Gaya Prasad vs Shri Pradeep Srivastava on 7 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 803, 2001 (2) SCC 604, 2001 AIR SCW 598, 2001 ALL. L. J. 433, (2001) 2 JT 426 (SC), 2001 (1) LRI 644, 2001 SCFBRC 128, (2001) 1 CGLJ 457, 2001 (3) SRJ 250, 2001 (2) JT 426, 2001 (1) ALL CJ 499, (2001) 1 ALL RENTCAS 352, (2001) 1 SUPREME 615, (2001) 3 MAD LW 124, (2001) 1 CURLJ(CCR) 464, (2001) 2 MAHLR 231, (2001) 2 MAH LJ 581, (2001) 42 ALL LR 685, (2001) 1 ALL WC 834, (2001) 1 CURCC 164, (2001) 2 MAD LJ 159, (2001) 1 KER LT 753, (2001) 2 RENTLR 1, (2001) 1 RENCR 221, (2001) 1 RENCJ 522, (2001) WLC(SC)CVL 201, (2001) 2 MPLJ 1, (2001) 1 SCALE 674

Bench: K.T. Thomas, Doraiswamy Raju

CASE NO.:
Appeal (civil) 1071 of 2001
Appeal (civil) 1072 of 2001

PETITIONER:
GAYA PRASAD

Vs.

RESPONDENT:
SHRI PRADEEP SRIVASTAVA

DATE OF JUDGMENT: 07/02/2001

BENCH:
K.T. Thomas & Doraiswamy Raju.

JUDGMENT:

THOMAS, J.

Leave granted.

This case presents a sample scenario of the tormenting plight of an average litigant who approaches the court with all expectations of getting relief for his urgent need. But the snail paced litigation creeping through all the tiers of the judicial hierarchical forums would have frustrated all his expectations, though others could admire the tenacity with which he persisted with the cause.

Twenty three years ago, the litigant in this case wanted accommodation for his son, who then became a medical graduate, to start a clinic so that from the stage of a fledgling in the profession of medicine he could fly higher up. His father who owns the building moved for eviction of the tenant from the building for the said purpose. Although he won the battle at all tiers the urgently needed eviction is till now eluding him as a mirage.

Appellant is the tenant of a shop building situate at Khalsa Gali, Agra. In 1978, the respondent-landlord filed an application under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the U.P. Act) on a twin need. One is that his son who passed his medical examination wanted to carry on medical practice and this building was needed for housing his clinic. The other is, the landlord himself had just retired from Railway service and he too did not want to waste his time, talent and energy and hence he wanted to start a radio repairing work which he thought could be performed by using a portion of the building. The first forum, called the Prescribed Authority, where the application was filed, found the claim bona fide and ordered eviction on 25.3.1982. It was further found by the said authority that the tenant has alternative accommodation in the same city for doing his business.

Appellant filed an appeal but it took only 3 years for the appellate court to dismiss the appeal on 10.10.1985. Though three years of pendency of an appeal is too much for a litigant it is not considered unduly long by the standards now developed regarding the pendency position of cases in the courts in India.

The lengthiest leap which appellant secured was thereafter when he approached the High Court. He filed a writ petition challenging the order of eviction before the High Court of Allahabad in 1985 and the High Court after entertaining the writ petition granted stay of operation of the eviction order. With the said initial dosage administered by the High Court at the entry stage, the hibernated writ petition seemed to have been consigned to records where it remained in torpidity for a record period of 15 years. The dust stricken writ petition was taken up and disposed of only thereafter and the High Court found no ground to interfere with the order challenged before it. Appellant who gained such a record time did not hesitate to make a plea to the High Court to grant him six months time more to vacate and that too was acceded to on a condition that appellant should give an undertaking before original authority that he would vacate the premises within six months.

The appellant who lost at all levels and yet succeeded during all these years by keeping the order of eviction at bay, lately discovered that the landlords son, for whom the eviction was sought, joined the Provincial Medical Service after 12 years of the institution of the lis. On that premise appellant ventured to move the same High Court once again, and this time for a review of the order. However, the review petition was dismissed by the High Court as per its order which is also impugned now.

In the appeal petition filed in this Court appellant stated that the son of the landlord who joined the Provincial Medical Service is posted at a place situated 200 kilometers from Agra, whereat the building is situate, and that he is now getting a pay of Rs.15,000/- per month.

The point sought to be urged is that, subsequent developments may also be taken into account in eviction proceedings, particularly when the eviction is sought by a landlord on the ground that he bona fide needs the building for his own use or for the use of any member of his family.

Section 21(1) of the U.P. Act deals with proceedings for release of building under occupation of tenant. Clause

(a) of the sub-section alone is germane in the present proceedings. The said clause is, therefore, extracted below:

> 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-
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> (a) 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 for whose benefit it is held by him, either for residential purposes or that the building is bona fide 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;

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 pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In Remesh Kumar vs. Kesho Ram [1992 Suppl. (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs

appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:

> 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.
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> This Court reiterated the same principle in Kamleshwar Prasad vs. Pradumanju Agarwal [1997 (4) SCC 413] that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattanaik, JJ) has held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench:
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> That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son.
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> In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in Pasupuleti Venkateswarlu vs. Motor and General Traders [1975 (1) SCC 770] which pointed to the need for re-moulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then:
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> 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 proceedings provided the rules of fairness to both sides are scrupulously obeyed.
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> The next three-Judge Bench of this Court, which approved and followed the above decision, in Hasmat Rai vs. Raghunath Prasad [1981 (3) SCC 103] has taken care to emphasise that the subsequent events should have wholly satisfied the requirement of the party who petitioned for eviction on the ground of personal requirement. The

relevant passage is extracted below:

Therefore, it is now incontrovertible 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 must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.

(Emphasis supplied) The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

Of course a two-Judge Bench (K. Ramaswamy and D.P. Wadhwa, JJ) pointed out in another case Ansuyaben Kantilal Bhatt vs. Rashiklal Manilal Shah [1997 5 SCC 457] that the pendency of a lis for a record period of thirty one years has transformed a middle aged landlord to advanced stage of gerenry and at that stage he could not start a new business venture. After lamenting over the system which caused a whopping delay of thirty-one years the Bench made two directions. The first was that the son of the landlord who by that time had four and a half years more to go for reaching the superannuation age could consider starting the business in the tenanted premises after retirement. The second was that in the meanwhile the rent for the building would stand enhanced from Rs.101/- to Rs.3500/- per month. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts.

We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Courts to evolve some concrete schemes for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Courts after passing the initial orders, keeping the operative part of decrees in abeyance. It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief justice of the High Court concerned so that he could take appropriate steps in the matter.

The above is not an advice, but only a suggestion. If any alternative suggestion would appear better the same can be resorted to. The time is running out for doing

something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra legal means which are very often contra legal means with counter-productive results on the maintenance of law and order in the country.

We dismiss these appeals.