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**(2014) 04 RAJ CK 0049**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 7287/10**

Nand Kishore and Others

APPELLANT

Vs

Rent Tribunal, Nagaur and Others

RESPONDENT

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**Date of Decision :** 16-04-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** (2014) 04 RAJ CK 0049

**Hon'ble Judges :** Sangeet Lodha, J.

**Bench :** Single Bench

**Advocate :** T.R. Choudhary for Suresh Shrimali, for the Appellant

**Final Decision :** Disposed off

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## Judgement

Sangeet Lodha, J.—This writ petition is directed against order dated 20.7.10 passed by Appellate Rent Tribunal, Nagaur in Appeal No. 15/04, whereby an application preferred on behalf of the petitioners-tenant under Section 21(3) of Rajasthan Rent Control Act, 2001 (for short "the Act") read with Order VI Rule 17 of CPC seeking leave to amend the reply, stands rejected.

2. The respondent filed a petition seeking petitioners' eviction from the premises, a shop, on the ground of reasonable and bona fide necessity of the premises for his son-Surya Prakash in terms of the provisions of Section 9(i) of the Act. It is averred in the petition that the respondent's son intends to start the business of computer parts and accounting job in the premises in question. The petition is being contested by the petitioners by filing a reply thereto. The evidence of the parties stands concluded and the matter is fixed for final arguments.

3. At this stage, the petitioners preferred an application seeking leave to amend the reply stating that during the cross examination, the witness-Surya Prakash deposed that he is studying in LL.B. Final Year, however, during the pendency of the petition, after acquiring the Degree of LL.B. and taking the "Sanad" from the

Bar Council of Rajasthan, he has started practice as an Advocate and therefore, the bona fide necessity of the premises as pleaded, stands eclipsed.

4. The application was contested by the respondent by filing a reply thereto. The respondent denied the occurrence of the subsequent event as pleaded.

5. After due consideration of the rival submissions, the application preferred by the petitioners seeking leave to amend the reply has been rejected by the Appellate Rent Tribunal by the order impugned observing that it cannot be said that the bona fide necessity as pleaded stands eclipsed. At the same time, the Rent Tribunal observed that the petitioners are at liberty to produce the evidence in this regard. Hence, this petition.

6. Learned counsel for the petitioners contended that in view of the fact that the respondent's son is engaged in profession of advocacy, apparently the bona fide necessity as pleaded stands totally eclipsed. Learned counsel submitted that the Rent Tribunal has rejected the application observing that the amendment prayed for cannot be allowed but the petitioners are at liberty to produce the evidence in this regard. Learned counsel submitted that the evidence of the parties already stands concluded and the matter is straight away posted for final arguments by the Rent Tribunal, without giving an opportunity to the petitioners to lead additional evidence and therefore, the order impugned is not sustainable in the eyes of law.

7. On the other hand, learned counsel appearing for the respondent while reiterating the stand taken in reply to the application seeking leave to amend the reply, submitted that the bona fide necessity of the landlord as pleaded cannot be said to have totally eclipsed. Learned counsel submitted that during the pendency of the petition, the respondent's son is not expected to sit idle and therefore, even if he has started the practice as an Advocate during the pendency of the petition, by no stretch of imagination it can be concluded that the bona fide necessity as pleaded stands totally eclipsed. Learned counsel submitted that the subsequent even can be considered only when requirement or need of the landlord stands totally eclipsed and therefore, the order impugned passed by the Rent Tribunal does not warrant any interference by this court. In support of the contention, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Gaya Prasad Vs. Sh. Pradeep Srivastava, .

8. I have considered the rival submissions and perused the material on record.

9. Undoubtedly, the Tribunal is empowered to allow either party to alter or amend its pleadings at any stage of the proceedings and on such terms as may be just. It is guiding principle of amendment that all amendments which are necessary for the purpose of determining the real question in controversy between the parties to any proceedings shall be generally allowed. The pre trial amendments are allowed more liberally than those which are sought to be made after commencement of the trial or after conclusion thereof. Normally, the right

to relief must be judged by reference to the date of suit or legal proceedings were instituted but the subsequent development which have bearing on right to relief claimed by the party, such subsequent events may be permitted to be brought on record by way of amendment of the pleadings. However, the power to permit amendment of pleadings is discretionary and has to be exercised judicially on consideration of the totality of the facts and circumstances of the case.

10. The question with regard to amendment of the petition for eviction on the ground of bona fide necessity, where the bona fide requirement is alleged to have become extinct on account of subsequent developments has been dealt with by this court and the Hon"ble Supreme Court time and again in the various decisions.

11. In *Hasmat Rai and Another Vs. Raghunath Prasad*, , the Hon"ble Supreme Court observed:

"If a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act."

12. However, in *Gaya Prasad Vs. Sh. Pradeep Srivastava*, , the Hon"ble Supreme Court observed:

"The crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps the utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in out limitative slow process system subsists. The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. It is pernicious, and unjust to shut the door before the applicant just on the eye of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period."

(emphasis supplied)

13. In the matter of Om Prakash Gupta Vs. Ranbir B. Goyal, , the Hon''ble Supreme Court while dealing with the question of courts power to take note of subsequent events and mould the relief, observed that for the said purpose following triad conditions must be satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

14. In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, , the Hon''ble Supreme Court observed:

"7. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period."

15. In "Legal Representatives of Abdulla vs. Priyambda Sharma", 2013 (2) WLC (Raj.), 175 , this court observed:

"8. As already stated during the pendency of the first appeal amended written statement was filed on behalf of the appeal incorporating therein subsequent events allegedly developed during the pendency of the suit to the effect that the adjoining shop to the suit shop has been got vacated from the other tenant and after renovation and construction of basement in it, it was let out to one Shri Mahendra Singh and it is Shri Singh, who is doing his readymade business in it at his own and independently whereas by filing rejoinder to the amended written statement the case of the respondent was that Shri Mahendra Singh is her domestic servant and mainly he looks after domestic affairs and only in absence of her he sits in the adjoining shop and looks after the business conducted by her in it. In support of their cases both the parties produced oral evidence in the form of affidavits and also various documents and the learned Appellate Court after considering the submissions made on behalf of the parties and critically analyzing the evidence available on record came to a definite conclusion that although the adjoining shop was got vacated during the pendency of the suit and it was renovated and a basement was also constructed in it and business of readymade garments is being conducted in it and Shri Mahendra Singh also also

sits and looks after the business conducted in the same, but it cannot be held that Shri Mahendra Singh is conducting business at his own and independently rather it is respondent, who is doing business in it and Shri Mahendra Singh occasionally sits in the shop and looks after the business only in the absence of the respondent. The judgment passed by the learned Court clearly indicates that for coming to the above conclusion every aspect of the matter was considered in a right perspective and it cannot be said that the conclusion arrived at by the Appellate Court is result of non-consideration of material evidence available on record or misreading or misinterpreting thereof. It was for the appellant to prove his contentions, but he has miserably failed to do so, it is well settled that the finding of fact cannot be interfered in second appeal unless it is result of non-consideration or misreading of material evidence available on record, but the present case is not of such a nature. Shri Mahendra Singh in his statement has categorically denied the suggestion made on behalf of the appellants that after paying a huge amount as "Pagdi" he took the adjoining shop from the respondent on rent and it is he who is doing business in it independently. It is behind any understanding that a person taking a commercial premises on rent after paying a huge amount as "Pagdi" will deny tat fact taking risk that the landlord on the basis of admission made by him can take undue advantage of it against him at a later time. The need shown by the respondent cannot also be said to have been satisfied only by the reason that she has started her business of ready/made garments in the adjoining shop by the reason that from the very beginning the case of the respondent is that both the shops are required by her for her business. The well settled legal position is that the landlord is best judge of his requirement for the business purpose and he has got complete freedom in the matter. Neither tenant nor court can advice the landlord how he should adjust himself and satisfy his requirement in some other way. In the present case also the appellant is not legally entitled to say that as the adjoining shop has been vacated and after renovation of it and construction of basement, the respondent has started business of readymade garments in it. It is not required for her to got the suit shop also and after further renovation and reconstruction of both the shops to start the business indicated by her in the plaint. In this regard, the well settled legal position is also that if it is found that the landlord has some other vacant premises in his possession that by itself would not be sufficient to negative the landlord's requirement shown for tenanted premises but in such a situation it is expected from the landlord to establish that the premises which is vacant is not sufficient and suitable for the purpose for which he required the tenanted premises. Whether the vacant premises available to the landlord is sufficient and suitable for his requirement or not will depend upon facts and circumstances of each case but mere being in possession of a vacant premises cannot negative the need shown by the landlord. Suitability of alternative accommodation available with the landlord has to be seen from convenience of the landlord and on the basis of totality of circumstances including profession, vocation, style of living, habits and background of the landlord. The normal rule is that any litigation or a suit or an original proceeding

is to be tried in all stages on the cause of action and the rights and obligations of the parties are to be adjudicated upon, as they obtained or existing on the date of commencement of the lis. But this is subject to an exception that the Court may take notice of the subsequent events of facts or law which may have happened since the commencement of the lis and grant relief to the parties on the basis of altered condition which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the molding of the relief. This rule is to be applied in cases where it is shown that the original relief claimed, by reason of subsequent change of circumstances has become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. In such a case, the Court must take a "cautious cognizance" of the subsequent changes of the fact and law to mould the relief. Such consideration of subsequent events or developments must be taken when they had a material impact on those rights and obligations. The well settled legal position is also that the crucial date for deciding bonafides of the need shown by the landlord is the date of the suit/petition and it must also continue throughout the progress of the litigation and must exist on the date of decree of the final court but at the same time if during the pendency of the litigation subsequent developments and events happen and the landlord comes into, a possession of vacant premises which is suitable and sufficient to satisfy the requirement of the landlord that events or development may be taken note of to adjudge the bona fide and reasonability of the need shown by the landlord. Such subsequent developments and events are to be taken note only when the need of the landlord can be shown to be completely eclipsed by such subsequent events. The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the landlord should have been completely vanished by such subsequent events. In the present case, it cannot be said that the initial requirement shown by the respondent for the suit shop has been completely vanished merely by the reason that in the adjoining shop some business has been started by the respondent as it cannot be expected from the respondent to sit idle till the shop is vacated. Merely by the reason that in the waiting period the respondent after renovating the vacated shop and construction of basement has started some business bona fide and reasonability of the requirement show for the suit shop cannot be adjudged to be negative."

(emphasis added)

16. Thus, upshot of the various decisions of the Apex Court and this court is that if the subsequent events sought to be brought on record by way of amendment of the pleadings are of such nature that the bona fide requirement of the suit premises by the landlord stands completely eclipsed, then, only such amendment which is necessary for effective and complete adjudication of the issue with regard to bona fide requirement of the premises by the landlord can be allowed by the courts at any stage of the proceedings. That apart, such subsequent event must be brought to the notice of court by making an appropriate application

promptly.

17. Adverting to the facts of the present case, it is to be noticed that the petition for eviction is pending since 2004 and obviously, the respondent's son shall not sit idle and therefore, even if he has started practice as an Advocate during the pendency of the petition, it cannot lead to irritable conclusion by itself that the bona fide necessity as pleaded, stands totally eclipsed and therefore, the order passed by the Rent Tribunal after due consideration refusing to grant the prayer for amendment of the petition does not warrant any interference by this court.

18. But then, while passing the order impugned, the Rent Tribunal has observed that the petitioners are at liberty to lead evidence, however, without giving an opportunity to the petitioners to lead evidence in this regard, straight away the matter is fixed for final arguments.

19. In the considered opinion of this court, on the facts and in the circumstances of the case, the desired purpose may be served by permitting the petitioners to file affidavit in this regard and the respondent-landlord is permitted to file counter affidavit, which shall be treated as evidence which shall be taken into consideration by the Rent Tribunal while deciding the matter.

20. In view of the discussion above, the order impugned passed by the Rent Tribunal declining the prayer for amendment of the petition is not interfered with. However, in view of the observations made by the Rent Tribunal in terms that the petitioners are at liberty to lead evidence in regard to subsequent event, it is directed that the petitioners shall be permitted to file an affidavit in this regard and the respondent-landlord shall be entitled to file a counter thereto. The affidavits to be filed as aforesaid by the parties shall be considered as evidence in the matter and the same shall be taken into consideration by the Rent Tribunal while disposing of the petition keeping in view the fact that the petition before the Rent Tribunal is pending disposal since 2004, it is directed that the affidavit, if any, shall be filed by the petitioners within a period of two weeks from the date of receipt of certified copy of this order and the respondent-landlord shall file counter thereto, if any, within a period of two weeks thereafter. The Rent Tribunal is directed to decide the petition expeditiously, in any case, within a period of three months from the date of receipt of certified copy of this order.

21. The petition stands disposed of accordingly. No order as to costs.