

BALDEV KRISHAN

v.

SATYA NARAIN

(Civil Appeal No. 7163 of 2013)

AUGUST 27, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 – s. 13(1)(h) – Eviction suit – On the ground of bonafide requirement of the wife of landlord, landlord himself and his family – Decreed by trial court and first appellate court – During pendency of the case, demise of wife of the landlord – High Court set aside the decree holding that the ground of bonafide requirement did not survive due to demise of landlord's wife – In appeal to this Court, the parties reached settlement, agreeing that tenants could occupy the tenanted premises for a further period of three years and the rent shall stand increased.

Appellant-respondent filed a suit u/s.13(1)(h) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 on the ground of *bonafide* requirement for himself and his family stating that his wife wanted to start business and premises was needed for the sake of business as well as for residence. Trial court as well as first appellate court decreed the suit. In the meantime, wife of the landlord died. High Court, in second appeal, held that due to death of the wife of landlord, ground for *bonafide* requirement did not survive. Hence the present appeal was filed. Parties entered into settlement.

Allowing the appeal, in view of the settlement between the parties, the Court

HELD: The parties arrived at a settlement before this

- A Court. It has been agreed that the rent shall stand increased to Rs.1500/- per month and that the Respondent-tenant shall be permitted to continue to occupy the tenanted premises for a further period of three years. However, the Respondent-tenant is directed to hand over peaceful and vacant possession to the landlord or his legal heirs in the event of his demise on or before 31st August 2016, provided the tenant pays all the arrears of rent till date (if any); and with effect from September 2013 pays a sum of Rs.1500/- per month towards damages for use and occupation. [Para 9] [557-F-H]

- Pasupuleti Venkateswarlu vs. The Motor and General Traders* (1975) 1 SCC770: 1975 (3) SCR 958; *Phool Rani vs. Naubat Rai Ahluwalia* (1973) 1 SCC688: 1973 (3) SCR 679; *Shantilal Thakordas vs. Chimanlal Maganlal Telwala* (1976) 4 SCC 417: 1977 (1) SCR 341; *Hasmat Rai vs. Raghunath Prasad* (1981) 3 SCC 103: 1981 (3) SCR 605; *Shakuntala Bai vs. Narayan Das* (2004) 5 SCC 772: 2004 (2) Suppl. SCR 114; *Sheshambal vs. Chelur Corporation* (2010) 3 SCC 470: 2010 (2) SCR 960 – referred to.

Case Law Reference:

- | | | | |
|---|-------------------------|-------------|--------|
| | 1975 (3) SCR 958 | referred to | Para 5 |
| F | 1973 (3) SCR 679 | referred to | Para 5 |
| | 1977 (1) SCR 341 | referred to | Para 5 |
| | 1981 (3) SCR 605 | referred to | Para 5 |
| | 2004 (2) Suppl. SCR 114 | referred to | Para 5 |
| G | 2010 (2) SCR 960 | referred to | Para 7 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7163 of 2013

- H From the Judgment and Order dated 11.03.2011 of the

High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil
Regular Second Appeal No. 216 of 2010.

Puneet Jain, Ms. Pratibha Jain, for the Appellant.

Aishwarya Bhati, Sanjoli Mittal, Amit Verma, Dr.
Prikshayat Singh, for the Respondent.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. We have heard
learned counsel for the parties in great detail, at the end of which
a settlement was arrived at between them, the terms of which
we shall spell out later.

2. The Appeal assails the order of the learned Single Judge
of the High Court of Rajasthan in Second Appeal No.216 of
2010 dated 11.3.2011 which in turn related to the legal propriety
of the decree of eviction passed by the First Appellate Court
being the District Judge, Churu. The landlord/Appellant had filed
a Suit for the eviction of the tenant/Respondent on sundry
grounds out of which we are presently concerned only with that
under Section 13(1)(h) of the Rajasthan Premises (Control of
Rent and Eviction) Act, 1950, which envisages the eviction of
a tenant on the predication of the landlord, "that the premises
are required reasonably and bonafide by the landlord (i) for the
use or occupation of himself or his family,".

3. We have perused the Complaint, the salient averments of
which are that "in order to solve his financial problem the plaintiff
wants to start a business of *Paapad*, *Badi* and spices in the
disputed shop to be looked after by his wife. The wife of the
plaintiff also wants to do the same and the plaintiff after his
retirement himself wants to pursue and continue this industry
and business and keep up his source of income. In these
situations since the plaintiff and his wife and children will also
require place for their residence for which he wants to vacate
and utilise two rooms, store and *varandah* as are built on the

- A first floor which is presently with Jaiprakash on rent. The plaintiff and his wife also need rooms built at the second floor of the house for the business and industry of *Paapad, Badi* etc., and for their residential purposes and for other needs. In this way, the plaintiff has legitimate, reasonable and bonafide need of the disputed shop and room which is at second floor for himself and his family members.....". After a perusal of these averments, it seems to us that it cannot be concluded that the eviction suit pleaded the bonafide need of only the subsequently deceased wife, either for commercial or residential requirement; the claimed need was of the plaintiff and his family.

4. The Trial Court, by its order dated 4.9.2003, decreed the Suit in favour of the Appellant-landlord which, as already indicated above, was upheld in appeal by the District Judge, Churu, by judgment dated 8.11.2010. However, in that duration, the Appellant-landlord's wife had passed away in 2007. In the impugned judgment, the High Court repelled the contention of the landlord that concurrent finding of fact ought not to be upset by the High Court in the Second Appeal. After doing so, the High Court did not view the claim of bonafide requirement of the tenanted premises favourably. This has resulted in the filing of the present appeal before us.

5. The discussion of the law should properly start with the three-Judge Bench decision in *Pasupuleti Venkateswarlu v. The Motor & General Traders* (1975) 1 SCC 770. Our research reveals that the question in hand has not received the attention of any larger Bench and hence if the *ratio decidendi* of *Pasupuleti* is to be varied, it per force has to be done by a larger Bench. In these circumstances, *Pasupuleti* holds the field on the question of the consideration to be given to events which have occurred subsequent to the institution of a suit and the disposal of any statutory appeal. *Pasupuleti* requires the Court to "take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed." After

laying down these propositions the decision was to the effect that the recovery of another accommodation by the landlord during the pendency of the case, had material bearing on the right to evict since that right would be defeated by the statutory provisions itself. *Pasupuleti* did not have the occasion to consider *Phool Rani v. Naubat Rai Ahluwalia* (1973) 1 SCC 688; counsel were clearly remiss in not bringing this decision to the Court's notice. Close upon the heels of this decision is *Shantilal Thakordas v. Chimanlal Maganlal Telwala* (1976) 4 SCC 417 also rendered by a three-Judge Bench. *Phool Rani* was cited and overruled in *Shantilal* and, therefore, the former ought not to be cited or considered any further. The tenor of *Shantilal* is in consonance with and not contrary to *Pasupuleti*, as it necessarily must be. What has been held is that if the requirement of the Plaintiff as well as his heirs is in issue before the Court, the passing away of the Plaintiff will not defeat the *lis*. Another three-Judge Bench in *Hasmat Rai v. Raghunath Prasad* (1981) 3 SCC 103 has followed *Pasupuleti*, again as it was precedentially bound to. The plurality was of the view that a decree or order does not become final till the appeal filed against it is finally disposed of. In his dissenting note, Pathak, J emphasised upon the fact that it was only in the course of the Second Appeal that the tenant endeavoured to draw the attention of the court to the demise of the landlord. Accordingly, Pathak, J was of the opinion that since there were concurrent findings of fact rendered by the Trial Court as well as the first Appellate Court, the demise of the Plaintiff-landlord in the course of the Second Appeal would not have any detrimental legal consequences to his claim. We may add here, by way of emphasis, that a Second Appeal would not entail the determination of questions of fact but must conform to the discipline of only considering question of law of substantial importance. *Shakuntala Bai v. Narayan Das* (2004) 5 SCC 772 is a decision of a two-Judge Bench and, therefore, need not detain us in view of the *ratio decidendi* of larger Benches. Significantly, it was not brought to the notice of the Court that

A

B

C

D

E

F

G

H

- A *Phool Rani* had already been overruled by two larger Benches. However, the distinguishing feature in this case was that consequent upon the death of the original landlord-plaintiff his legal heirs had been allowed to be impleaded and the case progressed from that stage, not in the appellate court but before the Trial Court. It has been duly noted at the final hearing of the eviction Suit by the Trial Court, all the Plaintiff's sons had specifically set up their own bonafide needs.

C 6. We have briefly considered the previous precedents since disparate decisions inexorably lead to a vexed and a split exposition of the law. Our objective is to insulate the subordinate courts from choosing between decisions of the Apex Court by presenting only one opinion of the law.

D 7. We must immediately refer to the decision of this Court, in the nature of a re-statement of the law, in *Sheshambal v. Chelur Corporation* (2010) 3 SCC 470 in which my learned and esteemed brother Thakur J. had perspicuously yet concisely considered the plethora of precedents pertaining to the legal consequences of the demise of the landlord whose bonafide need was the substance of the eviction action, during the pendency of an appeal. After analysing several previous decisions, it has been held that events which transpired subsequent to filing of the eviction petition could and must be kept in perspective if they would have the effect of dislodging the very plinth or substratum of the claim. In *Sheshambal*, the bonafide need that had been pleaded pertained only to the landlord and his wife. It will be relevant to record that the claim had been concurrently rejected by the courts below, before whom the landlord-husband had passed away. The widow, whose bonafide need had also been set up, unfortunately, also passed away during the pendency of the appeal in this Court. In those circumstances, it was held that the bonafide need, even assuming that it existed at the time of filing of the eviction action, had thereafter lapsed altogether on the death of the petitioning protagonists. It seems to us that it is arguable that the position

may change had there been a favourable verdict during their lifetime. Premium should not be placed on the filing of appeals merely to defeat a favourable decision on the unfair speculation that the endemic delay in disposal of appeals may result in defeating a decree because of the death of the landlord. It had been clarified in *Sheshambal* that "if the deceased landlord had any dependent member of the family, we may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately for the Appellant is neither the case set up nor the position on facts". The second aspect of the decision which needs to be recounted is that the rent had been increased by the High Court to Rs.10,000/- per month with effect from 1.11.2003 and thereafter by this Court to Rs.25,000/- per month with effect from 1.1.2009.

8. Returning to the pleadings before us, we are not seized of an eviction action in which the bonafide need of only the deceased wife of the Appellant had been pleaded. It is for this reason that we have extracted above the relevant parts of the Plaint. Therefore, it required our careful cogitation as to whether the landlord could still claim bonafide need for himself as well as his dependents.

9. In these circumstances, mindful of the uncertainty of which manner we may decide, the parties through their counsel have arrived at a settlement before us. It has been agreed that the rent shall stand increased to Rs.1500/- per month and that the Respondent-tenant shall be permitted to continue to occupy the tenanted premises for a further period of three years. The Appeal is accordingly allowed. The judgment of the High Court is set aside. However, the Respondent-tenant shall hand over peaceful and vacant possession to the landlord or his legal heirs in the event of his demise on or before 31st August 2016 provided the Respondent pays all the arrears of rent till date (if any); and with effect from September 2013 pays a sum of Rs.1500/- per month towards damages for use and occupation.

- A The usual undertaking to abide by these terms must be filed within four weeks from today failing which he shall be liable to be evicted/ejected forthwith.

10. Parties shall bear their respective costs.

B K.K.T.

Appeal allowed in view of the
Settlement between the Parties.