Supreme Court of India
Hasmat Rai & Anr vs Raghunath Prasad on 28 April, 1981
Equivalent citations: 1981 AIR 1711, 1981 SCR (3) 605
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
HASMAT RAI & ANR.

Vs.

RESPONDENT:
RAGHUNATH PRASAD

DATE OF JUDGMENT28/04/1981

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
PATHAK, R.S.
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 1711 1981 SCR (3) 605
1981 SCC (3) 103 1981 SCALE (1)714
CITATOR INFO :
R 1985 SC 207 (16)
E&D 1987 SC 406 (6)
R 1987 SC 741 (12,13)
D 1988 SC 30 (5)
RF 1991 SC1760 (20,23)
RF 1992 SC 700 (4)

ACT:
Madhya Pradesh Accommodation Control Act, 1961-Scope of section 12(1) (f)-Bonafide requirement under section 12(1)(f)-Landlord filing two eviction suits and acquiring possession of a major portion of the suit premises through an eviction order passed in one of them-Whether this acquisition amounts to the landlord "has a reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned' within the meaning of section 12(1)(f) of the Act-Noticing of such event subsequent to the passing of the decree for eviction in the other eviction suit, whether a must by the Court-Propriety of refusal of leave to amend the written statement under order VI rule 17 Civil Procedure Code by the High Court.

HEADNOTE:

The respondent-landlord filed two eviction suits for recovery of possession of a non-residential building which were in occupation of a firm Goraldas Parmanand and the appellant-tenant. The portion occupied by the appellant including the frontage was 7x22. In the view of the fact that the landlord obtained eviction order against the firm Goraldas Parmanand on the ground that the building was required for the purpose of reconstruction and repairs and also for bona fide requirement, in the later eviction suit filed against the appellant, in para 4 of the plaint the landlord stated that he was in possession of a major portion of the non-residential building which he obtained from the firm M/s. Goraldas Parmanand. The appellant contested the eviction suit filed against him on the ground, (a) that the premises was not in dilapidated condition and did not, therefore, need reconstruction and repairs and (b) that the landlord in view of his own admission in the plaint at para 4 has a reasonable suitable non-residential accommodation of his own and therefore cannot claim his eviction under section (12)(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961.

The trial court rejected the tenant's pleas and passed an eviction order. In appeal the first appellate court, while confirming the finding of the trial court that the building was in a dilapidated condition and required re-construction and repairs, held that even though the landlord obtained a decree against the firm Goraldas Parmanand, he had not got actual possession, as the litigation was still pending and, therefore, the plaintiff's requirements of the whole building was established.

In the second appeal before the High Court, an application under Order VI, Rule 17, Code of Civil Procedure, was made praying for an amendment to the written statement alleging that the firm Goraldas Parmanand has vacated the entire portion of the premises in his possession and the plaintiff-landlord has obtained actual possession of a major portion of the building and if this aspect was taken into consideration the plaintiff-landlord would not be entitled to a decree for eviction under section 12(1)(f) of the Act. The High Court rejected
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the application observing that the adjoining portion occupied by firm Goraldas Parmanand was vacated by the firm as for back as in the year 1972 and, therefore, the application for amendment filed 3-1/2 years after the filing of the second appeal must be rejected. Further it was of the view that the definition of "tenant" in the Madhya Pradesh Act would not enable a tenant, though in possession but against whom a decree or order for eviction has been made, to invite the court to take notice of events subsequent to the passing of the decree for eviction by the trial court. The High Court, accordingly confirmed the decree for eviction hence, the appeal by the tenant after obtaining

special leave of the Court.

Allowing the appeal and remanding the matter to the first appellate court with directions, the Court

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HELD: 1. Before an allegation of fact to obtain the relief required is permitted to be proved, the law of pleadings require that such facts have to be alleged and must be put in issue. Any amount of proof offered without pleadings is generally of no relevance. In order to be able to seek eviction of a tenant under section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961, the landlord has to allege and establish (i) that he bonafide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. The burden to establish both the requirements of section 12(1)(f) is squarely on the landlord. [610 H, 611 A, 612 D and F]

2. The application under Order VI Rule 17, Civil Procedure Code, in view of the averments in the written statement is wholly superfluous. However, in view of the pleadings in the instant case, it must be granted because "the burden of proof of establishing that the landlord was not in possession of a reasonably suitable accommodation in the same town was on the plaintiff" it was wrongly rejected by the High Court on untenable ground that the defendant-appellant was guilty of delay and laches ignoring incontrovertible admitted position which would non-suit the respondent-plaintiff. [613 E-G]

3:1. The definition of expression "tenant" in the Madhya Pradesh Accommodation Control Act, 1961 excludes from its operation a person in possession against whom any order or decree for eviction has been made. The decree means the decree of the final court. This is so because once an appeal against decree or order of eviction is preferred, the appeal is a continuation of suit. [615 C, 616 B]

3:2. When an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events occur which if noticed would non-suit the plaintiff. the court has to examine and evaluate the same and mould the decree accordingly. The tenant is entitled to show that the need or requirement no more exists by pointing out such subsequent events, to the court including the appellate court. Otherwise the landlord would

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derive an unfair advantage, and it would be against the spirit or intendment of Rent Restriction Act which was

enacted to fetter the unfettered right of re-entry. In such a situation it would be 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. But the tenant can be precluded from so contending when decree or order for eviction has become final. [616 C-G]

Pasupuleti Venkateswarlu v. The Motor and General Traders, [1975] 3 S.C.R. 958, followed.

Taramal v. Laxman Sewak and Ors., 1971 Madhya Pradesh Law Journal p. 888, overruled.

3:3. In the instant case; (i) relying on the admission of the plaintiff himself that he has in his possession a shop admeasuring 18/x68 plus 7/x68 forming part of the same building and his failure to state that the space with 18 frontage is neither suitable not reasonably suitable nor sufficient for starting his business as Chemist and Druggist, the plaintiff's suit for eviction on the ground mentioned in section 12(1)(f) of the Madhya Pradesh Act must fail; (ii) the finding of the courts below that the respondent requires possession of the whole of the building including the one occupied by the tenant for starting his business as Chemist and Druggist as also for his residence is vitiated beyond repair. The observation of the High Court that the remaining portion of the premises would be used by the landlord for his residence and even though the portion utilised for the purpose of running the business would be smaller compared to the one to be utilised for the residence it would still not be violative of sub-section (7) of section 12 because such a composite user would not radically change the purpose for which the accommodation was let, is contrary to records and pleadings. [618 B-C, D-F, 619 B-C]

4:1. In order to obtain possession under section 12(1)(h) of the Madhya Pradesh Act the landlord has to establish his bonafide requirement of the accommodation in possession of the tenant for the purpose of building or rebuilding or making thereto any substantial additions or alterations and must further show that such building or re-building or alterations cannot be carried out without the accommodation being vacated. If the landlord succeeds in his prayer for possession on the ground mentioned in section 12(1)(h), it would be necessary for the court to give appropriate directions under section 18 of the Act. [619 F-G, 621 BC]

4:2. Here, as the matter has not been examined from this angle by any court, even though the litigation is pending for a long time, the case requires to be remanded to the first appellate court to ascertain: (i) whether the landlord is interested in re-constructing that portion of the building which is in possession of the tenant as demised premises; (ii) whether the landlord would be in a position to reconstruct the building in his possession without the tenant being required to vacate the demised premises and

(iii) if the first two queries are answered in favour of the landlord, what should be the appropriate directions to be given in favour of the tenant as enjoined by section 18 of the Act. [621 C-F]

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Per Pathak, J. (Concurring)

1. 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 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. Here, the High Court should have allowed the application for amendment of the written statement under Order VI Rule 17, Civil Procedure Code. [624 E-F]

2. Before the need for personal residence can be held proved, several considerations need to be proved under section 12(1)(e) of the Act. The omission to draw the attention of the High Court to the fact that the need for personal residence was never pleaded in the plaint led the High Court to fall into error in taking this element into account. [625 B-C]

Per Contra:

3:1. In the instant case, it is clear from the concurrent findings of the courts below that (a) the respondent has made out his case under section 12 (1)(h) of the Act that he requires the building including the portion occupied by the appellants for the re-construction of the front portion and repairs to the rear portion and that necessitates that the appellants vacate their accommodation and (b) the respondent needs a portion of the building for starting the business of a medicine shop. [625 E-G]

3:2. Whether or not the shop should be located in the front portion of the building and what should be the dimensions of the proposed Chemist and Druggist shop will turn on the evidence adduced by the parties in that behalf, Giving a finding on this point, in the circumstances of this case, is pre-eminently a task to be entrusted to a subordinate court. The questions for consideration by the appellate court are: (i) what should be the location of the shop and what should be the dimensions in the matter and (ii) availability of the benefit under section 18 of the Act to the appellants. [625 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1108 of 1976.

Appeal by special leave from the judgment and order dated the 17th April 1976 of the Madhya Pradesh High Court in Second Appeal No. 113 of 1969.

S.K. Mehta, P.N. Puri and E.M.S. Anam for the Appellants.

P.P. Juneja for the Respondent.

The following Judgments were delivered DESAI, J. A tenant under a decree of eviction is the appellant in this appeal by special leave.

Respondent landlord filed a suit for recovery of possession of premises being a small shop admeasuring 7'X 22' forming part of a big non-residential building situated in Sadar Bazar, Bilaspur town in Madhya Pradesh on two grounds, to wit: (i) that he (landlord) intended to open a medicine shop and he had no other reasonably suitable accommodation for the same in the town; and (ii) that he (landlord) required the suit building for the purpose of reconstruction and repairs which could not be carried out unless it was vacated by the defendant. The tenant resisted the suit pointing out that the landlord on his own admission as set out in plaint para 4 was in possession of a major portion of a non-residential building of which he acquired possession from the firm of Goraldas Parmanand which accommodation was sufficient for starting the business of Chemists and Druggists shop. It was also contended that the building was not in a dilapidated condition and did not need reconstruction and repairs.

The trial court recorded a finding that the building was in a dilapidated condition and reconstruction of it was essential and the landlord had sufficient funds to undertake reconstruction. On the question of personal requirement of plaintiff to start a medicine shop, the trial court recorded a finding that in the front portion of building landlord would start his business as Chemists and Druggists and the rear of the building would be utilized by him for his residence. It was further held that as the landlord's requirement was a composite one in that he wanted to reconstruct the building and then use the whole of it for himself, therefore, the tenant was not entitled to be inducted in the reconstructed building which he would have been entitled to claim under section 18 of the Madhya Pradesh Accommodation Control Act, 1961 ('Act' for short).

An appeal by the tenant to the District Court elicited in para 20 a finding that though the landlord was studying he might choose his career for business after he completed his education and he had got Rs. 8,000 in a fixed deposit account in a bank and even though he obtained a decree against the firm of M/s. Goral Parmanand he had not got actual possession as the litigation was still pending and, therefore, the plaintiff's requirement of the whole building was established. The finding that the house was in dilapidated condition and required reconstruction was affirmed.

When the matter reached the High Court in second appeal by the tenant an application under Order VI, rule 17, Code of Civil Procedure, was made praying for an amendment to the written statement alleging that the firm Goraldas Parmanand has vacated the whole of the remaining portion of the building excluding the premises in possession of the tenant measuring 7' X 22' and that the plaintiff has obtained actual possession of the same and if this aspect was taken into consideration the plaintiff landlord would not be entitled to a decree for eviction under s. 12(1)(f) of the Act. The High Court rejected the application observing that the adjoining portion occupied by firm Goraldas Parmanand was vacated by the firm as far back as in the year 1972 and therefore the application for

amendment filed 3 1/2 years after the filing of the appeal must be rejected on the ground of delay and laches. Further, despite the judgment of this Court in Pasupuleti Venkateswarlu v. The Motor and General Traders, the High Court felt considerable hesitation in taking note of this event subsequent to the passing of the decree for eviction by the trial court because of its earlier decision in Taramal v. Laxaman Sewak and Ors in which it was held that the definition of 'tenant' in the Act would not enable a tenant, though in possession but against whom a decree or order for eviction has been made, to invite the Court to take notice of events subsequent to the passing of the decree for eviction by the trial court. The decision of this Court was distinguished on the ground that the definition of the expression 'tenant' in Andhra Pradesh Building (Lease Rent and Eviction) Control Act, 1960, was somewhat different and was wide enough to include such persons. The High Court accordingly rejected the application and dismissed the second appeal confirming the decree for eviction.

Section 12(1)(f) under which eviction of the tenant is sought by the landlord reads as under:-

> "that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non residential accommodation of his own in his occupation in the city or town concerned."

In order to be able to seek eviction of a tenant under s. 12(1)(f) the landlord has not only to establish that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business but he must further show that the landlord has no other reasonably suitable nonresidential accommodation of his own in his occupation in the city or the town concerned.

The landlord in this case seeks eviction of the tenant from a building let for non-residential purpose. He can obtain possession either for continuing or starting his business. He was a student at the relevant time. He appeared to have completed his education thereafter. It is stated in the plaint unambiguously that he wanted to start business by opening a medicine shop. In other words, he wanted to start a Chemist and Druggist shop. He must, therefore, show that he has not got in his possession a reasonably suitable non- residential accommodation of his own in his occupation in the town of Bilaspur.

The suit building, as earlier observed, is in the city of Bilaspur and situated in Sadar Bazar, obviously a business locality. Respondent-landlord claims to be the owner of the whole building. The suit premises in possession of the tenant in which he is carrying on a small kirana shop admittedly admeasures 7 frontage on the main road and 22 in depth. In other words it is 7'X 22'. The whole building of which demised premises form a small part appears to be having a frontage of 28. 3 passage has to be excluded. The premises in possession of the tenant has a frontage of 7. The length of the building or what is styled as depth was given out to us as 90 by learned counsel for respondent- landlord. 18' frontage with 90' depth was thus in possession of firm Goraldas

Parmanand. Respondent landlord had also initiated proceedings for obtaining possession of the premises occupied by firm Goraldas Parmanand on the same ground, namely, that he wanted to start his business of Chemists and Druggists in the building.

The question is whether the premises occupied by firm Goraldas Parmanand has been vacated by the firm. If the answer is in affirmative, the respondent landlord has thus obtained vacant possession of the whole of the premises occupied by firm Goraldas Parmanand. Looking to the map annexed to the plaint and the evidence led in the case and the dimensions of the premises stated at the hearing of this appeal the area vacated by the previous tenant would be 18'X90' plus portion at the back of the premises occupied by the present appellant which would be 7'X 68' and it has come in possession of the respondent. The last question would be if landlord obtained vacant possession subsequent to the decree passed against the present appellant tenant by the Trial Court, whether the subsequent event could be noticed by the court for moulding the decree against the present appellant tenant.

Section 12 starts with a non-obstante clause thereby curtailing the right of the landlord to seek eviction of the tenant which he might have under any other law and the right of eviction is made subject to the overriding provision of section 12. It is thus an enabling section. In order to avail of the benefit conferred by section 12 to seek eviction of the tenant the landlord must satisfy the essential ingredients of the section. The landlord in this case seeks eviction of the tenant under section 12(1)(f). He must, therefore, establish (i) that he requires bona fide possession of a building let for non-residential purpose for continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. The burden to establish both the requirements of section 12(1)(f) is squarely on the landlord. And before an allegation of fact to obtain the relief required is permitted to be proved, the law of pleadings require that such facts have to be alleged and must be put in issue. Ordinarily, therefore, when a landlord seeks eviction under section 12(1)(f) the court after satisfying itself that there are proper pleadings must frame two issues namely (i) whether the plaintiff landlord proves that he bona fide requires possession of a building let to the tenant for non- residential purpose for continuing or starting his business, and (ii) whether he proves that he has no other reasonably suitable non-residential accommodation of his own in the city or town concerned. Without elaborating we must notice a well established proposition that any amount of proof offered without pleadings is generally of no relevance.

Turning to the pleadings in this case the plaintiff in para 6 of the plaint has stated as under:-

> "The plaintiff intends to start his own business in the said building after the said reconstruction. He intends to open a medicine shop therein. The plaintiff bona fide requires the suit house for the above purpose. He has no other suitable accommodation for the same in the town."

The cryptic averment is that the plaintiff has not got any other reasonably suitable accommodation in the same town. However, in para 4 of the plaint it is stated 'that the major portion of the building is in occupation of the firm Goraldas Parmanand and the plaintiff has already obtained a decree for

its eviction therefrom'. The defendant in his written statement has in term stated that the defendant is in possession of a small portion of the building, the remaining portion of which was in possession of firm M/s. Goraldas Parmanand. In para 6 of the written statement it is further stated that on his own admission, the plaintiff has got a suitable alternative accommodation being the premises for which a decree of eviction is obtained for doing business and which is more than sufficient for his requirement. The learned Trial Judge framed Issue No. 2(a) on the question whether the plaintiff landlord had no other reasonably suitable accommodation of his own in his occupation in the city. While recording finding on this issue the cryptic observation in para 19 of the judgment is that the plaintiff is a student and he has no other accommodation for starting his own business. There is not the slightest reference to the decree admittedly obtained by the plaintiff against firm M/s. Goraldas Parmanand which firm was carrying on business in a portion of the building which the plaintiff himself has described as the major portion of the building, the suit premises being a small portion of the whole building. In the first appeal this contention is disposed of by observing that the alternative accommodation which the defendant has pleaded in his written statement is under litigation and therefore it cannot be treated as available to the plaintiff.' In the second appeal in the High Court the defendant appellant moved an application under Order VI Rule 17 for amendment of the written statement for elaborating what was already stated that not only the decree obtained by the plaintiff against the adjoining tenant of the same building namely firm of M/s. Goraldas Parmanand has become final but the plaintiff in execution of the decree way back in 1972 obtained actual possession of the whole of area occupied by that firm and that forms major portion of the whole building. This application, though, in our opinion, to be wholly superfluous in view of the pleadings hereinbefore set out and in view of the fact that the burden of proof of establishing that the landlord was not in possession of a reasonably suitable accommodation in the same town was on the plaintiff was rejected on untenable ground that the defendant appellant was guilty of delay and laches. This application for amendent deserves to be granted, and we grant the same. What is its impact ? Even while rejecting the application the High Court in terms observed in para 4 of its judgment as under:-

'Adjoining portion was vacated by firm Goraldas Parmanand as far back as in the year 1972'.

The High Court thus had before it a fact beyond dispute and beyond controversy that the major portion of the building was vacated by the adjoining tenant way back in 1972. This was an uncontroverted fact. Therefore remand on this point is an exercise in futility because the fact alleged in the application for amendment is admitted. After rejecting the application on wholly untenable ground the High Court in 1976 affirmed the finding wholly contrary to record as available at that stage that the plaintiff landlord had no other reasonably suitable non-residential accommodation of his own in his occupation in the city even though on landlord's own admission he had acquired vacant possession of a major portion of the building let for non-residential purpose as far back as 1972. In the course of hearing we were repeatedly told that the finding of facts are sacrosanct. The finding of fact ignoring incontrovertible admitted position which would non-suit the plaintiff if upheld would be travesty of justice. The burden being on the plaintiff to show that he had no other reasonably suitable accommodation for carrying on the business which he wanted to start in the suit premises, it was for the plaintiff to show that he had not acquired possession from firm Goraldas Parmanand. Alternatively the plaintiff should have shown that the said adjacent accommodation was not reasonably suitable for the business he wanted to start. He has done neither. On the

contrary plaintiff has admittedly adopted a position in the plaint that he not only wanted suit premises but also the adjoining premises of which he had obtained possession for starting his business. In such a situation if the High Court had kept in view that the plaintiff had already with him viz. possession of a building having 18 frontage on the main road and 90 depth plus portion at the back of the suit premises in his possession it would have to come to an affirmative conclusion that the plaintiff had sufficient accommodation for starting his business as a Chemists and Druggists. It was no where pointed out by the plaintiff that the shop of Chemists and Druggists or a medicine shop would require frontage of more than 18'. 18' frontage on a main road in a city like Bilaspur is sufficiently attractive and accommodating. The depth of the shop as given out to us being 90'; therefore landlord has now in his possession shop admeasuring 18' x 90' plus the area of 7' x 90' at the back of the suit premises being part of the same building. Would this not provide more than ample accommodation to the plaintiff to start his business as a Chemists and Druggists ? Not one word has been said that the accommodation which is already in possession of the plaintiff is neither suitable nor reasonably suitable nor sufficient for starting his business. In fact the very stand of plaintiff landlord as accepted by the High Court that some portion at the back would be utilised by landlord for residence would affirmatively establish that landlord has more than enough vacant accommodation in possession for starting his business.

The difficulty which the High Court experienced was whether a tenant under a decree of eviction could invite the Court to take into consideration the events subsequent to passing of the decree which if noticed would non-suit the landlord.

The definition of expression 'tenant' in the Act excludes from its operation a person in possession against whom any order or decree for eviction has been made. The High Court referred to its earlier judgment in Taramal's case wherein it was held that the protection to a statutory tenant lapsed with the passing of a decree and such a person had no right to bring on record new circumstances which were not in existence at the date of the passing of the decree. This approach wholly overlooks the scheme of the Rent Restriction Act. The M.P. Act enables a landlord to seek eviction of a tenant and obtain possession under various circumstances set out in section 12. If a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the Court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Registration Act. If the landlord is able to show his requirement when the action is commenced and the requirement continued till the date of the decree of the Trial Court and thereafter during the pendency of the appeal by the tenant if the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in

exercise of the right an appeal is preferred the decree or order ceases to be final. What the definition of 'tenant' excludes from its operation is the person against whom the decree or order for eviction is made and the decree or order has become final in the sense that it is not open to further adjudication by a court or heirarachy of courts. An appeal is a continuation of suit. Therefore a tenant against whom a decree for eviction is passed by Trial Court does not lose protection if he files the appeal because if appeal is allowed the umbrella of statutory protection shields him. Therefore it is indisputable that the decree or order for eviction referred to in the definition of tenant must mean final decree or final order of eviction. Once an appeal against decree or order of eviction is preferred the appeal being a continuation of suit, landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage. An illustration would clarify what we want to convey. A landlord was in a position to show he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suited. Can the court shut its eyes and evict the tenant ? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re- entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but 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 proceeding from court to court if subsequent events occur which if noticed would non suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly. This position is no more in controversy in view of a decision of this Court in Pasupuleti Venkateswarlu (supra) where Justice Krishna Iyer speaking for the Court observed as under:-

> "We affirm the proposition that for making the right or remedy claimed by the party just and meaningfully as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautions cognisance of events and development subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously observed."

In order to fully evaluate the law laid down in the aforementioned extracted passage it is worthwhile to give the background of facts in which it was made. The appellant landlord in that case was the owner of a large building which was leased out in separate portions to several tenants. One of such tenants was the respondent. The landlord wanted to start a business in automobile spares and claimed eviction of the respondent under the Rent Restriction Act being Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The petition was resisted and the Rent Controller dismissed the petition. The appeal of the landlord failed. But in revision the High Court chose to remand the case to the appellate authority and the appellate authority in turn remitted the case to the Trial Court for fresh disposal in accordance with certain directions. The landlord preferred a revision petition against the order of remand by the first appellate court. The High Court dismissed

the action of the landlord taking cognisance of a subsequent event namely that the landlord acquired possession of a reasonable suitable non-residential building in the same town. In appeal to this Court it was seriously contended that it was improper for the High Court to take into consideration the subsequent events and this contention was negatived inter alia on the ground in the passage extracted above. 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 landlord's 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. He can be precluded from so contending when the decree or order for eviction has become final. In view of the decision in Pasupuleti's case (supra) the decision of the Madhya Pradesh High Court in Taramal's case must be taken to have been overruled and it could not be distinguished only on the ground that the definition of 'tenant' in the Madhya Pradesh Act is different from the one in Andhra Pradesh Act. Therefore, the High Court was in error in declining to take this subsequent event which was admittedly put forth in the plaint itself into consideration.

The landlord wants to start his business as Chemists and Druggists. On his own admission he has in his possession a shop admeasuring 18' X 90' plus 7' X 68' forming part of the same building the remaining small portion of 7' X 22 is occupied by the tenant. The landlord has not stated that so much space with 18' frontage is not reasonably suitable for starting his business as Chemist and Druggist. In that view of the matter the plaintiff's suit for eviction on the ground mentioned in section 12(1)(f) must fail and this is being done by not disturbing any finding of fact but relying upon the admission of the plaintiff himself.

There is an error apparent on the face of the record inasmuch as when the High Court was faced with a dilemma whether the landlord required the whole of the building including demised premises now in possession of the appellant tenant for starting his business of Chemists and Druggists and when the High Court had before it an indisputable fact that the respondent landlord has obtained vacant possession of a major portion of the building which was in possession of firm M/s. Goraldas Parmanand, was it necessary for him to have any additional accommodation ? The High Court got over this dilemma by observing and by affirming the finding of the subordinate courts that the remaining portion of the premises would be used by the landlord for his residence and even though the portion utilised for the purpose of running the business would be smaller compared to the one to be utilized for the residence it would still not be violative of sub-section (7) of sec. 12 because such a composite user would not radically change the purpose for which the accommodation was let. This finding is contrary to record and pleadings. Minutely scanning the plaint presented by the landlord there is not the slightest suggestion that he needs any accommodation for his residence. He has not even stated whether at present he is residing in some place of his own though he claimed to be residing in the same town. He does not say whether he is under any obligation to surrender that premises. Section 12(1)(e) specifically provides for a landlord obtaining possession of a building let for residential purposes if he bona fide requires the same for his own use and occupation. But there is an additional condition he must fulfil namely he must further show that he has no other reasonably suitable residential accommodation of his own in his occupation in the city or town

concerned. Utter silence of the landlord on this point would be a compelling circumstance for the court not to go in search for some imaginary requirement of the landlord of accommodation for his residence. In the context of these facts the Trial Court and the first Appellate Court committed a manifest error apparent on the record by upholding the plaintiff's case by awarding possession also on the ground neither pleaded nor suggested. The landlord must have been quite aware that he cannot obtain possession of any accommodation for his residence. There fore, the finding of the High Court and courts subordinate to it that the respondent-landlord requires possession of the whole of the building including the one occupied by the tenant for starting his business as Chemists and Druggists as also for his residence is vitiated beyond repair. Once impermissible approach to the facts of the case on hand is avoided although facts found by the Courts are accepted as sacrosanct yet in view of the incontrovertible position that emerges from the evidence itself that the landlord has acquired major portion of the building in which he can start his business as Chemists and Druggists he is not entitled to an inch of an extra space under section 12(1)(f) of the Act.

Respondent landlord also sought possession on the ground set out in section 12(1)(h) which reads as under:-

> "that the accommodation is required bona fide by the landlord for the purpose of building or rebuilding or making thereto any substantial additions or alternations and that such building or re-building or alterations cannot be carried out without the accommodation being vacated."

In order to obtain possession under section 12(1)(h) the landlord again has to establish his bona fide requirement of the accommodation in possession of the tenant for the purpose of building or rebuilding or making thereto any substantial additions or alterations and must further show that such building or re-building or alterations cannot be carried out without the accommodation being vacated. The case of the landlord on this point is that he wants possession of the whole of the building including the suit premises and he has Rs. 8,000 in a fixed deposit account and that as the building is in a dilapidated condition, he would reconstruct the same and use it for himself both for residence and starting his business.

If landlord acquires possession under section 12(1)(h), section 18 imposes corresponding obligation which reads as under:-

> "18. Recovery of possession for repairs and rebuilding and re-entry.-(1) In making any order on the grounds specified in clause (g) or clause (h) of sub- section (1) of Sec. 12, the Court shall ascertain from the tenant whether he elects to be placed in occupation of the accommodation or part thereof from which he is to be evicted and, if the tenant so elects, shall record the fact of the before election in the order and specify therein the date on or which he shall deliver possession so as to enable the landlord to commence the work of repairs or building or re-building, as the case may be."

The courts declined to grant any relief to the tenant under section 18 on the ground that as the landlord's requirement is a composite one, the tenant is not entitled to be re- inducted in the building that may be reconstructed by the landlord after obtaining possession of the same. Now once it is held that the landlord is not entitled to possession for his residence and he has more than enough accommodation in his possession for carrying on his business, the composite requirement disappears. Landlord's case will, therefore, have to be exclusively examined in the context of section 12(1)(h).

Two contentions were urged on behalf of the appellant to negative the case of the landlord in this behalf; one that the building is not in a dilapidated condition and secondly it can be repaired without vacating the premises. As all the courts have concurrently found that the building is in a dilapidated condition, this finding is entitled to respect and it is not proper for us to interfere with the same. The question would however be whether the landlord wants to reconstruct the demised portion of the premises even though he is not entitled to acquire possession of the same for his use and that he would be under an obligation to re-induct the tenant after its construction. The further question is whether the landlord is interested in reconstructing the whole building. It was alternatively contended that no attempt is made to find out whether the landlord would be in a position to reconstruct that part of the building which has come in his possession once he is not in a position to acquire possession of the demised premises for his own use. This situation calls for a fresh examination of the case of the landlord under section 12(1)(h). If landlord is to be awarded possession under section 12(1)(h) on the footing that, that is the only ground on which he can seek possession, it will have to be found out after giving oppor-

tunity to the landlord to prove whether he is interested in re-building that portion of the building which is occupied by the appellant and further the court should give necessary direction under section 18. In that event the court will have also to ascertain whether the portion which is now in possession of the landlord and which he may be interested in reconstructing can be reconstructed without the tenant vacating the demised premises. As the whole foundation of the landlord's case of composite requirement disappears the matter has to be examined afresh on the footing that the landlord has come to the court for possession under section 12(1)(h) only and if he succeeds in his prayer for possession on the ground mentioned in section 12(1)(h) it would be necessary for the court to give appropriate direction under section 18 of the Act. As the matter has not been examined from this angle by any Court it has become inevitable, even though the litigation is pending for a long time, to remit the case for examination of this aspect. The question is whether the remand should be to the first appellate court or to the trial court. As the first appellate court is the fact finding court, in our opinion it would be appropriate for us to remit the case, after setting aside the decree of the first appellate court as well as the High Court, to the first appellate court to ascertain :-

(i) Whether the landlord is interested in reconstructing that portion of the building which is in possession of the tenant as demised premises;

(ii) Whether the landlord would be in a position to reconstruct the building in his possession without the tenant being required to vacate the demised premises; and

(iii)if the first two queries are answered in favour of the landlord, what should be the appropriate directions to be given in favour of the tenant as enjoined by S. 18 ?

Accordingly, this appeal is allowed and the decree of eviction made by the trial court and confirmed by the 1st appellate court and also by the High Court is set aside. The prayer of the landlord for possession under section 12(1)(f) is negatived as he is not entitled to recover possession on the ground mentioned in section 12(1)(f). The matter is remanded to the 1st Appellate Court for the limited purposes set out in the just preceding paragraph. In the circumstances of the case there will be no order as to costs.

PATHAK J. This is tenant's appeal by special leave against the judgment of the High Court of Madhya Pradesh arising out of a suit for ejectment.

The suit was filed by the respondent, Raghunath Prasad. He claimed to be the owner of a building in Sadar Bazar, Bilaspur. One portion of the building was occupied by a firm Goraldas Permanand. According to the plaint, the entire building was in a dilapidated condition and the plaintiff intended to reconstruct the front portion of the building and to effect major repairs in the rear portion. In order to do so it was said to be necessary that the defendants should vacate the accommodation. In regard to the other portion, the plaintiff stated that he had obtained a decree for ejectment against Goraldas Parmanand. The plaintiff also alleged that he intended to start the business of a medicine shop and for that purpose he required the accommodation occupied by the defendants as it faced the main road in Sadar Bazar, and that he had no other suitable accommodation in the town for such business.

The suit was resisted by the defendants, and a number of pleas were taken. In particular it was denied that the accommodation occupied by them was dilapidated and that it was bona fide required by the plaintiff. It was claimed that in view of the decree for ejectment against Goraldas Parmanand the plaintiff had suitable alternative accommodation for his proposed business.

The trial court found that the entire building, including the accommodation occupied by the defendants, needed reconstruction and repairs, and that for the purpose of his projected business the plaintiff had bona fide need of the accommodation held by the defendants. It was observed that the accommodation occupied by Goraldas Parmanand was still under litigation as an appeal was pending in the case. Holding that the grounds under section 12(1) (f) and 12(1)(h) of the Madhya Pradesh Accommodation Control Act were made out, the suit was decreed for ejectment.

The defendants preferred an appeal, and the first appellate court while dismissing the appeal maintained the findings of the trial court and upheld the order of ejectment.

A second appeal by the defendants was dismissed by the High Court on 17th April, 1976. During the pendency of the appeal the defendants moved an application under Order VI, Rule 17 of the Code of Civil Procedure for leave to amend their written statement by adding the plea that the plaintiff had secured vacant possession of the adjoining portion of the building from Goraldas Parmanand in the year 1972, and that the case should be remanded for deciding whether the accommodation acquired

was reasonably suitable for starting a medicine shop, the purpose for which the plaintiff said he required the accommodation held by the defendants. The High Court rejected the application observing that it had been moved three and a half years after the event had taken place, that it was not made bona fide but was intended merely to gain time and would result in grave injustice to the plaintiff. The High Court also observed that even if the amendment was allowed it would not affect the decision of the case, because as the plaintiff's need extended to entire building his securing vacant possession of one part would not conclude the matter. It was pointed out that the plaintiff intended to reconstruct the entire portion of the building including the accommodation occupied by the defendants, as well as effect major repairs to the rear portion of the building. In place of the shop of the defendants with a frontage of 7 and a depth of 22 and the adjoining shop with a frontage of 10 and a depth of 90, the plaintiff intended to demolish the front portion of both the shops and to reconstruct the building with a new shop having a wide frontage of 22' and a depth of 7', and to reside in the rear portion of the building. The High Court added that residence in the rear portion of the accommodation would not alter the nature of the accommodation as the residence would be incidental to the main purpose of carrying on the medicine business in the front portion of the building.

The defendants having obtained special leave from this Court this appeal is now before us.

As analysis of the plaint shows that the ejectment of the appellants was sought on two grounds. The respondent intended to reconstruct the front portion of the dilapidated building and to repair the rear portion and according to him this required the appellants to vacate the accommodation occupied by them. That clearly is the ground envisaged by s. 12(1)(h), Madhya Pradesh Accommodation Control Act. That ground stood on its own. The respondent also intended to open a medicine shop in the front portion of the building, and he pleaded that he had no other accommodation for the purpose. That brings into play s. 12(1)(f) of the Act. The plea shows that as the dilapidated building required reconstruction and repairs, the respondent indended to avail of the opportunity to so effect the structural alterations as to accommodate a medicine shop which he planned to start as a business in the premises. This latter ground arose as a sequel to the first. If the first ground was made out, the appellants would have to vacate the portion held by them, and if that had been the only ground the court would automatically be called upon to consider s. 18 of the Act, which entitles the tenant at his option to be reinstated in a portion of the reconstructed building. There was the further ground that the respondent proposed to start his own business in the front portion of the building, and the finding of the High Court that the respondent wanted the rear portion of the building for his personal residence.

The subordinate courts were influenced by the consideration that although the respondent had obtained a decree for ejectment against Goraldas Parmanand, the case continued to be the subject of litigation and therefore it could not be said that the respondent was in possession of alternative accommodation. However, while the second appeal was pending in the High Court the appellants applied for amendment of their written statement to include the plea that the respondent had meanwhile obtained possession from Goraldas Parmanand. The High Court declined to permit the amendment. In doing so, it seems to me that the High Court erred. It was an essential part of the appellants' defence from the outset that the portion let out to Goraldas Permanand constituted

suitable alternative accommodation, and therefore they should not be ejected. 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. That position, to my mind, is indisputable. The High Court should have allowed the amendment. The High Court, alternatively observed that the respondent wanted to accommodate his shop in the front portion of the building and therefore, of necessity, he would require the portion occupied by the appellants. That conclusion is based on the findings rendered by the courts below, which findings the High Court respected as findings of fact. But the High Court failed to note that both the courts below had proceeded on the assumption that the adjoining portion occupied by Goraldas Parmanand was not immediately available on account of litigation. It is for that reason that permitting the amendment sought by the appellants became relevant and, indeed, imperative. If the respondent has obtained possession of that portion, and that does not seem to be disputed, it becomes a serious question for decision whether the respondent needs the front portion of the building for his medicine shop and, if so, according to dimensions proposed by him. In the consideration of that question the element of the respondent's need for the rear portion of the building for his personal residence must be ignored. That need was never pleaded in the plaint and, as will be seen from s. 12(1)(e) of the Act, several considerations need to be satisfied before the need can be held proved. This aspect of the matter was apparently not brought to the notice of the High Court and therefore it fell into the error of taking this element into account.

My brother Desai has in his judgment held that the respondent can accommodate his medicine shop in the portion vacated by Goraldas Parmanand and he has indicated the dimensions of the shop which appear reasonable to him. With great respect I am unable to concur with what he has said. Whether or not the shop should be located in the front portion of the building and what should be its dimensions will turn on the evidence adduced by the parties in that behalf. The original record of the suit is not before us, and without knowledge of the state of the evidence I would refrain from a finding on the point. Indeed, it seems to me in the circumstances of this case to be pre-eminently a task to be entrusted to a subordinate court.

The position which then emerges is this. The respondent has made out his case under s. 12(1)(h) of the Act that he requires the building, including the portion occupied by the appellants, for reconstruction of the front portion and repairs to the rear portion, and that necessitates that the appellants vacate their accommodation. This matter is concluded by the concurrent findings of fact rendered by the trial court and the first appellate court. It is also concluded by concurrent findings of fact that the respondent needs a portion of the building for starting the business of a medicine shop. What should be the location of the shop and what its dimensions is a matter which remains for decision. And there is the further question of considering the availability of s. 18 of the Act to the appellants. Both these questions, I think, should be left to the first appellate court.

Accordingly, I allow the appeal, set aside the judgment and decree of the High Court and of the first appellate court and remand the case to the latter court for permitting the appellants to amend their

written statement and allowing the parties to lead such evidence as is consequentially called for, and thereafter to decide the case afresh in the light of the observations made above. I would leave the parties to bear their costs.

S.R. Appeal allowed.