

RAM NIBAS GAGAR (DEAD) BY LRS.

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v.

DEBOJYOTI DAS AND ORS.

DECEMBER 4, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

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Assam Urban Areas Rent Control Act, 1972:

S.5 (1)(c)—Subsequent event—Suit for eviction—Decreed—Appeal by tenant—Pending appeals before first appellate court and Supreme Court tenant filing applications to bring subsequent events on record—Maintainability of—Held, in the application before the first appellate court, the subsequent event, i.e., letting of shops to other tenants, is stated to have taken place during pendency of the suit and no reason is assigned why the fact was not brought to notice of trial court—Besides, the said application does not seem to have been pressed before appellate court or in revision before High Court—In the application filed before Supreme Court, subsequent events i.e., inducting yet other tenants, took place during pendency of revision before High Court, but the attention of the High Court was not invited to such subsequent events by promptly moving an appropriate application—There is no averment in either of the applications that the premises re-let were so suitable as to satisfy the requirements of the landlord so as to be relevant and material subsequent events—Both the applications fail to satisfy the tests—(i) of bringing of the subsequent events having a material bearing on the relief sought for from the court and (ii) having been promptly brought to the notice of the Court—Appeal dismissed—Rent and eviction—Subsequent events.

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Om Prakash Gupta v. Ranbir B. Goyal, [2002] 2 SCC, 256 and J.J. Lal Pvt. Ltd. and Ors. v. M.R. Murali and Anr., [2002] 3 SCC, 98, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2336 of 1999.

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From the Judgment and Order dated 22.7.1998 of the Assam High Court in C.R. No. 415 of 1993.

Vijay Hansaria, Ms. Inklee Barooah and Sunil Kumar Jain, for the Appellant.

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A N.R. Chaudhary and Somnath Mukherjee for the Respondents.

The following Order of the Court was delivered :

B In the year 1981, the landlords-respondents filed a suit for eviction of the tenant-appellant from a shop situated on the ground floor and a room situated on the first floor alleging that the premises were required *bonafide* by the landlord for his own occupation mainly for commencing cloth business in the shop, a ground available under Section 5(1)(c) of the Assam Urban Areas Rent Control Act, 1972. The ground for eviction was held to be proved by the Trial Court as also by the Appellate Court. A revision preferred by the tenant in the High Court was also dismissed. This is an appeal filed by the C tenant by special leave.

D So far as the finding of the Trial Court upheld by the first Appellate Court and by the High Court in revision based on the averments made in the plaint is concerned, no fault can be found therewith. What we are called upon to consider in this appeal is the impact of subsequent events to which the tenant-appellant invited the attention of the first Appellate Court as also of this Court by moving applications. We will deal with the two applications to examine if any of the two applications satisfied the requirement of bringing such subsequent events on record of which a Court of law is bound to take notice and whether such subsequent events ought to have been inquired into for disentitling the landlord-respondent from decree for eviction as granted E by the Trial Court.

F The law as to subsequent events has been examined in details and summed up in a recent decision of this Court in *Om Prakash Gupta v. Ranbir B. Goyal*, [2002] 2 SCC, 256, a decision to which both of us are a party. The same law has been reiterated by a subsequent Division Bench in *J.J. Lal Pvt. Ltd. and Ors. v. M.R. Murali and Anr.*, [2002] 3 SCC, 98. It has been held:

G “The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take notice of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become H inappropriate or cannot be granted (ii) that taking note of such

subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. A

Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties." B C D

We will test the maintainability and entertainability of the two applications in the light of the tests laid down as above.

The application dated 9.1.1990 filed before the first Appellate Court is a vague and bald application. It was alleged that "during the pendency of the suit" the landlord had given on tenancy to (1) Khan jewellers; (2) Tarak certain premises. No date of alleged creation of any of the two tenancies is given in the application so as to determine the date of subsequent event. There is no such averment made as to the accommodation which is alleged to have been let out to the two tenants during the pendency of the suit as would enable determination of nature and extent of the accommodation and whether such accommodation would have been sufficient to satisfy the requirement of the landlord in the submission of the tenant. The subsequent event is stated to have taken place during the pendency of the 'suit' and no reason is assigned why the attention of the Trial Court seized of the suit was not invited to the subsequent event and the application was being moved belatedly for the first time in first appeal. What is more, from a perusal of the judgment of the Appellate Court we do not find the application having been pressed by the tenant-appellant thereat before the Appellate Court. The impugned judgment of the High Court also does not show any grievance having been raised by the tenant-petitioner thereat complaining that the E F G H

- A application moved before the Appellate Court did not receive the consideration of the Appellate Court and prejudice having resulted therefrom to the tenant-petitioner in the High Court.

- B The civil revision remained pending in the High Court from the year 1993 to 22nd July, 1998. Special leave petition before this Court was filed on 8.9.1998 accompanied by an application seeking to invite the attention of this Court to additional facts by way of subsequent events. The relevant part of the application is extracted and reproduced hereunder :

- C “That during the pendency of the proceedings, the respondents-landlords have inducted many new tenants in the rooms adjacent to the suit premises. Some tenants were inducted during the pendency of the first appeal for which an application was filed by the Petitioner. However, the Appellate Court failed to take note of the additional facts while disposing of the appeal. Even subsequent to disposal of the appeal by the Appellate Court, new tenants have been inducted by the landlord/respondents. A sketch map of the suit premises alongwith the names of the tenants inducted and the period of tenancy is filed herewith and marked as ANNEXURE P-2.”
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The map annexed with the application sets out the tenants having been inducted during the pendency of the proceedings as under:

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DETAILS OF OTHER TENANTS

	Portion No.	Name of Tenants	Period
F	1.	Khan Jewellers	1990-1993
		B Sarkar Jewellers	1993-1997
		Tilupada Das	Present
	2.	M/s. Tarak	1988-93
		Choudhury Library	1993 - till now
G	3 and 4	Khan Jewellers	Before 1990
		Dr Bandhana Acharjee	1990-96.
	3	Kartick Chandra Paul	1996 - till now
H	4	M/s. Symphony	1996 - till now

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also be adverted to. It appears that the premises in occupation of the tenant-appellant are situated on main road having the opening of the shop in the front and on the main road. Behind the shop there is a staircase and behind the staircase shops No. 3 and 4 are situated. The map does not indicate the direction in which the shops No. 3 and 4 have opening, i.e., as to whether towards the road, towards or below the staircase or in the lanes situated on the sides. The premises demarcated as No. 1 and 2 are certainly situated in the back portion of the building and presumably have some opening in the small lane situated on the side of the premises No. 1 and 2. B

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To the extent of the tenants having been inducted during the pendency of the first appeal it is clear that the attention of the First Appellate Court or of the High Court was not invited to such subsequent events. While dealing with the application filed before the First Appellate Court we have already indicated that the alleged subsequent events sought to be brought to the notice of the First Appellate Court had taken place "during the pendency of the suit" and not during the pendency of the first appeal. The application D
filed in this Court though goes on to say that even subsequent to disposal of the appeal by the Appellate Court new tenants have been inducted by the landlord-respondent but the years of subsequent events as discernible from the map Annexed with the application show such events having taken place either in the year 1993 or in the year 1996 or 1997, that is, certainly when the revision was pending in the High Court and the special leave petition was not filed. Here again, the question arises why the attention of the High Court was not invited to such subsequent events by promptly moving an appropriate application. The application filed in this Court, does not on its face, furnish any explanation for not bringing events to the notice of the courts as and when they occurred. Yet another infirmity with the application is that here F
too the application does not make an averment that the premises falling vacant and having been re-let were so suitable as to satisfy the requirements of the landlord so as to be relevant and material subsequent events. E

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Both the applications, i.e., the application filed in the First Appellate Court and the application filed in this fail to satisfy the twin tests: (i) of bringing of the subsequent events having a material bearing on the relief sought for from the Court and (ii) having been promptly brought to the notice of the Court. The application filed in this Court by the appellants is a belated attempt to dislodge the findings of facts concurrently arrived at by the two courts below the High Court, as also by the High Court. While exercising H

A jurisdiction under Article 136 of the Constitution, it will not be just to entertain such a belated and half hearted effort to introduce subsequent events by the tenant appellant.

B For the foregoing reasons, we do not find a case having been made out for interfering with the decision of the High Court or of any of the courts below. The appeal is dismissed as devoid of any merit. However, in view of the period for which the tenant has already been in possession of the suit premises, the tenant appellant is allowed six months time to vacate the suit premises subject to his filing usual undertaking within a period of six weeks from today.

C R.P.

Appeal dismissed.