Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 16 OF 2013

Gracy D'Souza, Major, r/o Shetiavado,
Mapusa, Bardez-Goa. ... Petitioner

Versus

1. The Administrative Tribunal by its Chairman, Panaji, Goa.

2. The Addl. Rent Controller, Collectorate, Mapusa, Bardez, Goa.

3. Ana Rosalina D'Souza (dec), represented by her heirs:

   a. Brigadier Melvile D'Souza (deceased) by LRs.

   (i) Mr Rohan Fabian George D'Souza

   (ii) Miss Nomita Ann de Souza Mann

   b. Smt. Aruna D'Souza,

   c. Captain Colvile D'Souza,

   d. Smt. Sandra D'Souza,

   e. Godville D'Souza,

   f. Smt. Richardina D'Souza,

   g. Luiza D'Souza,

   h. Liza Maria D'Souza, ... Respondents

Mr. A.F. Diniz, Senior Advocate with Mr. Ryan Menezes, Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Petitioner.

Mr. Shivdatt P. Munj, Additional Government Advocate for Respondent No. 2.

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Mr. Sanjay Sardessai, Mr. Kher Simoes, Ms. Neha Kholkar and Ms. Saicha Desai, Advocates for Respondent Nos. 3(a) to 3(h).

CORAM: **BHARAT P. DESHPANDE, J.**

RESERVED ON: **4th JANUARY 2024**

PRONOUNCED ON: **23rd JANUARY 2024**

JUDGMENT:

1. Vide order dated 22.04.2013, Rule was issued in this matter. The co-ordinate Bench of this Court [M.S. Karnik, J.] vide order and judgment dated 05.04.2023 disposed of the Writ Petition by setting aside the order of the Administrative Tribunal and remanded the matter for deciding afresh within a period of three months. The remand was directed only on the ground that there was an inordinate delay from the date of hearing of the matter and passing of the judgment by the learned Administrative Tribunal.

2. The legal representatives of the landlady [Respondent No. 3] challenged the decision of this Court by filing a Special Leave Petition (C) No. 12952 of 2023. By order dated 22.08.2023, the

Apex Court quashed and set aside the oral judgment passed by this Court and directed that the matter be heard on merits and be disposed of preferably by the end of December 2023. Accordingly, the matter was taken up for final disposal. The matter was finally heard in the first week of January 2024.

3. The Petitioner is the tenant whereas the legal representatives of Respondent No. 3 are the landlords. The parties are referred to as the tenant and landlords for the sake of convenience.

FACTUAL MATRIX:

4. The original landlady-Ms. Ana Rosalina D'Souza [Respondent No. 3] filed an Application for eviction of the tenant in the year 1983 under Section 23(b) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 [hereinafter referred to as the 'Rent Control Act', for short]. Such Application was filed for eviction of the tenant on the ground that only two rooms towards the western side along with the W.C. and bathroom are in possession of the landlords whereas the remaining house bearing No. E/99/9 at Mapusa, Goa was leased out to the Respondent/Tenant on a direct contract of 11 months from 01.07.1979.

5. Respondent No. 3 [the original landlady] was residing at Sikandarabad and used to visit Goa in the month of May, October and December and reside in two rooms. The husband of the landlady was doing business at Sikandarabad and due to his advanced age decided to retire from his business and settle down in Goa. The landlady had four sons, all married. Her one son Lieutenant Colonel, Melvile D'Souza was in service in the operational area and his wife and children were staying with the landlady. The original landlady decided to settle down in Goa along with her husband and her family members. Two rooms which were in her possession were therefore not sufficient for her requirement and for the requirement of her family members. Hence, the requirement of the landlady along with her family members was a bonafide requirement for additional accommodation.

6. The tenant resisted such an Application by filing a written statement and denied the additional requirement of the landlady. It is the contention of the tenant that the landlady never came down to stay in the suit house and two rooms which were in her possession were also not occupied by the landlady during her visit to Goa. The husband of the landlady has brought property and house at Thivim, Bardez, Goa and the same could be occupied by

the said landlady along with her husband and other family members. It is claimed that the eviction Application is filed on flimsy grounds.

7. After recording evidence of the landlady and other witnesses, the Rent Controller vide its judgment dated 28.03.1996 accepted the contentions of the landlady and directed the tenant to vacate and put the landlady in possession of the suit premises within three months. It is necessary to note here that during the pendency of the proceedings before the Rent Controller and after recording the evidence, the landlady expired. She was represented by her legal heirs i.e. her sons and their respective spouses.

8. The tenant filed an Appeal before the Administrative Tribunal which was dismissed by order dated 29.05.2012, accepting the contentions of the landlady and also the observations of the Rent Controller. Such order passed by the Tribunal is under challenge in the present Petition by the tenant.

9. Before the Rent Controller, the evidence of the landlady-Ms. Ana Rosalina D'Souza started on 27.01.1986. Her deposition was completed on 20.02.1986. Thereafter, the landlady examined

Jacinto Basilio Clement D'Souza [witness no. 1], Vassudev Thali [witness no. 2] and Mrs. Helen D'Souza [witness no. 3].

10. The tenant then stepped into the witness box and deposed in respect of her defence. The tenant then examined Valintinho D'Souza [witness no. 1] and Karim Bepari [witness no. 2].

11. The learned Rent Controller after considering the above evidence on record came to the conclusion that the need of the landlady was genuine for her and her family members and that the existing area in her possession was not sufficient only to cater for her bonafide need. Accordingly, the Application was allowed under Section 23(3) of the Rent Control Act. In Appeal, the learned Administrative Tribunal confirmed the said findings.

12. From the pleadings of the parties and specifically from the Application filed by the landlady, it is clear that the eviction of the Respondent was sought basically under Section 23(3) of the Rent Control Act.

13. Section 23 of the Rent Control Act reads thus:

> *"23. Landlord's right to obtain possession.— (1) A landlord may, subject to the provisions of section 24,*

apply to the Controller for an order directing the tenant to put him in possession of the building—

(a) in case it is a residential building,—

(i) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation or for the occupation of any member of his family; or

(ii) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bonafide requires another building instead, for his own occupation;

(b) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own or to the possession of which he is entitled in the city, town or village concerned which is own or to the possession of which he is entitled whether under this Act or otherwise:

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument 'inter vivos' shall not be entitled to apply under [this sub-section] before the expiry of five years from the date on which the instrument was registered:

[Provided further that in case of gift from parents the above period of five years shall be reduced to two years]:

Provided further that where a landlord has obtained possession of a building under this section, he shall not be entitled to apply again under this section—

(i) in case he has obtained possession of a residential building for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building for possession of another non-residential building of his own.

(2) Where the landlord of a residential building is a religious, charitable, educational or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller, subject to the provisions of section 24, for an order directing the tenant to put the institution in possession of the building.

(3) A landlord who is occupying only a part of a residential building may, notwithstanding anything contained in sub-section (1), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his own use or for the use of any member of his family."

14. Sub-section 3 of Section 23 of the Rent Control Act as quoted above deals with a situation when a landlord/landlady who

is occupying only a part of the residential building may, notwithstanding anything in sub-section 1, apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he [landlord] requires additional accommodation for his own use or for the use of any member of his family. Thus, the words "notwithstanding anything" in sub-section 1 exclude sub-section 1 wherein the landlord is not occupying any remaining part of the building for his own stay, and he requires it for his own occupation or for the occupation of any member of the family.

15. Here, this provision clearly empowers the landlord to seek eviction of the tenant, even though he/she is occupying part of the remaining part of the building and/or he is in need of occupation for himself or for the use of any member of his family. Thus, the pleadings in the Application filed by the landlady assume much importance. As discussed earlier, the landlady in her Application claimed that at present, she is in occupation of only two rooms with attached W.C. and bathroom whereas the remaining portion is occupied by the Respondent/Tenant. Thus, the contention of the landlady is for additional accommodation for herself and for the use of her family members. She further claimed that since her

husband is of advanced age and as they desired to settle down in Goa, she required more space. These aspects are covered under the caption of "additional accommodation for her own use". The pleadings further show that her one son Melvile D'Souza is in service and mostly in the operational area and as such, the wife of Melvile and their children are also staying with the landlady at Sikandarabad. The landlady and her husband need to settle down permanently in Goa along with her family members i.e. the wife and children of Melvile D'Souza. She, therefore, claimed that two rooms which are in her possession are not sufficient for her requirement and for the requirement of her family members and thus, she is having a bonafide need for additional accommodation. Thus, apart from her own needs, the landlady has claimed the needs of her family members. This aspect is of much importance since during the pendency of the said proceedings before the Rent Controller, the landlady expired and her legal heirs were brought on record.

16. The tenant filed a written statement thereby denying the claim of bonafide need of the landlady and that of her family members. It is specifically contended by the tenant that the period of 11 months in the first agreement was from 12.12.1973. Even the contention of the landlady that she is the sole heir of her deceased

brother Arthur D'Sa is also denied. The tenant then admitted that the landlady is residing with her family members at Sikandarabad, however, denied that she visited Goa in the months of May, October and December and stays in two rooms which are in her possession. It is claimed by the tenant that the landlady came for the first time in October and kept her suitcase in the said two rooms and on the same day, started living with her Attorney Mr. J.B. Clement D'Souza. The tenant further denied the contention that the husband of the landlady intended to settle in Goa permanently along with the landlady after retiring from business activities. In the alternative, it is claimed by the tenant that the landlady's husband got property and house at Ganvai, Thivim, Bardez, Goa and such house belongs to the father-in-law of the landlady. The landlady along with her family can very well occupy one of such houses if her need is genuine. The property of the father-in-law of the landlady is surveyed in the name of Albano D'Souza, who is the brother of the husband of the landlady. Finally, it claimed that the grounds of eviction are false and flimsy and thus, the landlady is not entitled to any relief.

17. The pleadings are referred to in detail since arguments were advanced about comparative hardship to the tenant not being considered by the Courts.

18. First of all, the pleadings in the Application for eviction show that the landlady pleaded that she is the owner of the suit house and after the death of her brother, she is the sole owner and the legal heir entitled to the entire house. Similarly, the averments in the Application in paragraph 11 show that the tenant has their own house at Calangute. In reply to the said averments, there is only a simple denial in the written statement filed by the tenant. The contention of the landlady is that the two rooms in her possession are not sufficient enough to cater to her needs as well as to accommodate other family members. Except denial on this aspect, the written statement filed by the tenant nowhere pleads about comparative hardship, in case, the Rent Controller considers granting of the order of eviction.

SUBMISSIONS OF PETITIONER:

19. Mr. Diniz would submit that first of all, the pleadings of the landlady show that the need was only for herself and her husband and there are no specific pleadings regarding the need for the premises for her family members. He would therefore submit that once the landlady and her husband expired, such need no longer existed. Since the pleadings regarding the needs of other family members are vague and no witness to that effect was examined including her son, there is no material for granting eviction. He

would further submit that the learned Rent Controller and the Tribunal wrongly placed a burden on the tenant to prove comparative hardship. He claimed that the need raised by the landlady falls only in the first part i.e. for her and her husband's need and not of any other family member. He further submitted that the son of the landlady by the name of Melvile has his own flat in Delhi and the wife of Melvile along with their children reside therein. In such circumstances, any observations of the need for occupation by Melvile or his wife, cannot be considered bonafide. He would submit that the landlady expired on 27.11.1993 i.e. before passing the eviction order and therefore, the entire proceedings for eviction ought to have been rejected. He would submit that there are no findings of the Courts below about any bonafide need of the children of the landlady. He submits that there is no need for the tenant to plead comparative hardship and it is the duty of the Rent Controller or the Tribunal to consider comparative hardship on the basis of evidence on record. He submits that the orders passed by the Courts below are, therefore, perverse as an unnecessary burden has been shifted on the tenant to prove comparative hardship.

20. Mr. Diniz would then submit that Applications have been filed before this Court for the production of additional documents to show that Meville had a flat in Delhi and that too with the

knowledge of the landlady during her lifetime. He submits that this aspect has been suppressed by the landlady and therefore, on this count also, the Application for eviction deserves to be dismissed.

21. Mr. Diniz placed reliance on the following decisions:

1) Phiroze Bamanji Desai Vs. Chandrakant N. Patel & Others, (1974) 1 SCC 661;

2) Aminabi A. H. Usman Vs. Bhagwan Balmukund Oza and Another, 1983 RCJ 708;

3) Variety Emporium Vs. V. R. M. Mohd. Ibrahim Naina, (1985) 1 SCC 251;

4) Hameedia Hardware Stores, Vs. B. Mohan Lal Sowcar, 1988 AIR (SC) 1060;

5) Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, (2003) 2 SCC 320;

6) Kedar Nath Agrawal (Dead) & Another Vs. Dhanraji Devi (Dead) by LRs. & Another, (2004) 8 SCC 76;

7) Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Others, 2004 (Supp.) Bom. C.R. 333;

8) Mohd. Ismail Vs. Dinkar Vinayakrao Dorlikar, (2009) 10 SCC 193;

9) Seshambal (D) Through L.Rs. Vs. Chelur Corporation Chelur Buildings & Others, 2010 AIR (SC) 1521;

10) Sundeep Kumar Bafna Vs. State of Maharashtra & Another, (2014) 16 SCC 623 and

11) Raghunath S. Dixit & Others Vs. Surendranath B. Burad & Others, 2016 (4) Bom.C.r. 345.

SUBMISSIONS OF RESPONDENTS:

22. Per contra the learned Senior Counsel Mr. Kantak appearing for the legal representatives of Respondent No. 3 (landlady) would submit that the requirement for additional accommodation is itself pleaded by the landlady for herself and for her family members. The Application was filed by the landlady and has also produced relevant evidence. The claim is bonafide and the Rent Controller has to consider whether such claim is bonafide or not. It is submitted that when two Courts have decided based on facts, material and evidence that the claim of the landlady for herself and for her family is bonafide for additional accommodation, the High Court in its supervisory jurisdiction should not interfere with such findings. He submits that comparative hardship has to be decided on the facts of each case. Not only the landlady, but, the tenant is also duty bound to produce material showing comparative hardship. It is submitted that the Rent Controller or the Appellate Authorities are duty bound to consider comparative hardship and only thereafter, arrive at a conclusion whether the tenant could be evicted.

23. Mr. Kantak would submit that in the written statement, the tenant did not utter a single word about comparative hardship in case, an eviction order is passed. Similarly, while filing an Appeal challenging the eviction order, no ground is raised in connection with comparative hardship. Thus, for the first time and that too in the written synopsis filed before the Tribunal, arguments to the effect of comparative hardship were raised and that too without any ground or evidence adduced.

24. Mr. Kantak would then submit that the grounds, which were raised before the learned Tribunal are not at all against the findings of the Rent Controller but only on subsequent events i.e. the death of the landlady and her husband. He submits that the bonafide need of the landlady along with her family members has to be considered on the day of filing of eviction Application, though subsequent events could be taken into account. However, such bonafide need cannot be extended from time to time till the matter is finally disposed of.

25. Mr. Kantak would then submit that the findings of the learned Rent Controller are not at all perverse and thus, the same are not disturbed by the Administrative Tribunal. He submits that the rest of the premises was for the landlady along with her family

members and therefore, even after the death of the landlady the need will still exist, which is bonafide and only on that count, the matter cannot be decided. He finally claimed that the findings of both the Courts below are neither perverse nor illegal and thus, need no interference in the present Petition.

26. Mr. Kantak placed reliance on the following decisions:-

1) Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada, (2003) 2 SCC 320;

2) Shakuntala Bai & Others Vs. Narayan Das & Others, (2004) 5 SCC 772;

3) Usha P. Kuvelkar & Others Vs. Ravindra Subrai Dalvi, (2008) 1 SCC 330;

4) Bentool Steel Products Private Limited Vs. O.M.A. Mohammed Omar & Another, (2008) 17 SCC 679 and

5) D. Sasi Kumar Vs. Soundararajan, (2019) 9 SCC 282.

DISCUSSION AND CONCLUSIONS:

27. The rival contentions now fall for determination.

BONAFIDE NEEDS OF THE LANDLADY AND HER FAMILY MEMBERS:

28. As discussed earlier, the pleadings in the Application for execution clearly show that it was filed under Section 23(3) of the Rent Control Act. The provision is already quoted above, it shows that even though the landlady was occupying only part of the remaining building, however, when she required additional accommodation for herself or for the use of family members, she is entitled to seek relief of eviction of the tenant. Admittedly, the entire house consists of many rooms, out of which, only two rooms were in possession of the landlady at the time of filing the eviction Application. The remaining portion which consists of four rooms along with another portion is admittedly in possession of the tenant. Then the landlady in her Application claimed that as her son Melvile is a serving Officer and normally, attends operational areas, his wife and children reside with the landlady. However, during the deposition, she specifically stated that she has four sons, all married and residing in different places. Her eldest son is Melvile D'Souza, and her second son is Colvile, who is working in the Air Force as a squadron leader. Her third son is Travile working in Air India whereas her fourth son, Godvile is doing business. She further deposed that the area occupied by the tenant has four rooms with attached bathroom and W.C. Upon the death of her brother, Arthur D'Sa, she became the sole universal heir and accordingly, became the landlady of the said property. She then

claimed that her husband, Fabian D'Souza had business at Sikandarabad, but now he retired being 72 years old. She claimed that they were residing in the rented premises at Sikandarabad and after filing of the present proceedings, she gave notice to the tenant to vacate her house. She then claimed that the part of the said house i.e. two rooms which are in her possession are not sufficient enough for her requirement and for the family members. Her son Melvile is in the operational area and his family is staying with her. Thus, she needs the entire house for herself and for her family members.

29. The landlady was cross examined at length and she described the suit house as consisting of seven rooms out of which, 5 rooms are in the possession of the tenant. She disclosed that her son, Melvile is not provided with accommodation whenever he is in the field area. Said son Melvile is transferred from one place to another and he has to serve the Nation and therefore, his wife and children stay with her. She gave the details of the posting of her son Melvile and claimed that his wife and two children are schooling in Sikandarabad and staying with her in a rented place. She claimed that her son Colvile, who is in the Air Force, is having his own accommodation. Her third son Trevile works for Air India and he has his own accommodation in Mumbai.

30. During further cross examination, she categorically denied having any intention to sell the suit house or to give it to her Power of Attorney holder. She went to stay in the suit house as she did not have any other accommodation in Goa. As far as her husband is concerned, she admitted that he is from Thivim, but denied that her husband is having any house or property in Thivim. She also denied specifically the suggestion that she along with her husband are in possession of one house in Thivim which belonged to her father-in-law. All other suggestions have been denied by her. Thus, the evidence of the landlady clearly shows that the need was bonafide for herself along with her husband and other family members. There is no dispute that the landlady has four sons, all married. It is also not in dispute that her two sons have their residential accommodation in Delhi and Mumbai, however, it is also true that except for the suit house, the landlady and her husband do not have any other place of their own in Goa.

31. Thus, the need as deposed by the landlady is found to be genuine for the simple reason that two rooms which were in her possession at the relevant time were not sufficient enough to cater for the need for premises for herself and her family members including her four sons and their spouses and for the grandchildren, if any.

32. The Application could be filed on both counts i.e. the need for the use of landlord/landlady or/and for the use of any of her family members.

33. The contention of Mr. Diniz is that the pleadings referred to the need of the landlady only, is of no substance. The pleadings as well as the evidence as discussed above, clearly show that the need as pleaded was for the landlady and her husband as well as other family members which include her son, Melvile, his wife and children.

34. It is no doubt true that even if the other sons have accommodation in different States, their need to stay in their own house in Goa for the purpose of some of their family members cannot be considered as not a bonafide need. The evidence of the landlady to that effect is clear on both counts.

35. Mr. Diniz claimed that Melvile failed to step into the witness box and therefore, the need of his family is not established. This submission cannot be accepted for the simple reason that Melvile is not the landlord whereas his mother was the landlady. The Application could be filed by the landlord and not by the family members. Similarly, the evidence of the landlady could be considered as a bonafide need of her family members and for that

purpose, the concerned family member need not step into the witness box. Asking the family member to step into the witness box to prove his need would be stretching such contention too far. The landlady, in fact, stepped into the witness box and stated about her own needs and the needs of her family members. The Tribunal was required to decide such an aspect about the need of the landlady along with her family members. The submission that need of each family member must be proved by independent member, cannot be accepted.

36. It is an admitted fact that the landlady and her husband expired during the proceedings before the Rent Controller. In this respect, Mr. Diniz claimed that once the landlady and her husband expired, the claim regarding the bonafide need of the suit premises for the landlady no longer existed. He would submit that the need must not only be considered at the time of deciding the eviction Application, but also, in connection with subsequent proceedings till the eviction is final. In this respect, he claimed that in the case of **M/s Variety Emporium** (supra) the Apex Court by relying on the decisions in the case of **Hasmat Rai Vs. Raghunath Prasad (1981) 3 SCR 605** has observed in paragraph 16 that when an action is brought by a landlord for the eviction of the tenant on the ground of personal requirements, the landlord's

need must not only be shown to exist at the date of the suit, but it 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 landlord, the Court has to examine and evaluate those events and mould the decree accordingly. The tenant is entitled to show that the need or requirement of the landlord no more exists by pointing out such subsequent events, to the Court, including the Appellate Court.

37. However, Mr. Kantak would submit that the judgment which has been relied upon in the case of **Hasmat Rai** (supra) has been explained in subsequent decisions by the Apex Court in the case of **Shakuntala Bai** (supra) by relying on the decision in the case of **Shantilal Thakordas Vs. Chimanlal Maganlal Telwala, (1976) 4 SCC 417** observing that the bonafide requirement of the landlord has to be considered on the basis of a crucial date for deciding, which is the date of institution of the proceedings. The decision rendered in **Phool Rani Vs. Naubat Rai Ahluwalia, (1973) 1 SCC 688** was considered wherein the Apex Court has observed that events which take place subsequent to the filing of an eviction Petition under any Rent Act can be taken into consideration for the purpose of adjudication until a

decree is made by the final Court determining the rights of the parties, which are more in the nature of obiter do not represent the correct legal position. The decision in the case of **Shantilal Thakordas** (supra) is of the larger Bench whereas the decision in the case of **Phool Rani** (supra) was overruled. Such observations are found in paragraph 11 in the case of **Shakuntala Bai** (supra) which reads thus:

> *"11. In Shantilal Thakordas v. Chimanlal Maganlal Telwala (supra), a larger Bench overruled the decision rendered in Phool Rani v. Naubat Rai Ahluwalia (supra) insofar as it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The Court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of*

Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In Kamleshwar Prasad v. Pradumanju Agarwal (1997) 4 SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava (2001) 2 SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bonafide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin (2002) 1 SCC 610. Therefore, the legal position is well settled that the bonafide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred

by the tenant will make no difference as his heirs are fully entitled to defend the estate."

38. In the case of **Usha P. Kuvelkar** (supra), the bonafide need of the landlord was accepted and the tenant was directed to hand over the possession. The tenant challenged such proceedings before the Tribunal which also confirmed the eviction. When the matter was filed before this Court, a Writ Petition was allowed and the matter was remanded for fresh decision. The landlady challenged such a decision of this Court before the Apex Court. However, during such a remand, the original landlord expired. In such circumstances, the Apex Court by placing reliance on the decision in the case of **Shakuntala Bai** (supra) has observed as under in paragraph 14:

"14. Sub-section (1) of section 12 of the Act says "no suit shall be filed in civil court against a tenant for his eviction …". The language employed does not say "no decree shall be passed …". So the bar created is against filing of the suit except on one of grounds enumerated in clauses (a) to (p) of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore the principle that "the need of

the landlord must exist till the decree for eviction is passed by the last court and attains finality" can even otherwise have no application here in view of the express language used in the section."

39. In **Usha P. Kuvelkar** (supra), the claim was for the needs of the landlord as well as for his family members. Thus, the death of the landlady during the proceedings before the Appellate Authority was considered to be inconsequential as the family members were fully entitled to defend such a claim.

40. In the case of **D. Sasi Kumar** (supra), the Apex Court while dealing with the bonafide requirement of the landlord considered the date of filing of the Application as the date to be considered for bonafide requirement and held in paragraph 12 as under:-

"12. Further the High Court has also erroneously arrived at the conclusion that the bonafide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights. Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is

declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011. The appeal was thereafter disposed of by the Appellate Authority in the year 2013. The High Court had itself taken time to dispose of the Revision Petition, only on 06.03.2017. The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in the case of Gaya Prasad vs. Pradeep Srivastava, (2001) 2 SCC 604 has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bonafide requirement of landlord is the date of application for eviction, which we hereby reiterate."

41. Thus, the law which stands as on date as laid down in the above decisions clearly shows that a bonafide requirement of the landlord has to be reckoned as on the date of the filing of the date of Application and the same cannot be continued till the final adjudication as existing. As we know the matters require sufficient time to decide from the Rent Controller till final adjudication by the competent Authority as well as the Court. In this matter, it is no doubt true that the landlady expired during the pendency of the

adjudication of the eviction proceedings before the Rent Controller. However, it is also true that the landlady expired somewhere in 1993 i.e. after the evidence of the landlady was over. The last witness of the tenant was examined on 13.10.1995. Although the Application for eviction was filed in the year 1983, the decision by the Rent Controller was pronounced on 28.03.1996. Thus, as on the date of the Application, the bonafide need of the landlady was required to be considered including that of her family members. The landlady cannot be deprived of her claim if found bonafide, only because the proceedings before the Rent Controller continued for 13 long years. Such delay on the part of the Rent Controller cannot be considered as advantageous for the tenant to claim that the need no longer subsists. The decisions discussed earlier would go to show that the bonafide need has to be considered on the date of the Application, which is a crucial date for deciding the proceedings. The observations of the Apex Court in the case of **Shakuntala Bai** (supra) are therefore required to be considered in favour of the landlady. Thus, the contention of Mr. Diniz that on the death of the landlady and her husband, her bonafide need does not survive, cannot be accepted.

42. The evidence of the landlady along with her witnesses would go to show that she did not have any other premises for residence

in Goa and that two rooms in her possession were not sufficient enough to cater for the needs of her family including her sons and their spouses.

43. The evidence of the tenant and her witnesses would go to show that first of all the tenant is in possession of four rooms along with a verandah and a washroom. Two rooms which are in possession of the landlady are admittedly part and parcel of the same house and in order to enter such rooms, the landlady is required to pass through the living room, which is in possession of the tenant. This aspect is admitted by DW-1/Tenant in her cross examination which reads thus:-

> *"I admit that in order to enter into the portion of the rooms in occupation of the Applicant, they have to come to the living room which is in my possession and thereafter enter their portion."*

44. It thus shows that two rooms in occupation of the landlady did not have any independent access so as to occupy it along with her family members. The landlady was required to pass through the living room which is in possession of the tenant. Thus, the contention that the landlady could have occupied these two rooms for her family's needs, cannot be accepted for the simple reason that these two rooms do not have any separate ingress and egress

for the purpose of separate occupation. Every time the landlady is required to pass through the living room which is in possession of the tenant. Besides this, the said two rooms were not having any independent access. Thus, it is difficult to digest that the landlady would occupy these two rooms which do not have any independent access and have to pass through the living room which is in possession of the tenant. In other words, the said two rooms do not have any independent access for the purpose of safety and privacy or otherwise.

45. The tenant in her deposition though claimed that the landlady had having house at Thivim, admitted, that such house stands in the name of the brother-in-law of the landlady and that there is no document with her to show that the landlady has any other house in her name to occupy and reside. There is no other material to show as to the need for the tenant to occupy four rooms and a verandah as compared to the need of the landlady. The deposition of the tenant is totally silent about the number of members of her family, which were occupying the said house. She admitted that the landlady has four sons, who are all married.

46. The bonafide need which the landlady has to prove for herself and for her family members, is on the date of the filing of

the proceedings for eviction, as held in the decisions discussed above. It is no doubt true that the landlady expired in November 1993, but by that time, the recording of her evidence was already over. The legal representatives including her four children and their spouses were already brought on record. Therefore, the crucial date for considering the bonafide need of the landlady, and after she died for her family members, is the date on which the case was filed. As on the date of passing the order of eviction by the Rent Controller, the need for the said premises by the legal heirs of the landlady very much subsists and thus, the contentions raised by Mr. Diniz, which are contrary to the settled proposition of law, cannot be accepted.

47. In **Shakuntala Bai** (supra), the crucial date for deciding the bonafide requirement of the landlord is held to be the date of the institution of the proceedings. If the landlord or his legal heirs prove such bonafide need, the Rent Controller is duty bound to consider it and act accordingly.

48. The contention of Mr. Diniz that Melvile or his wife did not step into the witness box to prove their need is of no substance. The reason behind it is that the need was disclosed by the landlady for herself and her sons/family members for which she

successfully stepped into the witness box and deposed. No doubt after her deposition was recorded and completed, she expired in November 1993. However, the legal heirs were brought on record and the legal heirs are entitled to rely upon the deposition of the landlady to prove their contention of bonafide need. It is not the case that there is absolutely no evidence to prove even the bonafide need of the family members of the landlady. The tenant cannot claim that such need could be satisfied only by occupying two rooms which are in the possession of the landlady, for the simple reason that the tenant admitted that such rooms are accessible only through the living room which is in her possession. Thus, the said two rooms do not have any privacy or independence as far as access is concerned.

49. The learned Rent Controller framed issues which are found in paragraph 22 and deliberated on them by accepting the needs of the landlady. There is no other evidence to show that the landlady had any other place to reside of her own in Goa. When she stated on oath that due to old age, her husband wants to retire from the business and both of them intend to settle in Goa and that her family consists of four sons along with their spouses, the requirement of additional accommodation of four rooms in possession of the tenant stands established.

50. The learned Administrative Tribunal also considered this aspect and accepted the findings of the learned Rent Controller. Such findings of fact, based on evidence, cannot be re-appreciated in the supervisory jurisdiction of this Court unless it is shown that such findings are contrary to law or perverse to the facts and evidence brought on record. Both these aspects are not established in the present Petition.

COMPARATIVE HARDSHIP:

51. Once the Rent Controller is satisfied that the need of the landlady for additional accommodation is bonafide, he is duty bound to make an order thereby directing the tenant to put the landlord in possession of the tenanted premises.

52. Section 25 of the Rent Control Act reads thus:

> *"25. Controller to decide right to possession.— The Controller shall, if he is satisfied that the claim of the landlord under section 23 is bonafide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not satisfied, he shall make an order rejecting the application:*
>
> *Provided that in the case of an application under sub-section (3) of section 23, the Controller shall reject the application, if he is satisfied that the hardship which*

may be caused to the tenant by granting it will outweigh the advantage to the landlord:

Provided further that the Controller may give to a tenant a reasonable time of not less than three months and not exceeding six months for putting the landlord in possession of the building and may extend such time so as not to exceed six months in the aggregate from the date of the order."

53. The first proviso is applicable to the matter in hand as it is directly related to sub-section 3 of Section 23 of the Rent Control Act. Admittedly, the Application for eviction was filed by the landlady for additional accommodation on the grounds of her bonafide need along with all her family members. The only ground of rejection of the Application for bonafide need once proved, could be if the Rent Controller is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

54. Thus, it is the duty of the Rent Controller to consider the aspect of hardship which may be caused to the tenant if eviction is ordered and "if such hardship outweigh the advantage to the landlord". These wordings are very material. While comparing the hardship caused to the landlady and the tenant, the Rent

Controller is duty bound to consider the gravity of such hardship caused to the tenant and which will outweigh the advantage to the landlord.

55. The aspect of comparative hardship, is, therefore, required to be considered once the Rent Controller comes to the conclusion that the need of the landlord is bonafide for additional accommodation. However, in order to compare hardship which would outweigh the advantage to the landlord, the evidence of the parties is required to be evaluated.

56. The Rent Controller while considering the evidence of the landlady and that of the tenant compared the hardship of the landlady as against the tenant and found that the tenant is occupying four rooms whereas the landlady is occupying only two rooms. Since the family of the landlady consisted of many members, her requirement for additional accommodation was found genuine. It is also considered by the Rent Controller that the evidence of the tenant nowhere shows that the landlady has any other house. Besides this, there are no pleadings or evidence from the tenant to show or to prove as to what hardship she would suffer in case an eviction order is passed.

57. Mr. Kantak has rightly pointed out that in an Appeal filed before the Administrative Tribunal, the tenant even did not raise any ground of comparative hardship. Such an aspect was raised for the first time in the written synopsis as filed by the tenant and accordingly, the learned Administrative Tribunal has rightly rejected such contention stating that in the absence of grounds raised in an Appeal, the same cannot be looked into. The learned Tribunal has also observed that there are no pleadings or even evidence on the part of the tenant to consider the aspect of comparative hardship. The only ground raised in the written statement is that the landlady has another house in Thivim, which has been disproved by the evidence of the tenant.

58. In order to consider comparative hardship, the parties must plead and then adduce evidence on it. It is no doubt true that as per the proviso to Section 25, the power of the Rent Controller to reject the Application for eviction exists only on his satisfaction that hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlady. Such findings cannot be evaluated without pleadings and evidence. It is no doubt true that the pleadings are not to be construed strictly as found in the CPC. However, there has to be some material in the written statement filed by the tenant to show as to how he will suffer hardship in

case, evicted from the suit premises. Similarly, there has to be some evidence on this count itself so that the Rent Controller will be able to accept it. The comparative hardship cannot be judged in the air or without any such evidence on record. Similarly, when the tenant, while filing an Appeal against the eviction order fails to raise any ground in the Appeal memo about comparative hardship, the Administrative Tribunal was not supposed to deal with it.

59. Admittedly, the question regarding comparative hardship was for the first time projected in the written synopsis filed by the tenant before the Administrative Tribunal. The findings of the Administrative Tribunal while rejecting such contentions cannot be faulted as there was no ground raised on the said aspect. Similarly, there was no evidence produced by the tenant as to how her comparative hardship would outweigh the advantage gained by the landlady.

60. Mr. Diniz would submit that it is the duty of the Rent Controller to consider comparative hardship and the Administrative Tribunal has unnecessarily put the burden of comparative hardship on the tenant. In this regard, Mr. Diniz placed reliance on the case of **Phiroze Desai** (supra). This

Authority, in fact, did not support the contention about putting the burden on the tenant. In paragraph 9 of **Phiroze Desai** (supra), the Apex Court has discussed that, earlier the view was that once the landlord establishes that he reasonably and bonafidely required the premises for his own use and occupation the burden of proving the greater hardship would be caused by passing a decree for eviction than by refusing to pass it on the tenant and if the tenant fails to discharge this burden by producing proper evidence, a decree for eviction must go against him, prevailed at one time in various High Court on the basis of the decision of the Court of Appeal in England in **Kelly Vs. Goodwin, 1947 ALL ER 810**, but, it can no longer be regarded as correct after the decision of the Apex Court in the case of **M/s Central Tobacco Company Vs. Chandra Prakash, MANU/SC/0547/1969**. In the said decision the Apex Court observed thus:

> *"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."

(Emphasis supplied)

61. The Apex Court in paragraph 9 then further observed the object of the Act which is for control of rents and evictions for leasing of the building etc. and Section 21 specifically enumerates the ground which alone entitles the landlord to evict his tenants. One of the grounds is that the premises are reasonably and bonafidely required for his occupation and that for his family members. Such a bonafide need must be proved by the landlord and the onus to prove it is certainly on the landlord. The Apex Court further observed that there is no reason to hold that once the landlord discharged his onus of bonafide need, it shifts to the tenant making it obligatory to show that great hardship will be caused to him by passing a decree of eviction than by refusing it. The Apex Court further observed that 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 considering all the circumstances of the case as to whether great hardship would be caused by passing a decree than by refusing to pass it.

62. In **Badrinarayan Bhutada** (supra), the Apex Court in paragraph 7 has observed thus:

> *"7. A perusal of the scheme of the Act, so far as the ground of reasonable and bonafide requirement by the landlord for occupation of residential or non-residential premises is concerned, shows that clause (g) of sub-section (1) of Section 13 contemplates a decree for eviction being passed on proof of availability of the ground according to law. In spite of a ground for eviction u/s 13(1)(g) having been made out, the Court may deny the relief of eviction if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Thus in a way, Section 13(2) acts as a proviso to Section 13(l)(g) the former having an overriding effect on the latter. The burden of proving availability of ground for eviction under Section 13(1)(g) lies on the landlord; the burden of proving greater hardship so as to deprive the landlord of his established right to seek eviction lies on the tenant."*
>
> (Emphasis supplied)

63. In the case of **Badrinarayan Bhutada** (supra), the Apex Court in paragraphs 11, 12 and 13 observed thus:

> *11. The Act does not lay down any guidelines or relevant factors based whereon the question of comparative hardship is to be decided. A slight indication is given in the first para of Section 13(2) that regard must be had to (i) all the circumstances of*

the case, (ii) including the question whether other reasonable accommodation is available for the landlord or the tenant. The expression "other reasonable accommodation" as employed here does not mean an accommodation suitable in all respects as the suit accommodation is. The Legislalture has chosen it appropriate to leave the determination of issue on sound discretion of the Court.

12. In Bega Begum Vs. Abdul Ahad Khan, (1979) 1 SCC 273 pari materia provision contained in Jammu & Kashmir Rent Act came up for the consideration of this Court. It was observed that it is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed but such an event would happen whenever a decree for eviction is passed and merely because the tenant will be ousted from the premises where he was running his activity cannot, by itself, be considered to be a hardship and be a valid ground for refusing the landlord a decree for eviction. In deciding the extent of the hardship, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. The owner of the property cannot be denied eviction and compelled to live poorly merely to enable the tenants to carry on their flourishing business activity at the cost of the landlord. The fact that there is no other means for the landlord to augment his income except by getting the tenancy

premises vacated compared against the conduct of the tenant who having obtained the premises for a fixed number of years has overstayed and enjoyed the premises for a long period of time are relevant factors not to deprive the landlord from the possession over the tenancy premises and recording a finding of no equity in favour of the tenants continuing in possession any further. If the tenants prove that they will not be able to get any accommodation anywhere in the city that may be a relevant consideration. However, the tenant cannot insist on getting an alternative accommodation of a similar nature in the same locality because that will be asking for the impossible. What are to be weighed as relevant factors are the comparative inconvenience, loss, trouble and prejudice.

13. In Piper v. Harvery, (1958) 1 All. ER 454, the issue as to comparative hardship arose for the consideration of Court of Appeal under the Rent Act, 1957. Lord Denning opined:

> *"When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and this is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship."*
>
> *Hodson, L.J., opined:*
>
> *"The tenant has not been able to say anything more than the minimum which*

> *every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsucessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."*

64. A careful reading of the above observations of the Apex Court would show as to how comparative hardship is to be decided and on what basis, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on one party to prove that lesser disadvantages will be suffered by the other side. The owner of the property cannot be denied eviction and compelled to leave poorly merely to enable the tenants to carry on their flourishing business activity at the cost of the landlord. The fact that there is no other place for the landlord to stay is one of the important factors and if there is no material produced on record by the tenant to outweigh such a factor, a decree for eviction must follow.

65. In the case of **Bentool Steel Products Private Limited** (supra), it has been observed in paragraphs 5 and 6 as under:

"5. The second submission made by the learned Senior Counsel for the appellant is that the issue as to comparative hardship being essentially a question of fact, the High Court in exercise of its revisional jurisdiction under Section 25 of the Act could not have interfered therewith and, therefore, the decision of the High Court is liable to be set aside on this ground alone. Reliance was placed on Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [(1980) 4 SCC 259]. We have carefully considered the submission so made by the learned Senior Counsel for the appellant and examined the decisions of the appellate authority and the High Court in this background. It is settled that the scope of revisional jurisdiction under Section 25 of the Act is not so restricted and limited as one under Section 115 CPC, but at the same time it is not so wide and open as that of an appellate court so as to convert the revisional jurisdiction into an appeal against the findings of first appellate court or authority. However, in Raja Lakshmi Dyeing Works [(1980) 4 SCC 259] itself this Court has held that if it could be shown that there was a taint of such unreasonableness as results in miscarriage of justice then even concurrent findings of facts are liable to be interfered with in exercise of revisional jurisdiction. A perusal of the decision of the High Court shows that on the question of comparative hardship, the High Court has not interfered with any of the findings of facts arrived at by the appellate authority. All that the High Court has said is that from the proven facts, the inference which has been drawn by the appellate authority is wholly unsustainable in law and has, therefore, obviously occasioned miscarriage of justice. How the issue as to comparative hardship is to be

approached has been dealt with by this Court while dealing with pari materia provisions contained in similar rent control legislations in Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273].

6. The conclusion of the appellate authority that the tenant would suffer comparatively more hardship is based on two findings of fact: one, that the business of the tenant is more flourishing than that of the landlord and, two, that the administrative office of the tenant was situated on the upper floor of the same tenancy premises and in the event of the tenant being called upon to shift his business to another premises, he shall have to move at a distance from the administrative office, which would cause serious inconvenience to him. Suffice it to observe that the conclusion drawn by the appellate authority on the issue as to comparative hardship from the proved facts is vitiated by two infirmities: the appellate authority has taken irrelevant factors into consideration and ignored the relevant factors from consideration. In Bega Begum case [(1979) 1 SCC 273] this Court has held that merely because the tenant will have to be ousted from the tenancy premises on account of a decree for eviction being passed is irrelevant to be considered as a hardship because asking by the tenant for availability of premises similarly situated in all respects the same as the tenancy premises would be asking for almost an impossible and if that factor be taken into consideration as a relevant factor, then a decree for

eviction would not be liable to be passed in any case at all. It has also been held that the landlord cannot be prevented from augmenting his income by expanding his own business merely for the sake of securing enjoyment by the tenant of the tenancy premises for any length of time. In Badrinarayan Chunilal Bhutada case [(2003) 2 SCC 320] this Court has held that the onus is on the tenant of proving relevant factors, which would enable a finding as to comparative hardship being arrived at in his favour and he should discharge the onus. One of the relevant factors which the tenant is expected to point out is that he cannot shift to other premises because other premises for carrying on his business activity in the city would just be not available. In the present case, the finding of fact arrived at by the appellate authority is that to accommodate his business which has already expanded, the landlord has taken two godowns on rent and the rent which the landlord is paying for these two godowns is much more than the rent which the tenant is paying in respect of the tenancy premises. Apart from this, the landlord for want of requisite space in his business premises is being compelled to stack his business stock on the road edges in front of his shop and he is being repeatedly harassed by the local authority and other officials on account of such avoidable misuse of the road by the landlord. Simply because the tenant has a flourishing business, the same cannot be set up as a defence, in the name of comparative hardship, against the bonafide requirement of the landlord

whose business has already outgrown and whose necessity is imminent. Thus, a relevant factor was ignored by the appellate authority. The fact that the business premises of the tenant shall have to be shifted at some distance from the administrative office situated on the first floor is not a factor of any relevance as the activities, which are carried on from the administrative office can very well be carried on therefrom while the business dealings can very well be carried on from such premises as the tenant shall have to avail himself in the event of his being evicted from the tenancy premises. A little inconvenience to the tenant cannot be called a hardship."

66. The contention of Mr. Diniz is that even the son of the landlady by the name of Melvile expired during the pendency of the Appeal and therefore, the need for his requirement, is also not existing. Such contention is again required to be answered as incorrect. The landlady specifically pleaded in the year 1983 itself that the premises were required for herself, her husband and other family members, which include the wife and children of Melvile since at that time, Melvile was serving as Officer and was posted at different places from time to time. The evidence of the landlady specifically proves that the two rooms in her possession were having access through the living room which is in the possession of the tenant and the same would not be sufficient for herself and

her family members, has been established through evidence. The tenant admitted that the landlady had only two rooms in her possession. Thus, for the landlady along with her husband and for the occupation of the other family members such a portion of two rooms was insufficient. There is no other evidence to show that the need of the landlady was not at all bonafide. It is a fact that the landlady and her husband expired during the pendency of the proceedings. However, the need for her family members including Melvile and his family subsists. Even after the death of Melvile, the need for the premises for the family members subsist and cannot be considered as non-existence. It would be absurd to demand further evidence in anticipation of the death of the members of the family of the landlady. The decisions passed by the Courts below are on concurrent findings and in the absence of any illegality or perversity, it is not proper for this Court to consider all subsequent events including the one which is tried to be projected here by filing Miscellaneous Civil Applications. Even otherwise, the accommodation of Melvile in New Delhi has no relevance at all to his need to stay in Goa. Since the litigation is prolonged for such a long period, purchasing some different accommodations in some different States cannot extinguish the claim of bonafide need. The landlady and her family members being the owners of the suit premises would be certainly entitled to occupy the suit house by showing their bonafide need. The question of settling down in Goa

is a fact to be proved and considered by the concerned Authority. Once the fact finding Authority comes to the conclusion, on the basis of evidence on record, which is found to be legal and bonafide, cannot be disturbed while entertaining the supervisory jurisdiction under Article 227 of the Constitution of India.

67. The Petition, therefore, fails and hereby stands dismissed.

68. Rule stands discharged. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.