
(2024) 12 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No.5888 Of 1998 With Interim Application No.1916 Of 2023

Smt. Sudhatai Bhagwandas Sawant And Ors

APPELLANT

Vs

Ramchandra Shivram Gadekar

RESPONDENT

Date of Decision : 09-12-2024

Acts Referred:

Constitution of India, 1950 — Article 136, 227

Kerala Buildings (Lease and Rent Control Act), 1965 — Section 11(3)

Citation : (2024) 12 BOM CK 0025

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench?

Advocate : Ramesh D. Soni, Tushar R. Momaiyah, Anjali Helekar

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J.

1) Petitioners /Defendants have filed this Petition challenging the judgment and decree dated 31 August 1998 passed by the III Additional District Judge, Satara, allowing Civil Appeal No. 100 of 1993 filed by Respondent-Plaintiff and setting aside the decree dated 4 January 1993 passed by the learned Joint Civil Judge, Junior Division, Wai, in Regular Civil Suit No.320 of 1989. The Trial Court had rejected the prayer of Plaintiff for recovery of possession of the suit premises and had decreed the suit only to the extent of recovery of arrears of rent. While allowing the Appeal filed by Plaintiff, the Appellate Court has directed the Defendant to deliver the possession of the suit premises to the Plaintiff.

2) The Petition was admitted by order dated 12 March 1999 and the eviction decree was stayed. During pendency of the Petition, Respondent/Plaintiff filed Civil Application No. 429 of 2012 for amendment of the Plaint for incorporating additional ground of bonafide requirement of the daughter of the Plaintiff in respect of the suit premises. This Court allowed Plaintiff to amend the Plaint by incorporation of paragraph 9A therein and directed the Trial Court to frame issues

relating to bonafide requirement of Plaintiff's daughter as pleaded in amended paragraph 9A as well as the issue of comparative hardship. Both the parties were granted liberty to lead evidence on the issues. The record and proceedings were transmitted to the Trial Court for recording its findings on the said issues. After recording findings of the Trial Court same was directed to be transmitted to the District Court, which was also directed to record its findings on the additional issues and place the matter before this Court. The Writ Petition was kept pending.

3) The Trial Court, after considering the evidence led by parties on additional issues of bonafide requirement of Plaintiff's daughter and comparative hardship, answered the said issues in favour of Plaintiff holding that Plaintiff has established the bonafide need and requirement of the suit premises and that he would suffer greater hardship. The Appellate Court has however, reversed the said finding of the Trial Court by its order dated 17 February 2020 holding that amended paragraph 9A lacked pleadings regarding two independent needs of Plaintiff and his daughter and accordingly held that bonafide requirement of the Plaintiff's daughter was not established. The Appellate Court accordingly did not go into the issue of comparative hardship. Accordingly, findings recorded by the Trial and the Appellate Courts on the issue of comparative hardship of Plaintiff's daughter are placed before this Court and they also subject matter of challenge in the present Petition. During pendency of the Petition, Respondent/Plaintiff has passed away on 15 March 2022 and his daughter Shilpa Shonan Mankar, on whose behalf bonafide requirement is urged before me, is brought on record to represent the deceased Plaintiff.

4) Plaintiff is the owner in respect of the structure located on Plot No.157, City Survey No.81, Panchgani, Taluka-Mahabaleshwar, District-Satara. The structure comprising of ground plus one floor constructed on Plot No.157 on the ground floor, Plaintiff ran a medical store. Commercial structure situated on the first floor on Plot No.157 are the 'suit premises'. Plaintiff's father had inducted Shri Bhagwandas Sawant, a medical practitioner as monthly tenant in respect of the suit premises for running his dispensary in the same. The original tenant passed away and his wife-Smt. Sudhatai Bhagwandas Sawant (Defendant No.1) became the monthly tenant in respect of the suit premises. Plaintiff claimed that Defendant No.1 was in arrears of rent from 1 June 1984. He instituted Regular Civil Suit No.320 of 1989 in the Court of Jt. C.J.J.D., Wai seeking recovery of possession of the suit premises on the ground of reasonable and bonafide need. Plaintiff impleaded children of Dr. Bhagwadas Sawant as Defendant Nos. 2 to 4 as well as Arun Parab, son of his brother-in-law, as Defendant No.5.

5) Defendant Nos. 1 to 4 jointly filed their written statement contesting the claim of Plaintiff. Defendant No.5 filed a separate written statement claiming that his father Shantaram Parab was a medical practitioner, who was brother of first wife of Dr. Bhagwandas Sawant. That his father used to help Dr. Bhagwandas Sawant in the medical profession and before his death, his father was also conducting medical practice in the suit premises for 25/30 years. That his father was

residing with Dr. Bhagwandas Sawant as his family member for 25 years prior to his death. That after death of Dr. Bhagwandas Sawant, Defendant No.5 is running the dispensary in the suit premises. Based on the pleadings raised by the parties, the Trial Court framed issue as to whether Defendant Nos. 2 to 5 are tenants in respect of the suit property and whether Plaintiff requires the same for his reasonable and bonafide requirement. Issue of cause of greater hardship was also framed. Another issue of Plaintiff's entitlement to recover rent of Rs.582.20 was also framed. Parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to dismiss Plaintiff's claim for seeking vacant possession of the suit premises by holding that he did not prove his reasonable or bonafide requirement and that greater hardship would be caused to Defendants in the event of passing of eviction decree. However, the Trial Court decreed Plaintiff's claim for recovery of arrears of Rs.583.20/-.

6) Plaintiff filed Regular Civil Appeal No.100 of 1993 in the Court of District Judge, Satara, which came to be allowed by judgment and decree dated 31 August 1998 decreeing the Suit on the ground of Plaintiff's reasonable and bonafide requirement and cause of greater hardship to him. The Defendants were directed to handover possession of the suit premises to the Plaintiff. Aggrieved by the decree of the Appellate Court dated 31 August 1998, the Defendants have filed the present Petition challenging the decree passed by the Appellate Court on 31 August 1998.

7) The Petition was admitted by order dated 12 March 1999 by staying execution of the eviction decree. During pendency of the Petition, Respondent /Plaintiff filed Civil Application No.429 of 2012 seeking amendment of the Plaint for incorporating the bonafide need of his daughter- Shilpa Shonan Mankar, who had completed diploma in Pharmacy and that she wanted to shift to Pachgani to assist her father in his Pharmacy business. Application for amendment of Plaint was allowed by order dated 18 January 2019 and the record and proceedings were transmitted to the Trial Court by permitting the Plaintiff to carry out amendment by inserting paragraph 9A in the Plaint. Parties were granted liberty to lead evidence on the additional issues of bonafide requirement as pleaded in paragraph 9A of the Plaint as well as cause of hardship. The Trial and Appellate Courts were directed to record their findings on the additional issues. Accordingly, Plaintiff incorporated paragraph 9A in the Plaint and pleaded further bonafide requirement of his daughter shifting to Pachgani and assisting her father in growing business of Shrikrishna Medical and General Store. Defendant No.5 filed additional written statement to the amended Plaint. Plaintiff led evidence in respect of the amended Plaint. Plaintiff also examined his daughter- Shilpa Shonan Mankar in support of additional bonafide requirement. Defendant also led additional evidence on the amended pleadings. After considering the amended pleadings and additional documentary and oral evidence, the Trial Court answered both the additional issues relating to bonafide requirement as well as cause of greater hardship in favour of Plaintiff and against the

Defendants. The findings recorded by the Trial Court vide order dated 13 September 2019 were transmitted to the Appellate Court. However, the Appellate Court by its order dated 17 February 2020, reversed the findings of the Trial Court and held that Plaintiff's daughter-Shilpa did not establish her bonafide requirement in respect of the suit premises. The Appellate Court did not go into the issue of comparative hardship. The findings recorded by the Trial and the Appellate Courts on the additional issues having been placed before this Court, the Petition is called out for final hearing.

8) Mr. Soni, the learned counsel appearing for the Petitioners would submit that the original bonafide need of the Plaintiff stands eclipsed by his death and the only issue that now remains to be decided is whether his daughter-Shilpa has pleaded or proved her independent bonafide requirement in respect of the suit premises. He would submit that the Defendants have succeeded in respect of additional issue of bonafide requirement and that therefore the Suit deserves to be formally dismissed by this Court. He would take me through paragraph 9A incorporated by way of amendment in the Plaint to demonstrate that Shilpa merely desired to assist her father/Plaintiff in running the medical store. That Shilpa never pleaded that she wanted to set up independent business in the suit premises. That therefore there is total absence of pleading about Shilpa's own bonafide requirement in respect of the suit premises. That since Shilpa desired to merely assist her father in operating medical store and since Plaintiff has passed away, even the bonafide requirement sought to be added by way of amendment has come to an end. Since original -Plaintiff is no more, there is no question of Shilpa assisting him in the business of medical store. Mr. Soni would further submit that Shilpa is otherwise well settled in Pune. She has a job in Pune and there is nothing on record to indicate that she has resigned from job and has shifted her residence to Pachgani. That her children are studying in Pune and even till date, she continues to reside in Pune. That even Plaintiff's wife has now shifted to Pune and there is no family member from Plaintiff's side residing at Pachgani. It therefore, cannot be contended that suit premises are required by Shilpa for bonafide requirement. That what Shilpa has expressed is mere 'desire' to assist his father in running of medical store. That there is marked distinction between 'desire' of a person and his/her 'requirement'. That it is well settled position of law that requirement must be more than a mere wish or impulse or desire on the part of the landlord and would rely upon judgment of the Apex Court in *Kempaiah V/s. Lingaiah and Others* (2001) 8 SCC 718.

9) Mr. Soni would further submit that on the issue of comparative hardship, Shilpa otherwise has possession of the entire ground floor shop at Plot No.157. Additionally, the family possesses ground plus one floor structure at Plot No.161. As against this, Defendant No.5, who continues to conduct his medical practice in the suit premises, does not have any other alternative premises. That his bungalow located in a residential housing society and no part of bungalow can be used for running of a dispensary. That even otherwise, distance between suit premises and dispensary is more than 1.5 km and that the bungalow is not

located on main road as that of the suit premises. That Defendant No.5 is a 70 year old Doctor, who has been conducting his medical practice from the suit premises for the last several decades and he cannot now be told to search for alternate premises at such an advanced age. He would accordingly pray that Petition be disposed of by upholding the findings of the Appellate Court on additional issue of bonafide requirement by setting aside the eviction decree.

10) Petition is opposed by Ms. Helekar, the learned counsel appearing for original -Plaintiff, who is now represented through Shilpa Shonan Mankar. She would submit that death of original Plaintiff cannot have any effect on the bonafide requirement pleaded and proved before the Trial Court. That bonafide requirement is required to be considered as on the date of filing of the Suit. That the Appellate Court has rightly decreed the Suit by accepting the original bonafide requirement of the Plaintiff and that the findings of the Appellate Court decreeing the Suit do not warrant any interference. Additionally, Ms. Helekar would submit that Plaintiff's daughter-Shilpa has pleaded and proved her own bonafide requirement in respect of the suit premises. She would submit that after Plaintiff's death, the suit premises and the ground floor medical store have been bequeathed by her father to Shilpa, who is a qualified Pharmacist and is desirous of conducting and continuing pharmacy business in the suit premises. That Shilpa had pleaded and proved that she is unable to secure steady job or earn sufficient salary to maintain her family and that she is in genuine need of the suit premises for conducting business in pharmacy therein. That Trial Court had rightly accepted the bonafide requirement of Shilpa after assessing the evidence on record. The Appellate Court has failed to appreciate the evidence on a preposterous ground that there was no pleading in support of Shilpa's own bonafide requirement. That findings recorded by the Appellate Court on the additional issue of Shilpa's bonafide requirement are perverse and liable to be set aside. In support of her contentions, Ms. Helekar would rely upon judgment of the Apex Court in Raghunath G. Panhalre (dead) by LRS. V/s. Chaganlal Sundarji and Co. (1999) 8 SCC 1 and judgment of Nagpur Bench of this Court in Khandelwal Steel and Pipe Distributors V/s. Rajendra s/o. Ganpatray Malhotra (deceased) L.Rs. Prashantlal wd/o Rajendranath Malholtra and Ors. 2023(5)Mh.L.J. 495 She would accordingly pray for dismissal of the main Writ Petition by upholding Appellate Court's impugned decree as well as findings of the Trial Court on the additional issue of Shilpa's bonafide requirement.

11) Rival contentions of the parties now fall for my consideration.

12) The Petition involves somewhat strange situation where the same is originally filed by the Defendants, who faced eviction decree passed by the Appellate Court by upholding original Plaintiff's bonafide requirement. During pendency of the Petition, Respondents/Plaintiff wanted to further bolster his position by adding pleadings relating to his daughter assisting him in expansion of the medical store in the suit premises as well by amending the Plaint. Therefore though Plaintiff has succeeded in the Suit, he still invited an order for

remand of the proceedings to the Trial Court for recording findings on additional issue of her daughter's bonafide requirement. While Plaintiff succeeded before the Trial Court in establishing his daughter's bonafide requirement, he has unfortunately failed before the Appellate Court, who has held that Plaintiff's daughter -Shilpa could not establish bonafide requirement in respect of the suit premises. Thus, the Appellate Court, which originally upheld Plaintiff's own bonafide requirement and decreed the Suit, has now rejected his daughter's bonafide requirement in respect of the suit premises. Thus, both sides are aggrieved by two different orders passed by the Appellate Court. While Petitioners/Defendants are aggrieved by the original decree of the Appellate Court dated 31 August 1998, Respondent /Plaintiff is aggrieved by findings of the Appellate Court on additional issue of Shilpa's bonafide requirement vide order dated 17 February 2020.

13) Before proceeding further, it would be first necessary to consider as to what exactly survives to be decided in the present Petition. According to Mr. Soni, the original eviction decree of the Appellate Court dated 31 August 1998 has been rendered superfluous on account of Plaintiff's death on 15 March 2022 and that the only issue which now survives is whether his daughter Shilpa pleaded and proved her own independent bonafide requirement in respect of the suit premises. He has submitted that since Defendants have succeeded in respect of additional issue of Shilpa's bonafide requirement, nothing really survives in the present Petition and the same is required to be closed by formally setting aside the decree of the Appellate Court on 31 August 1998. On the other hand, it is Ms. Helekar's contention that original eviction decree passed by the Appellate Court on 31 August 1998 also survives as bonafide need of the original Plaintiff as pleaded in the Suit is required to be adjudged in the present proceedings. Additionally, and if necessary, the issue of Shilpa's own bonafide requirement can also be decided in the present proceedings. According to her, the subsequent death of original Plaintiff during pendency of the proceedings is irrelevant and what needs to be adjudicated is bonafide requirement, which existed at the time of institution of the Suit.

14) In *Gaya Prasad V/s. Pradeep Srivastava* (2001) 2 SCC 604 the Apex Court has held that the subsequent events may, in some situation, be considered to have overshadowed the genuineness of the landlord's need, but only if they are of such a nature and dimension so as to completely eclipse such need and make it insignificant altogether, that Courts need to rely upon the subsequent events. In my view, the fact situation involved in the present case would be governed by the judgment of the Apex Court in *Seshambal (dead) Through L.Rs. V/s. M/s Chelur Corporation Chelur Building and Ors.* (2010) 3 SCC 470, which has been rendered after considering the judgment in *Gaya Prasad (supra)*. In *Seshambal (supra)*, the owners and landlords had let out the premises to the tenant for a period of three years and on expiry of the lease, owners filed proceedings for recovery of possession of the premises on the ground that they required the same for their bonafide personal occupation under Section 11(3) of the Kerala

Buildings (Lease and Rent Control Act), 1965. The Rent Controller dismissed the proceedings and held that owners had already shifted their residence out of Cochin and were living with their daughter and son-in-law at Ernakulam. The landlord/owner appealed before the Appellate Authority, which confirmed the decision of the Rent Controller. The landlord thereafter filed appeal before the High Court, which was rejected. However, during pendency of the proceedings before the High Court, landlord passed away on 24 April 1996. His wife filed appeal before the Supreme Court but during pendency of the Appeal, she also passed away. An application was filed before the Apex Court to bring on record daughters of the couple for prosecuting the Appeal. However, by that time, the Court observed that two out of three daughters were settled in Coimbatore and Bihar whereas third daughter was settled in America. In the light of this factual position, issue before the Apex Court was whether the daughters could continue eviction proceedings pending before the Apex Court. The Apex Court discussed the ratio of various judgments rendered in the past and held in paragraph 28 and 29 as under:

28. As noticed earlier, the requirement pleaded in the eviction petition by the original petitioners was their own personal requirement and not the Indeed if the deceased landlords had any dependent member of the family we requirement of the members of their family whether dependent or otherwise. may have even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation.

29. In the light of what we have stated above, we have no hesitation in holding that on the death of the petitioners in the original eviction petition heir right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such a requirement be passed at this point of time.

15) The judgment of the Apex Court in Seshambal (supra) has been followed by His Lordship Justice N. W. Sambre of this Court in Natwarlal Dahyabhai Shah (since deceased through L.Rs.V/s. Smt. Jadaobai w/o Mishrimal Lalwani, (since deceased) her L.Rs. 2015 1 Mh.L.J. 365 in which, this Court held that if a legal heir intends to continue the proceedings involving the issue of bonafide need under the Rent Act, the bonafide need of such legal heir must be pleaded and established. This Court held as under:

"8. In the light of above, the contention of the petitioner is that bona fide need of the plaintiff and her husband has extinguished and as such, the orders passed by the Courts below needs to be quashed and set aside. In support of this contention, the learned Counsel for the petitioner has relied upon the judgment delivered by the Apex Court in the case of Sheshambal (Dead) through LR. v.

Chelur Corporation Chelur Building, (2010) 3 SCC 470. The Apex Court, according to the petitioner, mandates that subsequent developments which has direct bearing over the pleadings in the petition of the bona fide need is required to-be looked into and the same needs to be re-assessed.

11. From perusal of the pleadings raised by the landlady in support of her bona fide need as reflected in the suit demonstrates that bona fide need of landlady namely Smt. Jadaobai and her husband is pleaded in clear terms. It is stated in paragraph-3 of the said plaint that the premises in question are required by the landlady so as to establish business along with her husband. There are no pleadings as regards bona fide requirement of the son.

12. The perusal of evidence of husband of the plaintiff who has entered into witness box in clear terms admits that other legal heir namely son who is presently pursuing the petition was not staying with the landlady or her husband.

13. The fact remains that the landlady has expired during pendency of the appeal whereas her husband who was brought on record as one of the legal heirs has expired during pendency of the present petition. The Apex Court in the matter of Sheshambal (Dead) through LRs. v. Chelur Corporation Chelur Building (supra) has laid down parameters particularly in paragraphs-12, 13, 15, 16 and 17 as regards subsequent developments to be taken into account while deciding the claim of the landlord and tenant for bona fide need. The said observation reads thus:

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14. It is required to be taken a note of the fact that other legal heir i.e., son is pursuing the present petition. There are no pleadings in support of the bona fide need of the son. What is pleaded in the plaint is bona fide need of the husband of the landlady. The evidence also speaks about the bona fide need of the husband of the landlady. There is no word in the evidence about the bona fide need of son.

15. It is worth to observe here that if the legal heir intend to continue the proceedings much less the proceedings wherein possession of the property is sought under the clause 'bona fide need' of the Rent Act, the judgment of the Apex Court cited supra mandate that the bona fide need of legal heir should be pleaded and established. Just because he is legal heir, that does not ipso facto given him right to claim the possession of the property on the ground of bona fide need, that was established by the original plaintiff. In the eviction proceedings which were initiated for the possession of the property, the landlady or her husband has pleaded their own requirement that the premises to be occupied by them for the purpose of carrying out the business. In the said civil suit or even in the evidence, there is no whisper about bona fide need of any member/L.R. of the plaintiff and the claim of bona fide need was restricted to that of landlady and her husband, who have expired way back.

16. In view of the above observations, subsequent developments i.e., death of

landlady and death of her legal heir whose bona fide need was pleaded if taken into account, the judgment decreeing the suit for possession for bona fide need needs to be set aside."

16) Similar view is taken by another Single Judge of this Court-(Justice R.G. Ketkar) in Yashodabai Khedkar Vs/ Goda.Chatuseth Sinnar and Ors. Writ Petition No.5672 of 1998, decided on 1 February 2019 in which this Court held that bonafide requirement of the original landlord was overshadowed by her death and got completely eclipsed and this Court rejected the prayer made by her legal heir to permit him to amend the Complaint and set up his own bonafide requirement. Instead, this Court granted leave to the legal heirs to file a fresh Suit for recovery of possession on bonafide requirement. Similar view is taken by me in Sulochana Divakar Parkar V/s. Shamrao Dinannath Bhatte and Ors. 2024 SCC Online Bom 3434 in which this Court held in paragraphs 25 and 26 as under:

25. In my view, the judgments relied upon by Mr. Haridas in Sheshambal, Natwarlal Dahyabhai Shah and Yashodabai Gopalrao Khedkar apply squarely to the facts of the present case. Original Plaintiff pleaded the bonafide requirement of himself and his son to run cycle repairing shop in the suit premises. Both original Plaintiff as well as the son Ashok Bhatte have unfortunately passed away during pendency of proceedings. Plaintiff passed away during pendency of the suit, which was then prosecuted by his son Ashok Bhatte. After the suit was dismissed, Ashok Bhatte lodged Appeal before the Appellate Bench of Small Causes Court but passed away during pendency of the Appeal and the Appeal was thereafter prosecuted by his wife Leena Ashok Bhatte, son Prashant Ashok Bhatte and daughter Supriya Amit Mhatre. While prosecuting the Appeal, Ashok Bhatte's legal heirs did not seek to amend the complaint and set up their own bonafide requirement. Thus, there is no pleading that Leena Ashok Bhatte, Prashant Ashok Bhatte and Supriya Amit Mhatre have their own particular bonafide requirement in respect of the suit premises. Mr. Sadavarte has attempted to salvage the situation by contending that bonafide requirement of the whole family was pleaded in the complaint and has relied upon the judgment in Satish Chander Aggarwal, which is rendered post the judgment in Sheshambal. The contention of Mr. Sadavarte about bonafide need of entire family is referable to the averment in the Complaint that "The plaintiff says that work of cycle repair is the only source of income of Plaintiff and his family." However, I am unable to agree that bonafide requirement of entire family in respect of the suit shop is pleaded in the complaint. The pleaded case is requirement of Shop for running of cycle repair shop by Plaintiff and his son-Ashok. Only those two persons wanted to conduct the business. Dependency of family members on income is a different concept than requirement by a particular member of family to conduct business in the premises. These are not residential premises where every member of family would need the premises. In respect of commercial premises, specific case of bonafide requirement of Plaintiff or particular member of his family must be pleaded as proved.

26. Therefore, in view of law laid down by Apex Court in Sheshambal as followed by this Court in Natwarlal Dahyabhai Shah and Yashodabai Gopalrao Khedkar, heirs of Ashok Bhatte (Leena Ashok Bhatte, Prashant Ashok Bhatte and Supriya Amit Mhatre) will have to file a fresh suit setting up their own bonafide requirement in respect of the suit premises for recovery of its possession. The eviction decree passed by the Appellate Bench is in ignorance of the law expounded by the Apex Court in Sheshambal as followed by this Court in Natwarlal Dahyabhai Shah and Yashodabai Gopalrao Khedkar. In my view therefore, the eviction decree passed by the Appellate Bench is unsustainable in law and is liable to be set aside. The Appellate Court has committed jurisdictional error in decreeing the suit in absence of pleading on behalf of the three Appellants before it in respect of their own bonafide requirement. The Appellate Court failed to appreciate that the three Appellants before it do not have right to seek recovery of possession of suit premises on the basis of bonafide requirement pleaded by the deceased parties. It was incumbent on them to plead their own bonafide requirement by seeking amendment of the Plaint. As held by this Court in Yashodabai Gopalrao Khedkar, it would not be appropriate to permit Respondents to now amend the suit to set up their own bonafide requirement. Instead, they can file a fresh suit for recovery of possession of the suit premises by setting up their own bonafide requirement. In such suit, they can also agitate grievance of Defendant allegedly handing over the premises for use to a third party. If and when the suit is filed, the Small Causes Court can be requested to give priority for its expeditious disposal, considering the fact the present round of litigation ensued between the parties for 26 long years.

17) Thus, the position in law appears to be fairly well settled that it is incumbent for a legal heir to set up his /her own bonafide requirement and possession of the suit premises cannot be sought by relying on bonafide requirement pleaded in the Suit by the original Plaintiff if the original Plaintiff expires during pendency of the proceedings.

18) In the present case, original Plaintiff continued to prosecute the proceedings for a fairly long time since 1989 and was alive when the Appellate Court rendered finding on additional issue of Shilpa's bonafide requirement by order dated 17 February 2020. In fact, Interim Application No.1916 of 2023 bringing on record amended pleadings, additional evidence and findings of Trial and Appellate Courts on additional issues has been field by the original Plaintiff himself by affirming the same on 25 January 2021. Unfortunately, during pendency of long legal battle that has ensued for over 35 long years, the original Plaintiff passed away on 15 March 2022. However, long before his death, original Plaintiff filed Civil Application No.429 of 2012 and sought to amend the Plaint for the purpose of incorporating Shilpa's bonafide need in respect of the suit premises. Rather than restricting adjudgment of his own bonafide requirement in present Petition, he also set up his daughter's bonafide requirement by filing application for amendment of Plaint in the year 2012, which obviously delayed decision of the present Petition. Instead of this Court deciding the Petition on 18

January 2019 the proceedings were required to be remanded for amending the Plaint for recording additional evidence and for seeking findings of the Trial and the Appellate Courts on additional issues. The original-Plaintiff however took a risk and got the additional bonafide need of his daughter adjudicated from Trial and Appellate Courts and placed their findings before this Court in the present Petition. After doing so, however, he unfortunately passed away on 15 March 2022.

19) Original Plaintiff was conducting the business of Medical Store in the ground floor premises of structure constructed on Plot No.157. His originally pleaded case was that he was finding it increasingly difficult to run the business from the said ground floor premises and required the first-floor premises in possession of the Defendants for expanding his business. The said need of the original Plaintiff though initially rejected by the Trial Court, came to be upheld by the Appellate Court by judgment and decree dated 31 August 1998. Since Plaintiff has expired on 15 March 2022, his own bonafide need of expanding the business has come to an end. As per the law expounded by the Apex Court in *Shesambal* (supra) and by this Court in *Natwarlal Dahyabhai Shah*, *Yashodabai Khedkar*, and *Sulochana Parkar* (supra) it was necessary for his daughter-Shilpa to set up her own bonafide requirement to continue the proceedings. Such need is indeed pleaded by amendment of the Plaint during lifetime of the original Plaintiff. Therefore, in my view, what survives for adjudication by this Court is not the original need of the Plaintiff at the time of institution of the Suit but the bonafide requirement pleaded by daughter-Shilpa by amending the Plaint. Accordingly, consideration in the present Petition is now restricted to daughter-Shilpa's bonafide requirement in respect of the suit premises.

20) By amending Plaint, original Plaintiff incorporated paragraph 9A in the Plaint, which reads thus :

21) There is debate amongst the parties as to whether daughter-Shilpa pleaded her own bonafide requirement or what was pleaded in paragraph 9A was additional facet of original Plaintiff's own bonafide requirement. Mr. Soni, supports latter proposition whereas according to Ms. Helekar, former proposition of pleadings of Shilpa's own need is correct.

22) In amended paragraph 9A of the Plaint, Plaintiff pleaded that his daughter-Shilpa has completed D. Pharm Course in the year 1995 and was serving as senior Pharmacist in Dinanath Mangeshkar Hospital at Pune. It was further pleaded that Shilpa desired to live with her parents at Pachgani and assist them in their business. Plaintiff had planned expansion of the business of medical store by adding the business of sale and hire of surgical and hospital instruments as well as sale of homeopathy medicines and in such expansion, Shilpa was to assist him. It was further pleaded that upon receipt of possession of the suit premises, Shilpa was to shift alongwith her family to Pachgani for assisting the Plaintiff in his business. That Shilpa was qualified to run medical store and wanted to participate in the business as well as expand the same with her father.

In my view, the above pleadings are clearly aimed at indicating bonafide requirement of Plaintiff's daughter -Shilpa. The above pleadings cannot be read in a skewed and myopic manner as if they merely sought to put forth Plaintiff's plan of expanding the business. The fundamental change that the Plaintiff sought to bring about in the Suit by incorporating Paragraph 9A in the Plaintiff is to add the need and desire of Shilpa to participate in Plaintiff's business. The amended pleadings were not aimed at adding averments relating to Plaintiff's expansion plans, but the same were aimed purely at adding Shilpa's bonafide need in respect of the suit premises. There is a clear averment in paragraph 9A that Shilpa wanted to shift to Pachgani alongwith her family immediately upon receipt of possession of the suit premises for participating in her father's business. Thus, specific need of Shilpa is pleaded to secure possession of the suit premises for expanding the business to sell and hire surgical and hospital equipment as well as the homeopathy medicines. The requirement of Shilpa, to earn livelihood through participation in her father's business by shifting to Pachgani alongwith her family, is clearly pleaded in 9A of the Plaintiff.

23) If any doubt remained about putting forth Shilpa's own bonafide requirement in respect of the suit premises, Affidavit of Evidence filed by her makes things further clearer. In her affidavit of evidence Shilpa stated as under :-

24) Thus, in addition to his own bonafide requirement, as originally pleaded in the Plaintiff, Plaintiff clearly put forth additional bonafide requirement of his daughter-Shilpa by incorporating Paragraph 9A in the Plaintiff. Shilpa supported her own need by stepping in the witness box and led her own evidence in respect of the averments added in paragraph 9A of the Plaintiff.

25) The Appellate Court, in my view, has erred in holding that there are no foundational pleadings in the Plaintiff in support of Shilpa's own bonafide requirement. The Appellate Court has recorded following findings:

17) I have gone through the pleadings i.e. amended Para 9A in the Plaintiff and the written statement as well as evidence led by plaintiff. The issue before this Court is whether plaintiff needs suit premises for requirement of his daughter or plaintiff's daughter requires premises for her personal use. On perusal of pleadings in Para 9A, it is very clear that there is no such pleadings. It is pleaded that plaintiff's daughter Shilpa who is residing at Pune has completed Diploma in Pharmacy in 1995, now she is serving in Dinanath Mangeshkar Hospital, Pune, it is her desire to help her parents by residing with them. It is also pleaded that plaintiff intends to start new sections pertaining to surgical and hospital instruments and homeopathy medicines and to expand the business of Shrikrishna Medical Stores and for that plaintiff's daughter Shilpa has consented. It is further pleaded that after getting possession, Shilpa would shift to Panchgani and she would help plaintiff in his business and it is her wish to work with father and to expand the business which is the desire of plaintiff. As argued by Advocate for defendant, the issue before this Court is not of plaintiff's requirement but the issue is related to the need of plaintiff's daughter. From the

pleadings it seems that no need is expressed for plaintiff daughter. I agree that the pleadings are pertaining to plaintiff's need and regarding comparative hardship, evidence is also in same manner but said issue is not before me.

18) Plaintiff may express his need for his children. In that situation, defendants have no right to doubt the need expressed by plaintiff. The words "reasonable requirement" postulate that there must be an element of need. It should not be mere desire or wish. The word "requirements" connotes something more than mere a wish and involves an element of need. It is settled preposition that it is not required that plaintiff should prove the dire necessity but it should not be a mere wish of plaintiff. In present case, it is a simple wish of plaintiff's daughter to assist her parents in their business. It is not pleaded at all that plaintiff's daughter wants to start business from suit premises or plaintiff needs the premises to start the business for his daughter by putting any reason like her unemployment etc. Entire pleading is about the requirement of plaintiff and not of shilpa.

19) It is settled law that in order to succeed the claim of requirement, the landlord has to plead his basic requirement in precise manner furnishing suitable details. There must be some pleading spelling out the need to enable the tenant to resist the claim. The particulars of need of landlord may be given at the time of evidence. In present case, there is no mention of basic need of plaintiff's daughter Shilpa which was the fact in issue before Trial Court and is before this Court. At the cost of repetition I would like to mention that reasonable and bonafide need of plaintiff is not fact in issue before this Court at this stage. The task of recording evidence is restricted to the need expressed by plaintiff's daughter Shilpa and she has expressed no need. Her assistance or help to plaintiff in future may be the evidence to substantiate genuineness of plaintiff's claim. Mere wish to extend help can not be termed as need or requirement of plaintiff's daughter. I have gone through the reported judgments (supra) relied upon by the Advocate for plaintiff. In absence of the basic pleading, the law laid down in reported judgments can not be said helpful to plaintiff's case. Considering all these facts, I am not in conformity with the view taken by learned Trial Court. As there is no pleading about the requirement of plaintiff's daughter, I have to answer issue No. 1A in the negative.

26) I am not in agreement with the Appellate Court that paragraph 9A does not contain Shilpa's independent bonafide requirement in respect of the suit premises. The Appellate Court failed to appreciate that as on the date of filing of amendment application in the year 2012, Plaintiff was alive and running the medical store. Shilpa apparently was finding it difficult to manage her affairs at Pune in her limited salary and non-steady job and being a qualified Pharmacist, she is fully capable of running a medical store and therefore desired to participate in her father's medical business. The Appellate Court apparently expected Plaintiff to add an averment that Shilpa wanted to open her own independent medical store in the suit premises. Such expectation on the part of

the Appellate Court is completely misplaced. There was already a medical store in the family being run by her aged father and Shilpa is fully qualified to run the same and in such circumstances, it was but natural for her to participate and take over her father's set business rather than opening an altogether new business in the suit premises. In my view, therefore, Plaintiff rightly pleaded the need of Shilpa to participate and assist father's set medical store by expanding the same in the suit premises. As observed above findings of the Appellate Court about lack of pleadings about Shilpa's own bonafide requirement are a result of its skewed and myopic reading of paragraph 9A of the amended Plaintiff.

27) Appellate Court has thus, committed a fundamental error in holding that there are no foundational pleadings about Shilpa's independent bonafide requirement. Accordingly, submission of Mr. Soni that Plaintiff did not plead Shilpa's own independent bonafide requirement is repelled.

28) Having held that there are pleadings in the Plaintiff about Shilpa's own bonafide requirement, the next issue for consideration is whether she proved the same. Evidence of Shilpa on the issue of her bonafide requirement is already reproduced above. In her evidence, Shilpa stated that she has completed qualification of Diploma in Pharmacy. That her husband did not have source of income and hence she started serving as Senior Pharmacist in Dinanath Mangeshkar Hospital. That she was finding it increasingly difficult to maintain her family, particularly on account of rising age of her son and his educational expenses. That she was required to leave the job at Dinanath Mangeshkar Hospital on account of inability to fulfil family requirement in meager salary and accordingly she joined M/s. Apolo Pharmacy. Since she was unable to manage the affairs of the family through salary earned from M/s. Apolo Pharmacy, she left the said job and joined M/s. Wellness Forever. She was required to leave the job with M/s. Wellness Forever since she was subjected to frequent transfers and thereafter joined services with National Institute of Ophthalmology. She produced her salary certificate, which reflected net salary Rs.16,029/-. Shilpa further stated that after securing possession of the suit premises, she wanted to shift to Pachgani alongwith her family for participating in the business of medical store. She stated that she is fully qualified as well as experienced to conduct medical store.

29) Shilpa further relied on letter dated 10 June 1997 of Food and Drugs Administration (Maharashtra State) Satara granting her approval to function as additionally registered Pharmacist in father's Shrikrishna Medical and General Stores. She also produced salary certificates issued by M/s. Apolo Pharmacy and M/s. Wellness Forever to prove her service at these establishments. Shilpa's cross examination did not bear out any contradictions in her evidence. In fact, the cross-examination shows that her husband was not engaged in any occupation. She further stated in the cross-examination that in pursuance of recommendation granted to her vide Certificate dated 10 June 1997, she worked in her father's establishment for 4 to 5 years upto 2001-2002.

30) The above evidence led by Shilpa makes her case of bonafide requirement in respect of the suit premises fully believable. On the basis of evidence on record, it is difficult to hold that Plaintiff or Shilpa came out with some imaginary or concocted story for the purpose of creating an artificial need. This is not a case of mere desire or wish of Shilpa but a proper case of her requirement to run the medical store. She is after all a qualified pharmacist possessing necessary experience, having worked in other pharmacy stores for several years. Therefore, the need expressed by her to run and expand medical store of her father cannot be treated as a mere wish or impulse or desire. Therefore, reliance by Mr. Soni on judgment of the Apex Court in Kempalah (supra) is totally misplaced. To my mind, need of Shilpa in respect of suit premises appears to be genuine and bonafide. Reliance by Ms Helekar on judgment of this Court in Khandelwal Steel & Pipe Distributors (supra) appears to be apposite. This Court has held that expansion of business can also be a reasonable and genuine need. This Court held in paragraphs 24 to 26 as under:-

24. It is a statutory obligation on the Court to weigh and assess the comparative hardship from both angles. Already, it is noted that the landlord has proved reasonable and genuine need of the suit premises for expansion of business. Obviously, landlord has a right to use his premises as per his choice being the owner of the property. On the other hand, tenant's children are settled at abroad and at old age he is running a shop. If he was in genuine need to continue his business for his survival then certainly he would have taken thorough search for the premises in any part of the city but he did not. When both the situations are put in the scale it is evident that the tenant was not keen to protect his business by searching another premises. Therefore, the result would be that the tenant would not suffer that much hardship which was tried to be canvassed. On the other hand when the landlord has proved his ground of reasonable need, by making comparison the hardship would be caused to the landlord, if decree of eviction has not been passed.

25. Merely because the tenant will be ousted from the premises itself, cannot be considered to be a hardship and a valid ground for refusing the landlord a decree for eviction. In deciding the extent of the hardship, each party has to prove its relative advantages or disadvantages which they may suffer. The owner of the property cannot be denied eviction merely on the ground that tenant has no other premises. It is the duty of the tenant to search for the premises but on fact, it is evident that tenant was quite casual as he has not searched the premises in the city. The tenant's contention that he searched premises in Central Avenue area only which itself shows that he was not serious about finding out the premises. As referred above the evidence of tenant's witness broker is not reliable.

26. In view of above discussion, the landlord has duly established bona fide and genuine need which is considered by both the Courts below. Moreover both the Courts below have held that the issue of comparative hardship tilts in

favour of landlord. In this petition, submission on the point of comparative hardship has been independently assessed on the basis of emerging evidence. For the reasons stated above, no interference is called in the impugned judgment and order. There is no merit in the writ petition hence it stands dismissed. The petitioner/tenant is directed to vacate the suit premises within two months from the date of uploading of this order.

31) Mr. Soni's contention that there is no evidence of Shilpa resigning from job and shifting to Pachgani. However, in Raghunath G. Panhale (supra) the Apex Court held that a landlord in service need not first resign from the job and wait for unknown and uncertain result of long drawn litigation. It further held that bonafide requirement does not mean dire or compelling necessity. The Apex Court held in paragraph 11 as under:-

11. It will be seen that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the courts was absolutely wrong in law and perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India.

32) Coming to the issue of comparative hardship, Mr. Soni has submitted that

Plaintiff had, and now Shilpa can, use alternate premises at House No.161, which are similarly sized and located five shops away for expanding the business. Apart from the fact that Plaintiff proved that the suit premises bearing House No.161 was being used as a godown, Ms Helekar has clarified that after Plaintiff's death, only suit premises have been bequeathed by her father to her and she cannot now use or occupy the premises at House No.161. This position is borne out from the affidavit-cum-no objection certificate executed by Shilpa's mother-Vimal and Sisters Swati Hendrale and Prachi Shevale confirming that the suit premises have been bequeathed to Shilpa by Plaintiff through Will dated 1 February 2021. So far as the Defendant No. 5 is concerned, he admittedly owns and occupies a bungalow named- Aviram, located at a distance of about 1.5 km. from the suit premises. Defendant himself admits that bungalow consists of 4 rooms and there is no prohibition on conducting medical practice therein. Though it is sought to be contended that the bungalow can be used only for residence, Defendant No.5 can always use part of the same for his medical consultancy. It is not that Defendant No.5 runs a hospital or nursing home in the suit premises. He appears to be a general practitioner and can always use some part of his own bungalow for conducting his medical practice, in case he desires to continue his practice at his advanced age. Defendant No.5 is apparently aged about 71 years and does not have any dependent, since his children are well settled. His son has completed medical education from Russia and operates a dispensary at Pune. His daughter-in-law is a dentist in Pune. His daughter is married and resides outside of Pachgani. On the contrary, Plaintiff's daughter- Shilpa is earning meager income of about Rs.16,000/- and finding it difficult to manage affairs of her family. Therefore, Plaintiff's daughter-Shilpa would suffer greater hardship in the event of decree being refused as compared to the hardship that would be caused to the Defendant No.5 in the event of suit being decreed.

33) Conspectus of the above discussion is that though original Plaintiff's bonafide requirement ceased to exist after his death on 15 March 2022, his daughter's bonafide requirement is both pleaded and proved. Therefore, the eviction decree passed against the Defendants by the Appellate Court is required to be sustained. However, findings of the Appellate Court on the issue of bonafide requirement of Shilpa are required to be set aside by confirming the findings of the Trial Court on the said issue.

34) I accordingly proceed to pass the following order:

(i) The eviction decree passed in Regular Civil Suit No.320 of 1989 against the Defendants is sustained on the ground of bonafide requirement of original Plaintiff's daughter-Shilpa Shonan Mankar.

(ii) Findings of the Appellate Court rendered vide order dated 17 February 2020 on the additional issue of bonafide requirement of Shilpa is set aside and order passed by the Trial Court on 13 September 2019 on the additional issues is confirmed.

(iii) The Defendants shall accordingly hand over possession of the suit premises to Plaintiff's daughter –Shilpa on or before 28 February 2025.

35) With the above directions, Writ Petition is dismissed. Rule is discharged.

36) In view of disposal of the Writ Petition, Interim Application also stands disposed of.