

**(2000) 06 KAR CK 0028**

**In the Karnataka High Court**

**Case No :** House Rent Revision Petition No. 16 of 1999

Moolchand Prakashchand and Others

APPELLANT

Vs

C.M. Singaraju

RESPONDENT

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**Date of Decision :** 21-06-2000

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 115  
Karnataka Rent Control Act, 1961 — Section 21 (1) (h), 50

**Citation :** (2000) ILR (Kar) 3360 : (2000) 5 KarLJ 233 : (2000) 4 KCCR 280 SN

**Hon'ble Judges :** Chidanand Ullal, J

**Bench :** Single Bench

**Advocate :** Sri M.H. Datar, for the Appellant; Sri Yoganarasimha, for the Respondent

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**Judgement**

1. This is a tenant's second revision filed u/s 115 of the CPC and is directed against the order dated 24-11-1998 in Revision (Rent) No. 2 of 1996 passed by the Additional District Judge, Chickmagalur, dismissing the said first revision petition and further confirming the order of eviction passed by the Principal Munsiff and JMFC, Chickmagalur as against him on 4-12-1995 in HRC No. 74 of 1990.

2. The petitioners herein are represented by the Senior Counsel Sri M.H. Datar. The respondent-landlord is represented by Sri S.D.N. Prasad and Sri Yoganarasimha.

3. Before proceeding further, I feel it appropriate to set out in brief the facts of the case. They are as hereunder:

4. The petitioner 1 was the partnership firm and it was the tenant of the respondent-landlord. Petitioners 2 and 3 were the partners of the petitioner 1-Firm.

5. For the purpose of convenience, the petitioner 1 henceforth is referred to as the "tenant" and whereas the respondent is referred to as the "landlord". That is

how they were before the Trial Court, Principal Munsiff and JMFC, Chickmagalur.

6. That the landlord had filed an eviction petition u/s 21(1)(h) of the Karnataka Rent Control Act seeking eviction of the tenant. The petition schedule premises was consisting of the front side -shop portion measuring 14" x 12" and a rear side, a residential portion situated in M.G. Road, Chickmagalur. The shop portion as well as the residential portion were facing M.G. Road. That, there was yet another residential house portion abutting the residential portion of the petition schedule premises, but the same was facing "Agasara Beedi". The landlord was living in the said residential portion.

7. That the landlord had leased the subject premises on a monthly rental of Rs. 450/- per month and the same was done about 30 years ago. When the tenant was using the front portion abutting the M.G. Road for doing its partnership business in cloth, its partners (petitioners 2 and 3) were residing in the rear portion of that shop portion. That the landlord was a tailor by profession and he was carrying on with tailoring work sitting on the pail of Amardeep showroom, also situated in M.G. Road and as such, on every day morning as well as in the evening, he had to take the trouble of taking out and taking in, the sewing machine and other equipments from the said showroom for carrying on his tailoring work. Since he had to sit on the pail for the purpose of his tailoring work, he was exposed to sun and rain and had to work most of the time by bearing with the said hazards. That there was dispute with regard to his title in respect of the subject premises and finally, the matter had to be taken up to the Supreme Court to get his right, title and interest therein settled in his favour and it is thereafter, he had filed the above eviction petition as against the tenants.

8. That the landlord wanted to establish his own tailoring business in a bigger scale by buying two or more machines and further engaging some assistants to carry on the business of tailoring and preparing dresses in his own premises and therefore, the landlord had filed eviction petition in HRC No. 74 of 1990 before the Principal Munsiff and JMFC at Chickmagalur (henceforth in brief referred to as the "Trial Court") as against his tenant, seeking his eviction on the ground of bona fide use and occupation for running his above tailoring business and also for his residence. He further contended that the shop premises, since facing the M.G. Road, the same was convenient for him.

9. In filing the eviction petition, the landlord had also stated that he has got no objection to give the residential portion under his occupation facing "Agasara beedi" to the tenant for the purpose of residence of its two partners.

10. The tenant had opposed the eviction petition. It has contended that the petition schedule premises was not required by the landlord for his own bona fide use and occupation, that it would be put to greater hardship in the event eviction order were to be passed against it, that, the landlord had no intention to start any business of his own and he had filed the eviction petition only for the purpose of extracting higher rentals. It further contended that its lease had

commenced about 30 years ago and that it was doing the business in cloth for 30 long years and that it had earned goodwill and reputation and as such, it would be put to greater hardship and loss in the event it were to be evicted. It further contended that no alternative premises were also available for them, both for doing business as well as for the residence of its partners.

11. Before the Trial Court, the landlord had examined himself as P.W. 1 and his sister-in-law as P.W. 2. They also marked 10 documents as Exs. P. 1 to P. 10. They include, Ex. P. 10-National Savings Certificates of Rs. 5,000/- denomination numbering seven. On the other side, the tenant had examined the petitioner 2 herein as R.W. 1 and examined yet another witness by name Dattatreya Rao as R.W. 2 who spoke with regard to the demand of higher rentals from the tenants by the landlord.

12. That the Trial Court on appreciation of the material evidence, both oral and documentary, adduced by the parties had passed the orders on 4-12-1995 whereby it had allowed the eviction petition of the landlord and further granted six months time to the tenant to quit and vacate from the petition schedule premises.

13. Being aggrieved thereby, the tenant had preferred a revision petition u/s 50 of the Rent Control Act before the Additional District Judge at Chickmagalur (henceforth in brief referred to as the "First Revisional Court") in Revision (Rent) No. 2 of 1996. Before the First Revisional Court, the tenant had also filed an application under Order 41, Rule 27 to adduce evidence in the revision and the said application came to be rejected by the First Revisional Court, also in passing the impugned order in the revision.

14. The First Revisional Court having heard both sides and further on appreciation of the evidence on record before the Trial Court had finally confirmed the order of eviction passed by the Trial Court. The First Revisional Court while dismissing the revision petition had granted a further time of two months to the tenant to vacate from the petition schedule premises.

15. Being aggrieved by the order passed by the First Revisional Court in the said Revision (Rent) No. 2 of 1996 one filed u/s 50 of the KRC Act, the tenants are before this Court in filing the instant second revision in the instant HRRP.

16. Now I come to the HRRP before Court.

17. In setting out the grounds in the instant HRRP, it was contended by the tenant that the First Revisional Court had erred in confirming the order of the Trial Court holding that the landlord bona fide required the premises for the purpose of his own business. It was also contended therein that in filing the petition, the landlord did not plead the manner in which he was mobilising the finance for the purpose of the business and further with regard to the experience to do the business in readymade garments. It was further contended by the tenant that the First Revisional Court erred in holding that the ruling of this Court

in the case of *A D'Souza v Rama Rao (dead)* by L.Rs, and also the subsequent rulings thereon on the said point were not applicable to the facts and circumstances of the case. Furthermore, it had been argued that the First Revisional Court had not properly appreciated the question of comparative hardship caused to the tenants, particularly when the tenant had earned goodwill and reputation in running the business in the schedule premises and that it had spent about Rs. 1 lakh for the purpose of furnishing the business premises. It was also urged by the tenants in filing the instant HRRP that the Court had not considered the question of partial eviction in its proper perspective and therefore, the First Revisional Court had gravely erred in passing the eviction order.

18. The learned Senior Counsel Sri Datar while taking me through the impugned order passed by the First Revisional Court had urged mainly the following three points

Firstly that the landlord had not pleaded in his eviction petition the actual business requirement for the purpose of running ready-made garment business by him. Secondly, that the First Revisional Court did not consider the evidence on record to come to the conclusion that the landlord had proved his case for bona fide requirement of the subject premises. Thirdly, that, had the First Revisional Court properly weighed the evidence on record with regard to the hardship, it would have come to a just conclusion that greater hardship would be caused to the tenant since it had established its business in the subject premises, having run the same on partnership business for 30 long years and that it had earned goodwill in its business and furthermore, that the tenant had invested a large sum to the tune of Rs. 1 lakh for the purpose of erection of showcases alone in the business premises.

19. The further point urged by Sri Datar was that the First Revisional Court did not appreciate that the Trial Court had not properly considered the point of partial eviction of the petitioners.

20. Sri Datar had also placed reliance on the following decisions in support of the case of his party.

1. *A. D'Souza, supra*;
2. Unreported decision in CRP No. 3662 of 1982, DD: 16-10-1986;
3. *Abdul Haq v Mahboob Khan*;
4. *Rahman Jeo Wangnoo v Ram Chand and Others*;
5. *Srinivasa Baliga v Gopalakrishna Pai*;
6. *Krishna Murari Prasad v Mitar Singh*.

21. On the other side, the learned Counsel for the respondent-landlord while supporting the impugned order passed by the First Revisional Court confirming

the order of the Trial Court had argued that his party had established his bona fide requirement of the front portion - the shop portion for the purpose of running his own tailoring business and the rear portion - a house portion for living purpose of the partners. Sri Yoganarasimha had also pointed out that the landlord had litigated for long and finally he got his right, title and interest on the subject premises settled after approaching the Supremo Court and it is only thereafter, he had filed the eviction petition before the Trial Court for the eviction of his tenant. He further submitted that this Court cannot forget for a moment that his party was carrying on his tailoring business at the pail of a showroom for long while he was litigating for establishing his title in respect of the petition schedule premises and further that, for the purpose of doing his own business of tailoring on the pail of a showroom, he had to take the pains of removing the machine and other things from the showroom in the morning and again depositing the same there in the evening after closing his business for the purpose of carrying on his tailoring business and that his party had to put up with the sun and rain all through as he was carrying on his business on that pail of the showroom. He therefore submitted that in a very pitiable condition his party was carrying on his tailoring business for his sustenance and one could not expect him to carry on his business for all time to come in that vulnerable condition, particularly when the petition schedule premises was available after he succeeded in the Supreme Court in establishing his title thereon.

22. Sri Yoganarasimha, the learned Counsel for the landlord, with regard to the comparative hardship also argued that, when the tenant was a well-placed businessman and when the landlord was a small time businessman in doing tailoring business, it had to be held that the greater hardship would be caused to his party than to the tenant.

23. To sum up, Sri Yoganarasimha, also submitted that both the Courts below concurrently held that the landlord had proved his case for bona fide use and occupation and further held concurrently that it was the landlord, who would be put to greater hardship. Therefore, he prayed that the instant writ petition be dismissed.

24. In the light of the above arguments advanced by the contending parties before me, the sole point that arises for my consideration is whether the impugned order passed by the First Revisional Court confirming the order of the Trial Court in ordering eviction of the tenant is erroneous and as such called for an interference in the instant revision petition or not.

25. At the cost of repetition, I have to point out at the outset that both the Courts had concurrently held on all the points in favour of the landlord.

26. Out of the three points argued by the learned Senior Counsel Sri Datar, the point with regard to the non-pleading of the business requirement of the landlord for the purpose of running his business in readymade garments in the petition schedule premises is the only point that received my attention. As I see with

regard to the bona fide requirement of the landlord, he had pleaded in paras 3 and 4 hereunder:

"3. The petitioner is a tailor and he has no premises of his own for carrying on business apart from the premises leased to the respondents. The petitioner has been residing in a small premises which comes to the west of the premises leased to the respondents. The petitioner as stated above, is a tailor, and he has been carrying on his tailoring business sitting on the pail of the premises belonging to Messrs. Amardeep Showroom, situated in the M.G. Road, a few hundred feet away from the schedule premises. Everyday in the morning the petitioner has to take out his sewing machine and other equipments from the Amardeep Showroom and when the business is closed, he has to keep the sewing machine etc., inside the showroom and he is completely at the mercy of the proprietors of Amardeep showroom. Since the petitioner has to sit on the pail and work, he is exposed to the sun, and also rains and has to work most of the time in adverse conditions. The petitioner had to put up with the inconvenience because there was a litigation in respect of the schedule premises between him and his neighbour Mr. Dharmachand, which was ultimately decided in the Supreme Court of India in favour of the petitioner about 4 years ago.

4. During the pendency of the said litigation since the petitioner was faced with many problems including financial problem he could not think of establishing his business in his own premises. Now that the litigation is over, it is the desire of the petitioner to carry on the business of tailoring and preparing dresses in his own premises and it is also his desire to live in the adjacent premises coming to the west of the business premises. It is also the desire of the petitioner to establish his business on a bigger scale by buying two or three sewing machines and engage some assistants and also carry on the business in ready-made goods. In the circumstances the premises in the occupation of the respondents is reasonably and bona fide required by the petitioner not only for his business but also for his residence. It would be very convenient for the petitioner to occupy the schedule premises and do business in the front portion abutting the M.G. Road and reside in the hind portion and the petitioner has no objection to give the residential portion in which he is residing which faces Agasara beedi, to the respondents. In these circumstances the respondents are liable to vacate and handover khas possession of the schedule premises to the petitioner".

27. By a cursory look and simple reading of the pleading of the landlord in the above paras, to some extent, one can say that the landlord had not given all the material details with regard to his business requirement. This is also the argument of the learned Senior Counsel for the tenant. But, in the facts and circumstances of the case, if one reads carefully the above pleadings with regard to bona fide need and his requirement, I do not think one can say that he did not plead as to his business requirement; of course, it is an arguable point that the landlord had not given all the material details meticulously in pleading as to his business requirement. As argued by Sri Datar, the landlord had adduced in his

evidence in examining himself as well as examining yet another witness, sister-in-law (P.W. 2) to the effect that he could augment the required capital for the purpose of business by raising loan by pledging the subject building itself and furthermore, P.W. 2 his sister-in-law living with him had also deposed that she would be supplying a sum of Rs. 70,000.00 as she saved the like sum in the National Savings Certificates; besides the landlord had also deposed in his evidence that he would also raise loan by pledging the petition schedule building as the same is worth more than Rs. 10 lakhs.

28. To me it appears that the evidence what the landlord had adduced thereto as above was an evidence superfluous, for as I see, the landlord had taken on himself before Court that he had arranged the required capital for his proposed business. According to me, the case of the landlord was a simple case of shifting of his tailoring business from the pail of the showroom to the premises of his own for the purpose of establishing his business in preparing ready-made dresses. No doubt in para 4 of the petition, he pleaded that he wanted to start his business in a "bigger way", but that pleading "bigger way" has to be understood with reference to the poor circumstances in which the landlord himself was carrying on his tailoring business, he being a tailor by profession having sewing machine and other required apparatus items for the purpose of running the tailoring work and that he wanted to buy two or three sewing machines by engaging some assistants for the purpose of preparing dresses or readying the garments.

29. Therefore, in my considered view, the business that the landlord wanted to commence in the petition schedule premises was only a small time business in preparing ready-made dresses. I for one feel that the landlord in the case had ventured to give evidence with regard to the capital out of his anxiety to show that the requisite capital had also been arranged for the purpose of business. By that alone I don't think one could say that the landlord did not plead his requirement for the purpose of running his garment business in the eviction petition. The said anxiety on the part of the landlord one could understand for, he himself had litigated for establishing his right in respect of the very petition schedule building by taking up the matter upto the Apex Court.

30. In this context it is relevant to observe that the arrangement of the finance for a small business as the one the landlord had proposed to start in the instant case is not relevant, as held by this Court in the decision of K.N. Suryanarayana Setty v K. Sattar Khan. In paras (22) and (23) of the judgment, this Court held as hereunder:

"(i) The arrangement made by the landlord and the finance available with him would be certainly relevant if he intends to establish business on a large-scale. But to establish a small business, no such preparation or arrangement is necessary. The "cash on hand" factor loses its relevance more so with drastic changes in the economic policies, and cash is freely available through the medium of financial institutions. . . For starting of a provision store, in the nature of things, no elaborate arrangement or preparation is necessary. No expensive

furniture or other accessories are required. All that would be required is one or two racks to start with to keep the articles of daily use to be sold in the shop premises; and to start a provision store it cannot be said that the funds required to be invested would be a large sum. One could start a provision store with a small amount of Rs. 4000/- to Rs. 6000/- . . . taking into consideration the fact that the property itself is situated in a highly commercialized area, the Court could proceed on the basis that the petitioner is in a position to establish a provision store business in a small-scale to start with".

31. Therefore, I am of the view that even that argument of Sri Datar that there was no pleading but only the evidence with regard to the requirement of the landlord for the purpose of establishing his business lacks merit. All the more, as argued by Sri Yoganarasimha, both the Courts concurrently held that the landlord had proved his case for bona fide requirement of the petition schedule premises.

32. I should not miss to mention here yet another important point Sri Datar had argued with regard to the non-consideration of the partial eviction of the tenant. Even that argument according to me, does not merit consideration, for the reason that the Trial Court had very well considered that aspect of the case too while discussing the same in para (18) of the judgment of the Trial Court very well confirmed by the First Revisional Court. In this context, I have to point out that in filing the very petition for eviction, the landlord had gone to the extent of offering portion of the house in his occupation to the tenant; in fact that house portion was in the very rear portion of the petition schedule premises and the only difference is that, when the petition schedule premises was situated in the front portion abutting to M.G. Road, the residential premises one offered by the landlord to the tenant was situated in the rear side of the same having access from "Agasara Beedi". Therefore, according to me, if the order passed by the First Revisional Court is viewed from any angle, I do not think, one could point out any error thereon.

33. In that view of the matter, I do not find any merit in the instant second revision herein preferred. Hence, the same fails and accordingly stands dismissed.

34. However, the tenant is granted two months time for the purpose of vacating from the petition schedule premises but the said time is granted subject to the condition that the tenant pays the landlord all the rentals due as on date within 15 days from this day and further pays future rentals as and when the same falls due.