M.S. ZAHED

v.

K. RAGHAVAN

DECEMBER 1, 1998

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

Karnataka Rent Control Act, 1961:

S. 21 (1) (h)—Tenanted premises—Recovery of possession by landlord on ground of reasonable and **bona fide** *requirement—Held, requirement of landlord has to be both bona fide and reasonable—Landlord had sufficient accommodation in his possession for requirement of his family members—His requirement not being reasonable, he was not entitled to an order of ejectment in his favour—However, as tenant agreed to vacate premises after expiry of 4 years—Ordered accordingly in exercise of power under Article 142 of the Constitution of India—Constitution of India—Article 142.*

S.50—Revision—Power of High Court—Held, High Court entitled to re-appreciate evidence in order to examine legality as also correctness of judgment of trial court.

The appellant-landlord filed a suit under Section 21(1) (h) of the Karnataka Rent Control Act, 1961 for possession of the premises in occupation of the respondent tenant on the ground of reasonable and *bona fide* requirement. The case of the landlord was that he purchased a double storeyed house in which in a portion of ground floor the respondent tenant was staying; and that he required the accommodation occupied by the tenant for comfortable stay of his family members including his parents. The tenant resisted the suit contending that the landlord was in possession of substantial portion of the ground floor and the whole first floor, which was quite sufficient to meet the needs of his family members. The trial court decreed the suit holding that the accommodation available with the landlord was insufficient for his family and, therefore, his requirement for additional accommodation was genuine. The tenant filed a revision petition under Sec. 50 of the Act. The High Court appointed a Commissioner to report about the exact accommodation available with both the landlord and the tenant. The Commissioner submitted his report alongwith a sketch of the accommodation in occupation of the parties. The High Court allowed the revision application

A and dismissed the suit holding that looking to the size of the family of the landlord and the accommodation available with him, it could not be said that he had any genuine and *bona fide* need for any extra accommodation. Aggrieved, the landlord filed the present appeal.

It was contended for the landlord that the High Court in exercise of
B revisional jurisdiction was not entitled to interfere with the finding of fact recorded by the trial court on relevant evidence; and that the need of the landlord had to be examined from his own point of view and the High Court erred in holding that the accommodation available with the landlord was sufficient. On the other hand, for the tenant, it was contended that the powers
C of revision available to the High Court under Sec.50 of the Act were wider; it had ample jurisdiction thereunder to correct the errors of fact and law committed by the trial court; and in view of the sketch and the report of the Commissioner the High Court was justified in holding that the need of the landlord could not be said to be genuine and *bona fide.*

D Disposing of the appeal, this Court

HELD: 1.1. The High Court in revision under Sec. 50 of the Karnataka Rent Control Act, 1961 was entitled to re-appreciate the evidence with a view to finding out whether the order of the trial court was legal or correct. [223-E]

E 1.2. Sub-section (1) of Section 50 of the Act shows that the High Court, in exercise of its revisional jurisdiction, can consider the question whether the order of the trial court was legal or correct. It is obvious that legality of the order of the Small Causes Court which would fall for consideration of the High Court would pertain to errors of law that might have been
F committed by the said court. But so far as the correctness is concerned, whether the order sought to be revised was correct on facts or not will also fall for consideration of the High Court in exercise of its revisional jurisdiction. Unlike Sec. 115 C.P.C. or power of revision conferred on the High Court under other statutes, once the Act enabled the High Court to look into the 'correctness' of the orders sought to be revised, it cannot be
G said that the High Court would be disabled from considering the question whether the findings of fact reached by the Court of Small Causes were correct or not in the light of the evidence on record. [224-B-E]

M/s. Central Tobacco Co. Bangalore v. *Chandra Prakash,* (U.J. (S.C.) 90 (1969) 432 and *M/s. Bhoolchand & Anr.* v. *M/s. Kay Pee Cee Investments*
H *& Anr.,* AIR (1991) SC 2053, relied on.

2.1. For the purpose of applicability of Section 21(1) (h) of the Act, the requirement of the plaintiff-landlord has to be both *bona fide* and reasonable. If any of these two elements of requirement is missing or both the elements are missing on the facts of the case, no decree for possession can be passed in favour of the landlord under this provision. [229-G-H] A

2.2. The existing accommodation with the landlord on the ground floor and first floor of the building is sufficient to cater to the needs of the landlord and his family members, namely, his mother, his wife, two daughters and a son. On the other hand the defendant's family consists of himself, his wife and his four children as well as his unemployed brother and his mother, in all eight persons. The accommodation with him (one bed room and one hall with a small kitchen and a small toilet) is so small that partial eviction is out of question. [229-C-D-E] B C

2.3. Consequently no fault can be found with the reasoning of the High Court to the effect that looking at the accommodation available with the landlord on the ground floor and the first floor of the building, he had no genuine existing need for the suit premises and, therefore, it could not be said that the landlord had made out any case under Section 21 (1) (h) of the Act. In the light of the available accommodation with the landlord, it cannot be said that his requirement for additional space is reasonable though it cannot be doubted that it is a *bona fide* one. [229-F-H] D E

Meenal Eknath Kshirsagar (Mrs.) v. *Traders & Agencies & Anr.*, [1996] 5 SCC 344 and *Prativa Devi (Smt.)* v. *T.V. Krishnan,* [1996] 5 SCC 353, distinguished.

2.4. However, even though the tenant succeeds in this appeal and the judgment of the High Court is confirmed, in view of the stand taken by the tenant through his counsel to vacate the premises after expiry of four years time, it is deemed fit to exercise powers conferred by Article 142 of the Constitution of India and to direct the tenant as agreed to by him before the Court through his counsel to vacate the suit premises on or before 31st December, 2002. There shall be an order against the tenant as aforesaid to vacate the suit premises by that time, with the usual undertaking by the tenant. [232-H; 233-A-B-C] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5994 of 1998. H

A From the Judgment and Order dated 1.4.97 of the Karnataka High Court in H.R.R.P.No. 1693 of 1991.

S.S. Javali, Josheph Pookkatt and Prashant Kumar for the Appellant.

A.T.M. Sampath for the Respondent.

B

The Judgment of the Court was delivered by

S.B. MAJMUDAR. J. Leave granted.

By consent of learned counsel for the parties, the appeal was finally C heard and is being disposed of by this judgment.

A few relevant facts dealing with this appeal on special leave under Article 136 of the Constitution of India, deserve to be noted at the outset.

D *BACKGROUND FACTS*:

The appellant before us is the landlord and the respondent is the tenant. The appellant is the owner of a residential house situated in Indiranagar locality' in Bangalore city. The respondent is occupying a part of the ground floor of the said house on a monthly rent of Rs. 170. The present proceedings E arise out of the suit for possession filed by the appellant against the respondent under Section 21 (1) (h) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the 'Act'). For the sake of convenience, we shall refer to the appellant as the plaintiff and the respondent as the defendant in the latter part of this judgment. The case of the plaintiff is that he requires the suit premises in occupation of the defendant as the present accommodation F available to him on the first and the ground floors of the building is not sufficient for accommodating all the members of his family consisting of himself and his wife, his three daughters and a son and also his parents. Invoking Section 21 (1) (h) of the Act proceedings were initiated by the plaintiff in the Court of IV Additional Judge of Small Causes, Bangalore. The G said provision reads as under :

> "21. *Protection of tenants against eviction.* (1) Nothwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord H against the tenant;

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely:— A

xxx xxx xxx

(h) that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust; or ....." B

C

The case of the plaintiff is to the effect that he is the sole owner of the house including the tenanted premises having bought them in Feb. 1988 by availing of a housing loan from his present employer Hindustan Machine Tools International Limited. According to the plaintiff, the defendant, who is occupying a part of the ground floor premises of the said building was an Assistant Engineer with Indian Telephone Industries and was already staying D as a tenant when he purchased the property. According to the plaintiff, the accommodation available with him on the first and the ground floors of the building is not sufficient for comfortable stay of all the members of his family and, therefore, the aforesaid suit.

E

The defendant resisted the proceedings and contended that the plaintiff was in possession of substantial portion of the ground floor and was also having in his possession whole of the first floor of the building. There were also two rooms available in the compound which were utilised as shops; one of them being let out to a tenant. It was further contended that the plaintiff, his wife and four children were occupying the building in their possession F and the accommodation with them was quite sufficient to meet their needs. That the parents of the plaintiff were permanently residing at Mysore and were not staying with the plaintiff. Consequently, their need was wrongly being pressed in service by the plaintiff.

G

The Trial Court after recording the evidence offered by the parties, came to the conclusion that the available accommodation with the plaintiff was insufficient for his family and, therefore, his requirement for additional accommodation was genuine and absolute and that looking to the status of the defendant and his economic position in life, he would not suffer any hardship if evicted from the suit premises. Consequently, the Trial Court H

A decreed the suit of the plaintiff and ordered the defendant to vacate the premises.

The defendant carried the matter in revision before the High Court invoking jurisdiction of the High Court under Section 50 of the Act. During the pendency of the revision proceedings, the learned Single Judge of the B High Court who was seized of the matter, appointed a Commissioner to go on the spot and report about the exact accommodation available to both the landlord and the tenant in the building in question. The Commissioner, accordingly, went on the spot and inspected the premises occupied by the tenant as well as by the plaintiff-landlord and submitted his report along with C a sketch showing the actual accommodation available with the plaintiff and defendant in the suit building. Both the sides relying upon the said report of the Commissioner, submitted their rival contentions before the High Court. Ultimately, the learned Single Judge of the High Court came to the conclusion that looking to the size of the family of the plaintiff, the accommodation available to him in the building consisting of a substantial part of the ground D floor and the whole of the first floor was quite sufficient and, therefore, it could not be said that the plaintiff had any genuine and *bona fide* need for any extra accommodation for which the defendant could be displaced from the premises. As a result of the aforesaid conclusion arrived at by the learned Single Judge, the revision application of the defendant was allowed and the E suit of the plaintiff was dismissed. That is how the plaintiff has come to this court in the present appeal on the grant of special leave to appeal.

RIVAL CONTENTIONS:

Learned senior counsel, Shri S.S. Javali for the plaintiff vehemently F submitted that though Section 50 of the Act was widely worded, the nature of the proceeding before the High Court was by way of revision and could not treated to be a regular first appeal on facts. The learned Single Judge of the High Court had erroneously interfered in revision by upsetting a pure finding of fact reached by the Trial Court on relevant evidence. He contended G that the need of the landlord had to be examined from his own view point and not from the view point of the tenant and looking to the size of his family and also the need for accommodating his widowed mother, as his father had died during the pendency of these proceedings it could not be said that the accommodation available with the plaintiff was sufficient. Our attention was also invited by learned senior counsel for the plaintiff to three decisions of H this court. We will refer to them hereinafter. It was vehemently contended by

learned senior counsel for the plaintiff that this was not a fit case in which the High Court should have interfered in exercise of its revisional jurisdiction. A

Shri A.T.M. Sampath, learned counsel for the defendant, on the other hand, submitted that the powers of revision available to the High Court under Section 50 of the Act are wider as compared to the revisional jurisdiction under Section 115 of the C.P.C. or for that matter revisional powers of the High Court in other statutes which permitted the High Court to interfere only if the order sought to be revised was illegal or improper. That the High Court had ample jurisdiction under Section 50 of the Act for correcting errors of facts and law committed by the Court of Small Causes. For supporting his submission, our attention was invited by learned counsel to two decisions of this court to which we shall refer hereinafter. It was submitted by learned counsel for the defendant that the Commissioner's sketch and report which were relied upon by both the sides in the High Court clearly indicate that there was sufficient accommodation with the plaintiff on the ground and the first floors of the building. That even assuming that the plaintiff wanted to accommodate his widowed mother, still there was sufficient accommodation available to him and consequently, the High Court was justified in upsetting the decision of the Trial Court which clearly appeared to be incorrect. B C D

In view of the aforesaid rival contentions, the following points arise for our determination : E

(1) Whether the High Court in revision under Section 50 of the Act was entitled to re-appreciate the evidence with a view to finding out whether the order of the Court of Small Causes was legal or correct;

(2) Whether the impugned order of the High Court was even otherwise erroneous; and F

(3) What final order?

We shall deal with these points seriatim.

Point No.1: G

In order to consider this question, it will be appropriate to refer to Section 50 of the Act. The said Section reads as under :

"*50. Revision.* (1) The High Court may, at any time call for and examine any order passed or proceeding taken by [the Court of Small H

A Causes or the Court of Civil Judge] under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or *correctness* of such order or proceeding and may pass such order in reference thereto as it thinks fit."

(Emphasis supplied)

B

Now a mere look at sub-section (1) of Section 50 of the Act shows that the High Court in exercise of its revisional jurisdiction, can consider the question whether the order of the Court of Small Causes, with which we are concerned in the present proceedings, was legal or correct. It is obvious that legality of C the order of the Small Causes Court which would fall for consideration of the High Court would pertain to errors of law that might have been committed by the said Court. But so far as the correctness is concerned, whether the order sought to be revised was correct on facts or not will also fall for consideration of the High Court in exercise of its revisional jurisdiction. It is pertinent to note that the powers of revision available to the High Court under Section D 115 of the Code of Civil Procedure are circumscribed and only errors of jurisdiction if detected from the order sought to be revised can be corrected by the High Court. Even the Statutes conferring powers of revision to the High Court for considering whether the orders of lower courts or authorities are legal or proper, would enable the High Court to exercise jurisdiction that E is wider than the one under Section 115 C.P.C. but not so wide as to enable the High Court to correct mere errors of facts. But once the present Act has enabled the High Court to look into the correctness of the orders sought to be revised, it cannot be said that the High Court would be disabled from considering the question whether the findings of fact reached by the Court of Small Causes were correct or not in the light of the evidence on record. F It is axiomatic that revisional power cannot be equated with the power of reconsideration of all questions of fact as Court of First Appeal. Still the nature of the revisional jurisdiction of the High Court under Section 50 of the Act will have to be considered in the light of the express provisions of the Statute conferring such power. On the express language of Section 50, sub-G section (1) of the Act, therefore, it can not be said that the High Court had no jurisdiction to go into the question of correctness of findings of fact reached by the Court of Small Causes on relevant evidence. In fact this question is no longer *res integra.* In the case of *M/s. Central Tobacco Co., Bangalore* v. *Chandra Prakash,* U.J. SC 90 (1969) p. 432, a Bench of two learned Judges of this Court, Shah & Mitter, JJ., interpreting the very same H Section 50 of the Act, speaking through Mitter, J., clearly ruled in para 3 of

the Report as under : A

> "3.....Counsel for the appellant contended first that it was not open to the High Court in exercise of its revisionary jurisdiction to differ from the concurrent view of the two lower courts ....."

In this connection, it was observed that as the revisionary powers were B couched in very wide terms, the court was not inclined to accept the aforesaid contention of the counsel for the appellant. The aforesaid decision of this Court rendered in the light of the express wording of this very Section 50 of the Act, therefore, clinches this issue against the plaintiff. The aforesaid decision of this court has been consistently followed by the Karnataka High Court in various decisions while exercising revisionary powers under Section C 50, sub-section (1) of the Act. This very question was once again examined by this Court in the case of *M/s Bhoolchand & Anr.* v. *M/s Kay Pee Cee Investments & Anr.*, AIR (1991) SC 2053. Verma, J (as he then was) speaking for the two Judge Bench of this Court, made the following observations in para 6 of the report:

D

> "We shall first take up the question relating to the landlord's reasonable and *bona fide* requirement which is a ground for eviction under clause (h) of the proviso to sub-section (1) of Section 21 of the Act. It may be recalled that the Trial Court had negatived the existence of this ground while the High Court reversing that conclusion has E held it to be proved. The question before us is whether there is any infirmity in the High Court's reversal of this finding justifying interference in these appeals. Against the decision of the Trial Court, the provision made in Section 50 of the Act is of a revision and not an appeal to the High Court. However, the power of revision is not narrow as in S.115 CPC but wider requiring the High Court to examine F the impugned order for the purpose of satisfying itself as to the legality or correctness of such order or proceeding which enables the High Court to pass such order in reference thereto as it thinks fit. It is clear that the High Court in a revision under Section 50 of the Act is required to satisfy itself not only as to the legality of the impugned G order or proceeding but also of its correctness. The power of the High Court, therefore, extends to correcting not merely errors of law but also errors of fact. In other words, the High Court in a revision under Section 50 of the Act is required to examine the correctness of not only findings on questions of law but also on questions of fact. It is significant that the revision provided is directly against the Trial H

A Court's order and not after a provision of appeal on facts. All the same, the power in revision under Section 50 of the Act cannot be equated with the power of the Appellate Court under Section 107(2) of the Code of Civil Procedure which is the same as that of the original court; and the revisionary power under Section 50 of the Act even though wide as indicated must fall short of the Appellate Court's B power of interference with a finding of fact where the finding of fact depends on the credibility of witnesses, there being a conflict of oral evidence of the parties."

In view of the aforesaid settled legal position, therefore, Point No. 1 will have to be answered in the affirmative against the plaintiff and in favour of the C defendant.

Point No. 2.

This takes us to the moot question whether the impugned decision of the High Court is otherwise erroneous and cannot be sustained. We have to D keep in view certain salient features of the case which are well established on record. The plaintiff is a high officer being Deputy General Manager in Hindustan Machine Tools International Limited. He purchased the suit building in 1988 and started residing therein. Substantial part of the building is in his possession and occupation. His family consists of himself, his wife and four E children being three daughters and one son. By now, the children are well-grown up. When the suit was filed in 1989, his first two daughters were aged 15 and 12 years and his son was aged 8 years and the fourth child was a daughter who was still younger. By now, the two elder daughters have reached the ages of 24 & 21 years, the son has reached the age of 17 years and the last daughter is still younger. Though the plaintiff's case was that F his parents were also to reside with him unfortunately his father has expired and now his widowed mother is staying with plaintiff's sister at Mysore but we can proceed on the basis that the plaintiff would be justified in seeking accommodation for his aged widowed mother. Thus, the legitimate requirement of accommodation for the plaintiff and his family would consist of sufficient G number of rooms where he and his wife with four grown-up children and his mother can comfortably stay. The Trial Court came to the conclusion that because of his needs, the accommodation with him was not sufficient and therefore, the defendant was required to vacate the premises. With a view to finding out whether the plaintiff was in genuine need of additional accommodation in the building, the learned Single Judge in the revisional H proceedings, as aforesaid, appointed the Commissioner to go on the spot and

find out the exact accommodation available with the contesting parties in the building in question. It is also pertinent to note that none of the parties raised any contention before the High Court that such additional evidence should not be got recorded and Commissioner should not be appointed for going on the spot to find out the exact situation. On the contrary, both the sides acted upon the Court's order, co-operated with the Commissioner when he went on the spot and argued on the basis of the report and the sketch drawn by the Commissioner. No contention was raised by either side that the proceeding should be remanded to the Trial Court for consideration of this additional evidence. On the contrary, both the sides tried to support their respective cases in the light of this additional evidence and invited the court's decision thereon. Accordingly, it is in the light of the Commissioner's report and the sketch that the learned Single Judge of the High Court came to the conclusion that the plaintiff's need for additional accommodation is not genuine and his requirement is fully satisfied and met by the present accommodation available to him both on the ground floor and the first floor.

We have, therefore, to see whether the said finding of the High Court is justified on this evidence or not. The Commissioner's Report which is produced on the record of this proceedings at Annexure R-1 by learned counsel for the defendant shows that the schedule premises in question are a part of the entire building situated in Indiranagar measuring 59' 6" x 39'6". The landlord is residing in the ground floor as well as the first floor and his tenant is residing on a portion of the ground floor. That the landlord is in occupation of a portion of the ground floor consisting of four rooms (one hall, one bed room, one dining hall and one kitchen) and a bathroom with entrance from the backyard. The first floor consists of six rooms (two bed rooms one with attached toilet, one hall, one room, one kitchen one bath room). The portion in occupation of the tenant in the ground floor consists of four rooms (one hall, one bed room, one kitchen and one bath room cum toilet). The Commissioner also found that there were two more shops in the premises facing the road admeasuring approx. 6'x 8" and 15'x10" respectively which were in occupation of different tenants. Along with the Commissioner's Report was annexed a sketch prepared by him during his spot inspection. When we turn to the said sketch, we find that on the ground floor accommodation available with the plaintiff consists of one bed room admeasuring 10' 9½" x 11' 4½".

On the left hand side of the said bed room there is a hall admeasuring 14'10" x 9'5½." On further west of the said hall is a dining room admeasuring

A 9'3"x7' 10" and on further west of the dining room is a kitchen admeasuring 6' 7½' x 5' 10". On the right side of the said kitchen is a bath room which has an opening on the western side. This is the available accommodation with the plaintiff on the ground floor. When we turn to the first floor accommodation, we find from the said sketch that there is a bed room admeasuring 11'x11'8". B Towards the west of that bed room is situated another bed room admeasuring 12' 8" x 10' 11½. On further west is a toilet admeasuring 8' x 3' and towards the southern side of the said toilet is a bath room admeasuring 6'6" x 5' 1". On the further west of the bath room, is a small water closet, while on the southern side of the two bed rooms is situated a hall admeasuring 14' 10" x 10' 7". Towards the west of that hall is another room admeasuring 10' 5½"x C 8' 4½ and towards further west is a kitchen admeasuring 6'10" x 6'. It is in the light of this accommodation admittedly available with the plaintiff that his need will have to be examined. As noted earlier, he has got two grown-up daughters, one minor son and one minor daughter. In addition to plaintiff and his wife, plaintiff's old widowed mother as and when she comes and stays D with the plaintiff would require to be accommodated in the available accommodation and if all of them are not in a position to stay comfortably in the available accommodation, the need for extra space would arise for the plaintiff. However, the aforesaid details of accommodation available with the plaintiff show that on the first floor two bed rooms are available. Even if one bed room is utilised by the plaintiff and his wife, the other bed room can E comfortably be utilised by his two grown-up daughters. On the first floor there is a big hall wherein he can entertain his foreign guests as and when they come. The room towards the western side of the hall on the first floor is utilised as a dining room which is just on the east of the kitchen. As plaintiff's is a well-knit one family, he would require only one kitchen and one F dining room for the entire family. Thus, the need to accommodate his guests, he being a high ranking officer of the HMT Company and who some times have to invite foreign guests at his house, can also be met from the first floor accommodation. Hence the first floor can fully accommodate the plaintiff and his wife, his two grown-up daughters and can also meet his requirement of G entertaining his guests as and when they come to visit. In addition to this occupation, the first floor area meets the requirement of the plaintiff's family for having a common dining room and kitchen. When we turn to the ground floor accommodation with the landlord, we find that there is one bed room admeasuring 10'9½" x 11'4½" situated on the eastern side of the ground floor. That bed room can easily accommodate his minor daughter and widowed H mother as and when she comes and stays with him. Still there will be left a

large hall admeasuring 14' 10" x 9'5½" situated on the south of the said bed room on the ground floor. That hall can obviously be utilised by his minor son, now of 17 years' age and who is likely to become a major in near future. Still two more rooms are left with the plaintiff on the ground floor. Though the sketch mentions them as dining and kitchen, it is obvious that plaintiff's being one unit and well-knit family, the plaintiff, his wife and his children and even his widowed mother would require amongst them only one dining room and one kitchen. Both these rooms are already available to them on the first floor as seen earlier. Consequently, the ground floor dining room admeasuring 9'3" x 7'10" can be utilised by the plaintiff's son for his study and which can be utilised also by his daughters for their study or any other work. Even that apart, still there will be one more room on further west of the aforesaid room which is shown as a kitchen but which would be available as an extra study room for his children. Thus, "the existing accommodation with the plaintiff on the ground floor and first floor of the building is sufficient to cater to the needs of all the family members" of the plaintiff. Consequently, there would remain no occasion for him to legitimately process his claim for extra accommodation for ousting the defendant who stays squeezed in one bed room and one hall. The defendant's family consists of himself, his wife and his four children as well as his unemployed brother and his mother in all eight persons. His accommodation consists of a hall admeasuring 7'2" x 10'10" and a bed room admeasuring 10'.½" x 5'5". In addition thereto he has got a small kitchen admeasuring 6' 10" x 4' 10" and one small toilet admeasuring 4"10"x3'. It is of course true that the defendant is also well placed in life and is drawing substantial gross salary of at least Rs. 8,000 and odd p.m. as stated by him in his counter, but the accommodation with him is so small that partial eviction is out of question while the plaintiff's need, as seen above is fully satisfied by the existing accommodation with him. Consequently, we cannot find any fault with the reasoning of the High Court to the effect that looking at the accommodation available with the plaintiff on the ground floor and the first floor of the building, he had no genuine existing need for the suit premises and consequently, it could not be said that the plaintiff had made out any case under Section 21 (1) (h) of the Act. In the light of the available accommodation with the plaintiff, it cannot be said that his requirement for additional space is reasonable though it cannot be doubted that it is a *bona fide* one. However, for the purpose of applicability of Section 21(1)(h), the requirement of the plaintiff-landlord has to be both *bona fide* and reasonable. If any of these two elements of requirement is missing or both the elements are missing on the facts of the case, no decree for possession can be passed in favour of the landlord under this provision. The conclusion reached by the

A B C D E F G H

A learned Single Judge of the High Court on the aforesaid evidence cannot be said to be suffering from any error. On the contrary, it remains well sustained on record. Consequently, no case is made out by the plaintiff for interference of this Court under Article 136 of the Constitution of India.

Before parting, we may mention that the learned senior counsel for the B plaintiff invited our attention to three decisions of this court in support of his contentions. In the case of *Dattonpant Gopalvarao Devakate* v. *Vithalrao Maruthirao Janagaval,* [1975] 2 SCC 246, *Krishna Iyer, J,* speaking for a Bench of two learned Judges of this Court, observed:

> "... It is true that the power conferred on the High Court under Section C 50 of the Mysore Rent Control Act 1961, is not as narrow as the revisionary power under Section 115 of the Code of Civil Procedure. But at the same time it is not wide enough to make the High Court a second court of first appeal ....."

On facts, it was held in that case that there were no pressing grounds which D would justify the Supreme Court in upsetting the views of the High Court confirming those of the lower appellate court. It cannot be disputed that revisionary power under Section 50 is not an appellate power as available to the appellate court under Section 96 of the CPC. The same view, as noted earlier, was taken by this court in *M/s Bhoolchand's* case (supra). Learned E senior counsel for the plaintiff also invited our attention to the case of *Meenal Eknath Kahirsagar (Mrs.)* v. *Traders & Agencies & Anr.* [1996] 5 SCC 344. Nanavati, J, in that case, speaking for the Bench of two learned Judges of this Court observed as under :

> "It is for the landlord to decide how and in what manner he should F live and he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate to him to continue to occupy such premises".

G In the said case it was found as a fact that the plaintiff had no other premises except the suit premises in the city of Bombay and earlier she was staying in the premises with her husband who was a tenant thereof but even that possession was parted with and the tenanted accommodation was occupied by her husband's brother. Thus, the position of the landlord was a precarious one. In these peculiar facts, the aforesaid observations were made by this H Court. It is difficult to appreciate how the said decision can be of any

assistance to the learned senior counsel for the plaintiff as it has been found in the present case that the plaintiff is staying in his own house and a substantial portion thereof is in his own occupation and only a small portion of the ground floor in the said building is occupied by the tenant. The evidence on record, as noted earlier, shows that there is no genuine or felt need of the plaintiff to have any extra accommodation in this very building occupied by him as owner thereof. Our attention was then invited to a three Judge Bench judgment of this Court reported in the same volume in the case of *Prativa Devi (Smt.)* v. *T.V. Krishnan*, [1996] 5 SCC 353. In that case an aged landlord was staying with her friend and was in need of the suit premises where the tenant was residing. The High Court in that case had taken the view that "looking to the age of the landlord, she could continue to stay with her friend rather than occupy the suit premises". Upsetting that decision, it was held in the aforesaid case that :

> "The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court was rather solicitous about the age of the appellant and thought that because of her age she needed to be looked after. That was a lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for. There is nothing to show that she had any kind of right whatever to stay in the house of the family friend. On the other hand, she was there merely by sufferance. There is no law which deprives the landlord of the beneficial enjoyment of his property....

We fail to appreciate how the aforesaid decision can advance the case of the plaintiff. In the present case, as noted earlier, the plaintiff is already occupying his own house. He has possession of the whole of first floor and substantial portion of ground floor. He is not staying in any rented premises or at sufferance of any one. Now the question is whether the accommodation available with him is so insufficient, looking to the size of the family that he badly requires additional accommodation in the same building. This question has to be answered in the light of the available accommodation with the landlord and the need of his family members. For deciding this question, the observations in the aforesaid cases cannot be of any assistance to learned senior counsel for the plaintiff. For all these reasons, therefore, point No. 2 will have to be answered in the negative against the plaintiff and in favour

A of the defendant.

Point No. 3.

As a result of the aforesaid discussion, it has to be held that no case is made out by the plaintiff for our interference under Article 136 of the B Constitution of India. The judgment rendered by the High Court is well sustained both on the ground of jurisdiction of the High Corut under Section 50(1) of the Act as well as on merits.

As a result of our decision on the aforesaid points, the consequence would be that this appeal would be liable to fail. However, after this appeal C was heard at length on 12th Aug. 1998, we reserved the orders with a view to finding out whether there was any possibility of a settlement between the parties. When the matter reached before us on 24th Nov. 1998 for the aforesaid purpose a telegram sent by the respondent-tenant addressed to Shri A.T.M. Sampath, Supreme Court Advocate, was brought to our notice. The telegram D reads as under :

"REF SLP 14370/1997-*MR ZAHEED* V. *RAGHAVAN-K* IF 5 YEARS TIME FOR VACATING THE PREMISES IS GIVEN I WOULD VACATE IMMEDIATELY AFTER THE EXPIRY OF 5 YEARS I HOPE THAT QUARTERS WOULD BE ALLOTTED TO ME BY E THAT TIME

(K RAGHAVAN) RESPONDENT"

Shri Sampath, learned counsel, who appeared for the respondent, confirmed the said telegram and submitted before us that the respondent will have no F objection to vacate the suit premises immediately after the expiry of 5 years as mentioned in the telegram as he hopes that by that time some quarters will be made available to him by his employer. Shri Sampath also stated, on instructions, that the respondent will stand by the aforesaid statement in the telegram even if he ultimately succeeds in these proceedings and the High G Court's decision in his favour is confirmed by us. When we enquired from Shri Sampath whether lesser time to vacate than a period of 5 years would be acceptable to the respondent, he fairly stated that even four years time to vacate the premises will be acceptable to his client. We record this fair stand taken by the respondent through his counsel Shri Sampath. Consequently, even though the respondent succeeds in this appeal and the judgment of the H High Court is confirmed by us, we deem it fit to exercise powers conferred

by Article 142 of the Constitution of India and to direct the respondent as agreed to by him before us through his counsel to vacate the suit premises on or before 31st Dec. 2002. There shall be an order against the respondent as aforesaid to vacate the suit premises by that time. Respondent shall file a written undertaking agreeing to vacate the suit premises on or before 31st Dec. 2002 pursuant to our present order. Such written undertaking shall be filed within four weeks from today. The written undertaking will also contain the usual terms including clearance of all arrears of rent, if any, on the basis of the agreed rent payable by him for the suit premises and will continue to go on paying rent on that basis by way of mesne profits till he vacates the suit premises by 31st Dec. 2002. The appeal will stand disposed of accordingly. In the facts and circumstances of the case, there will be no order as to costs.

R.P. Appeal disposed of.