

(2013) 10 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 62 of 2011

Michael Anthony William Gareth and Another	APPELLANT
Vs	
Maria do Rosario Da Fatima (Mrs.) and Another	RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 2 ABR 281 : (2014) 1 BomCR 300 : (2014) 2 MhLj 46

Hon'ble Judges : Reis F.M., J

Bench : Single Bench

Advocate : S.D. Lotlikar and Ms. G. Xettigar, for the Appellant; M.B. D'Costa and Ms. K. Betquekar, for the Respondent

Judgement

Reis F.M., J.—Heard Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners and Shri M.B. D'Costa, learned Senior Counsel appearing for the respondents. The above writ petition, inter alia, seeks to quash and set aside by a writ of certiorari or any other writ, the judgment and Order dated 25.1.2006, passed by the learned Rent Controller, at Panaji, in Case No. Rent/ARC/4/99 as well as the Judgment and Order dated 15.11.2010 passed by the learned Administrative Tribunal in Eviction Appeal No. 3/2006.

2. Briefly, the facts of the case as stated by the petitioners are that on 16.8.1999, the respondent No. 1 filed an Eviction Proceedings before the Rent Controller seeking eviction of the petitioners from the disputed house bearing Municipal No. 73, admeasuring 87 square metres surveyed under Chalta No. 141 of P.T. Sheet No. 45 of the City Survey of Panaji, under the provisions of the Goa Daman & Diu Buildings (Lease, Rent and Eviction) Control Act of 1968, (hereinafter referred to as "the said Rent Act"), on the ground that the disputed premises were required for her personal occupation and that of her family. It was the case of the respondent No. 1 that the said premises were acquired by her by virtue of a Deed of Gift dated 14.6.1994 and after the death of the original tenant on 4.5.1995, her heirs namely, the petitioners herein, continued to occupy in the said premises. It is further the case of the respondent No. 1 that she and

her son were living in the adjoining house which belonged to her sister where she had to stay to help her mother who was sick and blind and bed ridden from the year 1990 and who expired in June, 1997. It is further her case that the respondent No. 1 was requested to move out from the said adjoining house by her father and her sister and, therefore, she required the said premises for her own personal occupation.

3. On being served with the summons, the petitioners filed their reply to the said petition for eviction and, inter alia, claimed that the need of the respondent No. 1 was not bona fide and/or genuine. It was further their case that it was not real or natural and honest claim put forward in the Eviction Proceedings and that the respondent No. 1 had failed to substantiate her pleadings that her need was genuine. It was further their case that the sister of the respondent No. 1 was a permanent resident of Mumbai residing with her children and her in laws and that the respondent No. 1 could not live alone in the suit premises as her father was over 80 years old. It is further their case that the sister of the respondent No. 1, Mrs. Filomena D'Silva, has absolutely no interest in coming down to Goa nor has the said sister ever requested the respondent No. 1 to move out of the house which she is presently occupying. Thereafter, an amendment to the written statement was filed by the petitioners to take on record the subsequent events pertaining to the marriage of the children of the respondent No. 1 and their separate residences with their respective spouses. The amendment was otherwise rejected by the learned Rent Controller.

4. By judgment and Order dated 25.1.2006, the learned Rent Controller allowed the application for eviction and ordered the eviction of the petitioners from the said premises. Being aggrieved by the said judgment, an appeal was preferred before the Administrative Tribunal being Eviction Appeal No. 3 of 2006 which also came to be dismissed by judgment and Order dated 7.10.2009. Being aggrieved by the judgments passed by the Authorities below, the petitioners have preferred the above writ petition.

5. Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners, has assailed the impugned judgment as, according to him, both the authorities below have misconstrued the evidence on record and have failed to consider that the claim of the respondent No. 1 that she required the said premises for her bona fide occupation is not at all genuine nor borne out from the records. Learned Senior Counsel further pointed out that in fact the petitioners were originally occupying the suit premises for the last over 30 years and, as such, the Tribunal has failed to consider the comparable hardships of the petitioners in case they are ordered to be evicted from the said premises. Learned Senior Counsel further pointed out that the respondent No. 1 had originally filed the claim on the ground that she required the said premises for her occupation and her family but, however, the needs of the family of the respondent No. 1 no longer survives as they have got married and they are residing in separate establishments. Learned Senior Counsel further pointed out that the father of the respondent No. 1 is

occupying the adjoining house portion and, considering that he is 90 years old, the claim of the respondent No. 1 that she has been asked to leave the said portion of the house by the sister, cannot be believed. Learned Senior Counsel further pointed out that the father of the respondent No. 1 is not in a position to live alone and the whole game plan of the respondent No. 1 is to make out a fictitious case to seek the eviction of the petitioners from the suit premises. Learned Senior Counsel further pointed out that even the execution of the Gift Deed in the year 1994 is also the sinister design of the respondent No. 1 in collusion with her sister in fabricating a case for the eviction of the petitioners from the suit premises on a pretended claim of bona fide occupation. Learned Senior Counsel further pointed out that the claim of the respondent No. 1 is not at all sincere but only an excuse or pretext to seek the eviction of the petitioners from the said premises. Learned Senior Counsel has thereafter taken me through the Judgment of the Authorities below and pointed out that both the Authorities have misconstrued the evidence on record and failed to consider that the material on record shows that the claim put forward by the respondent No. 1 is totally far fetched and without any justification as it only shows a desire of the respondent No. 1 to occupy the said premises. Learned Senior Counsel further submitted that the findings of fact arrived at by the Authorities below are perverse and, as such, there are justifiable reasons for interference of this Court in the present writ petition under Article 226 and 227 of the Constitution of India. In support of his submissions, the learned Senior Counsel has relied upon the Judgment of the Apex Court reported in *T. Sivasubramaniam and Others Vs. Kasinath Pujari and Others*, (2009) 17 S.C.C. 645 in the case of (*Dilip Mitra & anr. Vs. Swadesh Chandra Bhasdra*), *Mavji C. Lakum Vs. Central Bank of India*, *Gian Devi Anand Vs. Jeevan Kumar and Others*, *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, *Hasmat Rai and Another Vs. Raghunath Prasad*, *Mattulal Vs. Radhe Lal*, *Thereza Cordo Vs. Venkatesh Lotlikar and Others*, *Jai Singh and Others Vs. Municipal Corporation of Delhi and Another*, *M.M.T.C. Limited Vs. Commissioner of Commercial Tax and Others*, *Radhey Shyam and Another Vs. Chhabhi Nath and Others*, *Dinesh Kumar Vs. Yusuf Ali*, *S.J. Ebenezer Vs. Velayudhan and Others*, and *Sarla Ahuja Vs. United India Insurance Company Limited*, The learned Senior Counsel as such submits that the impugned Judgment be quashed and set aside.

6. On the other hand, Shri M.B. D"Costa, learned Senior Counsel appearing for the respondent No. 1, has supported the impugned Judgment. Learned Senior Counsel pointed out that both the Authorities upon appreciating the material on record have concurrently found that the claim of the respondent No. 1 to occupy the disputes premises are bona fide. Learned Counsel further pointed out that these concurrent findings of fact cannot be re-appreciated by this Court in the present writ petition under Articles 226 and 227 of the Constitution of India. Learned Senior Counsel further pointed out that the claim of the petitioners that the father of the respondent No. 1 is more than 90 years old and requires her

help, is not at all relevant as it is the prerogative of the respondent No. 1 to reside in the premises which she requires. Learned Senior Counsel further pointed out that the question of the respondent No. 1 who is a married daughter residing with the father is not at all justified as her sister had already gifted the suit premises to her way back in the year 1994. Learned Senior Counsel further pointed out that in terms of the said Rent Control Act, after the period of five years, the respondent No. is entitled to put up a claim for bona fide occupation. Learned Senior Counsel further pointed out that the contentions of the petitioners are totally far fetched. Learned Senior Counsel further pointed out that all the Judgments relied upon by the learned Senior Counsel appearing for the petitioners are only to confuse this Court by raising false and untenable contents. Learned Senior Counsel further pointed out that the respondent No. 1 has conclusively established her claim of bona fide occupation of the suit house. Learned Senior Counsel further pointed out that the question of interfering in the Judgments passed by the Authorities below does not arise at all. In support of his submissions, learned Senior Counsel has relied upon the Judgments reported in *Julieta Antonieta Tarcato Vs. Suleiman Ismail*, , *State of Madhya Pradesh and Others Vs. Visan Kumar Shiv Charan Lal*, , *Pratap Rai Tanwani and Another Vs. Uttam Chand and Another*, , *Gian Devi Anand Vs. Jeevan Kumar and Others*, , and the judgment reported in *S.N. Kapoor (Dead) by his LRs. Vs. Basant Lal Khatri and ors*, . The learned Senior Counsel thereafter pointed out that during the pendency of the above eviction proceedings, there is an amendment which has been brought to the said Rent Control Act 1969 to the effect that the widows are entitled to seek possession of the premises for their bona fide occupation in a summary manner. Learned Senior Counsel further pointed out that it is not in dispute that the respondent No. 1 is a widow and considering the facts of the present case, the respondent No. 1 is also entitled to seek the eviction on that ground though the said amendment came into force during the pendency of the above proceedings. Learned Senior Counsel further pointed out that the question of amending the pleadings does not arise as, according to him, the facts which have been admitted and curl out from the record can be considered by this Court to draw the legal inferences based on law. Learned Senior Counsel further pointed out that the claim of the petitioners is bona fide and in view of the said amendment to the said Rent Act, the respondent No. 1 is entitled to occupy the disputed premises on that ground as well. Learned Senior Counsel further pointed out that there is no reason for any interference in the impugned Judgment.

7. Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners, in reply points out that even by the said amendments to the said Rent Act, the bona fide need of the respondent No. 1 has to be established. Leaned Senior Counsel further pointed out that it was incumbent upon the petitioners to file an application for amendment to incorporate the said ground if they were so entitled and as such the question of taking the petitioners by surprise at this stage, is not at all justified. Learned Counsel as such submits that the impugned Judgments

be quashed and set aside.

8. I have carefully considered the submissions of the learned Senior Counsel. I have also gone through the records and the Judgments relied upon by the learned Senior Counsel appearing for the respective parties. Before proceeding to consider the rival contentions, it would be appropriate to refer to the observations of the Apex Court in the judgment reported in *Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others*, , wherein it is observed at paras 30, 31 and 32 thus:

30. In AIR 1975 1297 (SC)

7. ... The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final on facts.

31. In *State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru*, , this Court explained the power of the High Court under Article 227 thus: (S.C.C. pp. 656-57, para 28)

28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and Tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

32. The aforesaid two decisions and few other decisions, namely, *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, , *State of Maharashtra Vs. Milind and Others*, and *Ranjeet Singh Vs. Ravi Prakash*, came to be considered by this Court in *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased)* through LRs. and Others, and this Court held: (Tilak Raj case S.C.C. pp. 10-11, para 38).

38. Though powers of a High Court under Articles 226 and 227 are very wide and

extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of appeal or a Court of error. It can neither review nor re-appreciate, nor reweigh the evidence upon which determination of a Subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior Tribunals within the limits of law.

9. In the light of the aforesaid legal position and considering the scope of the jurisdiction of the High Court under Article 227 of the Constitution of India, I shall now proceed to examine the findings of the authorities below whilst deciding the application for eviction filed by the respondent No. 1. The records reveal that the respondent No. 1 initiated proceedings for eviction of the petitioners for bona fide occupation. The said claim of the respondent No. 1 was disputed by the petitioners by, inter alia, claiming that the claim of the respondent No. 1 was not bona fide. The learned Rent Controller whilst disposing of the said application has noted that the said premises were acquired by the respondent No. 1 by virtue of a Deed of Gift dated 14.6.1994 and that the proceedings for eviction came to be filed on the ground that the respondent No. 1 and her son are residing in an adjoining house which belongs to the sister of the respondent No. 1, along with the parents of the respondent No. 1. The respondent No. 1 was residing in the said house from the year 1990 to help her mother who was sick and blind and that after her death, her father and her sister have been requesting her to leave the said house where the respondent No. 1's father is residing and, as such, the respondent No. 1 filed the proceedings for eviction of the petitioners from the said premises. The petitioners have opposed the said application on the grounds as already stated herein above.

10. The Rent Controller has further noted that respondent No. 1 who has been examined has reiterated the contentions in her application and produced the relevant documents. The petitioners examined the petitioner No. 1 as RW. 1 and also Maria S. Borges as RW. 2. The Rent Controller upon appreciating the material on record and the pleadings of the parties, has come to the conclusion that the respondent No. 1 cannot be deprived of her right to leave the sister's house and occupy her own house and it is not for the petitioners to advise the Landlady/respondent No. 1 as to where she should be residing. The learned Rent Controller has also taken note of the fact that the respondent No. 1 has no right to live in the house where her father is residing as it admittedly belonged to her sister. The learned Rent Controller has taken support on the citations relied upon by the respondent No. 1 and directed the eviction of the petitioners from the disputed house.

11. In the Appeal preferred before the Tribunal, whilst disposing off the Eviction

Appeal No. 3 of 2006, by judgment dated 15.11.2010, the learned Tribunal upon re-appreciating the material on record, has come to the conclusion that eviction proceedings initiated by the respondent No. 1 was u/s 23 of the said Rent Control Act, 1969 on the ground of bona fide requirement for personal occupation. The learned Tribunal has also considered that it is undisputed that the respondent No. 1 is the owner of the disputed premises and she is residing in another house which is adjoining to the said premises which is owned by her sister. The learned Tribunal has also taken note of the fact that if it is established that the landlady reasonably requires the rented premises, it has to be assumed that it is a bona fide need, which has to be rebutted by the tenant. In such circumstances, the Tribunal found that the fact that the claim was not bona fide, was on the petitioners. The learned Tribunal has also noted that as respondent No. 1 has no other house, she has sought for the eviction of the petitioners from the rented house. The learned Tribunal found that there is no material produced by the petitioners to contradict the case of the respondent No. 1 that she required the rented premises for bona fide occupation. The learned Tribunal also noted that the house occupied by the father cannot become the house of the respondent No. 1 so as to occupy it exclusively. The learned Tribunal also held that rules of pleadings are not applicable to Rent Proceedings. The learned Tribunal after considering the Judgments of the Apex Court relied upon by the Counsels appearing for the parties, has found that the respondent No. 1 has established that she is not occupying any residential building of her own or which is owned by her in the city and that the suit premises is the only residential building which she owns. The learned Tribunal further noted the statement of the respondent No. 1, that she was asked to leave the house occupied by her sister and took note of the fact that the appellant No. 1, in his deposition had stated that the father of the respondent No. 1 is living in the house belonging to the said sister. The learned Tribunal has also noted that the appellant had admitted in the written statement that the adjoining house belongs to the sister of the respondent No. 1 and that the respondent No. 1 is residing therein. The learned Tribunal has also noted that the appellants have not shown how the respondent has a right to occupy the said adjoining house. The learned Tribunal also noted that no rights had devolved in respect of the said house on the respondent No. 1 as her father is alive. It was also noted by the learned Tribunal that there is no dispute that the respondent No. 1 does not own any house in Panaji City. The learned Tribunal further noted that there are no contradictions in the statements of the respondent. The learned Tribunal has also examined whether the evidence on record suggests only a desire of the respondent No. 1 to occupy the disputed house and found that considering the material on record, the respondent No. 1 had established that her need to occupy the disputed house was bona fide and, consequently, dismissed the Appeal preferred by the petitioners.

12. From the foregoing findings on record, it has been concurrently held that the respondent No. 1 owns the rented premises under dispute and that the adjoining house occupied by her father is not owned by the respondent No. 1. The

respondent No. 1 has pleaded and proved that she requires the said premises for her bona fide occupation. The Authorities below have also concurrently found that the petitioners have failed to adduce any evidence to rebut the said contention of the respondent No. 1 that she required the rented premises for her own bona fide occupation. On the face of the said concurrent findings of fact, one will have to examine whether any interference is called for in the present Writ petition. Considering the ratio laid down by the Apex Court in the case of Celina Coelho Pereira Vs. Ulhas Mahableshwar Kholkar & Ors., (supra) referred to herein above, these concurrent findings of fact cannot be re-appreciated by this Court in a writ petition. Hence, the question of accepting the contention of Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners, that the material on record suggests that the respondent No. 1 has not established her bona fide needs to occupy the disputed premises cannot be re-assessed by this Court. Apart from that, the reliance placed by Shri S.D. Lotlikar, learned Senior Counsel, to show that the evidence only suggests a desire and not the need of the respondent No. 1, cannot be accepted. This aspect has been rightly considered by the Tribunal whilst holding that in the present case there were specific pleadings on record which have been proved by the respondent No. 1 that she requires the disputed premises for her own occupation as she has no other house of her own in the city. It is not open in such circumstances for the petitioners to contend that the respondent No. 1 can very well reside with her father and, as such, her claim of bona fide requirement is in fact not genuine. It is well settled that the landlord is the best Judge of his residential requirements and, as such, it is for him or her to decide how and in what manner she should live. If a landlord desires to beneficially enjoy his own house where the other property occupied by her is either insecure or inconvenient, it is not for the Court to dictate to her to continue to occupy such premises. In the present case, at the time of the filing of the proceedings for eviction, the respondent No. 1 and her son were admittedly occupying the said house which belonged to the sister of the respondent No. 1. Naturally, such sister would expect the respondent No. 1 and her family not to occupy her house when she had already gifted the adjoining house to the respondent No. 1.

13. The judgments relied upon by Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners in the case of S.J. Ebenezer Vs. Velayudhan & Ors. (supra), T. Sivasubramaniam & Ors. Vs. Kasinath Pujari & Ors., (supra) and Mattulal Vs. Radha Lal (supra), to contend that the desire of the landlord cannot be a substitute to the need to occupy the rented premises are essentially cases in which in the facts of those cases, the pleadings and the evidence disclosed only a desire and not the need of the landlord. But, however, in the case at hand, the respondent No. 1 in her application for eviction has clearly stated that after the death of her mother, her sister as well as her father had called upon her to evict the said premises she is presently occupying. This has been reaffirmed in her deposition before the Rent Controller. In the cross examination, apart from trying to say that the father would require her assistance on account of his old

age, there is nothing pointed out on record to suggest that there was no request put forward by the sister of the respondent No. 1 along with the father with that regard. Taking note of the findings noted by the Authorities below, the claim of the respondent No. 1 that she has been asked to leave the house by the sister is plausible and, as such, the contention of Shri Lotlikar, learned Senior Counsel, that this is only a pretext to evict the petitioners from the disputed premises, cannot be accepted. The fact that the sister of the respondent No. 1 is residing in Mumbai is irrelevant to assume that she had not asked the respondent No. 1 to discontinue occupying her house where her father is presently residing. It is also to be noted that considering that the disputed house is adjoining to the house where her father is residing, naturally, the respondent No. 1 can also appropriately take care of her father if such situation arises. A tenant cannot dictate terms to the landlady as far as her need to occupy the rented premises is concerned. In the present case, taking note of the fact that the respondent No. 1 does not own a residence in the City of Panaji, it can be reasonably assumed that the need of the respondent No. 1 was bona fide. Once these facts are established, it was incumbent upon the petitioners to rebut the said evidence by producing on record some material. The petitioners have miserably failed to adduce any such material to rebut the said evidence and, as such, the question of now contending that the respondent No. 1 does not require the disputed premises for her own occupation, does not arise at all. The Apex Court in a judgment reported in Dinesh Kumar Vs. Yusuf Ali, , has clearly held that the bona fide need of a landlady is to be assessed as on the date of the filing of the Eviction petition. As on that date, it cannot be disputed that respondent No. 1 did not own any house in the City of Panaji of her own nor did she have any vacant occupation of any premises where she could exclusively reside with her family. In such circumstances and taking note of the findings of the Authorities below, there can be no doubt that the need of the respondent No. 1 was bona fide and genuine.

14. So also the contention of Shri S.D. Lotlikar, learned Senior Counsel, that the respondent No. 1 has failed to establish that her bona fide need to occupy the disputed premises is not genuine, honest and conceived in good faith, cannot be accepted in view of the findings of the Authorities below referred to herein above. A bona fide requirement of the landlord is a concept which requires a practical approach and manifested by the actual need of the landlord and not a mere fanciful or whimsical desire. As noted herein above, the fact finding Authorities have come to the conclusion that the respondent No. 1 has established her bona fide need and her claim cannot be said to be whimsical. Rent Control Legislature generally leans in favour of a tenant but it is only in cases in which the eviction is sought of the tenant on account of bona fide requirement of the landlord for its own occupation or its use of the tenanted premises when it treats the landlord with some sympathy. In such circumstances, if one examines the findings of the Authorities below, on given facts proved by the evidence on record, the need to occupy the tenanted

premises by the respondent No. 1 can be said to be natural, real, sincere and honest. If a landlady wishes to reside with comfort in a house of her own, the law does not command or compel her to squeeze herself and dwell in a lesser premises so as to protect the continued occupation of the tenanted premises. Hence, considering the concurrent findings of facts arrived at by the Authorities below as elaborated above, there is no reason for any interference of this Court under Article 227 of the Constitution of India. The Apex Court in the case of *Julieta Antonieta Tarcato Vs. Suleman Ismail* (supra) has held at paras 11 and 12 thus:

11. Having noticed the evidence on record and the findings recorded by the courts below we have come to the conclusion that this appeal must be allowed. The finding of bona fide personal need recorded by the Appellate Court is a finding of fact based on the evidence on record. We have considered the evidence on record and we find that the finding recorded by the Appellate Court did not deserve to be set aside. In fact, the High Court also was of the same view, but in the changed circumstances having regard to the events that took place during the pendency of the writ petition, the High Court interfered with the order of the Appellate Court. We hold that the High Court was not justified in doing so. It cannot be lost sight of that the premises which the appellant required for her personal bona fide need belonged to her. She was residing in those premises with other family members for many years. Unfortunately, she suffered an accident and in the absence of any other grown up male member in the family she was persuaded by her brother Lawrence to come and reside in his apartment which was one of the flats in Ashoka Apartments and which was owned by him and his brother Tito. After residing there for several years, the appellant felt that she should not burden her brother any more and, therefore, wanted to shift to her own accommodation which was then in occupation of the respondent. The trial court made much of the fact that the appellant had also pleaded her bona fide need of providing accommodation to other members of the family. While doing so the trial Court completely lost sight of the fact that apart from the requirement of other members of the family, the appellant also required the premises for her own-accommodation. Thus, even if the other members of the family no longer required the premises, the requirement of the appellant survived. She had every right to occupy her own premises and she could not be told that she should share accommodation with her brother in another apartment.

12. The High Court was in error in holding that since the appellant became a co-owner of the premises upon the death of her brother Lawrence, she had a right to reside in those premises and, therefore, her need for the premises owned by her exclusively did not subsist. The appellant has brought to our notice the fact that in September 2003, the appellant and her sister gave their consent for the transfer of the flat in Ashoka Apartments in the name of Tito, their brother, who was a co-owner of the flat along with her late brother Lawrence. Even if we ignore this fact, one cannot compel the owner of the premises which exclusively belongs to her to share accommodation with a co-owner of hers in another

premises. The appellant being the owner of the suit premises, her need being bona fide and reasonable, it would be unfair to compel her to share the accommodation in another premises with its co-owner. We must therefore hold that the High Court was in error in coming to the conclusion that the bona fide personal need of the appellant did not subsist.

15. Taking note of the parameters laid down by the Apex Court in the interference by this Court in the findings of fact in a Writ petition, I find no reason for any interference in the impugned judgment as the respondent No. 1 has established a bona fide requirement to occupy the disputed premises which entitles her to evict the petitioners from the rented premises within the grounds as provided under the said Rent Act. The jurisdiction of this Court to enter into findings of fact is limited only to test whether the findings arrived at by the Rent Controller and the Authorities below are in accordance with law. This Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view on the facts as if it were a Court of facts. To ascertain whether the findings are in accordance with law, this Court can ascertain whether on the basis of the facts on record the conclusion arrived at by the Authorities below is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available on record. Only in cases in which a wrong premise of law or the conclusion arrived at on the established facts would betray the lack of reason and/or objectivity can render such findings of the Rent Controller and the Authorities below to be not in accordance with law. In the present case, for the reasons stated herein above, I find that there is nothing to suggest that the findings of fact arrived at by the Authorities below on the established facts are not in accordance with law.

16. To appreciate the next contention of Shri M.B. D'Costa, learned Senior Counsel appearing for the respondent No. 1, on the basis of the amendment to the said Rent Act, to the effect that the respondent No. 1 has an additional and/or alternate ground available to her to seek the eviction of the petitioners from the rented premises, it would be appropriate to note the amendment which came in for force during the pendency of the proceedings. Section 23A(3C) of the said Rent Control Act, 1969, reads thus:

Section 23A(3C)(a)- Notwithstanding anything contained in this Act, a landlord, who is a senior citizen, or a widow, or a physically disabled person, on an application made in this behalf to the Controller, shall be entitled to recover possession of any residential premises owned by him/her on the ground that such premises are bona fide required by him/her for occupation by himself/herself.

(b) Where the senior citizen, or a widow, or a physically disabled person recovers possession of the premises under Clause (a), he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of three years from the date of taking possession of the premises, failing which, the

evicted tenant may apply to the Controller for an order that he or she be restored the possession of the said premises and the Controller shall make an order accordingly.

(c) The Controller shall pass an order for eviction of tenant on an application by a senior citizen, or widow, or a physically disabled person under Clause (a) above supported by documentary proof that such a person is a senior citizen, or a widow, or a physically disabled person.

(d) Every application filed before the Controller under Clause (a) above shall be dealt with in accordance with the procedure specified in sub-section (3-A) and the provisions thereof in so far they are applicable, shall apply to such proceedings.

Explanation:- For the purposes of this subsection,-

(i) senior citizen means a person who has attained the age of 60 years;

(ii) a widow includes a widower; and

(iii) a physically disabled person means a person who has suffered disability at least to the extent of 40% and is so certified by a medical authority specified under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act 1 of 1996), as amended from time to time.

17. The said amendment apparently came into force in the year 2013. Shri M.B. D'Costa, learned Senior Counsel, has pointed out that in view of the said amendment to the said Rent Control Act, as the respondent No. 1 is a widow, she is entitled to evict the petitioner in case she requires the premises for her bona fide occupation. It is sought to be contended by Shri S.D. Lotlikar, learned Senior Counsel appearing for the petitioners that the said amendment would not be applicable to the facts of the present case as it is not retrospective. I am afraid that the language of the said provision clearly shows that the contention of Shri S.D. Lotlikar, cannot be accepted. The Apex Court in the Judgment reported in Usha P. Kuvelkar and Others Vs. Ravindra Subrai Dalvi, , had occasion to consider the said aspect in connection with a similar amendment by section 23A(3C) to the said Rent Act, wherein specific landlords were given such right to seek eviction of the tenants on the ground of bona fide occupation. The Apex Court has observed at Para 18 thus:

18. The language of section 23A(3)(c) which we have quoted above leaves no manner of doubt that the section was clearly applicable to the pending proceedings like the present one. It is obvious that the amendment application was filed by the landlord on 8-2-1989 wherein a specific reference was made to the above mentioned legal position. Beyond baldly denying, the tenant has done nothing worth the name. We have seen the judgment of the Additional Rent Controller who has considered section 23A(3) extensively. There can be no doubt that the provision was applicable to the proceedings and as such the Additional

Rent Controller was right in accepting the case of the landlord to the effect that firstly he was a government servant having retired on 31-5-1983, secondly he had no house in Panaji where the residential premises concerned existed and thirdly that he wanted the house for his own bona fide occupation. We, therefore, reject the contention of the respondent that section 23A(3) was not applicable to the present proceedings. The judgment of the High Court is woefully wanting on this aspect. No argument was raised by the counsel for the respondent regarding the 1994 Amendment.

18. In similar situations, wherein a right of a widow to evict a tenant on the ground of bona fide occupation which was introduced in the Delhi Rent Control Act 1958, was under consideration it is observed by the Apex Court in the case of *S.N. Kapoor (Dead) By Lrs. Vs. Basant Lal Khatri & Ors.* (supra) at Paras 7 and 8 thus:

7. So far as the challenge made to the order of the High Court rejecting the prayer to modify the relief claimed u/s 14(1)(e) of the Act for eviction into one u/s 14D is concerned, the manner of disposal adopted seems to be too summary and cursory. The Court has not chosen to, except stating that this Court had such powers under Article 142 of the Constitution of India, has not assigned any reason as to why it cannot do so, if the circumstances so warranted or justified in a given case. The tentability or otherwise of such a claim would depend upon the question as to whether a decision on the claim based upon such altered provision would require any fresh enquiry and proof of new facts, before it could be taken up for consideration. In *Surjit Singh Kalra Vs. Union of India (UOI) and Another*, this Court held that sections 14-B to 14-D though different from proviso to section 14(1)(e) and the tenant cannot contest the application on grounds specified therein, can and is entitled to show that the landlord's requirement was not bona fide, even when made u/s 14D. In *EMC Steel Limited, Calcutta Vs. Union of India (UOI) and Another*, also this Court, while upholding the constitutional validity of section 14D, observed that the special right conferred upon the widow u/s 14D can be availed of by her only once and she had to also prove her bona fide need like other landlords and that the restriction u/s 19 on re-letting after recovery of possession will also apply to her. This Court in *V. Rajeswari v. Bombay Tyres Intl. Ltd.*, 1995 Supp (3) SCC 172, countenanced such a claim of the widow in an appeal filed under Article 136 of the Constitution of India, even when the claim u/s 14(1)(e) came to be rejected by the courts below. In that case, this Court held (at S.C.C. p. 173, para 4) that "we are of the view that u/s 14D, the tenant has practically no defence whatever. All that has to be proved under the said section which has been extracted above, are -- (i) that the landlady is a widow and (ii) the premises are required by her for her own residence". The Court further observed that the fact that she is living with her daughter or any other person, is no ground to say that the premises in question are not required for her residence. So far as section 14(1)(e) is concerned, the bona fide nature of the requirement need be established for getting an order of eviction and even in the absence of a specific stipulation in this regard this Court,

in order to make the enabling power u/s 14D to be more reasonable read into it also the need to substantiate that the request of the widow to recover possession of the premises for her own residence should be bona fide. The common determining factor being the "bona fides" in both cases, and the landlady seeks an adjudication on the basis of materials already on record there should be no impediment for the Authorities/courts functioning even under the Act to permit such conversion or alteration and consider the claims made under the altered provision of law. As a matter of fact subsequent developments and altered circumstances were held to be relevant in adjudging the nature and character of the claim made, at all stages of the proceedings. The High Court, in our view, erred in refusing to allow the application for modification of the claim made u/s 14(1)(e) into one u/s 14D, for being considered on its merits. The order dated 19-1-2000 in CM No. 5154 of 1999 is set aside and the appeal filed against the same is allowed and application of the appellant for modification of the claim is allowed.

8. That the landlord has no other building in New Delhi is not in controversy and it is also a fact specifically noticed also by the Rent Controller. The question that does really arise for consideration is as to whether the claim of the landlady or the need to occupy the premises at New Delhi, in the circumstances, pleaded or demonstrated could be said to be not bona fide or reasonable merely because the landlady is residing, for the time being, at Bhopal -- altogether a different city in a different State also, along with her son and his family notwithstanding her decision to live separately at New Delhi. The need felt by the landlady to do so does appear to be sincere and honest and not a mere pretence only to evict the tenant. No material has been brought on record and no proof has been made by the tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet a certain amount of discretion has to be allowed in favour of the landlady too and courts should not also impose their own wisdom forcibly upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may result to him in passing an order of eviction. In adjudging the claim u/s 14D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim u/s 14(1)(e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine. As far as the claim u/s 14D is concerned, the widow-landlady's need for her own residence is recognized statutorily to be a valid one, but the move or request made to avail of the special benefit must be shown to be bona fide and not a pretext only to get rid of the tenant. Viewed in the context of the indisputable facts on record that the widow has no other premises of her own at New Delhi and that she wants to reside away from Bhopal and aloof from her daughter-in-law are by themselves sufficient to sustain her

claim. The rejection of the claim seems to be on hyper technical appreciation of the materials on record and does not constitute a real, proper and effective consideration at all. Therefore, viewed from any angle, we find the need and requirement of the appellant-landlady to be bona fide and consequently an order of eviction shall follow. We allow the claim of the landlady for eviction and the appeal against the order dated 3-7-2000 shall stand allowed.

19. Considering the subsequent amendments to the said Rent Act which gives an additional ground to the respondent No. 1 of eviction of the tenant, as she is a widow, I find that the said aspect can also be looked into by this Court on the basis of the admitted records. The undisputed facts of the present case disclose that the respondent No. 1 is a widow and that she has no other house owned by her in the City of Panaji. Apart from that, the fact finding Authorities below have conclusively come to the conclusion that her need to occupy the rented premises are bona fide. Hence, viewed in the context of the indisputable facts on record, the respondent No. 1 being a widow and as she requires the premises for her own bona fide occupation, the respondent No. 1 is entitled for the eviction of the petitioners from the disputed premises in view of the said amendment to the said Rent Act referred to herein above. On plain reading of the said amendment in section 23A(3C) of the said Rent Act, the requirements specified therein have been satisfied by the respondent No. 1 and, as such, the respondent No. 1 is entitled to seek the eviction of the respondent No. 1 from the rented premises also on that count.

20. For the reasons stated above, I find no reason to interfere with the impugned Judgments passed by the Authorities below. Consequently, the above Writ petition stands rejected. Rule stands discharged.