

(1993) 10 GUJ CK 0020

In the Gujarat High Court

Case No : Civil Revision Application No. 757 of 1980

Champaklal Chhotalal and Another

APPELLANT

Vs

Parvatiben Kuberbhai

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1),
13(1)(K), 13(1)(L), 13(2), 29(2)
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1995 Guj 12 : (1994) 1 GLR 713

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Advocate : S.B. Vakil, for the Appellant; M.R. Vyas, for the Respondent

Judgement

B.S. Kapadia, J.—The present revision application is filed by the defendants against the opponent-plaintiff. The plaintiff had filed the suit against the tenants being Civil Suit No. 80 of 1973 in the Court of the learned Civil Judge (S.D.) at Surat which was, on the formation of the Small Cause Court, numbered as Small Cause Case No. 1309 of 1975. The suit was filed against the tenants under the Bombay Rent Act u/s 13(1)(A) and (L). The plaintiffs suit for the possession of the suit premises was dismissed but a decree was passed in favour of the plaintiff for recovery of an amount of Rs. 33/- from the defendant No. 1. Against the said decree the plaintiff filed the appeal being Regular Civil Appeal No. 303 of 1977 and the said appeal has been decided by the learned Extra Assistant Judge, Surat, on 5th April, 1980 by allowing the appeal. The judgment and the decree of the trial Court dismissing the suit was set aside and the suit, of the plaintiff-appellant for possession was allowed and the defendant respondents were ordered to vacate and hand over the possession of the suit premises on or before 30th June, 1980 failing which the appellant-plaintiff to recover the same by the aid of the Court.

2. The facts in the present case can be briefly stated as under.

3. The plaintiff is the owner of the property bearing Nondh No. 3933 of Ward No. 7 situated at Malar Sheri, Surat. The said property consists of ground floor, first floor and the loft. Before the property was rented in the name of the defendant No. 1 the property was occupied by the elder brother-Pujalal as a tenant. Thereafter the present defendants Nos. 1 and 2 and one another brother-Jayantilal and their mother had also come to reside with said Pujalal when he had got the suit property on rent.

4. The said Pujalal who was serving in the railways was transferred from Surat to Valsad in the year 1955. So he left the suit premises with his unit and was residing at Bardoli and thereafter he was transferred to several places and ultimately he settled down at Bardoli with his unit from 1965.

5. After the said Pujalal left the suit premises in the year 1955 or thereabout, defendants Nos. 1 and 2, their brother-Jayantilal and their mother continued to stay in the suit premises. Defendant No. 1 has executed two rent notes at Exh. 82 and Exh. 83. The defendant No. 1 along with the abovementioned members of the family was residing in the suit property. However, he was transferred from Surat and at present he is serving at Bardoli. On the date when the suit is filed he was serving at Bulsar and he has also been allotted residential quarter by the railway authorities, and he has been residing with his unit at that place.

6. Jayantilal who is another brother of defendant No. 1 is also serving in the railway and he is residing at Bilimora with his unit. Defendant No. 2 along with his unit and the old mother is residing in the suit premises continuously since he came to reside in the suit premises. The aforesaid facts are already proved from the record and the same are not disputed.

7. It is alleged that defendant No. 1 has acquired suitable accommodation at Bulsar and he is not using the suit premises for a continuous period of six months and that the defendant No. 1 has sub-let or transferred for consideration the suit premises to defendant No. 2. It was also alleged that defendant No. 2 has also been allotted a railway quarter No. T-84 at Udhna. It was also alleged that defendant No. 2 is in arrears of rent for the period from 30th November, 1972. The plaintiff therefore, terminated the tenancy by his notice dated 11-12-1972 and demanded arrears of rent and possession of the suit premises, the defendants did not comply with the said notice and hence the aforesaid suit which was subsequently transferred to Small Cause Court at Surat and renumbered as stated above was filed.

8. The aforesaid suit was resisted by defendants Nos. 1 and 2. It is admitted that the defendant No. 1 has taken the suit premises on lease but it was denied that the suit premises was taken on lease for occupation of defendant No. 1 alone. Defendant No. 1, Champaklal, family consists of his brother and mother and they are residing in the suit premises jointly from the beginning. It is also admitted by defendant No. 1 that he was transferred to Bulsar and he has been allotted a quarter but he has denied that the said quarter is suitable for the residence of

defendant No. 1 and his family members. He has also admitted that defendant No. 2 has been allotted a quarter No. T-84 at Udhna but he contended that the said premises was not suitable for the residence of the family of defendant No. 2. It is also denied that they were not using the suit premises for a continuous period of six months or more from the immediately preceding the date of filing the suit for the purpose for which it was let without a reasonable cause. They also contended about the standard rent and about the validity of the notice and submitted that the suit of the plaintiff be dismissed.

9. In this case the proper issues are raised at Exh. 18. There was no serious dispute about the leasing of the property to defendant No. 1. The said notice was also found to be legal and valid. The material issue is issue No. 3 and it is as to whether the suit premises have not been used without reasonable cause for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit. The answer was in the negative, that is, it is against the plaintiff. Similarly, the issue No. 4 which is also equally important and that is with regard to the acquisition of the possession or allotment of the suitable residence. That was also answered in the negative. There was also an issue with regard to sub-letting and that was also decided against the plaintiff. Issue of non-joinder of party was not raised. In view of the aforesaid finding the suit for possession was dismissed.

10. Before the appellate Court the contention advanced by the appellant on the point of Section 12(3)(b) of the Bombay Rent Act was found to be devoid of any merit and it was rejected. On the point of sub-letting also there was no point for determination possibly because of the undisputed facts that the defendants Nos. 1 and 2 and their mother were residing together in the suit premises from the very beginning. On the point of Section 13(1)(k) of the Bombay Rent Act which is for not using the suit premises for the purpose for which it was let out without any reasonable cause for a period of six months immediately preceding the date of the filing of the suit, the finding is given against the landlord-plaintiff particularly relying on the evidence of defendant No. 2 and the admissions made by the plaintiff in her evidence. The plaintiff admitted in her deposition that the defendant No. 2 has never vacated the suit premises and he was in possession of the suit premises on the date of the suit. Once when the member of the family who was there with the tenant is residing in the suit premises it cannot be said that the suit premises is not used for the purpose for which it was let out. It may be stated at the outset, before I deal with the material point, that no contention has been raised on behalf of the landlord either on the point of arrears of rent or on the point of sub-letting and/or finding given on the point of Section 13(1)(k) of the Bombay Rent Act.

11. Therefore, in this revision application the material point to be considered is whether the plaintiff is entitled to a decree on the ground of Section 13(1)(L) of the Bombay Rent Act inasmuch as a suitable residence has been allotted to him. The appellate Court after considering at length the evidence on record as well as

keeping in mind the correct position of law on the point has come to the conclusion that the trial Court has erred in holding that the plaintiff has failed to prove that she is entitled to suit premises u/s 13(1)(L) of the Bombay Rent Act and on that ground the trial Court ought to have decreed the suit for possession as stated above. Before me Mr. S.B. Vakil has argued the matter at length and cited various authorities and also pointed out one additional fact which he has placed it on affidavit of the defendant that the defendant No. 2 has retired from service on completing his age of 58 years on 31st December, 1992 which fact was not and could not have been within the consideration of the appellate authority. It may also be stated to the credit of Mr. M.R. Vyas, learned Advocate appearing for the respondent-landlady, that the said fact has not been disputed. It is equally important to note that this Court is hearing the revision application u/s 29(2) of the Bombay Rent Act and, therefore, the Court has a very limited power u/s 29(2) to correct the error if the judgment is not according to law. Therefore, the Court has no power to act as a First Appeal for reappreciating the evidence once when the evidence was appreciated by the Court below properly and keeping in mind the provisions of law.

12. In this case Mr. Vakil submitted that there is no dispute on the point that the quarter is allotted to the defendant No. 1 at Bulsar who holds the tenancy rights. It is also not disputed that the quarter is also allotted to defendant No. 2 who is a member of the family at Udhna and the same is similar to that of the one which is allotted to defendant No. 1. On the point of area of the quarter allotted to defendant No. 2, it is not the case of defendant No. 2 that it was smaller in size than that of the area of the suit premises, the entire evidence on this point about the area has been elaborately discussed by the appellate Court and, therefore, it is not necessary to repeat the same. Therefore, from the point of accommodating the members of the family, namely, defendant No. 2, his wife, his son and the mother in the quarter, the quarter allotted is a suitable residence for his unit along with his mother. It may be stated at this juncture that the undisputed fact remains that during the pendency of the suit, the defendant No. 2 surrendered the possession of the quarter allotted to him in the year 1974 and during the period from 1970-74 he was using the same, for taking rest whenever he was returning from his duty at midnight as he was serving at Udhna and the quarter was also situated at Udhna. Whatever might be the subsequent reason for surrendering the same, the point remains that the said quarter was allotted to him and which was suitable residence for him with his family and it was also found that son of defendant No. 1 was not residing with him as he was studying in the college and his name did not appear in the ration card of defendant No. 2.

13. On the point of accommodating the family members no further argument could be advanced. It is true that the mother of defendant No. 2 is residing with defendant No. 2. She is an old lady. The quarter allotted to defendant No. 2 was sufficient and suitable for accommodating the mother of defendants and there was no other grievance whether it was in first floor or she could not climb the staircase or so. From the panchnama which was made when the quarter allotted

to defendant N.o, 2 was subsequently allotted to one Mr. Vyas it appears that the panchas were not required to go upstairs and, therefore, the quarter appears to be in the ground floor. So far as the suit premises is concerned that is also on the ground floor as well as first floor.

14. The point that was urged is that at the time when the decree was passed the said quarter was not with him because he had already surrendered the same, That argument has no force. If we examine the scheme of the act it is clear that there are certain provisions in the Bombay Rent Act which give a right to the landlord for getting a decree for possession, namely, u/s 13(1)(e) when the tenant is unlawfully sub-lets the premises or u/s 13(1)(k) when the tenant is not occupying the suit premises without any reasonable pause for a period of six months immediately prior to the filing of the suit. The moment these things happen it is not necessary it should continue till the time of passing the decree. Therefore, on that ground if the Court is satisfied that the suit premises were not used for the purpose for which it was let out for a continuous period of six months immediately preceding the date of filing the suit, certainly, the landlord would be entitled to the decree. Similarly, in sub-letting, when it is satisfactorily established, the decree will be passed irrespective of the fact whether the sub-tenant has already vacated the suit premises during the pendency of the suit or whether the suit premises has been occupied by the tenant after the suit is filed. Similar would be the case u/s 13(1)(L) of the Bombay Rent Act.

15. There is a judgment in the case of Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another, . In the said case the Supreme Court was concerned with the question of sub-letting under Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and it was held in that case, "If the "tenant" has sub-let the premises without the permission of the landlord either before or after the coming into force of the Act, he is not protected from eviction u/s 13(1)(e), and it matters not that he had the right to sub-let the premises under Sect. 1080) of the Transfer of Property Act. This becomes clear upon construction of Clause (e) of Section 13(1). The relevant words in Clause (e) are "has sub-let"." The present perfect tense contemplates a completed event connected in some way with the present time. The words take within their sweep any sub-letting which was made in the past and has continued up to the present time.

16. The said Supreme Court judgment has been relied upon by the Division Bench of this Court in the case of Shivilal Nathuram Vaishnav Vs. Sulochana and Others, . In the said case it was held that the landlord may successfully claim a decree for eviction u/s 13(1)(L) of the Bombay Rent Act if it is established that the tenant acquired or has been allotted a suitable residence and that the acquisition or allotment continued in existence till the date of filing of the suit. The cause of action provided in Section 13(1)(L) of the Act must exist not only by or before the notice to quit but it must also exist at the time when the suit is filed. The contention of the tenant that in order to get a decree of eviction under this clause, the tenant also must continue to be in possession of the residence at

the time of the decree is warranted. In para 9 of the judgment the Division Bench has also relied upon two decisions -- of Madhya Pradesh High Court, namely, one of Ramoopal v. Shantilal 1977 AIRCJ 372 and the other in Ahmedkhan v. Michel Nath 1977 (1) AIRCJ 868. The view taken in the aforesaid two cases was that if a tenant has acquired or been allotted a suitable residence, it is immaterial whether he is in actual or constructive possession thereof at the time of the suit or at the time of the decree. Similar view was also taken by the Delhi High Court in the case of Batoo Mal Vs. Rameshwar Nath and Others, . The Division Bench in the case of Shivilal (supra) held "The reasoning which weighed with the Madhya Pradesh High Court as well as the Delhi High Court is that once a fetter which is imposed on the right of a landlord to recover possession is removed by acquisition of or allotment to a tenant of a suitable residence, an embargo is lifted and the landlord is entitled to recover possession, and the Court need not read in the clause more than what is warranted." Even after referring to the Supreme Court case of Gappulal (supra) they were of the opinion that "in view of the present prefect tense in which Legislature has expressed this clause, we must hold that the completed event which is a ground on which ejectment action is based must have some relation to the present time. We are, therefore of the opinion that the cause of action provided in Section 13(1)(L) of the Bombay Rent Act must exist not only by or before the notice to quit but it must also exist at the time when the suit is filed. The contention urged on behalf of the petitioner-tenant that in order to get a decree of eviction under this clause, the tenant also must continue to be in possession of the residence at the time of the decree is not warranted and we must reject it."

17. In this view of the Division Bench Judgment of this Court which is binding to the single Judge, I think that there is no substance in the contention raised by defendant No. 2 that during the pendency of the suit he has returned the railway quarter allotted to him and therefore no decree can be passed against him as on the date of the passing of the decree he was not in possession of the quarter allotted to him.

18. Mr. Vakil has very vehemently argued before me that the quarter which was allotted to defendant No. 2 at Udhna was not suitable to him. It may be stated that the appellate court below after considering the entire evidence has come to the conclusion that the quarter which was allotted to defendant No. 2 by railway was a suitable residence for him and that finding was given after taking into consideration the entire evidence on record. When that is so, this Court would not like to reappreciate the evidence and disturb that finding. The learned appellate Judge has taken into consideration not only the size of the quarter allotted to defendant No. 2 but also the inconvenience that would be caused for medical treatment as well as for the education of the children. The learned Judge after taking into consideration the evidence of the plaintiff has come to the conclusion that there are schools at Udhna and, therefore, there is no question of any inconvenience to the family members, namely, the son of defendant No. 2 for education. Similarly, on the point of medical treatment, the learned Judge has

stated that though the defendant No. 2 was serving at Udhna, he was entitled to get the medical treatment as was given to the staff at Surat Railway Station. Under these circumstances, the appellate Court has rightly considered the suitability of the residence allotted to defendant No. 2.

19. Now it is submitted by Mr. Vakil that when defendant No. 2 was in railway service he was given a railway quarter which was merely a temporary occupation and, therefore, it cannot be said that there was acquisition of possession and/or the quarter has been allotted to him. Even though such a quarter was occupied by him for the purpose of residence it cannot be said to be for the purpose of permanent settling down. On this point Mr. Vakil has relied on some authorities. The first in point of time is *Nathani Shivankumar v. Dhanalal* (1975) XVI GLR 779. It is a judgment in case of *Nathani Shivankumar v. Dhanalal*, decided by Justice S.H. Sheth. It may be stated that the facts of that case have not been stated in the reported portion of the judgment. However, that was a case u/s 13(1)(K) as well as 13(1)(L) of the Bombay Rent Act. The reported portion is only in respect of Section 13(1)(L) and not of 13(1)(K). In the subsequent part of the judgment Section 13(1)(K) of the Bombay Rent Act was considered and some facts were stated in the judgment. I have perused the facts of the said case by calling the original papers of the judgment. It appears that the tenant has temporarily occupied the bungalow of his friend for the purpose of performing the marriage ceremony of his brother and his sister Laxmi. The tenant left the suit premises and went to the bungalow of his friend, Ramchandra Odhavdas for the purpose of performing the marriage of his brother in May, 1970 and he continued to stay in that bungalow for a few months possibly under the agony caused to him by running away of his sister from the family. In the background of those facts the Court examined the question as to whether can it be stated that he continued to do so without any reasonable cause. While answering that question it was further observed that running away of a girl in the Hindu family is a matter of serious distress and agony to the rest of the family. Therefore, the tenant stayed away from the suit premises and it cannot be said that the tenant did so without a reasonable cause. The other side of the argument was that he occupied the bungalow of said Ramchandra Odhavdas for a period of nine months and that aspect was considered for the purpose of considering as to whether can it be said that he has acquired the possession of a suitable residence and in the background of those facts it was observed that in order to bring home the tenant a ground of eviction as specified in Section 13(1)(L) of the Bombay Rent Act was raised. Under the said Act it is necessary to prove that whether the tenant has acquired vacant possession and whether that is suitable residence. Possession means legal possession of accommodation of any person. Therefore, unless there is an evidence to show that there is transfer of interest, it cannot be said that the tenant is in possession of a house or a bungalow.

20. The second ingredient of Section 13(1)(L) has also been examined and it was observed that the defendant-tenant must have acquired vacant possession of a

suitable residence. The suitable residence depends upon the extent of living available, the size of the family which is to be accommodated therein and the availability of the facilities or amenities therein. Any temporary accommodation does not amount to residence. The expression of the word "residence" used in Section 13(1)(L) means residence with the object of settling down. Unless there is evidence to show that the tenant has shifted to the new premises in order to settle down there, it is extremely difficult for the Court to hold that he shifted to the new premises for settling down and obtained the same for that purpose. These observations are good and are made in the background of the facts of that case. Even applying those principles here also, when the quarter is allotted to the railway employee by the railway he acquires a right to possess. His possession cannot be taken away without following the procedure as contemplated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Therefore, the defendant No. 2 has a right to occupy the said quarter. Not only that, he did occupy and used the same for a period of four years. It is the case of defendant No. 2 that he used it only whenever he returned from duty during midnight. Assuming that to be correct, what is to be seen is whether the quarter which was allotted to defendant No. 2 was suitable for his residence along with his family or not. If that is so, he has acquired the possession of the suitable residence. The test would be that whether it has been done with the object of settling down. When a person is serving he has to settle down there and, therefore, when the residence is provided by the master or the employer it is with a view to see that the employee settles down there for his employment. When the quarter was given to defendant No. 2 at Udhna it was for the purpose of his settling down at Udhna.

21. It is the further contention of Mr. Vakil that if any such allotment of quarter is meant for settling down the employee would be in a difficult position if he is transferred. Prima facie that argument appears to be attractive but, on proper consideration thereof it appears that it has no basis because, whenever the Government servant or a railway employee is transferred, he will be provided with a quarter. If he is not provided with the quarter for some time, certainly he can continue his old quarter till he is provided with the new one. Even otherwise also, if that interpretation of providing quarter is made applicable to all the tenants who are Government servants or railway employee or a private firm employee and who has a transferable job, certainly, that would be discriminatory in favour of employees who have been allotted the quarter. Therefore also that argument for interpreting the section in this manner is contrary to the principle of equality of law and equal protection of law to the citizens. Hence the same cannot be accepted. In similar case of *Dinesh Ratilal Panwala v. Chhaganlal Lallubhai*, reported in 1986 GLH (UJ 47) 49 in reply to the contention of the Counsel for the petitioner that the acquisition of the premises is not of permanent basis, it was observed as under:

"This contention cannot be accepted. There is nothing to show in the Act that the acquisition of the premises should be on permanent basis. However, it is true

that if the acquisition of possession is purely of temporary nature and if the tenant who acquires such possession is liable to be vacated at any time such acquisition may not be considered to be acquisition within the meaning of Section 13(1)(L) of the Act. That is not the case, as far as the acquisition of the premises by the petitioner is concerned. The petitioner is a Government employee and according to relevant provisions of the Government rules he would continue in service at least up to the age of 58 years. At present the petitioner is aged about 46 years. Therefore, the petitioner would, as of right, continue in possession of the premises up to the age of 58 years unless he is transferred to another place. In case he is transferred to another place, he may get another staff quarter at the place where he is transferred. Moreover, in the event of his transfer he would not be in need of rented premises at Valsad. Therefore, also the petitioner cannot be protected."

22. Therefore, this judgment also directly discussed the point with regard to the quarter which was allotted to defendant No. 2 and the quarter can be considered to be suitable premises for defendant No. 2.

23. Further it was contended that the quarter which was given to defendant No. 2 is at Udhna while the suit premises is situated in Surat and, therefore, it is at a distance and the children, particularly, child of 7 years, cannot go from Udhna to Surat to the school and, therefore, it cannot be said to be a suitable premises.

24. For that purpose the reliance was placed on the judgment reported in *Ramagauri Girdharlal v. Narottam Narandas*, reported in (1975) XVI GLR 176. In that case which was u/s 13(1)(L) of the Bombay Rent Act the observations are made in the light of the facts of that case. The question was that the tenant was a railway employee and he was occupying the rented premises at Rajkot and stayed at Surendranagar for some time and thereafter transferred to Mehsana and in view of these facts he cannot be said to have acquired a suitable accommodation. In the light of those facts it was observed that Section 13(1)(L) of the Bombay Rent Act cannot apply to the tenants who acquired or was allotted the quarters in a different town. With a view to emphasise the point, the learned Judge has observed, "Surely a tenant in Ahmedabad cannot be evicted merely because he purchased a suitable property and acquired vacant possession thereof in Moscow or for that matter in Madras. The calculated design of the legislature is to afford protection to the tenants townwise where housing shortage exists. And the need for protection does not disappear if alternative premises are acquired at a place other than in that particular town while it would disappear if such accommodation is acquired in that very town," With these observations the landlords's revision application was rejected.

25. Here in the present case for the purpose of finding out as to whether it is a different town or not, it is necessary to see the circumstances and particularly the observations made by the learned Judge that Udhna is suburb of Surat, it is not at a far away distance from Surat and practically it is part of Surat. When that is so, the aforesaid observations made by Mr. Justice M.P. Thakkar (as he

then was) in the aforesaid case would not apply in the present case.

26. It is further contended by Mr. Vakil that though the railway quarter was allotted to defendant No. 2 still however, the family members of defendant No. 2 never shifted to the new quarter and have continued to occupy the suit premises and, therefore, it cannot be said that he has acquired vacant possession of the suitable residence because, his eviction from the suit premises will again drive his family members from that place to the new premises and will create difficulty of accommodating them.

27. For these contentions he has relied on the judgment delivered in the case of Jagjivan Narsi v. Manchhaben, reported in (1975) XVI GLR 991. As stated earlier, for the purpose of finding the ratio of the judgment one has to see the facts of that case first, the observations made in the light of those facts and the sections applied. It is important to note that in that very case Justice S.H. Sheth (as he then was) has observed in para 8 as under.

"If the evidence shows that the new premises which a tenant has taken on rent are sufficient to accommodate himself and all his dependants, then certainly he can be evicted u/s 13(1)(L) of the Rent Act from his old premises. If the new premises are not sufficient for accommodating his large family and if he himself resides in his new premises and if his dependants continue to occupy or reside in his old premises, I do not think he can be evicted u/s 13(1)(L) of the Bombay Rent Act from his old premises because his new premises are not "suitable" for accommodating his entire family."

In the aforesaid case it was found that the suit premises have been left by the defendant to his brothers and there is no evidence on record to show that whether they are dependents or not. In the aforesaid case it was also held, "It is, therefore, in the interest of justice to take fresh evidence and to decide whether the defendant's brothers who are occupying the suit premises are his dependents. If they are his dependants and if they cannot be accommodated by the defendant in his new premises, then the defendant cannot be evicted from the suit premises u/s 13(1)(L) of the Bombay Rent Act. In view of the reasons stated above, the decree for possession passed by the learned District Judge is liable to be set aside and the suit is required to be remanded to the trial Court for recording a finding on this aspect of the matter." The matter was remanded to the trial Court for fresh trial on the issues framed in para 9 thereof.

28. Now the question would be whether the aforesaid observations are applicable of the facts of the present case or not. In the present case so far as the undisputed fact of family of defendant No. 2 which was left in the suit premises when he got a railway quarter at Udhna is concerned, it consists of himself, his wife, one son and his mother in all four members. Looking to the size of the quarter, it can well be accommodated in the quarter and that is the finding given by the appellate Court below. Under these circumstances, it cannot be said that the new premises allotted to the defendant No. 2 cannot be said to be suitable

premises. It is important to note that in fact the tenancy stands in the name of defendant No. 1, Defendant No. 1 left the premises in 1965 when he got the quarter in Bulsar and he is residing there with his unit. At that time the landlord did not take action. But when defendant No. 2, who is also serving in railway, got a quarter at Udhna the landlord filed the suit. Now when the entire family can be accommodated in the quarter the landlord is certainly entitled to a decree u/s 13(1)(L) of the Bombay Rent Act.

29. The last attempt that was made by Mr. Vakil is that defendant No. 2 has retired from the service in December, 1992 and if the decree is passed against him, he will be totally without any protection. When he retired in 1992 at the age of 58 certainly now he will be at the age of 60 today. The question is whether this fact would in any way affect the right of the landlord to get the possession of the suit premises on the ground of Section 13(1)(L) of the Bombay Rent Act. It is true that normally when the rights of the parties are to be decided, it is to be decided on the disputes raised in the pleadings. The exception is that when any new events or change of circumstances take place that can be brought in by amending the pleadings provided they are going to affect the rights of the parties. For instance, the case is u/s 13(1)(g) of the Bombay Rent Act and during the pendency of the suit if there are changes in the circumstances which make the case of the plaintiff a bona fide one and which was not accepted as a bona fide by the trial Court certainly the appellate Court, after amendment in the pleadings and taking necessary evidence, can make assessment on the point of bona fide requirement. There is a provision u/s 13(2) of the Act that no decree can be passed on the ground specified in Clause (g) of Sub-section (1) of Section 13 of Bombay Rent Act if the Court is satisfied having regard to all the circumstances of the case that greater hardship would be caused to the tenant by passing a decree than by refusing to pass it. Therefore, the rights u/s 13(1)(g) are controlled by Sub-section (2) of Section 13 of the Bombay Rent Act and, therefore, that is likely to affect the right of the parties and if there are some facts which have taken place subsequent to the filing of the suit or the decision of the trial Court, such facts can be brought on record by the amendment of the pleading.

30. Similar view is taken by the Supreme Court in the case of Ramesh Kumar Vs. Kesho Ram, . In the said case the petition for eviction on the ground of bona fide need was dismissed by the Court of first instance since it was found that bona fide need was not proved. In revision the landlord pleaded certain subsequent events which according to him justified possession on ground of bona fide requirement. The Counsel for tenant failed to appear and possession was granted to landlord on basis of subsequent events. In the light of those facts, it was observed in para 4 as under:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a

material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance" of the subsequent change of fact and law to mould the relief."

In para 6 it was observed as under:

"The High Court proceeded to accept the allegations as proved presumably in view of the fact that appellant's learned Counsel did not even appear, let alone challenge the allegations. But there might also be cases in which, having regard to the nature of the circumstances, the Court may insist upon proof independently of such admission by non-traverse. When subsequent events are pleaded in the course of an appeal or proceedings of revision, the Court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order 19, Civil Procedure Code. The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The Court, if it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for any enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities."

31. Here in the present case, as stated above, the cause of action of the present case is the acquisition of the suitable residence by defendant No. 2 and that should exist on the date when the suit is filed. The moment that is done subsequent event of either surrendering the possession or any other event would not take away the right of the landlord to get possession on that ground. This view is also fortified by the view taken by the Division Bench of this Court in the case of Shivilal Nathuram Vaishnav v. Harshadrai Haribhai Oza, reported in (1980) XXI GLR 99. Therefore in this case no amendment of the plaint is necessary nor the affidavit filed by the petitioner pointing out the fact of retirement would in any way affect the right of the landlord to get the possession. Therefore, the finding recorded by the Court below after the aforesaid discussion is correct and is hereby confirmed.

32. The question would be that the decree for possession is passed and the defendant No. 2 was ordered to hand over the possession on or before 30th June, 1980 and by virtue of the order of this Court in the revision as per the order passed by Justice Ahmadi on 2nd May, 1980 his possession is protected till now. Now when the respondent entitled to a decree for possession u/s 13(1)(L) and when the defendant No. 2 retired on superannuation at the age of 58 years in 1992 he would certainly find it difficult to get the rented premises in Surat. It is in common knowledge that Surat is a very costly city in the whole of Gujarat. Premises are not easily available and particularly after retirement the income

would certainly be less than when he was in service. Under these circumstances he would certainly require some reasonable time for vacating the suit premises and, therefore, time for vacating the suit premises deserves to be extended. On this point heard both the parties. Mr. Vakil submits that he should be given time for three years for vacating the suit premises but, Miss. Vyas strongly opposes it. According to her at the most the time of six months or a year may be given but not more than that. If this case would have been in the ordinary circumstances, the time for six months or a year could have been sufficient. But the suit premises is situated in Surat and the defendant No. 2 is residing in Surat since his childhood and he has already retired from the service. Therefore, he would go out for getting the premises; hence certainly he would require some more time. Hence, time of three years to vacate the suit premises on humanitarian ground is granted on the following conditions.

33. Hence, the present revision application is dismissed with the modification of the order passed by the lower appellate Court that the time to vacate the premises is extended up to three years from today on condition that the petitioner shall regularly pay Rs. 16.50 per month as and by way of damages for use and occupation of the premises and will give an usual undertaking to hand over the vacant and peaceful possession of the suit properties to the landlord on the expiry of the aforesaid period and further that they shall not part with the possession of the suit premises or any part thereof and will not transfer or assign in any manner their right or interest in the suit premises to any other person(s). Mr. Vakil, on behalf of the petitioners informed me that the petitioners will give the undertaking as mentioned above. The aforesaid undertaking will be filed within two weeks from today. In case no undertaking is filed, the extension of time granted, shall not operate and the decree holder will be entitled to get possession of the suit premises by executing the decree immediately.