IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.497 OF 2016

Smt. Rukminibai Motiram Kshirsagar (deceased)
through its legal heir
Sumanbai Namdeo Kshirsagar & ors. ... Applicants

v/s.

Smt. Manoramabai Mallikarjun Bagale(deceased)
through legal heirs
Smt. Shobha Raosaheb Bagale … Respondents

Mr.Rajesh Patil i/b. Rahul Matkari for the applicants.
Mr. Vikram Sathaye i/b. Mulani & co. for respondents

CORAM : DAMA SESHADRI NAIDU, J.

RESERVED ON: 17th July 2019.
PRONOUNCED ON: 6th September 2019

JUDGMENT

Introduction:

In a suit for eviction, the owners have concurrently succeeded. Both the trial Court and the Appellate Court have accepted that the owners need the property for their use. Aggrieved, the tenants filed this Civil Revision Application (CRA) before this Court, under Section 115 of the Code of Civil Procedure. The tenants have pleaded three things:

(a) Change of circumstances or subsequent developments; (b) Owners' suppressing facts; and (c) the suit proceedings getting abated. We will examine.

Facts:

2. Generations ago, one landlord let a piece of property—two shops—to one tenant. The tenancy continued. Both the original landlord and the original tenant passed away. Later, their legal heirs succeeded on either side. Eventually, in 1986 the wife and seven children of the immediate predecessor-landlord filed Suit No.585/1986 to evict the tenants, on the grounds of *bona fide* requirement and arrears of rent. During the trial, it seems, the owners gave up their claim on the arrears of rent, but they persisted with the *bona fide* requirement under Section 13(1)(g) of the Bombay Rent Control Act. Eventually, in 2001, the trial Court decreed the suit.

3. Aggrieved, the tenants filed Civil Appeal No.343 of 2001. That appeal too was dismissed. Thus, the tenants suffered concurrent findings. As a matter of collateral development, three defendants, that is the defendants 3, 5 and 7, died pending the suit. The owners did bring on record the legal representatives (LRs) of the 5th and the 7th respondents. But could not bring on record the LRs of the 3rd defendant. Eventually, the Appellate Bench of the Small Cause Court dismissed the Appeal.

4. Assailing the judgment in appeal, the tenants filed Civil

Revision Application No. 497 of 2016. Six months later, the tenants also filed Civil Application No.62 of 2017 with a few documents to bring on record what the tenants called the later developments not in their knowledge till then.

Submissions:

Petitioners-Tenants:

5. In the above factual background, Shri Rajesh Patil, instructed by Shri Rahul Matkari for the applicant, has submitted that pending the appeal in October 2015, the owners inducted a new tenant into the adjacent shop. Had there been any *bona fide* requirement, they would have used that property, too, for themselves, instead of letting it out to a 3rd party. In that context, Shri Patil asserts that the plea of *bona fide* requirement is false.

6. Then, Shri Patil has drawn my attention to a few photographs to assert that a lady by name Neeta Ranpise is the new tenant and that she has been carrying on the business in the adjacent property. Shri Patil has laid frontal emphasis on what he calls suppression of facts by the owners. According to him, two of the plaintiffs secured government employment pending the suit. They never brought it to the notice of the courts below. Had they brought this vital piece of information to the Appellate Bench's notice, the outcome could have been different. On this count, Shri Patil stresses that once a suiter's conduct is not bona fide, he deserves no indulgence from the court and, on the same

reckoning, even a meritorious case can be thrown out.

7. Shri Patil has also submitted that for many years, the landlords have kept two rooms near the leased property locked. This again exposes the owners' claim there was any *bona fide* requirement to accommodate themselves and carry on business in the leased property. To elaborate, Shri Patil has shown me a rough sketch filed along with the civil application, to hammer home his contention that there exists a clear open space, where the landlords could have constructed as per their convenience. Thus, the owners could have had a more commodious building, accommodating the alleged growing needs of the family.

8. One of the owners living in the vicinity, Shri Patil contends, has constructed a new structure for the residential as well as commercial purpose. Then, similarly, the other owners too could have done the same thing in the vacant space available for them. Besides, the tenant Shri Patil referred to already, he submits that the owners have inducted another tenant in another part of the property, that is a shop. Shri Patil has also stressed that the proceedings the owners initiated stood abated because they could not bring all the LRs of the deceased tenants.

9. In the context of all these later developments, Shri Patil has submitted that the lis does not become final until the fruits of the decree are released. For that, the litigation must run its full course, including the appeal and the revision. In the meanwhile, any

developments take place, they must be judicially noted and the relief moulded accordingly.

10. To support his contentions, Shri Patil has relied on *Dr. Vinayak Trimbak Wale v. Tarachand Hiralal Shet Marwadi*[1], *Mohd. Ismail v. Dinkar Vinaykrao Dorllikar*[2], *P. V. Papanna v. K. Padmanbhaiah*[3], *S.P. Chengalvaraya Naidu v. Jagannath*[4], *Parvez Rustom Nekoo v. Rustom Ardeshir Nekoo*[5], and *Tarachand Hassaram Shamdasani v. Durgashankar G. Shroff*[6].

Respondents-Owners:

11. Shri Vikram Sathe, the learned counsel for the respondents-owners, has submitted that the owners created no new tenancy. And the photographs the tenants filed do not reveal the true picture. According to him, what was shown in the photograph is the 'Veranda' that provides access to the rest of the property. Without the landlord's leave, at some point in time, if some street vendor stood there and conducted business, that should not be termed a tenancy the owners have created. In this context, Shri Sathe has submitted that the creation of tenancy is a legal formality—not a fortuitous event.

12. About the two of the owners securing jobs, Shri Sathe stresses that it never amounted to suppression of any material facts. It is a *lis*

1 **[]** (1960) 62 BLR 785
2 **[]** (2009) 10 SCC 193.
3 **[]** 1994 (2) SCC 316
4 **[]** 1993 DGLS (SC) 918
5 **[]** 2003(3) Bom.C.R.86
6 **[]** 2004 (Supp.)Bom. C.R. 333

pendence development not affecting the suit proceedings. According to him of the eight co-owners, if two have secured an alternative source of living, it has not rendered the cause of action infructuous. He has also submitted that it has been a well-established principle of law that once the cause of action has arisen and proceedings are taken, the later developments do not denude the cause.

13. About the open area said to have been available, Shri Sathe submits that it is again a question of an established legal principle that it is not for the tenants to dictate in what manner the owner should use his property. To elaborate, he has submitted that constructing something new entails various factors, such as finance. If a piece of property is readily available, the landlord cannot be compelled to abandon his right and be compelled to develop some other property in a manner which may not be beneficial for him.

14. Touching on the question of abatement, Shri Sathe has submitted that the tenants have been living for generations and carrying on the business. As is the case with the owners, people have been born into both the families, people have moved away from those families, and some have, inevitably, died away, too. According to him, the landlords' have diligently brought on record the LRs of the deceased defendants and have tried to serve notices on them. Those LRs were sought to be served on the addresses shown in the proceedings for respondents. Some have received the notices and

defended themselves, but some have avoided. Even otherwise, according to him, once it is a joint tenancy it suffers no partial abatement.

15. Shri Sathe has also submitted that every time, at the eleventh hour, the tenants have tried to introduce something new. To illustrate, he has submitted that before the Appellate Bench, for the first time after many years, the tenants pleaded that they would hand over half the leased property. Thus they wanted the Appellate Bench to remand the matter to the trial Court. It was again for deciding whether the *bona fide* requirement still subsisted. In this context, Shri Sathe has also submitted that now in the Revision Application, the tenants raise the bogey of subsequent developments. According to him all the issues now the tenants raised had been available to them all along. To support his contention, he has relied on *Gaya Prasad v. Pradeep Shrivastava*[7], *Smt. Ramkubai v. Hajarimal D. Chandak*[8], and *Sait Nagjee Purushotham & co. Ltd. v. Vimalabai Prabhulal*[9].

Reply:

16. In reply, Shri Patil has submitted that the plaintiffs have only pleaded that the need still subsists; in their reply to the Civil Application, they have pleaded nothing beyond.

Discussion:

7 **[]** AIR 2001 SC 803
8 **[]** AIR 1999 SC 3089
9 **[]** (2005) 8 SCC 252

17. As I have noted, generations ago the original landlord let a piece of property—two shops—to the original tenant. The original landlord and the tenant died. The LRs succeeded on both sides. In 1986, the wife and the seven children of the immediate predecessor-landlord sued for eviction. It was for their *bona fide* requirement. In 2001, the trial Court decreed the suit. The tenants Civil Appeal too was dismissed. So this Civil Revision Application under Section 115 of CPC.

Later Developments:

18. In this CRA, the tenants have filed an additional affidavit along with documents. They wanted the Court to consider what they call the subsequent developments. How does the Court take judicial cognizance of the subsequent developments?

(a) How Should the Later Developments be Brought on Record?

19. Usually, this Court exercises its revisional jurisdiction under Section 115 of CPC. That exercise of power concerns the jurisdictional errors. The challenge per se to the findings of fact ends with the appeal. And the Bombay Rent Control Act has not provided for the second appeal. So, in the revision under Section 115 of CPC, the suit survives, if at all, in an attenuated form, as the challenge is more technical than substantial.

20. That said, even the revision under Section 115 of CPC is a continuation of the original suit proceedings. The Code provides for

procedural steps to be taken—for example, placing evidence on record —both at the trial stage and at the appellate stage, but hardly any specific provision, again for placing evidence, at the revisional stage. Even Order 41, Rule 27 permits additional evidence at the appellate stage, not at the revisional stage.

21. But amending the pleadings is permitted at all stages. Order 6, Rule 17 enables the parties to amend the pleadings. It reads:

> "Amendment of pleadings – The Court may *at any stage of the proceedings* allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

22. Indeed, the court can allow the parties to amend the pleadings at any stage of the proceedings. Those amendments must be necessary for the court to determine the questions in controversy between the parties. This liberal provision underwent an amendment in 2002. So the earlier Maharashtra-specific State Amendment of 1983, I reckon, now may not stand in the way. Then, with the Central Amendment, the limitation on amending the pleadings is this: there should be no amendment once the trial has commenced. But there is an exception: if the court concludes that despite due diligence, the

party could not have raised the matter before the commencement of trial. And that includes the subsequent developments.

23. For the court to appreciate the later developments, they should be brought on record through amendment. Once the pleadings are amended, the later developments become part of the record. Then, based on the gravity, the appellate court or even the revisional court may remand the matter.

24. The tenants seem to have filed two applications before the District Court: Ext.82, for "permitting them to produce documents;" and Ext.85, "to frame additional issue and remand the matter for additional evidence on the issue." Both were dismissed "at the time of final hearing along with the main Civil Appeal." But there seems to be no application for amendment of pleadings *per se*.

25. Now, in this CRA, the tenants have filed a Civil Application. They have narrated what they call subsequent developments; besides they also filed certain documents and photos, for the first time. Through that CA, the reliefs they sought are these: "b) In view of the events which are now brought on record, the matter be remanded back and the Applicants be allowed to amend the written statement and lead evidence to that effect; c) The subsequent events which have taken place after the impugned judgments and orders and during the pendency of the above Civil Revision Application be taken on record and same may be considered at the time of hearing."

(b) What Should Amount to the Subsequent Developments?

26. The principal point of discord is the *bona fide* requirement. The question is, have the subsequent developments eclipsed this need?

27. In *Dr. Vinayak Trimbak Wale,* a learned Single Judge of this Court has held that under Section 13(f)(g) of the Bombay Rent Act, a landlord could recover possession of any premises if he reasonably and *bona fide* required the property for his own occupation. The burden would, therefore, lie on the landlord to prove his requirement. Then, the Court has observed that to satisfy the requirements of Section 13(1)(g) of the Bombay Rent Act, the landlord must establish to the Court's satisfaction that "his requirement of the suit premises for occupation by himself continued even during the pendency of the suit."

28. In *Mohd. Ismail*, the appellant was a tenant. The landlord applied for his eviction. He pleaded that he was jobless and wanted to start a "kirana business" in the leased property to sustain his family. According to him, he and his three sons required two shops for their *bona fide* need. The appellant was directed to vacate the leased shop. The Rent Controller and the Appellate Authority concurrently ordered eviction. The High Court remanded the matter. The appellate authority returned the same findings.

29. Again, the appellant filed a writ petition. He pleaded in that writ petition that the landlord filed a similar eviction petition against another tenant and secured possession. In that property, he had started

a business. The High Court again remitted the matter back to the Appellate Authority for fresh consideration. Yet again, the same order of eviction was returned. So the appellant filed a writ petition for the third time.

30. Again, the High Court partially allowed the writ petition and directed the Appellate Authority to hear and decide the appeal afresh. But this time, too, the outcome was no different. So the matter reached the High Court for the fourth time. This time, the High Court dismissed the Writ Petition. It concurred with the concurrent finding that the respondent proved his bona fide requirement. Then, the appellate approached the Supreme Court.

31. Before the Supreme Court, the appellant's counsel absented himself. The Court heard the respondent's counsel alone. The Supreme Court remanded the case back to the High Court, "who in turn, would frame issues to the extent whether in view of the subsequent events, as stated herein earlier, the bona fide requirement of the respondent landlord has already been satisfied or not." This case is an outlier; but, to my mind, it has no precedential proposition.

32. In another case, the landlord sought his tenant's eviction, on various grounds. The trial Court allowed that on the grounds of bona fide requirement. The trial court granted two years' time to the tenant. On appeal, the High Court of Karnataka dismissed the tenant's plea. But it granted four years' time to the tenant to vacate. Special Leave

Petition filed, that too was dismissed. Before the period of four years the High Court granted to the tenant could expire, the landlord died. He bequeathed the property to his brother, his wife, and their son. Despite the decree holder's death, the Executing Court ordered eviction.

33. The tenant reached the High Court, which allowed his petition. It has held that the landlord's original cause of action did not survive on his death. The legatees went to the Supreme Court. In *P. V. Pappanna*, the Supreme Court has held that when eviction of a tenant is sought on the ground of personal need of the landlord, such need must not only exist on the date of the suit but must also exist when higher courts deal with the order of eviction in appeal or in revision.

34. *P. V. Papanna* has finally held that events which take place after an eviction petition under any Rent Act was filed can be considered until a decree becomes final. But any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing court for adjudication on the ground that some event or the other has altered the situation. In other words, once the decree becomes final, "it [becomes] a part of the estate of the landlord."

35. In *Tarachand Hassaram Shamdasani*, the respondent-landlord pleaded he required the leased property for his business. The

background of that requirement was that he was his partner and they were carrying on the business on his premises. Then, that nephew wanted him to go out. The petitioner-tenant in the written statement denied the respondent's plea. He asserted that the respondent owned three other properties. Later, the respondent swiftly changed his stand about his requirement. Despite the petitioner's serious objections, this Court observed, the respondent did not disclose the material facts necessary to decide the bona fide and reasonable requirement.

36. In the above context, *Tarachand Hassaram Shamdasani* has observed that it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that despite those acquisitions and ownership of other premises, the requirement still survives.

37. *Gaya Prasad* begins with an exhortation: "This case presents a sample scenario of the tormenting plight of an average litigant who approaches the court with all expectations of getting relief for his urgent need. But the snail-paced litigation creeping through all the tiers of the hierarchical judicial forums would have frustrated all his expectations, though others could admire the tenacity with which he persisted with the cause."

38. Then, *Gaya Prasad* traces the origin of the case: twenty-three

years ago, the landlord wanted accommodation for his son, who then became a medical graduate. It was for his son's starting a clinic. Although he won the battle at all tiers the urgently needed eviction still eluded him like a mirage. The appellant-tenant lost in the trial court, filed an appeal, and there too he failed. The appeal took three years. But the tenant had the longest leap, as *Gaya Prasad* puts it, in the High Court. He secured a stay and that lasted for 15 years. The High Court eventually found the tenant's objection meritless. It nevertheless granted him six months' time to vacate.

39. The appellant lately discovered that the respondent's son, for whom the eviction was sought, joined the Government Service. It was 12 years after the suit was filed. On that premise, the appellant wanted the High Court to review its order. The High Court, however, refused. Then, the appellant went to the Supreme Court.

40. In the above factual backdrop, *Gaya Prasad* has held that "the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction." Then it has observed:

> 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 our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, *neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or*

> *starting any new work would be at the peril of forfeiting his requirement to occupy the building. 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.*
>
> (italics supplied)

41. *Gaya Prasad* has held that, to overshadow the genuineness of the need, the subsequent events must be of such nature and of such a dimension that the petitioning party's need should have been completely eclipsed by such subsequent events. It has eventually held that

> "[T]he judicial tardiness, for which unfortunately our system has acquired notoriety, causes the *lis* to creep through the line for long, long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many, many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the

litigant, despite the impairment already caused."

42. In *Ramkubai,* the landlady filed a civil suit against respondent-tenant. When the original respondent died, his LRs were brought on record. The eviction was, among other grounds, bona fide requirement. The trial Court granted a decree. But the Appellate Court and the High Court have found that the landlady could not prove the bona fide requirement. One of the reasons that weighed with the Appellate Court and the High Court is that when the appellant sued, her son was unemployed; but later he started working as a contractor in the construction field. So his need to run *kirana* shop no longer subsisted.

43. In the above context, *Ramkubai* has observed that the appellant's son could not be expected to idle away the time by remaining unemployed untill the case is finally decided. It has already taken about 25 years. So, it has held that the appellant's son taking up the contract work, in the meanwhile, does not militate against his carrying on the business of kirana, which is his family business.

44. In *Sait Nagjee Purushotham*, the Supreme Court has noticed that the landlords have their business spread over Chennai and Hyderabad. Yet it has observed that it "is always the prerogative of the landlord that if he requires the premises in question for his *bona fide* use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore,

it is not genuine need."

45. *Sait Nagjee Purushotham* has emphasised that "it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business." But on fact, the Court has refused to interfere with the High Court's findings.

46. Finally, I may refer to another important decision from the Supreme Court. In that case, it has reversed the findings of fact accepted at the earlier three stages. The judicial overstretch of the statutory provisions and the improbability of legal interpretation have compelled the Apex Court to do so.

47. The original landlord filed a suit for eviction on the grounds of bona fide and reasonable requirement. The respondent-tenant resisted it. Pending the suit, the original plaintiff died; his heirs were brought on record. They amended the pleadings. The third legal representative pleaded that he wanted the leased property for his starting a grocery business. In that context, he stated that he was working in Metal box. Co., that there was a lock-out in that company, that he was finding it difficult to maintain the family, and that he wanted to improve his livelihood by starting grocery business.

48. The trial Court held that on the original landlord's death, the suit abated. On merits, the trial Court held that there was no proof of

lock-out, no proof of capital available for investment, no proof of preparations for business, and no proof of the third appellant's having experience in grocery business. It further held that the lockout did not put the appellant out of his job permanently; the appellant had not resigned his job. therefore, the requirement was not bona fide. The lower appellate Court confirmed the finding on the question of bona fide requirement but reversed the finding as to abatement. The appellate Court gave a finding that the tenant had got three other shops. The appeal was dismissed. The High Court, too, seems to have accepted the verdict of the courts below. The landlords came up in appeal to the Supreme Court.

49. In *Raghunath G. Panhale v. Chaganlal Sundarji and Co.*[10], the Supreme Court has held that the word 'reasonable' connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The word 'requirement' coupled with the word 'reasonable' means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. The language of the provision, it is held, cannot be unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get possession. *Raghunath G. Panhale* warns that if more limitations are imposed upon the landlord holding property, it would expose itself to the vice of unconstitutionality.

[10] **[]** (1999) 8 SCC 1

50. In *Rena Drego (Mrs.) v. Lalchand Soni*[11], as quoted by *Raghunath G. Panhale*, it was observed that in the light of the factual position in that case, "where the (landlady) says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement." It was held that the circumstances of the case raised a presumption that the requirement was bona fide and that "tenant has failed to show that the demand for eviction was made within any oblique motive". It was held that in the absence of such evidence by the tenant, the presumption of the *bona fide* need stood unrebutted.

51. In the end, Raghunath G. Panhale has observed that "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."

(c) The Precedential Summary:

52. Events which take place after an eviction petition under any Rent Act was filed can be considered until a decree becomes final. To overshadow the genuineness of the need, the subsequent events must be of such nature and of such a dimension that the petitioning party's need should have been completely eclipsed by such subsequent events. A person could not be expected to idle away the time by remaining

11 **[]** [1998] 2 SCR 197

unemployed untill the case is finally decided.

(d) Is an Alternative View Possible?

Courts and Delays:

53. Courts and delays are correlatives; they go together. The reasons are a legion. They range from infrastructural inadequacies to insufficient adjudicators to protracted procedures to plain misplaced priorities. The rule established by the general concurrence of the Common Law Courts, holds the American Supreme Court in *Mitchell v. Overman*[12], is that where the delay in rendering a judgment or a decree arises from the act of the court-that is, where the delay has been caused either for its convenience or by the multiplicity or press of business, either the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties-the judgment or the decree may be entered retrospectively, as of a time when it should or might have been entered up. Mitchell relies on the maxim *actus curiae neminem gravabit* (an act of the court shall prejudice no one), which has been well said to be founded in right and good sense and to afford a safe and certain guide for the administration of justice. It holds that the duty of the court is to see that the parties shall not suffer by the delay. A *nunc pro tunc* (Now for then) order should be granted or refused as justice may require because of the circumstances.

54. In *Becker v. King*[13], the District Court of Appeal of Florida

[12] **[]** (103 US 62 (1881)
[13] **[]** 307 So. 2d. 855 (Fla. Dist. Ct. App. 1975) as quoted in

has observed that courts from very ancient times have exercised the inherent power of entering judgments nunc pro tunc so the rights of a litigant, who is himself not at fault should not be impaired or lost. The Black's Law Dictionary quotes the American Federal Civil Procedure to explain this Latin expression: When an order is signed nunc pro tunc as of a specified date, it means that a thing is now done which should have been done on the specified date.

55. Given the enormous and inevitable delays in judicial adjudication, most of the times, the winner turns out to be the actual loser. The victory remains hollow: a pyrrhic victory (a victory that is not worth winning because the winner has lost so much in winning it. Interim order or no interim order, procedural delays or other reasons, unless the blame rests on the petitioner, the delay in the court's disposing the matter should not hurt him. If mere delay with nothing more were to defeat a person's right, it would only put a premium on those who take delight in delaying and dragging the proceedings. The is what Kerala High Court, per me, bemoaned in *Sunil Mathew v. Union of India*[14]. It is only an alternative thought, but the precedential weight pulls me back to the path of judicial propriety.

(d) Has the Landlords' Need been Totally Eclipsed?

56. The first allegation is that pending the eviction proceedings, the owners got another tenant evicted, secured possession, and then let

14 **[]** 2017 (4) KLT 597

out that portion to another lessee. The tenants have also contended that the portion adjacent to theirs was given to one Imran Shaikh. A photograph is filed. The owners deny this, too. They say the photograph reveals nothing; it only shows a casual vegetable vendor squatting over verandah with her wares, though the verandah itself is a passage. And the third contention is that the owners have open space still left; they could construct there. Indeed, it is not for the tenants to say what the owners should do with their vacant land.

57. The tenants assert the owners have kept two rooms adjoining the tenanted property locked for fifteen years. Had it been so, it would have been the subject during the trial. That alleged factual aspect cannot be brought to light at the revisional stage.

58. All these aspects, the owners assert, were known or happened during the trial or appeal. But they were not pleaded in the manner permissible. No amendment application was filed before the District Court. The tenants only filed a document petition and a petition for additional issues. Nothing more.

59. As the owners' counsel has submitted, the tenants during the appeal would surrender one of the two rooms—a half portion of the tenanted property. So the District Court did frame an issue on that. Besides it has also framed another issue: Is it necessary to frame the additional issue and remand the suit to the trial Court?

(e) The Owners' Position:

60. before the trial court, the fifth plaintiff deposed that they were four brothers. Two were dead, and two were retired. These four brothers have many children. One of these children was selling tea and snacks on the road (in a cart); he has been facing problems because of traffic regulations and Municipal laws. Another son is running a pan stall on the road; another a tailoring shop in the house itself; another an advocate; and many other children are unemployed.

61. The courts below have appreciated the evidence and concluded on facts that the owners have an expanded family, and their needs are genuine. It is impermissible for this Court to disturb those findings of facts in its revisional jurisdiction. The owners, besides denying these allegations, have contended that all these developments were said to have taken place when the appeal was pending. But the tenants did not bring them to that court's notice. The issue of the locked rooms had been concurrently rejected by the courts below. According to them, these pleas are part of the tenants' delaying techniques.

62. The alleged later developments, I must note, have not been, first, properly brought on record—at an appropriate time. Second, at this stage they cannot be considered; third, there is no clinching evidence to establish these allegations.

(f) Two of the Owners' Family Getting Employment:

63. Indeed, the tenants have made heavy weather of this issue.

Indeed, two of the many children in the owners' family secured employment. They are many other children, either unemployed or doing petty businesses. Let us not forget the owners initiated the eviction proceedings in 1986—over thirty years ago. In this period someone may be born, brought, and employed. And the one who was getting educated then, may get employed, and retired. And the one who was employed then may retire and die away, too.

64. In Dickensian diction, innumerable children may have been born into the cause; innumerable young people may have married into it; innumerable old people may have died out of it. The little of the plaintiffs may have been promised a new toy cycle when the case is settled, but may have grown up pending the case, possessed a real cycle, ridden it through his life, and ridden away into the other world. A case can be perennial but not the life, nor its needs. As it were, courts have time machines, for cases remain constant decades on end. But not the clients or causes.

65. True, two of the many children have secured employment. But that is hardly surprising in three decades and three years. That has not taken away the owners' need completely. That development has not eclipsed their need, so to say.

Suppression of Facts:

66. The tenants have contended that two of the owners' children got employment, perhaps, pending the appeal. It was not brought to

the Appellate Court's notice. It is suppression. At least, the tenants assert so.

67. *S. P. Chengalraya Naidu* is the oft-quoted judgment on fraud and its ramification in the judicial arena. It invokes Chief Justice Edward Coke's aphoristic assertion that "Fraud avoids all judicial acts, ecclesiastical or temporal". It reiterates that a judgment or decree obtained by playing fraud on the court is a nullity and *non est* in the eyes of the law.

68. As a general rule, suppression of a material fact by a litigant, according to the Supreme Court[15], disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have affected the merits of the case. It must be a matter material for the consideration of the Court, whatever view the Court may have taken.

69. The owners have a counter allegation: the tenants have business at another place, too. But they suppressed that fact.

70. At any rate, I see no plea taken in the CA about the suppression of a material fact: two of the children getting employment. But it was argued. I reckon among the many children of the owners, two getting employment in thirty years hardly affects their case

[15] **[]** M/s S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, [2004] 7 SCC 166

prospects. Nor does it amount to a material suppression.

Abatement:

71. Again, there is no plea in the CA about the alleged abatement. Nor was there any issue in the trial Court. So was the case with the District Court. The tenants, during the arguments, have stressed that the proceedings the owners initiated stood abated because they could not bring all the LRs of the deceased tenants. Let us examine this.

72. Three of the defendants, that is the defendants 3, 5 and 7, died pending the suit. The owners did bring on record the legal representatives (LRs) of the 5th and the 7th respondents. Of the 5th respondents' four LRs, respondents 5c and 5d could be served, but not the other two: respondents 5a and 5b. Then, all the LRs of the 7th defendants were served. They defended themselves in the suit. But the LRs of the 3rd respondent could not be brought on record.

73. In *Daya Ram v. Shyam Sundari*[16], the appellant had impleaded the heirs of the deceased respondent so far as known to him but had omitted to bring on record some of the heirs. Their details were unavailable with him. The question was about the effect of the appellant's having omitted to include two of the legal heirs, a son and a daughter, who admittedly had an interest in the property. The omission was brought to the court's notice before the could be heard.

16 **[]** AIR 1965 SC 1049

74. Noting the impact of Order 22, Rule 4 of CPC, *Daya Ram* has observed that where a plaintiff or an appellant after diligent and bona fide enquiry ascertains who the legal representatives of deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal. It has ruled that if the impleaded legal representatives sufficiently represent the estate of the deceased, a decision obtained with them on record will bind not merely those persons impleaded but the entire estate including those not brought on record. So if one of the legal heirs is on record, the appeal or suit would not abate.

75. Then, *Daya Ram* answered another question. It concerns the effect of omission to include all the known legal heirs, who, admittedly, had an interest in the property, despite the plaintiff's knowing about it. It has answered this query by holding that "there would be no abatement of the suit or appeal if the estate of the deceased is sufficiently represented. It has, however, gone ahead and held that "once it is brought to the notice of the Court hearing the appeal that some of the legal heirs of the deceased have not been brought on record, and the appellant is thus made aware of this default on his part, it would be his duty to bring others on record, so that the appeal could be properly constituted." In other words, if the appellant should succeed in the appeal, it would be necessary for him to bring on record those representatives whom he had omitted to implead originally.

76. In *Parvez Rustom Nekoo*, this Court has relied on Daya Ram and then held that once some of the legal heirs of the deceased are brought on record, the proceeding does not abate. "[B]ut once the petitioner is put on notice with respect to the omission on his part to implead other legal heirs, in that event, it is obligatory on his part to bring the left-out legal heirs on record." It has also observed that "[i]t is not open for any litigant who has the knowledge of other legal heirs to contend that one of the legal heirs is on record and therefore, proceeding does not abate. All known legal heirs must be brought on record."

77. If we trace back the roots of the case, the present tenants' common ancestor was the tenant, as was the present owners' common ancestor was the landlord. After their death, the families spread. What was leased out is a business structure: two rooms. In about six or seven decades, neither family remained constant. And the available tenants have been brought on record. They are tenants by operation of law; they have no independent right. So one represents another unless that another establishes there is a conflict of interest among them. Here a couple of children of one of the deceased co-tenants not being impleaded, I am afraid, cannot be fatal.

Conclusion:

Thus, viewed from any perspective, the applicants have failed to establish that this Court should overturn the concurrent findings by

exercising its revisional jurisdiction under Section 115 of CPC. The case deserves dismissal, and it is dismissed with costs.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.