

Sudha Devi ... Vs. M.Lalitha

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Court : Chennai

Decided On : Jul-28-2010

Judge : G.Rajasuria, J.

Appeal No. : C.R.P.(NPD).No.2626 of 2009 and M.P.No.1 of 2009

Appellant : Sudha Devi ...

Respondent : M.Lalitha

Advocate for Def. : Mr.S.Silambanan, Adv.

Advocate for Pet/Ap. : Mr.M.L.Ramesh, Adv.

Judgement :

1. Animadverting upon the order 23.7.2009 passed by the Rent Control Appellate Authority(VIII Small Causes Court) Chennai, in R.C.A.No.581 of 2007 confirming the order dated 14.6.2007 passed by the XII Judge, Court of Small Cause, Chennai, in RCOP No.255 of 2007, this civil revision petition is focussed by the tenant.

2. Broadly but briefly, narratively but precisely the relevant facts absolutely necessary and germane for the disposal of this revision petition would run thus:

(a) The respondent/landlady filed the RCOP No.255 of 2007 invoking Sections 10(2)(ii)(b), 10(2)(iii), 10(2)(1) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act,(herein after referred to as the 'Act' for short) on the

following grounds:

(i) The tenant used the premises concerned for a purpose other than that for which it was leased;

(ii) The tenant committed the acts of waste;

(iii) The tenant committed 'wilful default' in paying the rents;

(iv) The premises concerned is required for the 'personal occupation'.

(b) Ultimately, the Rent Controller ordered eviction on all the grounds.

(c) As against the said order, the tenant preferred appeal in RCA No.581 of 2007. The appellate authority held that the eviction ordered on the ground of 'waste' was not tenable. However, it confirmed the order of eviction on the other three grounds, set out supra.

(d) Being aggrieved by and dissatisfied with the order of the appellate authority in ordering eviction, this revision has been filed on various grounds.

3. Placing reliance on the grounds of revision, the learned counsel for the revision petitioner/tenant would develop his arguments, which could tersely and briefly be set out thus:

(i) The Courts below failed to take into account the fact that the tenant at no point of time admitted that the demised premises was converted for the purpose of conducting tuition centre.

(ii) The averment at paragraph No.4 of the counter filed by the tenant was misunderstood virtually by both the Courts below and they assumed and presumed as though the tenant admitted that the demised premises was converted into a tuition centre, when in fact, the tenant only pointed out that one of his family members, namely, the daughter of the tenant, who is an educated lady was taking tuition for the students and by no stretch of imagination the said averment could be taken as admission regarding different use of the demised premises.

(iii) The certificate of postings relied on by the tenant by no stretch of imagination could be ignored by any Court for the reason that legal presumption is available as to the genuineness of such document.

(iv) Even though the landlady contended that pre-litigation notice as well as telegram was sent by her to the tenant, absolutely there is no evidence in that regard. There is only a vague reference in the averments in the RCOP about the despatch of the letter and telegram.

(v) It is an admitted fact that once in two months rents were paid by the tenant to the landlady and incommensurate with that alone, every two months cheques were issued, but those cheques were not returned by the landlady, which would indicate that the landlady deliberately wanted to raise her accusative finger as against the tenant as though she was a 'wilful defaulter'.

(vi) There is nothing to indicate that the employer of the landlady directed her to vacate the official quarters and there is also no proof to evince and evidence that she voluntarily retired from the Port service.

(vii) The subsequent events also have not been placed before the Courts below.

(viii) The RCOP was filed in the year 2007 and there is nothing to indicate as to where actually the landlady is now staying and how her requirement under the 'personal occupation' still subsists.

(ix) It is also the contention of the tenant that the landlady is having one other building in the same City and that was not rebutted by her. Accordingly, the learned counsel for the tenant would pray for setting aside the orders of the Courts below and for dismissing the RCOP.

4. By way of torpedoing and pulverising the arguments as put forth on the side of the revision petitioner/tenant, the learned Senior counsel for the respondent/landlady would develop his arguments, the gist and kernel of them would run thus:

(i) The respondent/landlady cannot be driven to the extent of noting down with mathematical precision as to how many students are attending the tuition classes conducted by the daughter of the tenant and the various other factors involved in the conducting of tuition.

(ii) Ex facie and prima facie it is clear that the tuition classes are being conducted in the demised premises, which has been let out for residential purpose and in such a case, the Courts below were right in arriving at the conclusion that the tenant converted the premises for a different user other than the one for which it was let out to the tenant.

(iii) Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act is very clear that if there is any difficulty in paying the rent by the tenant to the landlady, it is open for the tenant to adhere to the said Section 8 of the Act. But in this case, peculiarly cheques were allegedly sent not even by Registered Posts but under the alleged certificate of postings.

(iv) It is the bounden duty of the tenant to see that the rents are paid periodically without any default irrespective of the fact whether the landlady demanded for it or not. But in this case, the Courts below correctly analysed the facts and held that the tenant failed to discharge her duty in paying the rents periodically and as such she committed 'wilful default' in paying the rents, warranting no interference by this Court in revision.

(v) It is quite obvious from the deposition of P.W.1 and her cross-examination that she voluntarily retired from the Port service and obviously and axiomatically a retired official cannot occupy the official quarters for ever. Necessarily such a retired official has to vacate the premises within a month or two and accordingly she vacated the official quarters and staying in a rented premises due to the tenants refusal to vacate the demised premises.

(vi) The cause of action arose as on the date of filing of the RCOP should be taken into account. If according to the tenant certain changes takes place, which are capable of cutting at the root of the RCOP, then it is for the tenant to place before the Court at least certain facts capable of drawing inference that no more the

landlady is in need of the premises for her personal occupation.

(vii) But in this case, subsequent rents are being sent to a rented premises, wherein the landlady was constrained to occupy because her own premises is under the occupation of the revision petitioner/tenant.

(viii) The landlady also established that she is having no other residential house for her occupation in the City of Madras.

Accordingly, the learned Senior counsel for the landlady would submit that absolutely there was nothing wrong in the orders passed by both the Courts below and as such, he prays for dismissing the CRP.

5. The points for consideration are as under:

(i) Whether the Courts below were correct in holding that the revision petitioner/tenant converted the demised premises into a tuition centre? and whether the Courts below were justified in holding that the tenant committed default in paying the rents?

(ii) Whether the Courts below were justified in holding that the landlady is in bona fide requirement of the demised premises for her personal occupation.

(iii) Whether there is any perversity or illegality in the orders passed by both the Courts below.

6. Heard both sides.

7. Point No.(i): The concept, putting the demised premises for a different use other than the one for which it was leased out, has to be understood in proper perspective. In this connection, the learned counsel for the tenant would appropriately cite the decision of the Honourable Apex Court reported in (1997) 1 SUPREME COURT CASES 254 PREM CHAND VS. THE DISTRICT JUDGE, DEHRADUN AND ANOTHER, certain excerpts from it would run thus: "4. The question that arises for consideration is whether Explanation (iv) of clause (1) of Section 21 of the Act has been correctly held to be applicable by the District Judge and the High Court to the facts as found. Explanation (iv) of Section 21(1) reads as

follows: In the case of a residential building

* * *

(iv) the fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord.

5. It is submitted by the appellant that the building under tenancy is not a residential building and, therefore, the condition precedent to the application of Explanation (iv) is absent in this case. According to counsel since the tenant is admittedly running a tailoring shop in one of the two rooms under his occupation the house ceases to be a residential building.

6. We are unable to accept this submission. The appellant has only two small rooms in which he resides with his wife, two young sons and one daughter and although he may have a tailoring shop in one of his rooms it is not unlikely that that very room is utilised as bedroom for one or two members of his family at night. The fact that he runs a tailoring shop in one of the rooms is not sufficient to convert what otherwise to all intents and purposes is a residential building into a non-residential building. The tests for application of Explanation (iv) are as follows:

(1) The building should be a residential building; and

(2) the landlord must be in occupation of a part of the building for residential purposes, the other part being in the occupation of the tenant. If the above two tests are fulfilled in a case it will furnish under the law a conclusive proof that the building is, bona fide, required by the landlord. There is no need for the landlord to establish any other requirement. Explanation (iv) provides a conclusive and irrebuttable presumption of bona fide requirement once the conditions mentioned therein are established. The two tests are fulfilled in this case on the findings of fact as noted above. We are of opinion that the District Judge was right in his finding that Explanation (iv) of Section 21(1) was applicable which view was also later upheld by the High Court. The High Court was, therefore, right in dismissing the writ application. A mere perusal of it would clearly show that simply because,

in a portion of the building the tenant does something which is not expressly contemplated in the lease deed, the Court cannot jump to the conclusion that there was different use of the building.

8. I would like to extract hereunder paragraph 4 of the counter filed by the tenant in the RCOP:

"4. The respondent denies the allegation in paragraph 4 that he is conducting tuition class in the petition premises, the actual fact being that she is occasionally teaching poor students without receiving any fee or remuneration whatsoever, but, the same being done as a free service. The petitioner also has knowledge of the same. At the time of induction of the tenancy the petitioner's grand-father had not objected to the same. The averment in para No.4 as alleged after so many years itself tells about its nature.

9. A mere running of the eye over the above excerpt in the counter would clearly expatiate and project that even by phantasmagorical thoughts it cannot be stated that the tenant made any supine submission or admission that the demised premises was converted into a tuition centre from that of a residential building.

10. It is the contention of the landlady that the tenant virtually vacated the premises and allowed her relative to occupy the premises and also the premises is being used as a tuition centre.

11. At this juncture I recollect and call up the following maxims:

(i) *Affirmatis est probare* He who affirms must prove.

(ii) *Affirmanti, non neganti incumbit probatio* The burden of proof lies upon him who affirms, not upon one who denies.

12. It is the bounden duty of the landlady to prove that the tenant vacated her residence from the demised premises and started staying elsewhere, but there is no shard or shred, miniscule or molecular, iota or jot of evidence to point out that the tenant is residing elsewhere than the demised premises.

13. The learned counsel for the tenant would appropriately and appositely, convincingly and correctly inviting the attention of this Court to the cause title in the RCOP and point out that it has been spelt out therein that still the tenant is occupying the demised premises. If really the tenant was occupying some other premises nothing prevented the landlady to cite that address and try to serve the RCOP notice on the said new address. But that was not done so. Furthermore, the deposition of the landlady remains only her ipse dixit relating to the ground of converting the premises for a different use. The Courts below without advertting to these facts simply placed very much reliance on paragraph No.4 of the counter filed by the tenant and held as though it was an admitted fact by the tenant regarding different use of the premises.

14. Whenever matters of this nature are considered the social aspect of the problem should necessarily be seen. It is common knowledge that now-a-days educated ladies, who are occupying residential premises are taking tuition, because they wanted to help others and also incidentally earn and that it does not mean that they converted their residential building into a non-residential tuition centre. The test as to what was the predominant intention in doing such non-residential activity. If the predominant intention and the purpose is to convert the entire building itself into a tuition centre, then it goes without saying that it would attract the concept 'different use'. Here the deposition of R.W.1-the tenant would explain and expound as to what is actually going on therein in the demised premises.

15. The learned counsel for the tenant also would submit that there is nothing to indicate that a board for the alleged tuition centre was found displayed in the premises concerned. As such, the Courts below without addressing themselves properly on the issue simply held as though the tenant put up premises for a different use and in my opinion such a finding is not based on objective evidence before the Courts below.

16. I am fully aware of the fact that while this Court exercising powers under Section 25 of the Act cannot assume the role of an appellate court. The appellate authority under the Rent Control Act happened to be the last court of facts.

However, when the Courts below fail to exercise their jurisdiction properly in analysing the evidence and arriving at the conclusion and if it is found that the findings are fraught with perversity, this Court could interfere in revision and accordingly, that much finding of the Courts below deserves to be set aside. Accordingly, this point is decided in favour of the tenant and as against the landlady.

17. Point No.(ii): Relating to the concept 'wilful default', at the outset itself, I would like to formulate an Universal logical proposition as under:-

All cases of non-payment of rent are not cases of wilful default. Once a tenant is shown as defaulter in paying rent, he cannot be labelled as a person who committed wilful default. In order to constitute 'wilful default', the following elements should be there, as found delineated in the decisions of the Honourable Apex Court in (2000)3 SUPREME COURT CASES 282- CHORDIA AUTOMOBILES V. S.MOOSA AND OTHERS. 8. Wilful default means an act consciously or deliberately done with open defiance and intent not to pay the rent. In the present case the amount of rent defaulted firstly is on account of the fact that the agent of the landlord did not come to collect the rent for some reason. Further, notice of default contained the disputed rent. This fact coupled with the fact that eviction suit was filed before maturing a case of wilful default in terms of the explanation to the proviso of Section 10(2). The dispute of rent admittedly was genuine. Further, we find the conduct of the appellant throughout in the past being not of a defaulter or irregular payer of rent. Thus, all these circumstances cumulatively come to only one conclusion that the appellant cannot be held to be a wilful defaulter.

9. In S.Sundaram Pillai v. V.r.Pattabiraman this Court had occasion to consider the word 'wilful default' under Section 10(2) of the aforesaid Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 which is reproduced below:(SCC pp.605-06, paras 21-26)

21. Before, however, going into this question further, let us find out the real meaning and content of the word 'wilful' or the words 'wilful default'. In the book A Dictionary of Law by L.B.Curzon, at p.361 the words 'wilful' and 'wilful default' have

been defined thus: 'Wilful' deliberate conduct of a person who is a free agent, knows that he is doing and intends to do what he is doing.

'Wilful default' Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.

22. In other words, 'wilful default' would mean a deliberate and intentional default knowing full well the legal consequences thereof. In Words and Phrases, Vol 11-A (Permanent Edition) at p.268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In Vol.45 of Words and Phrases, the word 'wilful' has been very clearly defined thus:

'wilful' intentional; not incidental or involuntary;

- done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;

- in common parlance word 'wilful' is used in sense of intentional, as distinguished from accidental or involuntary.

p.296 'Wilful' refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

23. In Vol.III of Webster's Third New International Dictionary at p.2617, the word 'wilful' has been defined thus:

governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed.

24. The word 'default' has been defined in Vol.I of Webster's Third New International Dictionary at p.590 thus:

to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation.

25. In Black's Law Dictionary (Fourth edn.) at p.1773 the word 'wilful' has been defined thus:

'Wilfulness' implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice.

The word 'reckless as applied to negligence, is the legal equivalent of 'wilful' or 'wanton'

26. Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above.

18. A mere poring over and perusal of those decisions would exemplify and demonstrate, display and convey that mere default in payment of rent would not constitute 'wilful default'. To constitute 'wilful default', the mental element of wilfulness is absolutely necessary.

19. At this juncture, I call up and recollect the following maxim:

"Acta exteriora indicant interiora secreta External acts

indicate undisclosed thoughts

20. Here it has to be seen as to what are all the objective facts which would enable the Court to come to the conclusion that there was 'wilful default'.

21. The tenant has come forward with the clear case that after sensing that there might be some problem in receiving rent by the landlady, she did choose to send the rent by way of cheque bi-monthly, incommensurate with the admitted practice of paying rent once in two months and it is evidenced by the certificate of postings.

Absolutely, there was no response from the landlady and those cheques were also not returned or encashed.

22. Whereas, the learned Senior counsel on the side of the landlady would argue that the certificates of postings are cooked up ones and no importance can be attached to them.

23. At this juncture, I would like to recollect and call up Section 114 illustration (e) and (g) of the Indian Evidence Act, which are extracted hereunder:

"Sec.114

(e) That judicial and official acts have been regularly performed;

.

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

24. Ex facie and prima facie, Exs.R4 to R6 are the certificate of postings bearing the postal seals. In such a case, the cited presumption ex facie and prima facie is attracted in respect of those documents. If at all the landlady had any doubt about such postal seals then it was for her to summon the postal official in order to expose the alleged malpractice or fraud perpetrated by the tenant. Half heartedly taking of a plea that the certificates of posting were fabricated ones would not fob off the burden of proof from the landlady to the tenant.

25. The landlady, who affirmed that such certificates of posting are fabricated ones, ought to have taken steps to prove her plea, but for the reasons best known to her, she had not taken any steps. In such a case, there is ex facie evidence to show that such cheques were sent periodically by the tenant to the landlady.

26. The Courts below misdirected themselves by resorting to a reasoning of their own that the tenant was not justified in sending rents once in two months forgetting for a moment that it was an admitted fact that the tenant was in the habit of paying the rent once in two months and the landlady also accepted it.

27. The ratiocination adhered to by the appellate Court that the bank statement was not verified, once again fails to carry conviction with this Court. The landlady who was in receipt of such cheques should have either returned or encashed them. Even assuming the worst case that no such cheques at all were sent by the tenant to the landlady, then it is not known as to what prevented the landlady, for such a long time, from sending the notice demanding rent even though such demand of rent may not be mandatory on the part of the landlady, as per law.

28. Here it is a peculiar case in which the landlady in paragraph Nos.4 and 5 of the RCOP would contend that a pre-litigation notice and a telegram were sent, but no copies of the same were filed. Even in the deposition of P.W.1 there was no delineation or detailing about such notice as well as the telegram.

29. Taking into consideration the over all circumstances, I am of the view that 'wilful default' in payment of rent cannot be presumed as against the tenant.

30. No doubt, the law is well settled that whenever the landlady refuses to receive the rent, the tenant without wasting much time should resort to Section 8(3) of the Act. But, in this case, that was not done so. Straight away the tenant did choose to send the rent under certificates of posting. No doubt, the tenant also should have taken pains to verify from her bank account as to whether the landlady encashed the cheques or not. Simply because the landlady is capable of picking holes in the conduct of the tenant, she cannot fasten the tenant with the liability that she committed 'wilful default' in paying rent.

31. When there are faults on the side of the landlady as well as the tenant on various aspects, taking into account the object of the Act, the benefit should be given in favour of the tenant and accordingly, if viewed, the concept 'wilful default' cannot be pressed into service as against the tenant simply because there is statutory non-compliance with Section 8 of the Act on the part of the tenant in the peculiar facts and circumstances of this case.

32. The learned Senior counsel inviting the attention of this Court to the facts that pendente lite there were delays in payment of rents, would develop his argument that this Court considering all those aspects could hold that the tenant committed

'wilful default'.

33. I would like to highlight and spotlight the fact that before the landlady could press into service the pendente lite default on the part of the tenant in paying rent, she should establish that as on the date of filing of the RCOP there was 'wilful default' in paying rent. If at all such fact has been established in a particular case, the question of additionally holding that there has been 'wilful default', pendente lite, in paying rents by the tenant to the landlady would arise. But in this case as has already been highlighted by me supra, there is no clear evidence on the side of the landlady that there was 'wilful default' on the side of the tenant in paying the rent as on the date of filing of the RCOP. Hence, I am of the considered view that the Courts below were not justified in holding that the tenant committed 'wilful default' in paying the rent even as on the date of filing of the RCOP and on that aspect the findings of the Courts below are set aside and accordingly, this point is decided in favour of the tenant as against the landlady.

34. Point No.(iii): At the out set itself I would like to refer to the decisions under Section 10(3)(a)(iii) of the Act:

(i) 1998 MADRAS LAW JOURNAL (SUPP) 18 RAM NARAIN ARORA V. ASHA RANI AND OTHERS, certain excerpts from it would run thus:

"8. Therefore, he submitted relying on the decisions in Meenal Eknath Kshirsagar v. Traders and Agencies, (1996) 5 S.C.C. 344 and Ram Dass v. Ishwar Chander, (1988)3 S.C.C.131, that the view taken by the High Court must be upheld.

9. Sec.14(1)(e) of the Act read as follows:

"14(1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.'(Italics supplied)

10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the Court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defeat the claim of the landlord."

(ii) 1995(II) CTC 452 SANKARANARAYANAN V. PALANISWAMI, certain excerpts from it would run thus:

"8. Section 10(3)(a)(iii) deals with the conditions for obtaining possession of a non-residential building.

The conditions required are:

- a) The building should be non-residential in character.
- b) The landlord should be carrying on business on the date of his applying for eviction.
- c) He should not be occupying any other non-residential building belonging to him for the purpose of his business; and
- d) The landlord's claim is bona fide for his business needs and not based on oblique motives like trying to obtain more rent or to harass the tenant."

35. A mere running of the eye over those decisions would exemplify and demonstrate, display and convey that the Court while dealing with the application of the landlady seeking eviction on the ground of 'personal occupation' should see that whether there is any 'bona fide requirement' on the part of the landlady.

36. Here the landlady has come forward with the clear case that she had voluntarily retired from the Port service and consequently she was bound to vacate the official quarters. During chief-examination P.W.1-the landlady candidly and categorically without mincing words, detailed and delineated those facts. However, during cross-examination of P.W.1 not even a suggestion had been put to her to the effect that she was not in occupation of the quarters at any point of time even while she was in service.

37. The learned counsel for the tenant would comment upon Ex.P2-the copy of memo issued by the Chennai Port Trust to the landlady and submit that a mere reading of it would not convey anything to the effect that the landlady voluntarily retired from the Port services and that she was bound to vacate the quarters etc.

38. No doubt, ExP2 is a communication issued by the Deputy Chief Mechanical Officer of the Chennai Port Trust and that would convey that the landlady had been relieved from the Port Trust services with effect from the A.N.of 31.8.2006 and that she was called upon to return all the Trust properties immediately so as to enable them to settle her accounts.

39. Once again I would like to point out that there is nothing to indicate or suspect that Ex.P2 is not a genuine document. P.W.1 herself on oath stated in support of Ex.P2 and pointed out that she retired from the Port service and she had to vacate the official quarters and that she wanted to occupy her own premises i.e. the first floor which is under the occupation of the tenant-the revision petitioner herein.

40. Over and above the available facts, I do not think that in a summary proceedings like the one under the Rent Control Act, any more evidence the Court could insist upon.

41. There is nothing to indicate and point out that the landlady is having any other building other than the demised premises for her occupation. While cross-examining P.W.1, it was suggested to her as though she was having one other house in Pidari Street, in the Madras City, for which she stated that she was not owning any such house in the city and she also pleaded ignorance as in whose name the said property stood.

42. Even while cross-examining P.W.1, there was nothing suggested to her that she was owning any other house in the city which she could use as her residence. Only during cross-examination of R.W.1 it is found exemplified as though the tenant contended that the landlady is having a house in Pidari Street in the City etc. In the counter filed by the tenant there is no whisper about those facts. If at all the landlady is having one other house, nothing prevented the tenant to plead specifically the said fact and produce very easily the Municipal records.

43. At this juncture, my mind hark back to the following maxim:

Judicis est judicare secundum allegata et probata It is the duty of the judge to decide according to facts alleged and proved.

44. It is a common or garden principle governing the law of pleadings that any amount of evidence without the backing of the pleadings should be eschewed.

45. I am fully aware of the fact that in rent control proceedings in stricto sensu the said maxim should not be pressed into service. But when material fact was expected to be pleaded by the tenant and if it is not pleaded, certainly that maxim would gain prominence.

46. In this case, for reasons best known to the tenant she has not pleaded specifically that the landlady is owning one other house in Pidari Street, etc., and she has also not taken steps to obtain any documentary evidence from the Municipality concerned or from the Revenue authorities concerned. Hence, in such a case, it is obvious and axiomatic that the landlady is not having any other residential house in the city other than the demised premises for her occupation. It is not that she has a mere desire to occupy the first floor of the building concerned,

but she also established her immediate necessity on the date of filing of the RCOP to occupy it because she voluntarily retired from the Port service and she was under the dire necessity to vacate the official quarters.

47. The learned counsel for the tenant would submit that there should be evidence to establish that the requirements of the demised premises on the ground of 'personal occupation' has been subsisting till the order that is being passed in this revision, for which, the learned Senior counsel for the landlady appropriately and appositely replied that in all cases subsequent events need not be taken into account and here if at all there is anything to show that the landlady, subsequent to the filing of the RCOP acquired any other residential building within the city, then that would cut at the very plea of the requirement of the demised premises for her 'personal occupation'. But here there is no such plea. Voluntarily the landlady cannot at the appellate stage and the revisional stage go on adducing additional evidence that her requirement subsists. If at all the tenant could at least place some prima facie evidence that the landlady acquired certain other property or acquired any other right which would capable of cutting at the very root of her plea in the RCOP, then the question of the landlady establishing the fact that her requirement persists would arise.

48. The learned Senior counsel for the landlady would correctly point out that after retirement, having no other go, the landlady has been constrained to adjust herself in a rented premises and in fact, the tenant also is paying the rent to the landlady at the tenanted premises and in such a case it is clear that there is nothing to indicate that her requirement seized to persist or exist pendente lite.

49. One important factor also should not be lose sight of. The tenant by keeping the litigation alive cannot try to gain any advantage in the litigative process and raise her accusative finger as against the landlady that the latter's requirement as of now ceased to exist and that her prayer is not backed by actual requirement etc.

50. At this juncture, I would like to refer to the recent decision of the Hon'ble Apex Court reported in (2010) 6 SCC 257 (Speedline Agencies vs. T.Stanes and Company Limited), certain excerpts from it would run thus:

"13.1. In *Hasmat Rai v. Raghunath Prasad* this Court held (SCC pp 112-14 para 14)

"14.....If a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act. If the landlord is able to show his requirement when the action is commenced and the requirement continued till the date of the decree of the trial court and thereafter during the pendency of the appeal by the tenant if the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final. What the definition of tenant excludes from its operation is the person against whom the decree or order for eviction is made and the decree or order has become final in the sense that it is not open to further adjudication by a court or hierarchy of courts. An appeal is a continuation of suit. Therefore a tenant against whom a decree for eviction is passed by trial court does not lose protection if he files the appeal because if appeal is allowed the umbrella of statutory protection shields him. Therefore it is indisputable that the decree or order for eviction referred to in the definition of tenant must mean final decree or final order of eviction. Once an appeal against decree or order of eviction is preferred, the appeal being a continuation of suit, the landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement

no more exists because of subsequent events, it would be open to him to point out such events and the court including the appellate court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage. An illustration would clarify what we want to convey. A landlord was in a position to show that he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suited. Can the court shut its eyes and evict the tenant? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re-entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events occur which if noticed would non-suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly. This position is no more in controversy in view of a decision of this Court in *Pasupuleti Venkateswarlu*¹ where Justice Krishna Iyer speaking for the court observed as under: (SCC p. 772, para 4) 4.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.....Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlords requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events. He can be precluded from so contending when the decree or

order for eviction has become final. In view of the decision in Pasupuleti case¹ the decision of the Madhya Pradesh High Court in Taramal case² must be taken to have been overruled and it could not be distinguished only on the ground that the definition of tenant in the Madhya Pradesh Act is different from the one in Andhra Pradesh Act. Therefore, the High Court was in error in declining to take this subsequent event which was admittedly put forth in the plaint itself into consideration. In the present case, Clause 6 (Legal Proceedings) of the scheme of amalgamation makes it clear that with effect from the effective date i.e. 1.4.2005 all proceedings in which the transferor company was a party be continued, prosecuted and enforced by or against the transferor company as if the scheme had not been made. In view of the above specific clause coupled with other clauses of the scheme and taking note of the fact that the transferor company in its entirety merged with the transferee company, the above decision is not directly applicable to the case on hand".

25. Particularly in matters governed by the Rent Acts to take into account subsequent events would inflict hardship on the landlords, in a case like the present one. In this context, it was held in SCC para 9 of *Joginder Pal v. Nava Kishore Behal* that: (SCC p.404) "9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords-both".

26. It is pointed out by Mr. Parasaran, learned Senior counsel that the tenant, in the present case, is an affluent Company and is not a tenant falling under the category of weaker sections of tenants of small properties. He further submitted that the principle of taking into consideration subsequent event is to be confined only to appeals on the principle that an appeal is a continuation of the proceedings and the Appellate Court exercises all the powers of the trial Court. (Vide *Lachmeshwar Prasad Shukul V. Keshwar Lal Chaudhuri* FC at p.13)

27. In the present case, subsequent event of amalgamation of a company took place during the pendency of the revision in the High Court. Though subsequent events which have occurred during the pendency of a revision petition in the High Court or when the matter was pending before this Court, have been taken into consideration by this Court in some cases, the question as to the difference between the exercise of jurisdiction in appeal and revision was not argued or decided in those cases.

28. In a revision under Section 25 of the Act, the Court is exercising a restricted jurisdiction and not wide powers of the appellate court. In *Sri Raja Lakshmi Dyeing Works V. Rangaswamy Chettiar* it was held: (SCC p.262, para 3) "3. ...Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the words of Untwalia,J., in *Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval*; 'it is not wide enough to make the High Court a second court of first appeal.'

29. Mr.Parasaran reiterated that the High Court having only the power of limited jurisdiction and not powers of the appellate court, the subsequent event which occurred during the pendency of the revision petition is not to be taken into account, the High Court will decide only as to the legality of the order under revision.

30. Coming to the expression "for its own use/occupation", it has to be construed widely and given wide and liberal meaning. When a company wants to expand its business and amalgamates with another company, this would also be a case of "for its own use". If a landlord which is a company cannot advance its interests in the business by amalgamating with another company by putting to use its own property, it would be unjust, unfair and unreasonable.

31. Further, the provisions of the Rent Control Act should not be so construed as to frustrate and defeat the legislation. If in a case of landlord requiring the

premises for its own use, to amalgamate with another company and expands its business, the rent control legislation may clash with the provisions of the Companies Act. The Companies Act and the Rent Control Act have to be harmoniously interpreted and not to be so interpreted as to result in one Act destroying a right under the other Act.

32. As stated earlier, death of a landlord after passing the order of eviction does not ipso facto destroy the accrued right under the decree. The cases which have taken into account the subsequent event in favour of the tenant are cases where during the pendency of the appeal or revision, the requirement of the landlord had been fully satisfied and met or ceased to exist. In the case on hand, the landlord required it for its own business and for residential purposes of its employees. That requirement continues to exist also for the transferee Company since the entire business of the transferor company stood transferred to the transferee Company. The requirement of the Company has neither been satisfied nor extinguished. The right to evict has already crystallised into a decree to which the Company after amalgamation has succeeded by involuntary assignment. As the decree for eviction was under stay, the decree could not be executed. Once the stay is vacated or dissolved, the respondent would be entitled to execute the decree. In the present case, the amalgamation order has also preserved the said right.

51. The above judgement is clear on this point and no more elaboration in this regard is required. Hence, I am of the considered view that the requirement of the landlady for occupying the premises for herself is a bona fide one and in fact, on that the Rent Controller as well as the appellate authority correctly, appreciating the facts, ordered eviction, warranting no interference in revision.

52. However, the learned counsel for the revision petitioner/tenant would make an extempore submission that all of a sudden the tenant cannot vacate the premises and she may require six months' time to vacate it.

53. However, the learned counsel for the landlady would submit that at the most two months' time can be granted because in the litigative process itself the tenant gained much time.

54. I would like to grant six months' time for vacating the premises and handing over possession in favour of the landlady for the reason that now-a-days it is somewhat difficult to find out an alternative accommodation.

55. The above granting of time is subject to the condition that the entire arrears, if any, shall be paid by the tenant within 15 days from this date and the future rents also should be paid periodically and if there is any default then the landlady is at liberty to file E.P to execute the eviction order. The tenant shall file an affidavit to that effect within 15 days from this date. The civil revision petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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