Raghunath G. Panhale (Dead) By Lrs vs Chaganlal Sundarji And Co on 13 October, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3864, 1999 (8) SCC 1, 1999 AIR SCW 3944, 1999 (6) SCALE 503, 1999 SCFBRC 440, 1999 (8) ADSC 689, 2000 (1) UJ (SC) 141, 2000 UJ(SC) 1 141, 1999 ADSC 8 689, 2000 (3) LRI 95, 2000 HRR 8, 1999 (10) SRJ 248, (1999) 8 JT 219 (SC), (1999) 2 RENTLR 542, (1999) 3 PAT LJR 171, (2000) 1 GUJ LH 208, (2000) 1 MAD LW 559, (2000) 1 RENCJ 161, (1999) 2 RENCR 485, (1999) 3 SCJ 700, (1999) 8 SUPREME 658, (1999) 6 SCALE 503, (2000) 2 BOM CR 9, 2000 (1) BOM LR 95, 2000 BOM LR 1 95

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Bench: M. Jagannadha Rao, A.P. Misra

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           CASE NO.:
Appeal (civil)  5925 of 1999

PETITIONER:
RAGHUNATH G. PANHALE (DEAD) BY LRS.

RESPONDENT:
CHAGANLAL SUNDARJI AND CO.

DATE OF JUDGMENT: 13/10/1999

BENCH:
M. JAGANNADHA RAO & A.P. MISRA

JUDGMENT:
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JUDGMENT 1999 Supp(3) SCR 629 The Judgment of the Court was delivered by M. JAGANNADHA RAO, J. Leave granted.

This is an appeal by the landlords for possession of a non- residential premises from the respondent tenant. The suit No. 37 of 1986 was filed before the Civil Judge, Junior Division, Panvel by the original landlord for his own use pleading bonafide and reasonable requirement. The respondent - tenant resisted the suit contending that the plea of bonafide requirement was not acceptable. During the pendency of the case in the first Court, the original plaintiff died and his heirs, the appellants were brought on record. They filed an application for amendment under Order 6 rule 17 of the Code of Civil Procedure and the same was allowed. The third legal representative pleaded that the same premises was required for himself for starting a grocery business. He stated that he was working in Metal box. Co., that there was a lock-out in that company, that he was finding it difficult to maintain

the family and wanted to improve his livelihood by starling grocery business. On the amended pleadings, both parties led evidence. The trial Court held that on the death of the original landlord, the suit abated becuase the original landlord's requirement was for himself and his requirement differed from that of his heirs. On merits, the trial Court held that there was no proof of lock-out, no proof of capital available for investment, no proof of preparations for business and that the appellant had no experience in grocery business. The lock out did not put the appellant out of his job permanently. The appellant had not resigned his job. Therefore, the requirement was not bonafide. The suit was dismissed. The lower appellate Court confirmed the finding on the question on bona fide requirement but reversed the finding as to abatement stating that the plaint was amended, and thereafter parties had adduced evidence on the question of the need of the legal representatives. The appellate Court gave a finding that the tenant had got three other shops. The appeal was dismissed. The landlord has come up in appeal.

We have heard elaborate arguments of the learned counsel on both sides. After hearing counsel, we are of the view, for reasons given below, that this is a fit case for interference under Article 136 inasmuch as the Courts were wrong in thinking that the plaintiff must prove not his need but his `dire or absolute necessity'. The above approach on the facts has appeared to us to be based on irrelevant circumstances.

Now, it is well-settled that this Court under Article 136 will not ordinarily interfere with the findings of fact arrived at by the Courts below except in rare situations. It was held in Variety Emporium v. V.R.M. Mohd. Ibrahim Naina, [1985] 1 SCC 251 which arose under a Rent Control statute, that though this Court would not ordinarily interfere, this Court could go into the correctness of findings of fact where "the concurrent decision of two or more courts or tribunals is manifestly unjust". This burden is no doubt to be discharged by the appellant. "But once that burden is discharged, it is not only the right but the duty of Supreme Court to remedy injustice". Similarly in Bega Begum and Ors. v. Abdul Ahad Khan and Ors., [1979] 1 SCC 273, which also arose under the Rent Control law, it was again held that where the "High Court" and the trial Court have made a legally wrong approach and have committed substantial and patent error of law in interpreting the scope and ambit of the words "reasonable requirement" and "own possession" in the section and "have thus misapplied the law and overlooked some of the essential features of the evidence, the Supreme Court has to enter into the merits of the case in order to prevent grave and substantial injustice".

We shall initially refer to the legal principles applicable to the case. Section 13(l)(g) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 uses the word "the premises are reasonably and bona fide required by the landlord for his own occupation etc". The requirement must, therefore, be both reasonable and bona fide.

The word `reasonable', in our view, connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The Word `requirement' coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. Aitken v. Shaw, (1933) S.L.T, 21; Novile v. Hordy, 90 L.J. Ch, 158. A reasonable and bona fide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in

presenti or within reasonable proximity in the future. The use of the word `bonafide' is an additional requirement under Section 13(l)(g) and it means that the requirement must also be honest and not be tainted with any oblique motive. The above principles have been laid down in various decisions of this Court and we shall refer to a few of them which are relevant to the issue before us. It was stated in Bega Begum & Others v. Abdul Ahad Khan & Others, [1979] 1 SCC 273 that the reasonable requirement postulates an element of need" as opposed to a mere "desire or wish". It was also pointed out that if it was indeed a case of a reasonable need, the same could not be diluted by characterising it as only a mere desire. It was stated:

> "The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire".

It was also held that the language of the provision cannot be unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get possession. If more limitations are imposed upon the landlord holding property, it would expose itself to the vice of unconstitutionality. Yudhishtir v. Ashok Kumar, [1987] 1 SCC 204. The construction of the relevant statutory provision must strike a just balance between the right of the landlord and the right of the tenant. In Bega Begum's case the landlords adduced evidence to show that they wanted to augment their present income by starting hotel business. This was treated as a genuine need and it was held that it could not be equated with a mere desire. This Court observed that "the Act does not completely overlook the interest of the landlord" In Mattulal v. Radhelal, [1974] 2 SCC 365, a like principle was laid down stating that the test was not subjective but an objective one and that the Court was to judge whether the need of the landlord was reasonable and bona fide. This Court held that the Additional District Judge in that case was wrong in thinking that the landlord who wanted to start iron and steel business, had to produce proof of preparations for starting his new business, such as making arrangements for capital investment, approaching the Iron and Steel Controller for the required permits etc. This court held that the above circumstances were "wholly irrelevant" and observed :

> "It is difficult to imagine how the respondent could be expected to make preparations for starting the new business unless there was reasonable prospect of his being able to obtain possession of the Lohia Bazar Shop in the near future". This Court took judicial notice of long delays in Courts and observed :
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> "It is common but unfortunate failing of our judicial system that a litigation takes an inordinately long time in reaching final conclusion and then also it is uncertain as to how it will end and with what result" and that, therefore, "it would be too much to expect from him (landlord) that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stocks of iron and steel materials when he would not know whether he would at all be able to gel possession of the Lohia Bazar Shop, and if so, when and after how many years".

Next comes the decision of this Court in A.K. Veeraraghava Iyengar v. N.V. Prasad, AIR (1994) SC 2357. In that case, this Court observed that the need was bonafide and that the tenant failed to adduce any evidence against the "experience of landlord, his financial capacity and his readiness and willingness to start jewellery shop". In Vinay Kumar and Ors. v. District Judge, Ghazipur and Ors., [1995] Suppl. 2 SCC 586, it was contended for the tenant that the son of the landlord whose requirement was pleaded, was in government service and, therefore, he could not have any bona fide need to start private practice as a doctor. This contention was rejected. In Rena Drego (Mrs.) v. Lalchand Soni and Ors., [1998] 3 SCC 341 it was observed that in the light of the factual position in that case, "where the (landlady) says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement" It was held that the circumstances of the case raised a presumption that the requirement was bonafide and that "tenant has failed to show that the demand for eviction was made within any oblique motive". It was held that in the absence of such evidence by the tenant, the presumption of the bona fide need stood unrebutted. In Sarla Ahuja v. United India Insurance Co., [1998] 8 SCC 119 it was again observed that the Court should not proceed on the assumption that the requirement of the landlord was not bona fide and that the tenant could not dictate to the landlord as to how he should adjust himself without getting possession of the tenanted premises. It was stated in Prativa Devi (Smt.) v. T.V. Krishnan, [1996] 5 SCC 353 and in Meenal Eknath Kshirsagar v. Traders and Agencies & Another, [1996] 5 SCC 344, that the landlord was the best judge of his requirement. In Smt. Sheela Chadha and Ors. v. Dr. Accharaj Ram Sehgal, [1990] Suppl. SCC 736, it was held that the landlord had the discretion to determine his need. See also in this connection the judgment of this Court in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, [1999] 6 SCC 222. In Raj Kumar Khaitan and Ors. v. Bibi Zubaida Khatun and Anr., [1997] 11 SCC 411, this Court had even stated that it was not necessary for the landlord to state in the pleadings, the nature of the business he proposed to start.

In the light of the above principles, we shall now examine the decision of the courts below. In this case, the plaintiff No. 1/3 (one of the legal representative of the deceased plaintiff) came forward with the plea that he was in service of Metal Box Co. and since January 1988, due to lock-out, the company was closed down and he was not having any source of income and therefore, he wanted to earn his livelihood by opening a grocery-shop The trial Court and the first appellate Court observed that it was necessary that plaintiff should prove that he had lost his job and was unable to maintain his family. This, according to the said courts, was belied by the fact that in the amendment application and affidavit, the plaintiff No. 1/3 described his occupation as `service' and that, therefore his evidence was not acceptable. It was further held that his evidence that he lost his job on 15.1.1958 must also be rejected. The envelope containing notice of lock- out from the company and news item in newspaper would not, it was observed, prove the lock out. The notice showed only an intention to lock-out from 5.2.1988. It was stated that no documentary evidence, was produced to prove that the said plaintiff lost his job. The trial Court in fact went into the definition of `lock-out' in the Industrial Disputes Act, 1947 and held that by a lock-out, the plaintiff would not lose his job permanently and that he would get his wages when the lock-out was lifted. As the plaintiff also admitted that there was a sign board at his house, with the words `Ganesh Water Supply', the plaintiff must be deemed to have started some other business. The plaintiff's evidence that he was maintaining himself by taking loans from friends was not proved by adducing other evidence. He had not taken steps to purchase furniture to furnish the proposed grocery shop and never thought of

the capital required for the business. On this material, it was held that no case was made out that he was not able lo maintain his family. Yet another reason was that during his father's life time, he, the plaintiff never thought of running a grocery shop. The plaintiff admitted that he did not resign his job. He thus had no intention of permanently running a grocery shop. It was not proved he had knowledge of grocery business. These are the reasons given by the trial court and the first appellate court for rejecting the appellant's case. The High Court rejected the application under Article 227 on the ground that concurrent findings of fact could not be interfered with.

It will be seen that the trial Court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lock-out or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled lo an order for possession of the shop. This lest, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lock-out" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter proverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a Bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the Courts was absolutely wrong in law, and perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact.

That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India.

Learned counsel for the respondent, however, raised another point regarding abatement and relied upon Phool Rani and Ors. v. Naubat Rai Ahluwalia, [1973] 1 SCC 688 to contend that while the matter was in the Trial Court, the original plaintiff died, that the cause of action based on his bona fide requirement ceased to exist and the suit could not have been continued by his heirs. This was because the original plaintiff's requirement would not be the same as that of his heirs. It is true, the above judgment does support the above contention. On the main point, the above decision was overruled in Shantilal Thakordas and Ors. v. C.M. Telwala, [1976] 4 SCC 417 where it was held that if the original plaintiff pleaded that it was his own need and that of family members, the cause of action would survive on his death, to his heirs. In Shantilal's case, it was pointed out that if the

landlord claimed possession on the ground of bona fide requirement for himself and his family members, his family members could continue the same eviction case, after the landlord's death, without amendment since the cause of action would survive to them.

Now, it is true that in Phool Rani there was no amendment application by the heirs of the deceased landlord while in the case before us, an amendment application was filed by the heirs and was allowed, putting in issue, their own requirement. It is also true that in Phool Rani no amendment application was filed and allowed, but there are still observations that, the plaint cannot be amended for putting in issue the requirement of the heirs inasmuch as the cause of action will be different.

Be t hat as it may, now the question before us is whether when relief for eviction was retained in the amendment and the plaint was amended at the instance of the heirs to put in issue their own requirement and when voluminous evidence was led on both sides and findings given on merits, the question is whether we should at this distance of time hold on basis of Phool Rani that the Amendment was wrongly allowed and drive the heirs to a fresh suit after thirteen years. The eviction case was filed in 1986 and we note the tenant had full opportunity to meet the case of the heirs as per the amended pleading. In our view, they suffered no prejudice whatsoever because of the amendment. We, therefore, think that in our discre-tion, we should not drive the heirs to file a fresh suit on the plea that the amendment was wrongly allowed. We, therefore, in our discretion under Article 136, do not permit this point to be raised by the respondent.

In the result, the appeal is allowed and the judgment and decision of all the three courts are set aside, and eviction is ordered. We, however, grant six months time for vacation subject to the tenant's filing usual undertaking within 4 weeks and continuing to pay occupation charges at the same rate during this period of six months. In case of breach of this order or the undertaking, the execution case can proceed straightway, Appeal is allowed. There will be no order as to costs.