Supreme Court of India
Phiroze Bamanji Desai vs Chandrakant M. Patel & Ors on 4 February, 1974
Equivalent citations: 1974 AIR 1059, 1974 SCR (3) 267
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
PHIROZE BAMANJI DESAI

Vs.

RESPONDENT:
CHANDRAKANT M. PATEL & ORS.

DATE OF JUDGMENT04/02/1974

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
GOSWAMI, P.K.

CITATION:
1974 AIR 1059 1974 SCR (3) 267
1974 SCC (1) 661
CITATOR INFO :
R 1979 SC 272 (14)
RF 1987 SC1782 (1)
RF 1987 SC2220 (6)
F 1988 SC1060 (13)
RF 1988 SC1422 (5)

ACT:
Bombay Rents Hotel and Lodging House Rates (Control) Act (57 of 1957), Sections 13(1)(g), 13(2) and 29(3)--Reasonable and bonafide requirement of premises for personal use and occupation--Juridical possession of other premises by landlord--Whether can be taken into account in determining need of landlord.
Bombay Rents, Hotel and Lodging House Rates (Control) Act, Sec. 29(3) Revisional powers of the High Court--Scope--High Court can interfere only if there is miscarriage of justice due to mistake of law--Finding of lower court as to bona fide requirement and greater hardship to landlord--Interference by High Court by re-appreciating evidence not permissible.

HEADNOTE:
The appellant was the owner of-two bungalows, called "Truth Bungalow" and "Hill Bungalow" in Navsari, South Gujarat.

The Truth Bungalow consisted of only one tenement with a separate room on the ground floor which was in the possession of the appellant. The rest of the Truth Bungalow which had been let out to a tenant who subsequently surrendered possession was given on leave-and-licence to one B in 1967.

The Hill Bungalow consisted of two tenements, one on the ground floor and the other on the first floor. The first floor is occupied by S, the mother of the appellant since the last several years. She was paying a sum of Rs. 50/- p.m. to the appellant for the occupation of the first floor. The ground floor of the Hill Bungalow was let out by the appellant to one M in 1957 at a rent of Rs. 65/- p.m. M died in September 1966 leaving behind him his widow, respondent No. 5, his son, Resp. No. 1 and his daughter, respondent No. 2. Sometime prior to the death of M respondent Nos. 3 and 4 together with the members of their respective families had come to reside in the ground floor premises. After the death of M they continued to stay with respondent No. 1, Respondent Nos. 2 and 5, however, left the ground floor premises and went away from Navsari soon after the death of M. The appellant by a notice dated 15-10-1966 terminated the tenancy of respondent Nos. 1, 2 and 5, on the ground that they had unlawfully sub-let the ground floor premises to respondents Nos. 3 and 4 within the meaning of sec. 13(1)(e) of the Act. However, the respondents failed to hand over vacant possession of the ground floor premises to the appellant. Therefore, on 18-1-1967, the appellant filed a suit for eviction under sec. 13(1)(e) of the Act. The appellant was carrying on his profession as an Architect and Consulting Engineer in Bombay since 1960, when he retired from Army Service,. He lived in a flat in Bombay for which he paid Rs. 475/- p.m. The principal area of his work in the early stages of his career was Bombay and South Gujarat but by about the middle of 1968. his work in Bombay practically dwindled to nil and his professional activities became confined almost exclusively to South Gujarat. The appellant accordingly decided to settle down in Navsari which was his native place where his mother was living for last several years and from where he would be able to carry on his profession conveniently, economically and with advantage. The appellant accordingly amended the plaint in the pending suit with the leave of the Court introducing an additional ground that he reasonably and bona fide required the ground floor premises for hi-, personal use and occupation and was, therefore, entitled to recover possession u/s 13(1)(g) of the Act. Respondent Nos. 2 and 5 did not contest the suit of the appellant as they were not residing in the ground floor premises and the main defence was on behalf of respondent Nos. 1, 3 and 4,

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who denied the allegations made in the plaint and disputed the grounds on which possession was sought to be recovered

by the appellant.

The trial Court on consideration of the evidence led on behalf of the appellant and respondent nos. 1,3 and 4, took the view that the appellant had not established that respondents nos. 3 and 4 were sub-tenants of respondent no.1 and, therefore, the appellant was not entitled to recover possession of the ground floor premises on the ground of unlawful sub-letting. However, the trial court held that the evidence on record was sufficient to establish that the appellant reasonably and bona fide required the ground floor premises for personal use and occupation and it was also clear from the evidence that greater hardship would not be caused to respondent nos. 1, 2 and 5 by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. The trial Court passed a decree for eviction against the respondents. On appeal by the respondents, nos. 1 to 4, to the District Court, the District Judge confirmed the decree for eviction and dismissed the appeal. This led to the filing of Revision Application before the High Court u/s 29(3) of the Act. The High Court interfered with the findings of the District Judge on both the questions, namely, reasonable and bona fide requirement for personal use and occupation as also greater hardship and held on re-appreciation of the evidence that the appellant had failed to establish that he reasonably and bona fide required the ground floor premises for his personal use and occupation and in any event, greater hardship would be caused to respondent no. 1 by passing a decree for eviction than by refusing to pass it. The High Court accordingly set aside the decree for eviction and dismissed the suit of the appellant. On appeal by special leave to this Court, the appellant contended that in reversing the findings of the District Judge on the aforesaid questions, the High Court exceeded its jurisdic-tion u/s 29(3), since both these findings were findings of fact which did not suffer from any mistake of law and the jurisdiction of the High Court under that section was limited only to examining whether the decision of the District Judge was "according to law".

HELD : (1) The High Court was. on the evidence of record, in error in reversing the findings of fact recorded by the District Judge. For the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bona fide, what was necessary to be considered was not whether the appellant was juridically in possession of the Truth Bungalow but whether the Truth Bangalow was available to the appellant for occupation so that he could not be said to need the ground floor premises. If the Truth Bungalow was in occupation of B on leave And licence, it was obviously not available to the appellant for occupation and it could not be taken into account for negativing the need of the appellant for the ground floor premises.

The finding of the District Judge on the question of reasonable and bona fide requirement was clearly one of fact. The Dist. Judge did not misdirect himself in regard to the true meaning of the word "require" in sec. 13(1) (g) and interpreted it correctly to mean that there must be an element of need before a landlord can be said to "require" the premises for his own use and occupation. [274 C]

it is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation. This was the correct test applied by the Distt. Judge to the facts found by him. Therefore, it was not competent for the High Court in the exercise of its revisional power under sec. 29(3) to interfere with this finding by re-appreciating the evidence. The High Court's reappraisal of the evidence and substitution of its own findings of fact in place of that reached by the District Judge was clearly outside the scope of the revisional power u/s 29(3). [2-74 F]

The High Court can interfere with the decision of the lower court u/s 29(3) only' if there is miscarriage of justice due to mistake of law. The High Court cannot reassess value of the evidence and interfere with a finding

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of fact merely because it thinks that the appreciation of the evidence by the lower court is wrong and the lower Court should have reached a different conclusion of fact from what it did. [273 F]

Hari Shankar v. Rao Girdharilal Chaudhury [1962] Supp. I S.C.R. 933, Bell & Co. Ltd. V. Waman Hemraj [1938] 40 Bom. L. R. 125 and Puranchand v. Motilal [1963] Supp. 2 S.C.R. 906 relied on.

(2) On the question of greater hardship, the District Judge decided against the respondents on the view that as soon as the landlord establishes that he reasonably and bona fide requires the premises for his own use and occupation, the burden of proving the greater hardship by passing a decree for eviction than refusing to pass it is on the tenant and if the tenant fails to discharge this burden by producing proper evidence, a decree for eviction must go against him. This view in regard to the burden of proof is not correct law. [276 C]

Kelly v. Goodwin, [1947] All Engl. Report 810, distinguished.

M/s. Central Tobacco Co. v. Chandra Prakash, Civil Appeal No. 1175/69 dated 23-4-69, followed.

The High Court was consequently justified in interfering with the finding recorded by the District Judge on the question of greater hardship and arriving at its own finding on the basis of the correct principle laid down by this Court. But the High Court fell into an error in appreciating the evidence and coming to the conclusion that greater hardship won d be caused to respondent No. 1 by passing a decree. for eviction than by refusing to pass it.

There was no evidence to support this finding by the High Court. The evidence was entirely the other way. [277 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2208 of 1972.

(Appeal by Special Leave from the Judgment and Order dated the 3rd April, 1972 of the Gujarat High Court in Civil Revision Application No. 325 of 1970).

R. M. Mehta, S. K. Dholakia and R. C. Bhatia, for the Appellant.

C. S. Rao, for the Respondent.

The Judgment of the Court was delivered by BHAGWATI, J. This appeal, by special leave, arises out of a suit filed by the appellant to recover possession of certain premises from the respondents. In order to appreciate the contention that has been raised in the appeal, it is necessary to notice the-facts giving rise to the appeal in some detail.

The appellant is the owner of two bungalows in Navsari, a town situate in South Gujarat. One bungalow is known by the name of Truth Bungalow while the other is known by the name of Hill Bungalow. The Truth Bungalow consists of only one tenement with a separate room on the ground floor. It was common ground between the parties and that appears clearly from the evidence and has also been found by the High Court as well as the lower courts, that this separate room on the ground floor of the Truth Bungalow was at all material times in the possession of the appellant. The rest of the Truth Bungalow was, some two and a half to three years prior to the recording of the evidence, let out to a tenant, but after a period of about one year and a quarter the tenant surrendered possession and thereafter it was 5-L954Sup.C. I. /74 given by the appellant to one Dr. Bharucha on leave and licence on payment of compensation of Rs. 50/- per month. The appellant in his evidence could not state precisely when this leave and licence 'was granted by him. He said that it was given in January 1966 or it may be in January 1967. We shall, for the purpose of this appeal, proceed on the basis that it was given in January 1967, for that would be more favourable to the respondent than taking January 1966 as the time when it was granted. Dr. Bharucha was thus in occupation of the Truth Bungalow, barring the ground floor room in the possession of the appellant, from January 1967 on leave and licence from the appellant.

The Hill Bungalow consists of two tenanments, one on the ground floor and the other on the first floor. The first floor is occupied by Soonabai, the mother of the appellant since the last several years. She is an old lady, aged about 82 years at the time of giving evidence but, as the evidence shows, age does not seem to have withered away her interest in life. There was some controversy before, the lower courts as to whether in respect of the first floor occupied by her, Soonabai was a tenant or a licence of the appellant. The lower courts held that she a tenant, while the High Court took the view that she was a licence. We shall presently examine this controversy but one thing may be made clear

at this stage namely, that Soonabai was paying a sum of Rs. 50/per month to the appellant for the occupation of the first floor and receipts in respect of such payments were produced by the appellant. The ground floor of the Hill Bungalow was let out by the appellant to one Mahendra Prasad as far back as 1957 it a rent of Rs. 65/- per month. Mahendra Prasad died in September 1966 leaving him surviving as his legal representatives his widow the fifth respondent. his son the first respondent and his. daughter the second_ respondent. Sometime prior to the death of Mahendra Prasad, respondents 3 and 4 together with the members of their respective families had come to reside in the ground floor premises and after the death of Mahendra Prasad, they continued to stay with the first respondent. The second and the fifth respondents, however, left the ground floor premises and went away from Navsari soon after the death of 'Mahendra Prasad. The appellant, by a notice dated 15th October, 1966, terminated the tenancy of respondents 1, 2 and 5 on the ground that they had unlawfully sub-let the ground floor premises to respondents 3 and 4. Though the tenancy in respect of the first floor premises was thus terminated by the appellant, the respondents failed to hand over vacant possession of the ground floor premises to the appellant and the appellant was accordingly constrained to file regular suit No. 26 of 1967 in the court of the ,Civil Judge, Senior Division, Navsari on 18th January 1967. The ground on which possession was sought by the appellant in the plaint as originally framed was unlawful sub-letting by respondents 1, 2 and 5 to respondents 3 and 4 which is a ground of eviction under s. 13(1) (e) of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the Bombay Rent Act). the appellant was carrying on his Profession as architect and consulting engineer in Bombay since 1960 when he retired from Army service. He lived in a flat in Bombay for which he paid a rent of Rs. 475/- per month. The principal area of work in the early stages of his professional career was Bombay and South Gujarat but by about the middle of 1968 his work in Bombay practically dwindled to nil and his professional activities became confined almost exclusively to South Gujarat. The ;appellant found that in the circumstances there was no point in his continuing to live. in Bombay and pay a high rent of Rs. 475/- per month which was a serious drain on his purse. The. appellant accordingly decided to settle down in Navsari which was his native place, where his mother was living for the last several years and from where he would be able to carry on his profession conveniently, economically and with advantage. Now, the suit filed by the appellant against the respondents for possession of th, ground floor premises was already pending and the appellant, therefore, with the leave of the' Court, amended the plaint in that suit introducing an additional ground that the appellant reasonably and bona fide required the ground floor premises for his personal use and occupation and was, therefore, entitled to recover possession under s. 1 3 (1) (g) of, the Bombay Rent Act.

Respondents 2 and 5 did not contest the suit of the appellant as they were not residing in the ground floor premises and the main defence was on behalf of respondents 1, 3 and 4 who denied the allegations made in the plaint and disputed the grounds on which possession was sought to be recovered by the appellant.

The trial court, on consideration of the evidence led on behalf of the appellant and respondents 1, 3 and 4, took the view that, though respondents 3 and 4 together with the members of their respective families were residing in the ground floor premises with the first respondent, it was not established by the appellant.that they were subtenants of the first respondent and the appellant was, , therefore,

not entitled to recover possession of the ground floor premises on the ground of unlawful sub-letting. However, so far as the. ground of reasonable and bona fide requirement for personal use and occupation was concerned, the trial court held that the evidence co record was sufficient to establish that the appellant reasonably and bona fide required the ground floor premises for personal user and, occupation and it was also clear from the evidence that greater hardship would riot be caused to respondents 1, 2 and 5 by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. The trial court accordingly passed a decree for eviction against the respondents. Respondents 1 to 4 being aggrieved by the decree for eviction preferred an appeal in the District Court, Bulsar. "he District Judge, who heard the appeal, found himself in complete agreement with the conclusions reached by the trial court and he accordingly confirmed the decree for eviction and dismissed the appeal. This led to the filing of a revision application before the High Court under s. 29, sub-s. (3) of the Bombay Rent Act. The High Court in revision interfered with the findings of the District Judge on both the questions, namely, reasonable and bona fide requirement for persona' use and occupation as also greater hardship and held, on an appreciation of the evidence, that the appellant had failed to establish that reasonably and bona fide required the ground floor premises for his own use and occupation and in any event the evidence showed that greater hardship would be caused to the first respondent by passing a decree for eviction than by refusing to pass it. The High Court, accordingly, set aside the decree for eviction and dismissed the suit of the appellant. Hence the present appeal by special leave obtained from this Court.

The main ground on which the appellant attacked the judgment of the High Court was that in reversing the findings of the District Judge on the question of reasonable and bona fide requirement for personal use and occupation as also on the question of greater hardship, the High Court exceeded its jurisdiction under s. 29, subs. (3), since both these findings were findings of fact which did not suffer from any mistake of law and the jurisdiction of the High Court under that section was limited only to examining whether the decision of the District Judge was "according to law". Tire High Court, it was contended, could not interfere under s. 29, sub-s. (3) with findings of fact recorded by the District Judge unless it could be shown that they disclosed an error of law in arriving at them, which according to the appellant, was not the position in the present case. This contention raises a question as to the true scope and ambit of the revisional jurisdiction of the High Court under s. 29, sub-s. (3). Fortunately this question is not devoid of authority. There are sections in other rent control legislations couched in identical language and they have received judicial interpretation at the hands of this Court. The first decision to which we may refer in this connection is Hari Shankar v. Rao Girdharilal Chaudhury(1). The section which fell for consideration in this case was s. 35, sub-s. (1) of the Delhi and Ajmer Rent Control Act, 1952 which was in the same terms as s. 29, sub-s. (3) of our Act. Section 34 of the Delhi and Ajmer Rent Control Act, 1952 corresponded to our sub-ss. (1) and (2) of s. 29. Explaining the seeps of S. 35, sub-s. (1) in the context of s. 34, Hidayatullah, J., (as be then was) said on behalf of the majority of the Court "Section 35 is undoubtedly worded in general terms, but it does not create right to have the case reheard, as was supposed by the learned Judge. Section 35 follows s. 34, where a right of appeal is conferred; but the second sub-section of that section says that no second appeal shall lie..... The phrase "according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to

confer larger powers than the power to correct error of jurisdiction to which s. 115 is limited.-But it must not be overlooked that the section-in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit-is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is "according to law". It stands to reason that (1) [1962] Supp. 1.S. C. R. 933.

if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy but the Act says that there is to be no further appeal."

Then the learned Judge quoted in extensor the following observations of Beaumont, C.J., in Bell & Co. Ltd. v. Waman Hemraj(1) in relation to s. 25 of the Provincial Small Causes Courts Act which was almost in the same terms as s. 35, sub-section (1) :

"The object of s. 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does s. 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a burden of proof has been heard, or the burden of proof has been placed on the wrong shoulders. Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at." and recorded that these observations had the full concurrence of the majority for whom he was speaking. This view was reaffirmed by Subba Rao, J., (as he then was) speaking on behalf of this Court in Puranchand v. Motilal (2) , where the same section 35, sub-s. (1) of the Delhi and Ajmer Rent Control Act again came up for consideration. The scheme and language of s. 29, sub-s. (3) of our Act being identical with that of s. 35, sub-s. (1) of the Delhi and Ajmer Rent Control Act, 1952, the same view must also govern the interpretation of s. 29, sub-s. (3) of our Act. The High Court can, therefore, interfere with the decision of the lower court under s. 29, sub-s. (3) only if there is miscarriage of justice due, to a mistake of law. The High Court cannot reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower court is wrong and the lower court should have reached a different conclusion of fact from what it did : in other words, the High Court cannot reappropriation the evidence and substitute its own conclusions of fact in place of those reached by the lower court. Bearing in mind this limited scope and ambit of the revisional power of the High Court under s. 29, sub-s (3) we may now proceed to consider whether the High Court acted within its jurisdiction in setting aside the decision of the District Judge. (1) [1938] 40 Bom. L. R. 125 (2) [1963] Supp. 2 S. C. R.

906. Now the decision of the District Judge was based on two findings recorded by him in favour of the appellant. One was that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, and the other was that greater hardship would be caused

to the first respondent by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. Both these findings were interfered with by the High Court and the question is whether the High Court was with in its power in doing so. Taking up first for consideration the finding that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, it may be pointed out straight 8 way that this finding was clearly one of fact. The District Judge did not misdirect himself in regard to the true meaning of the word requires in S. 13 (1) (g) and interpreted it correctly, to mean that there in an element of need before a landlord can be said to 'require' premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation. This was the correct test applied by the District Judge to the facts found by him. If he had applied a wrong test on a misconstruction of the word 'requires', the finding recorded by him would have been vitiated by an error of law. But the correct test having been applied, the finding of the, District Judge that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation was unquestionably a finding of fact and it was not compete it to the High Court, in the exercise of its revisional power under s. 29, sub-s. (3), to interfere with this finding by reappreciating the evidence. But, though such an exercise was not permissible, the High Court embarked on a reappraisal of the evidence and taking the view that the finding of fact reached by the District Judge was not correct, substituted its own finding of fact in place of that reached by the District Judge. That was clearly outside the scope and ambit of the revisional power of the High Court under S. 29, sub-s. (3).

But even apart from acting outside the limits of its revisional power under S. 29, subs. (3), the High Court was, in our opinion, on the evidence on record, in error in reversing the finding of fact recorded by the District Judge. So far as the first floor of the Hill Bungalow was concerned it was admittedly in the possession of Soonabai, the mother of the appellant. The District, Judge held, agreeing with the view taken by the trial court, that Soonabai was a tenant of the appellant paying a rent of Rs. 50/- per month. The High Court observed that this view taken by the District Judge was contrary to the evidence on record and relied for this purpose on a statement made by the appellant in cross examination that what his mother paid was compensation and not rent. It is true that this statement was made by the appellant in cross examination, but no undue reliance can be placed oil such statement made by a lay man who would not ordinarily be expected to recognize the fine distinction between compensation and rent, which has continually baffled even lawyers and judges, when we find that there was at least one rent receipt produced by Soonabai which clearly showed that what was being paid by her was rent and not compensation. There was here documentary evidence in the shape of rent receipt as against oral imperfectly understood admission made by the appellant, which supported the view taken by the District Judge that Soonabai was a tenant and not a licencee of the appellant and the High Court was in error in upsetting this view taken by the District Judge. Now, if Soonabai was a tenant of the appellant she could tell the appellant that she would continue to live on the first floor alone as she had been doing and would not allow the appellant together with his wife and children to live with her on a permanent basis. That was the mode of life to which Soonabai was accustomed for the last several years and even if it were possible for the appellant to impose himself together with his wife and children on her on the first floor, he rightly .and legitimately did not choose to do so an(. that could not be regarded as unreasonable on his part. The High Court then proceeded to consider the availability of the Truth Bungalow and

observed that since the Truth Bungalow was given on leave and licence to Dr. Bharucha, it was in the possession of the appellant and largely on the basis of this view the High Court came to the conclusion that the requirement of the appellant for the ground floor premises was not reasonable and bonafide. Now, it is true that when premises are given on leave and licence, the licenser continues, from a juridical point of view, to be, in possession of the premises and the licencee is merely given occupation, and therefore, strictly speaking the High Court was right in observing that the Truth Bungalow, which was given on leave and licence to Dr. Bharucha, was in the possession of the appellant. But for the purpose of determining whether the requirement of the appellant for the ground floor premises was reasonable and bonafide, what is necessary to be considered is not whether the appellant was juridically in possession of the Truth Bungalow, but whether the Truth Bungalow was available to the appellant for occupation so that he could not be said to need the ground floor premises. if the Truth Bungalow was in occupation of Dr. Bharucha on leave and licence, it was obviously not available to the, appellant for occupation and it could not be taken into account for negativing the :need of the appellant for the ground floor premises The appellant could not obtain for himself the occupation of the Truth Bungalow unless he terminated the leave and licence of Dr. Bharchau and compelled him to vacate the occupation of the, Truth Bungalow. That might involve a long litigation with Dr. Bharucha. As against that, a suit for eviction was already pending against the respondents in respect of the ground floor. premises and it would certainly be more reasonable to pursue that litigation rather than to start a new one. Besides, the appellant chose to have possession of the ground floor premises because he wanted to be near his mother who was living on the first floor. It is true that one room on the ground floor of Truth Bungalow was in possession of the appellant, but that could hardly be sufficient for his accommodation. The High Court also observed that one room an the ground floor of the Hill Bungalow was in the possession of the appellant, but this observation seems to be contrary to the evidence on record. There was only one garage on the ground floor of the Hill Bungalow and that garage was, according to the appellant, in the joint possession of the appellant and the first respondent, while according to the respondents, it was exclusively in the, possession of the first respondent. It was nobody's case that this garage was in the exclusive possession of the appellant. Moreover, it was only a garage and not a room and it could not be availed by the appellant for his occupation. It will, therefore, be seen that the evidence on record was sufficient to show that the requirement of the ground floor premises by the appellant was reasonable and bonafide and the High Court was in error in taking a contrary view and disturbing the finding recorded by the District Judge.

So far as the finding on the question of greater hardship is concerned, the District Judge decided against the respondents on the view that as soon as the landlord establishes that he reasonably and bonafide requires the premises for his own use and occupation, the burden of proving that greater hardship would be caused by passing a decree for eviction than by refusing to pass it is on the tenant and if the tenant fails to discharge this burden by producing proper evidence, a decree for eviction must go against him. This view in regard to the burden of proof, no doubt, prevailed at one time in various High Courts on the basis of the decision of the Court of Appeal in England in Kelly v. Goodwin(1) but it can no longer be regarded as correct after the, decision of this Court in M/s. Central Tobacco Co. v. Chandra Prakash(2). This Court speaking through Mitter, J., pointed out in that case, while discussing S. 21(4) of the Mysore Rent Control Act; 1961, and what was said there must apply equally in relation to s. 13(2) of the Bombay Rent Act, which is in identical terms "We do

not find ourselves able to accept the broad proposition that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under s. 21 sub-s. (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act. Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the court to determine whether the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal.

The whole object of the Act is to provide for the control of rents and evictions, for the leasing of buildings etc. and S. 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Cl. (h) of s. 21. contains one of such grounds, namely, that the premises are reasonably and bonafide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord. We see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenants making it obligatory on him to show that greater hardship (1) [1947] All Eng. Report 810. (2) Civil Appeal 1175 of 1969, date 23-4-1969.

would be caused to him by passing the decree than by refusing to pass it. In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after shifting such evidence that the court must form its conclusion on consideration of all the circumstances of the of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it."

It is, therefore, clear that the District Judge placed the burden of proof wrongly on the respondents and the finding of fact arrived at by him on the question of greater hardship was vitiated by a mistake of law. The High Court was consequently justified in interfering with the finding recorded by the District Judge and arriving at its own finding on the basis of the correct principle laid down by this Court. But the High Court, in our opinion, fell into an. error in appreciating the evidence and coming to the conclusion that greater hardship would be caused to the first respondent by passing a decree for eviction than by refusing to pass it. There was no evidence at all to support this finding reached by the High Court. The evidence was entirely the other way. The appellant stated in his evidence that he would suffer considerable hardship both financial and in the way of his profession if he was denied possession of the ground floor premises. This was true because the entire field of work of the appellant was now confined to South Gujarat and it was obvious that he would be able to carry on his profession conveniently, economically and with advantage, if he, could live in Navsari which is situate in South Gujarat. Moreover, in view of the shift in his field of work from Bombay to South Gujarat, it was unnecessary for the appellant to continue to live in Bombay and pay a high rent of Rs. 475/- per month which was a serious drain on his purse. There can, therefore, be no doubt that if a decree for eviction were not passed in his favour, the appellant would suffer real hardship. Now, as against this evidence on the part of the appellant, no evidence at all was led on behalf of the respondents to show that the 1st respondent would suffer any hardship if a decree for eviction were passed against him. The evidence, thus, was only in one direction and it unquestionably established that greater hardship would not be caused to the first respondent by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. The

High Court was, therefore, clearly wrong in reversing this finding of fact recorded by the District Judge.

It is, therefore, clear that the High Court was in error in setting aside the decree for eviction passed against the respondents. We would accordingly allow the appeal, set aside the judgment of the High Court and restore the decree for eviction passed against the respondents. We may, however, point out that in the course of the hearing before us the learned counsel on behalf of the appellant made an offer that the appellant would be willing to give one room on the ground floor of the Truth Bungalow which is in his possession to the, first respondent on a rent of Rs. 15/- per month, if the first respondent accepts this offer within a period of three months from today. We, therefore, direct that if the first respondent expresses his willingness to take this room on rent from the appellant at the rate of Rs. 15 per month within a period of three months from today, the appellant shall let it out to the 1st respondent at the rent of Rs. 15/- per month. There will be no order as to costs all throughout.

S.B.W.

Appeal allowed.