M.M. QUASIM

v.

MANOHAR LAL SHARMA & ORS.

April 7, 1981

[D.A. DESAI, R.S. PATHAK AND E.S. VENKATARAMIAH, JJ.]

Bihar Buildings (Lease, Rent and Eviction) Control Act 1947—Ss. 2(d), 11(1)(c) Expln. and 11(1)(d)—Landlord—Meaning of—Suit for eviction of tenant on ground of bonafide personal requirement and default—Partition of properties of landlord—Suit property allotted to a person not a party to the eviction proceedings —Whether landlord entitled to maintain and continue eviction proceedings.

Interpretation of Statutes—Administration of Rent Acts—Courts to bear in mind object and intendment of legislature.

Words and Phrases—Landlord—Meaning of—Ss. 2(d) and 11(1)(c) Expln. Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947.

Respondents 1 and 2 are the brother's sons of Respondent No. 3. These respondents commenced an action for ejectment of the appellant from a shop under section 11(1)(c) & (d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, alleging that the respondents in good faith required possession of the shop for opening an office and a clinic by the first respondent who had become a qualified medical practitioner, and that there was default in payment of rent for a period of three months i.e. September, October and November, 1972. The appellant contested the suit for eviction contending that he did not commit default in payment of rent for the three months and that the same was paid but no receipt was passed and that as the respondents were avoiding the statutory liability of passing the receipt acknowledging payment of rent, the appellant was forced to send the rent by money-order from December, 1972 and he sent the same month after month, and therefore, he could not be dubbed a defaulter. The ground for personal requirement was controverted contending that the property belonged to a firm, and therefore, the same cannot be claimed for the use of any one partner for his business other than the business of the firm. It was further contended that the respondents also owned a number of houses and their requirement for Respondent No. 1 was incorrect and unwarranted.

The Trial Court held against the appellant both on the question of default in payment of rent and personal requirement and ordered eviction.

The appellant preferred an appeal and when the appeal was pending before the appellate authority, he moved an application under Order 41, Rule 27 of the Code of Civil Procedure contending that there had been a partition of the properties amongst the members of the firm and the suit shop had been allotted

A to one 'P' who was neither a plaintiff nor a party to the proceedings and if the shop belonged to him as an exclusive owner, the respondents and especially respondent No. 1 could not seek to evict the appellant for his personal requirement of the suit shop. The appellate judge holding that the respondents were accepted by the appellant as the landlords of the suit shop, the subsequent partition decree would not help the appellant and agreeing with the finding of the Trial Court that there was default in payment of rent for a period of three B months, he dismissed the appeal.

The second appeal to the High Court by the appellant was dismissed, holding that the appellant had not moved the first appellate court with a proper application under order 41, rule 27 of the Code of Civil Procedure and as there was no such application on the record of the case the contention could not be entertained, and that the appellant did not challenge the finding of the courts on the C question of default in payment of rent.

In the appeal to this Court, it was contended on behalf of the appellant tenant that : (1) the High Court was in error in rejecting the contention of the appellant that the ground of personal requirement was no more available to the respondents in view of the partition decree because not only the landlord must prove his requirement at the commencement of the action but the D landlord for whose requirement the action is commenced must show that his requirement continues throughout the course of proceedings and that he had a subsisting interest in the premises of which possession is sought for his own use, (2) the High Court was in error in observing that in the absence of a proper application under order 41, rule 27 the Court could not entertain the contention thereby sought to be raised, and that the finding that the appellant was in default in payment of rent for a period of two months was not questioned before it.

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Allowing the appeal,

HELD : 1. The decree of the High Court and the first appellate court are set aside and the case remanded to the first appellate court, which after granting the application under order 41, rule 27, and taking the certified copy of the decree in the partition suit on record and after giving an opportunity to F the parties to lead any additional evidence should decide, whether the partition decree transfers the suit shop to 'P' exclusively and whether the respondents can maintain the action and are entitled to evict the appellant on the ground of personal requirement of respondent No. 1 and/or on the ground of default. [385 G—386 B]

G 2. The expression 'landlord' which has been defined in section 2(d) of the Rent Act is an inclusive definition couched in very wide language. This wide amplitude of the expression has however been cut down by the explanation appended to sub-clause (c) of sub-section (1) of section 11. The person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is the owner of the building and has a right to occupy the same in his own right. A mere rent collector, H though may be included in the expression landlord in its wide amplitude cannot be treated as landlord for the purposes of section 11(1)(c). [376 G—378 B]

3. The legislature by restricting the meaning of the expression 'landlord' for the purpose of Section 11(1)(c), manifested its intention namely that landlord alone can sue for eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use. A rent collector or an agent is not entitled to occupy the house in his own right. Even if such a person be a lessor and, therefore, a landlord within the expanded inclusive definition of the expression landlord, nonetheless he cannot seek to evict the tenant on the ground that he wants to personally occupy the house. He cannot claim such a right against the real owner and as a necessary corollary he cannot seek to evict the tenant on the ground that he wants possession of the premises for his own ocupation. [378 C, G]

In the instant case the application for additional evidence was filed after the arguments were concluded. The Judge had no objection in treating it to be one under Or 41 rule 27, took it on record and examined it on merits. The High Court was clearly in error in ignoring the evidence in second appeal on a technical consideration that a proper application under order 41, rule 27, was not placed before the first appellate court. [373 F, 374 C, 375 A-B]

In the instant case, there was a proper and regular application to meet with the requirements of order 41, rule 27, CPC for additional evidence inviting the court's attention to a subsequent event of vital importance cutting at the root of the plaintiff's right to continue the action. Coupled with it, there was evidence in the form of a certified copy of the decree in a partition suit showing that the respondents even if they had some shade of title to commence action, they having lost all interest in the property and the property having become one of exclusive ownership of a person not a party to the proceedings were no more entitled to continue the proceedings for their own benefit. Both the lower appellate court and the High Court were clearly in error in ignoring this vital piece of evidence which goes to the root of the matter and which would non-suit the respondents. [381 C, G]

Pasupuleti Venkateswarlu v. *The Motor & General Traders*, [1975] 3 S.C.R. 958 and *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhri*, [1940] F.C.R. 85, referred to.

4. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sold judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very *raison de'etre* of the Rent Act. If it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the court would expect the landlord to establish that the premises which is vacant is not suitable

for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. To say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant would be unsupported by the Rent Act. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted, and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of the necessities of life-shelter. [383 C—384 A]

In the instant case there are some recitals in the judgment of the High Court which show (i) that certain aspects have been disposed of cursorily, lacking precision, and (ii) that a tenant who examined as many as eightw itnesses including himself to prove that the rent was paid and who specifically pleaded that fact in reply to the notice served by the landlords and who meticulously fought his case, by making an application for additional evidence at the appellate stage would not give up the contention and if he had in fact given it up there was no justification for still taking the matter to the highest court. The subsequent event of partition of the properties have a dircet impact on the title of the landlord-respondents to evict the appellant on the ground of non-payment of rent. A remand of the case is therefore inevitable. [384 G—385 B, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 758 of 1978.

Appeal by Special Leave from the Judgment and Order/ Decree dated 5.10.1977 of the Patna High Court (Ranchi Bench) Ranchi in Appeal from Appellate Decree No. 204 of 1976 (R).

R.K. Garg, V.J. Francis, D.K. Garg and *S.K. Jain* for the Appellant.

Sarjoo Prasad, S.N. Misra and *A.N. Bardiyar* for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. A tenant under a decree of eviction questions its correctness in this appeal by special leave.

Respondents 1 and 2 are the brother's sons of respondent 3 Kishorilal Vishwakarma. Respondents commenced an action for ejectment of the appellant under section 11 (2)(c) & (d) of the Bihar Buillding (Lease, Rent & Eviction) Control Act. 1947 ('Rent Act' for short) from a shop forming part of holding No. 188 of Ward No. 3 within the area of Giridih municipality in Bihar State.

Claim for possession was founded on the ground mentioned in s. 11 (1) (c) alleging that the respondents in good faith required possession of the shop for opening an office and a clinic by first respondent Manoharlal Sharma who by then had become a qualified medical practitioner having obtained M.B.B.S. degree. The additional ground on which the claim rested was the usual one of default in payment of rent for a period of two months and more as envisaged by s. 11 (1) (d). Default complained of was failure to pay rent for the months of September, October and November, 1972.

Appellant contested the suit, *inter alia*, contending that he did not commit default in payment of rent for the months of September, October and November, 1972, and that the same was paid but no receipt was passed and that as the respondents were avoiding statutory liability of passing the receipt acknowledging payment of rent the appellant was forced to send the rent by Money Order from December 1972 and he sent the same month after month, and, therefore, he could not be dubbed a defaulter within the meaning of s. 11(1) (d). Controverting the ground of personal requirement, the appellant contended that the property belonged to a firm and, therefore, the same cannot be claimed for the use of any one partner for his business other than the business of the firm. And in any case, the respondents have number of houses in their possession and the requirement alleged on behalf of Manoharlal Sharma was incorrect and unwarranted.

The learned trial judge framed as many as nine issues. He held against the appellant both on the question of default in payment of rent and the personal requirement and after answering some technical defences raised by the appellant, learned trial judge decreed the suit. The appellant preferred an appeal to the appellate authority. When the appeal was pending before the learned Second Additional Subordinate Judge, Giridih, the appellant filed an application supported by an affidavit on September 28, 1976, purporting to be under order 41, rule 27, Code of Civil Procedure contending therein that as originally contended by him the shop belonged to a firm and in Suit No. 4 of 1974 there has been a partition of the properties amongst the members of the firm and the suit shop has been allotted to one Pyarelal, who is neither a plaintiff nor a party to the proceedings and if the shop now belongs to Pyarelal as an exclusive owner, the respondents and especially respondent 1 Manohar Lal Sharma cannot seek to evict the appellant for his personal requirement of the suit shop. This application was filed

with an affidavit drawn at the foot of the application itself. The learned appellate judge referred to this application in paragraph 12 of his judgment and negatived the contention therein raised observing that allotment of the suit shop to Pyarelal has taken place after the suit was filed and that as earlier the respondents were accepted by the appellant as the landlords of the suit shop, the subsequent partition decree would not help the appellant. He then made a cryptic observation that 'in any view of the matter the finding of the learned Munsif regarding personal necessity is correct and there is no ground for interference.' He agreed with the finding of the trial Court that there was default in payment of rent for a period of three months, and, therefore, also the respondents were entitled to a decree for eviction on the ground mentioned in s. 11 (1) (d) of the Rent Act. Accordingly he dismissed the appeal with costs.

A second appeal to the High Court by the tenant met with the same fate. It is, however, advantageous to notice the approach of the High Court to the two contentions raised on behalf of the appellant. The contention of the tenant that the ground for personal requirement of respondent 1 Manoharlal Sharma no more survives because he has no subsisting interest in the suit shop in view of the partition decree in Suit No. 4 of 1974 was negatived observing that the appellant had not moved the first appellate court with a proper application under order 41, rule 27 of the Code of Civil Procedure and as there was no such application on the record of the case the contention could not be entertained. Alternatively, the High Court found it difficult to accept the contention that during the pendency of the appeal if the house in question was allotted to the share of one of the co-sharers of the decree (sic) the decree which had been passed in their favour becomes nullity and is liable to be set aside by the appellate court on this ground alone. Relevant to the second contention the High Court observed that the appellant did not challenge the finding of the two courts below on the question of default in payment of rent. Accordingly the High Court dismissed the second appeal with costs. Hence this appeal.

Learned counsel for the appellant canvassed the same two contentions before us which were pressed before the High Court. It was contended that the High Court was clearly in error in rejecting the contention of the appellant that the ground of personal requirement was no more available to the respondents in view of the partition decree in Suit No. 4 of 1974 because not only the landlord must prove his requirement at the commencement of the action but

the landlord for whose requirement the action is commenced must show that his requirement continues throughout the course of proceedings and that he has a subsisting interest in the premises of which possession is sought for his own use. Reliance was placed in support of this submission on *Pasupuleti Venkateswarlu* v. *The Motor & General Traders.*(1) It was also contended that the High Court was in error in observing that in the absence of a proper application under order 41, rule 27 the court could not entertain the contention thereby sought to be raised. It was also contended that the High Court was in error in observing that the finding that the appellant was in default in payment of rent for a period of two months was not questioned before it.

Respondents 1 and 2 are the sons of one Sunderlal Sharma. Respondent 3 is the brother of Sunderlal Sharma. One Pyarelal is also a brother of Sunderlal Sharma and Respondent 3 and thus an uncle of respondents 1 and 2. These facts have become very relevant for evaluating and disposing of the contention canvassed before us.

Action for ejectment was filed by respondents 1 and 2 Manoharlal Sharma and Motilal Sharma sons of deceased Sunderlal Sharma, and respondent 3 Kishorilal Vishwakarma, brother of Sunderlal Sharma, *inter alia*, stating that they are the owners of the suit shop and are thus landlords within the meaning of Rent Act and that they require possession of the suit premises, firstly on the ground that Manoharlal Sharma wants to open his clinic in the suit shop and secondly, that the appellant tenant has committed default in payment of rent for a period of two months and more.

At the first appellate stage appellant filed an application, in the cause title of which it is mentioned that it is an application purporting to be under order 41 rule 27, C.P.C. and at the foot of it there is a sworn affidavit with reference to the contents of the application. In this application it has been in terms stated that in suit No. 4 of 1974 (*Kishorilal Vishwakarma* v. *Pyarelal Vishwakarma*) for partition of the assets of the firm there has been a compromise on August 16, 1974, and that by the partition effected by the decree the suit shop has been allotted to Pyarelal and thereby he became the owner and landlord of the suit shop with reference to the appellant and as he is neither a party to the

(1) [1975] 3 S.C.R. 958.

A suit nor has he applied to be joined as a party to the suit, the present respondents have no subsisting interest in the property and, therefore, a decree for eviction on any of the grounds mentioned in the Rent Act could not be passed in their favour. He requested for setting aside the decree on this ground. It was further stated in the application that this fact being in the special knowledge of the B respondents did not come to the knowledge of the appellant and notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him, and, therefore, he sought to produce this additional evidence at the appellate stage. A request was made to accept the certified copy of the partition decree evidencing the C fact alleged in the application. The learned appellate judge did not find fault either with the form of the application or compliance with the technical requirement of order 41, rule 27, or in any delay in moving the court for taking on record the additional evidence, The learned judge of the first appellate court disposed of the contention raised in the application on merits as would be evident from D paragraph 12 of his judgment. Not to confound the issue on this point any more, the observation of the learned judge of the first appellate court may be extracted;

> "After the argument was heard, the deft. appellant has filed the certified copy of the compromise decree of E P.s 4 of 1974 (page 10 begins) Relying on this decree it has been alleged that the house in question has now been allotted to one Pyarelal who is not party to this suit. So, now, the plffs have no concern with the suit house. This event had taken place after passing of the decree. If Pyarelal was co-sharer then other co-sharer is competent to file a F suit on behalf of the other. From the notice reply ext. I it will appear that ownership of the plffs respondent of T.S. 47/73 was accepted. Once they have accepted that the plaintiffs are the owner now the defendant appellant can not say that the plffs are not the owner of the suit premises. This partition decree will not help the defendant to say G that the plff do not require the house now ? In execution of that partition decree, also the vacant possession will be required. So, in any view of the matter I find that the findings of the matter I find that the findings of the learned Munsif, regarding the personal necessity is correct and there H is ground for interference. The learned Munsif has rightly appreciated the evidence and has come to the correct findings."

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It would unquestionably appear that the learned judge entertained the application for additional evidence, took it on record and examined it on merits.

In this background, in our opinion, the High Court was clearly in error in ignoring this evidence in second appeal on a technical consideration that a proper application under order 41, r. 27 was not placed before the first appellate court. Here is what the High Court says :

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> "Whenever any additional evidence is produced before an appellate court a regular application under order 41, rule 27 of the Code of Civil Procedure is filed. There is no such application in the records of the case."

C

Obviously, this is contrary to record. But the High Court appeared to be in two minds when it proceeded to entertain the contention on merits and negatived it on merits. Says the High Court further on this point as under :

D

> "Apart from that, it is difficult to accept the contention that during the pendency of the appeal if the house in question is allotted to the share of one of the co-sharers of the decree, the decree which had been passed in their favour becomes nullity and is liable to be set aside by the appellate court on this ground alone. This aspect of the matter has (sic) considered on several occasions by this Court where the plaintiff, during the pendency of the suit has assigned his interest. Even in those cases it has been held that by mere assignment the plaintiff does not lose the right to maintain the suit. In my view, the position will be all the more difficult for the defendant if any such objection is taken for the first time in the court of appeal."

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What precedents are relied upon by the High Court when it says that the aspect required to be considered by it has been examined on a number of occasions left us guessing because there is no citation in the judgment. If the precedent relied upon was quoted in the judgment we could have profitably examined the precedent itself. In the absence of it the contention being a pure question of law will have to be examined on its own merits.

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The procedural conundrum may be cleared out at the threshold. Was there a proper application before the appellate court under

A order 41, rule 27. It must be answered in the affirmative. The application Annexure II page 36 of the record recites in its title as: 'Petition under order 41, rule 27 of the Civil Procedure Code'. It is founded on an affidavit. It is a well recognised practice commonly adopted in courts that where an application is required to be supported by an affidavit the application is drawn up and at the foot of it an B affidavit is sworn. Even taking the most technical view of the requirement of order 41, r.27, C.P.C. the petition purporting to be under order 41 rule 27 meets with the requirement of the situation. The contention of delay in moving the application will be presently examined but the High Court could not have rejected the contention raised by the appellant on the ground that a proper application under C order 41, rule 27, is not to be found on record. To some extent this observation would indicate that the record of the case was not examined with the thoroughness as is expected in disposing of the appeal. In fact, the first appellate court whose grievance was that the application was filed after the arguments were concluded, has had no objection in treating the application to be one under order D 41, rule 27. It has been so treated and has been disposed of on merits as per the passage from the judgment extracted hereinbefore. The High Court, therefore, was squarely in error in rejecting the contention on the narrow ground that there was no proper application under order 41, rule 27.

E Now, probing the merits of the contention, the first thing that stares in the face is whether where a suit is filed by a person claiming to be landlord on the ground that he in good faith requires the suit premises for his own use and occupation, would he still be entitled to a decree for possession on this ground even if during the course of proceedings his interest in the suit premises has come to F an end and on the date of the final decree he had no subsisting interest in the suit premises? In other words, how should the Court approach a proceeding under the Rent Act while taking into consideration the subsequent events which would non-suit the plaintiff ?

G The expression 'landlord' has been defined in s. 2 (d) of the Rent Act which reads as under :

> "landlord" includes the persons who for the time being is receiving, or is entitled to receive, the rent of a building whether on his own account or on behalf of another, H or on account or on behalf or for the benefit, or himself and others or as an agent, trustee, executor, administrator,

receiver or guardian or who would so receive the rent, or be entitled to receive the rent if the building were let to a tenant."

The inclusive definition is couched in very wide language. However this wide amplitude of the expression has been cut down by the explanation appended to sub-clause (c) of sub-section (1) of s. 11 which reads a under :

"11. Eviction of tenants :

(a) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Dispute Act, 1947 and to those of section 12, where a tenant is in possession of any building, he shall not be liable to eviction there-from except in execution of a decree passed by the Court on one or more of the following grounds;—

... ...

(c) Where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord;

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall thenceforth constitute the building within the meaning of clause (aa) of section 2, and the rent so fixed shall be deemed to be the fair rent fixed under section 5;

Explanation : In this clause the word "landlord" shall not include an agent referred to in clause (d) of section 2."

Therefore, while taking advantage of the enabling provision enacted in s.11 (1) (c), the person claiming possession on the ground of

A his reasonable requirement of the the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression landlord in its wide amplitude cannot be treated as a landlord for the purposes of s. 11(1)
B (c). This becomes manifestly clear from the explanation appended to the sub-section. By restricting the meaning of expression landlord for the purpose of section 11(1)(c), the legislature manifested its intention namely that that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against the whole world to occupy the building himself and
C exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use. The latter part of the section envisages a situation where the landlord is holding the buildings for the benefit of some other person but in that case landlord can seek to evict tenant not for his personal use but for the
D personal requirement of that person for whose benefit he holds the building. The second clause contemplates a situation of trustees and *cesti que* trust but when the case is governed by the first part of sub-clause (c) of sub-section (1) of s.11, the person claiming possession for personal requirement must be such a landlord who wants possession for his own occupation and this would imply that he must
E be a person who has a right to remain in occupation against the whole world and not someone who has no subsisting interest in the property and is merely a rent collector such as an agent, executor, administrator or a receiver of the property. For the purposes of s. 11(1)(c) the expression landlord could, therefore, mean a person who is the owner of the building and who has a right to remain
F in occupation and actual possession of the building to the exclusion of everyone else. It is such a person who can seek to evict the tenant on the ground that he requires possession in good faith for his own occupation. A rent collector or an agent is not entitled to occupy the house in his own right. Even if such a person be a lessor and, therefore, a landlord within the expanded inclusive
G definition of the expression landlord, nonetheless he cannot seek to evict the tenant on the ground that he wants to personally occupy the house. He cannot claim such a right against the real owner and as a necessary corollary he cannot seek to evict the tenant on the ground that he wants possession of the premises for his own occupa-
H tion. That can be the only reasonable interpertation one can put on the ingredients of sub-clause (c) of s. 11(1) which reads: "Where building is reasonably and in good faith required by the landlord

for his own occupation.....". Assuming that the expression 'landlord' has to be understood with the same connotation as is spelt out by the definition clause, even a rent collector or a receiver of the property appointed by the Court in bankruptcy proceedings would be able to evict the tenant alleging that wants the building for his own occupation, a right which he could not have claimed against the real owner. Therefore, the explanation to clause (d) which cuts down the wide amplitude of the expression 'landlord' would unmistakably show that for the purposes of clause (c) such landlord who in the sense in which the word 'owner' is understood can claim as of right to the exclusion of everyone, to occupy the house, would be entitled to evict the tenant for his own occupation.

The next step to be taken is whether where a person claiming to be such a landlord has sought to evict the tenant for his own occupation of the building but lost his interest in entirety in the building during the pendency of the appeal which is a continuation of the suit. Would he still be entitled to maintain or continue the action after the cessation or extinguishment of his interest in the building? To examine this contention on merits one feature of the proceedings under the Rent Act may be taken into consideration. To what extent and in what circumstances the court can take notice of events subsequent to the institution of the action is the core problem. This is no more *res integra* and need not be examined in depth. In *Pasupuleti Venkataeswarlus'* case this Court examined this question in relation to a proceeding under the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960. The landlord in that case sought to evict the tenant as he wanted to start his own bussiness in the demised premises. In other words, action was for eviction for personal requirement. In the zig-zag course of proceedings it transpired that subsequent to the commencement of the action the landlord had come into possession of another shop which would meet with his requirement and on this subsequent event tenant requested the court to non-suit the plaintiff. At that stage the proceedings were pendings before the High Court in a revision petition at the instance of the landlord questioning a remand to the trial court by the first appellate court for investigation of certain facts. In this revision at the instance of the landlord the High Court took notice of the subsequent event that the landlord's requirement had been fully satisfied as he had come in possession of another shop. In appeal by the landlord to this Court, a serious exception was taken that the High Court could not have taken into consideration an event subsequent to the commencement of the proceedings and non-

A suit the landlord and that too at a stage when the proceedings were pending in revision at the instance of the landlord. Negativing this contention and dismissing the appeal this Court, after referring to the decision in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhri*[1] quoted with approval the following passage from B *Patterson* v. *State of Alabama*[2] :

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining C what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

In the leading judgment in *Lachmeshwar Prasad Shukul's* case Varadachariar, J. observed that an appeal being in the nature of a D re-hearing the Courts in India have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts which have come into existence after the decree appealed against was made. Krishna Iyer, J. summed up the position in *Pasupuleti Venkateswarlu's* case : E

> "It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to F court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies binding the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice—subject, of course, to the G absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or H

(1) [1940] F.C.R. 85
(2) 294 U.S. 600 at 607.

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

To sum up, there was a proper and regular application to meet with the requirements of order 41, rule 27, CPC for additional evidence inviting the Court's attention to a subsequent event of vital importance cutting at the root of the plaintiff's right to continue the action. Coupled with it, there was evidence in the form of a certified copy of the decree showing that the plaintiffs, even if they had some shade of title to commence action, they having lost all interest in the property and the property having become one of exclusive ownership of a person not a party to the proceedings, were no more entitled to continue the proceedings for their own benefit.

Have the first appellate court and the High Court acted in accordance with law in ignoring this subsequent event of vital importance? The first appellate court, as pointed out earlier, proceeded to examine the contention on merits and rejected it on the ground that this being an event subsequent to the passing of the decree by the trial court, no notice could be taken of it, a view contrary to the law laid down by this Court. Same is true of the High Court when it said that even if the landlord who commenced action lost all interest in the property subsequent to the passing of the decree, the decree does not become a nullity and at any rate no note of the subsequent events can be taken in the absence of a proper application under order 41, rule 27, C P.C. But the next observation of the High Court that where the plaintiff landlord's interest in the property is extinguished subsequent to the decree by the trial court, he does not lose his right to maintain and continue the action, is opposed to the very scheme of the Rent Act and the provisions contained in ss. 11(1)(c) and 12. Both the courts were, therefore, clearly in error in ignoring this vital piece of evidence which goes to the root of the matter and would surely non-suit the plaintiffs.

Once this subsequent event of landlord's interest in the property getting extinguished as the property in question is allotted as an exclusive owner to a sharer upon a partition amongst co-sharers, is properly evaluated, unless some proper explanation is offered by the landlords who are parties to the proceedings, the plaintiffs are

A liable to be non-suited. This does not require much of a discussion because plaintiffs sought possession for personal requirement of respondent 1 Manohar Lal Sharma. Monohar Lal Sharma wanted to start his clinic, as he is a qualified medical practitioner, in the suit premises. Manohar Lal Sharma is neither an owner nor a co-owner nor he has any interest in the suit property since the date of parti-
B tion effected by compromise between the co-sharers in Suit No. 4/75. If action were to start today a or day after the decree for partition, could Manohar Lal Sharma ever file a suit for evicting the present appellant from the suit shop on the ground that he wanted to start his clinic in the suit shop ? If Manoharlal Sharma can bring such an action he can as well evcit any tenant from any premises with which
C he has no connection. Even if at the commencement of the action Manoharlal Sharma was a co-owner alongwith his brother and uncle and, therefore, he had a semblance of title to commence action for eviction, once the co-owner parted company, partitioned property by metes and bounds and the suit property came to be allotted to Pyarelal as an exclusive owner. Manoharlal Sharma
D cannot claim eviction of the tenant from such property in which he has no subsisting interest. And even if this event occurred subsequent to the passing of the decree by the trial court, this subsequent event should have been noticed at the appellate stage because the appeal is nothing else but a continuation of the suit and in a proceeding under the Rent Act the relief
E has to be moulded according to the situation on the date of the decree; the decree would mean the decree which is final and not correctible by any judicial proceeding. Manoharlal Sharma, therefore, cannot seek to evict the tenant for his personal requirement. Therefore, the suit for eviction under s.11(1)(c) would ordinarily fail on this ground. However, as the the fresh
F evidence is being taken into consideration and as both the appellate courts and the High Court have erred in approaching the matter by ignoring the subsequent event, it would be presently pointed out that in order to do justice between the parties the matter will have to be remanded to the first appellate court.

G Before turning to the next topic, a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place. The learned judge of the first appellate court while upholding the claim of personal requirement of respondent 1 has observed as under:

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> "It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as

to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Girdih.....The defendant appellant has also filed certified copy of judgment of one suit No. 47/73 which is Ext. D only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs".

This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very *raison de'etre* of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the

A same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life—shelter—and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In 'The Sociology of Law', edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under :

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> "The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it".

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It was, however, contended on behalf of the respondents that even if in view of the subsequent event the plaintiffs landlords were not entitled to recover possession on the ground set out in s. 11(1)(c) yet the respondents would still be entitled to evict the appellant on the ground mentioned in s. 11(1) (d) inasmuch as all the courts have concurrently found that the appellant was in default of payment of rent for a period of three months, i. e. September, October and November, 1972, and that this finding was not even questioned before the High Court as mentioned in paragraph 3 of the judgment of the High Court. The appellant has set out ground No. V in his petition for special leave in the following terms :

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> "Because the High Court erred in holding that the findings regarding default in payment of rent and of personal necessity were not challenged before the High Court".

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Undoubtedly, what the High Court states in its judgment on the question whether a particular finding was challenged or not challenged is entitled to highest respect at our hands and must ordinarily be always accepted. We have lingering hesitation in the facts of this case for two specific reasons : (i) that there are some recitals in the judgment of the High Court specifically referred to herein before which show that certain aspects have been disposed of cursorily, lacking precision; and (ii) that a tenant who examined as many as eight witnesses including himself to prove that the rent was paid and who specifically pleaded that fact in reply to the notice served by the landlords and who meticulously fought his case by making an application for additional evidence at the appellate

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stage would not give up the contention and if he had in fact given it up there was no justification for still taking the matter to the highest court. Even then we would have overlooked the contention to the contrary and accepted what has been stated in the judgment but for the fact that subsequent event stated hereinabove may have a direct impact on the title of the landlords-respondents to evict the appellant on the ground of non-payment of rent.

If on examining and evaluating the contents of the certified copy of the decree in partition suit No. 4/74 it is established conclusively that the property has been exclusively allotted to Pyarelal who has not applied to be joined as party to these proceedings though he has filed some affidavit in this appeal before this Court and if no reservation is made in the decree for continuation of the proceedings for recovering possession on the ground of non-payment of rent in favour of the present respondents nor have the present respondents undertaken any liability to continue the proceedings on behalf of Pyarelal Sharma for the limited purpose of recovery of rent, in our opinion it would be extremely doubtful if the respondents can still maintain the action for recovering rent and for possession on the grounds mentioned in s. 11 (1)(c) & (d). That aspect has not at all been examined either by the first appellate Court or by the High Court. If 'A', a landlord commences action for eviction against his tenant on the only ground of nonpayment of rent and during the pendency of the proceedings transfers the property lock stock and barrel to a third person and if the third person is not before the Court, without finally expressing any opinion because the remand is contemplated, it is just unthinkable that such a landlord can continue the suit even after he had no interest in the property. The aspect may have to be examined in the background of the contract between the landlord who commenced the action and his transferee, or the transferee having reserved some right came to the Court for being impleaded as a party to continue the action and his, right to continue, may be examined. These aspects are not examined by any Court though decision on them goes to the root of the matter. Therefore, a remand is inevitable in the circumstances of this case.

Accordingly, we allow this appeal and set aside the decree of the High Court and the first appellate Court and remand the case to the first appellate Court which, after granting the application under order 41, r. 27 and taking the certified copy of the decree in partition suit No. 4/74 on record and after giving an opportunity to the parties before it to lead any additional evidence pursuant to this additonal evidence, would decide the following two questions :

A (1) Does the partiton decree transfer the suit shop to Pyarelal Sharma exclusively ?

(2) If yes, can the respondents (plaintiffs) maintain action and are entitled to evict the appellant (defendant) on the ground of personal requirement of Manohar Lal Sharma B (respondent 1) and/or on the ground of default as contemplated by s. 11(1)(d) of the Rent Act ?

On the evidence on these issues the Court may mould the final relief consistent with its findings.

With this direction the appeal is remanded to the first C appellate Court. In the circumstances of the case there will be no order as to costs.

N.V.K. *Appeal allowed.*