Ramesh Kumar vs Kesho Ram on 30 September, 1991

Equivalent citations: AIR1992SC700, 1992SUPP(2)SCC623, AIR 1992 SUPREME COURT 700, 1992 AIR SCW 336, 1992 SCFBRC 322, 1992 (2) SCC(SUPP) 623, (1992) 1 RENCR 370

Bench: M.N. Venkatachaliah, N.M. Kasliwal

JUDGMENT

1. We have heard learned Counsel for the parties. Special leave granted.

2. The grievance of the appellant-tenant is that the High Court in the proceedings of revision while granting leave to the Respondent-landlord to plead certain subsequent events, had virtually accepted the pleadings as proof in itself of the allegations which according to the respondent entitled him to possession. The trial Court had negatived the bona fides of the landlord's claim for possession. Learned Counsel for the appellant contends that it is one thing to permit a party to urge certain subsequent events but quite an other to assume, without more, that the facts so alleged are proved without the formality of an enquiry and recording of evidence. The proceedings in the High Court, says counsel, ceased to be revisional and assumed the character of a fresh trial on fresh grounds without an enquiry and trial of or evidence on those fresh grounds. Learned Counsel says that pleading and proof of the subsequent events are two distinct stages and the High Court is in error in not keeping the two stages distinguished and in proceeding on the premise that the first stage could serve the purpose of the second also. It is further urged that the subsequent events now sought to be raised by the appellant himself before this Court would, on considerations of comparative hardships, neutralise those pleaded by the respondent, even if they were true.

3. We may briefly recall the facts :

> Respondent by his petition dated 28-6-1983 sought the eviction of the appellant from the accommodation in his occupation in the ground floor of premises No. 3195, Gali Sani Ram, Mohalla Dassan, Delhi, on grounds of respondent's alleged bona fide need. The respondent was, it would appear, in occupation of the two upper floors and claimed that the accommodation in his occupation was insufficient for the requirements of himself and the members of his family and that, therefore, he bona fide needed the use of the ground floor as well.
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> On 28-7-1987 the Additional Rent Controller, Delhi, dismissed the petition holding that the accommodation in the possession of, the respondent could not be said to be insufficient for his needs and that the alleged requirement put forward to evict the appellant was not bonafide.

> In the revision petition preferred against this dismissal, the respondent sought to plead certain subsequent events which, according to him, justified grant of an order for possession. The subsequent events were that the health of the first son of the respondent was impaired by cardiac problems and that there was also additions to the family by subsequent births of grand children. It was also pleaded that the second son of the respondent had also, in the meanwhile, got married. The High Court permitted the respondent to raise these pleas and proceeded to dispose of the revision petition and granted possession on the basis of these subsequent events. It is relevant to note that learned Counsel who had been engaged by the appellant had failed to appear at the revisional hearings. The subsequent prayer of the appellant for recalling the order and for being afforded an opportunity of being heard on the merits was declined by the High Court on the ground that the learned advocates who had failed to turn-up at the hearing had, apparently, declined to furnish affidavits as to the reason of their absence. The case of the appellant was lost on account of this refusal of the advocates to file their affidavits.

4. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhari Chief Justice Sir Maurice Gwyer observed :

> But, with regard to the question whether the court is entitled to take into account legislative changes since the decision under Appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In (1934) 294 US 600 at p. 607, Hughes C. J. said :
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> We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.
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> And in Pasupuleti Venkateswarlu v. The Motor & General Traders Justice Krishna Iyer said :
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> We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-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 justified bending the rules of procedure, where no specific provision or fairplay is 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 report to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.
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> These principles have since been reiterated and reaffirmed in Hasmat Rai v. Raghunath Prasad .

5. The contention of the appellant's learned Counsel is that the subsequent events pleaded would require to be proved as otherwise it would amount to granting a decree on pleadings alone without more and without evidence to prove the alleged subsequent factual events. It is urged that the High Court accepted the averments themselves as their own proof and proceeded straightway to reverse the decree of dismissal and to grant possession for the first time in revision.

6. The submissions of learned Counsel are only partly correct. While it is true that a distinction must be made between pleading and proof, the further submissions that these must necessarily be in two successive sequential stages need not always be so and particularly when dealing with pleas of subsequent events in appeals and revisions. If the allegations of facts made in support of such a plea are denied then alone the question of their proof in an appropriate way arises. If those allegations of facts are admitted, there is no need to prove what is admitted or must be deemed to be admitted. There can be admissions by non-traverse. The High Court proceeded to accept the allegations as proved presumably in view of the fact that appellant's learned Counsel did not even appear, let alone challenge the allegations. But there might also be cases in which, having regard to the nature of the circumstances, the Court may insist upon proof independently of such admission by non-traverse.

When subsequent events are pleaded in the course of an appeal or proceedings of revision, the Court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order 19, C.P.C. The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The Court, if it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for an enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities.

7. On a consideration of the facts of the present case, ends of justice would be met by setting aside the orders under appeal and remitting the matter to the High Court to take into account the

subsequent events relied upon by the respondent as well as those now sought to be raised by the appellant if the appellant places them before the High Court in an appropriate manner. It will be for the High Court to decide whether, having regard to the nature of the subsequent facts, it will be necessary to collect oral evidence on them or they could be decided on affidavit-evidence. The High Court will then dispose of the revision petition afresh in accordance with law. We request the High Court to dispose of the revision petition expeditiously and not later than three months from the date of receipt of this order.

8. The orders under appeal are set aside and the appeal is disposed of in the above terms No costs.