facts and circumstances of the case, the parties will bear their own costs.

Y.Llal

Appeal failed.