

## GUJARAT HIGH COURT

Kasturbhai Ramchand Panchal

Vs.

Firm of Mohanlal Nathubhai

Civil Revn. Applns. Nos. 710 and 602 of 1963

(J.B. Mehta, J.)

16.08.1967

### ORDER

#### **J.B. Mehta, J.**

1. These two cross revision applications are filed respectively by the original plaintiff and by the original defendants 1 and 3 against the decree passed by the City Civil Court, giving partial possession of the suit premises to the plaintiff, and to that extent modifying the trial Court's decree which was for possession of the entire suit premises. The short facts which have given rise to these revision applications are as under : The plaintiff is a partnership firm registered under the Indian Partnership Act. The plaintiff is the manufacturer and dealer in steel furniture and steel goods. The plaintiff has a factory in the interior of Ghanchi's Wadi near Pankor Naka where the steel goods and furniture are manufactured. As the plaintiff was in need of premises on the main road of Pankor Naka to open a show room and a sales office for its steel goods and furniture, the plaintiff firm purchased the suit house in an auction sale held on 26th October 1956. The final sale certificate was issued on 25th April 1957 and thus the plaintiff purchased the suit premises from the Custodian of Evacuee Properties for a consideration of Rs. 35,250/-. The plaintiff's partner Chimanlal is now residing on the first floor and the second floor of the suit premises. On the ground floor of the suit house, the present suit premises, namely, the shop is situated, of which the defendant No. 1 Firm of Mohanlal Nathubhai and the two defendants, Nos. 2 and 3, who form the said coparcenary, are the tenants. The defendants are doing the business of Kharadi, preparing wooden articles like cradles, wooden boxes, bed-stands, etc. As the plaintiff needed the suit shop for the show room and the sales office, the tenancy of the defendants was terminated by a notice Exhibit 81 dated 1st July 1957, and the defendants were asked to hand over vacant possession of the suit shop. As the defendants did not comply with the said request, the plaintiff filed the present suit to recover possession of the entire suit shop on the ground of *bona fide* and reasonable personal requirement for the aforesaid purpose. The defendants contended that the plaintiff did not require the suit premises *bona fide* and reasonably for their

own occupation and that greater hardship would be caused to them if a decree for possession was passed. The trial Court, namely, the Small Cause Court at Ahmedabad, held that the plaintiff required the suit premises reasonably and *bona fide* for its personal use and occupation and that greater hardship would be caused to the plaintiff if no decree for possession of the entire premises was passed. The trial Court accordingly decreed the plaintiff's suit on 5th May 1961. Defendants 1 and 3, namely, the joint family firm of Mohanlal Nathubhai and Ranchhodlal Mohanlal, filed an appeal in the Court of the District Judge at Ahmedabad. The appeal stood transferred to the City Civil Court at Ahmedabad. When it came up for hearing, the learned Judge passed the order, Exhibit 17, permitting additional evidence, as the same was required on the question as to whether, no hardship would be caused to either party if a decree in respect of only a part of the suit premises was passed. Both the parties led additional evidence and, after considering the entire evidence, the learned City Civil Court Judge held that the plaintiff required the suit premises reasonably and *bona fide* for personal occupation. On the question of hardship, the learned Judge held that no hardship would be caused to either party if possession of only a part of the suit premises admeasuring 9' x 20' was given to the plaintiff and the staircase in the corridor 6' x 20' was removed and placed in the three feet additional space allotted to the plaintiff on the west of the portion decreed to the plaintiff. In view of the said finding, the appellate Court modified the trial Court's decree. It is this decree which is challenged in both these cross revision applications.

2. Mr. Vakil for the tenants, defendants 1 and 3, raised the following points at the hearing :

- (1) that the finding of the lower Court as to the personal requirement of the landlord is contrary to law as it is based on a plain misconstruction of Section 13(1) (g) of the Bombay. Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act) ;
- (2) that the finding as to no hardship is based on additional evidence which ought not to have been admitted, and the said finding is contrary to law and is without jurisdiction ;
- (3) that the decision on the basis of these findings being contrary to law, this Court has no other power except to quash that decision and remand the matter to the lower appellate Court; and
- (4) that, in any event, no decree for possession of the suit shop ought to be passed in favor of the landlord.

Mr. Shah, on the other hand, in his revision application urged that the additional evidence ought not to have been allowed and that the finding as to no hardship being perverse was contrary to law and, therefore, this Court must pass a decree for possession of the entire suit shop.

3. In order to appreciate the first contention of Mr. Vakil, we must consider the provision contained in section 13(1) (g) of the Act which runs as under :

"13. (1) Notwithstanding anything contained in this Act but subject to the provisions of

section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

.....

(g) that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust."

This ground contained in Section 13(1) (g), therefore, enables the landlord to recover possession if the premises in question are reasonably and *bona fide* required by the landlord for occupation by himself. Mr. Vakil urged that the lower appellate Court has in terms interpreted the expression "require" in Section 13(1)(g) as "demanded or claimed." The learned Judge in terms states as under :

"In view of these special safeguards provided in Section 13 of the Bombay Act the word 'require' must be equated with 'demanded or claimed' and as an antithesis of 'pressingly needed'. The element of 'must have' to which a reference has been made in the matter of *Naresh v. Kanai Lal*<sup>1</sup>, cannot be introduced in the interpretation of word 'require' in the Bombay Act. I am therefore of the opinion that the expression 'require' as used in the Bombay Act must be equated with the expression 'claimed or demanded'....."

Mr. Vakil is right in his contention that the expression "require" could not be equated with a mere demand or claim. The expression "require" has, in the context, the element of a genuine present need. For the application of section 13(1) (g), the present need which the landlord must show must both be genuine or honest and reasonable in the circumstances. The whole emphasis of the requirement is on the element of the need which has to be established, which is always something more than a mere desire or a claim or a demand, but which is surely less than a compelling or absolute necessity. In AIR 1952 Calcutta 852, the expression "require" in a similar context under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, had been interpreted by Chunder J. in the following words :

"The word 'require' is something more than the word 'desire'. Although the element of need is present in both the cases, the real distinction between 'desire' and 'require' lies, in the insistence of that need. There is an element of 'must have' in the case of 'require' which is not present in the case of mere 'desire'. What has got to be seen is that there must be a sort of 'must have' element in the need of the landlord and also that his want or need of the house must be honestly felt by him. Where both the elements are satisfied, the Court would be justified in granting a decree for ejection."

The distinction which has been brought out in the Calcutta case between 'desire' and 'require' is quite correct. Even though the learned Judge has used the expression "must have", it is only in the context of the element of need, as distinguished from a mere desire. Even though the learned

appellate Judge was, therefore, wrong in stating the law on the point by saying that the word "require" could be equated with a mere desire or claim, the learned Judge was completely right in so far as he negated the argument of the tenants that there must be a compelling necessity shown. That is why the learned Judge has stated that he would equate the term "require" with demand or claim as an antithesis of "pressingly needed." The whole contention before the learned Judge was based on the ground that unless a pressing need is shown, the test of requirement would not be satisfied. As I have already held, there is no question of any absolute or compelling necessity. The question is only of a requirement and some element of need must be shown which must both be honest and reasonable in the circumstances of the case. The learned

<sup>1</sup> AIR 1952 Cal 852

Judge has, therefore, on the whole, applied the correct test in so far as he has held that no absolute necessity ought to be shown. The facts of the case, as found by both the Courts, show that the plaintiff has a factory for the manufacture of steel goods and furniture inside the premises known as Chamchi's Wadi and just at a short distance on the main road leading from Ponkor Naka the suit shop is situated. The honesty of the plaintiff's purpose could never be doubted, because, the goods manufactured in the factory have to be sold. In fact, in the years 1951 to 1955, the plaintiff had a shop in the premises known as Lalbhai's Manda and that shop had been vacated. The plaintiff's case in the evidence of partner Chimanlal is that, that shop had to be vacated as it was a small shop where no show room could be made and so the shop was not suitable for the requirement. Even the defendants have to admit in their evidence that the plaintiff's old shop was not in the area which was suitable for their market and that is why the same had to be vacated. Immediately after the said shop is vacated, the plaintiff firm has invested an amount of Rs. 35,000/- to get this much-needed alternative accommodation by purchasing the suit premises where the partner can stay on the first and the second floors and the firm can have a show room and a shop in the ground floor shop. Thus, the plaintiff's requirement of the suit premises was an honest requirement and, at the same time, it was a reasonable requirement. The finding, therefore, of both the lower Courts on this question of fact must be upheld. Mr. Vakil had, no doubt, argued in this connection that when the requirement is of a part, there could be no reasonable requirement of the whole. Mr. Vakil in this connection relied upon the decision of Pratt J. in *Vithaldas Bhagwandas v. Nagubai M. Joshi*<sup>2</sup>, where the learned Judge had decided the question of *bona fide* and reasonable requirement in the context of Section 9 of the Bombay Rent (War Restrictions) Act, 1918. In that case, it was held that a *bona fide* requirement of a small fraction of premises leased did not amount to a reasonable requirement of the whole of the premises within the meaning of section 9 of the said Act. The said decision is a decision on its special facts. The tenant sought to be evicted in that case was a lady doctor who was in occupation of the ground floor as residence and the first floor as a hospital, and she had also one motor garage in an outhouse appertaining to the said building. The landlord who lived on the New Chauney Road and had two motor cars and two carriages without horses, in terms stated that he did not require any part of the premises in the possession of the tenant, except the motor garage for the accommodation of one of his cars. At the relevant time, the landlord's cars were

accommodated, and in a hired garage close to his residence and the other in a vacant shop in his sister's house. On these facts, the learned Judge held that, to evict the lady doctor from the suit premises merely for giving a garage to the landlord could not be considered as a reasonable requirement of the landlord of the suit premises. That decision could have no application to the facts of the present case. Mr. Vakil next relied upon the decision of a Full Bench of the Madhya Pradesh High Court in *Damodar Sharma v. Nandram Deviram*<sup>3</sup>, where the Full Bench held that a tenant was liable to be ejected from the shop in his occupation on the ground that his landlord required it for continuing or starting his own business, unless it could be shown that any other non-residential accommodation in occupation of the landlord was suitable for the purpose of continuing or starting the landlord's own business. Their Lordships, no doubt, added that ejection of a tenant could not be had for future expansion of the business of the landlord. But, on the other hand, if the landlord's business had, in fact, grown and there was a felt need, to be determined objectively for additional accommodation for the

<sup>2</sup>23 Bom LR 856 : ( AIR 1921 Bom 54)

<sup>3</sup> AIR 1960 Mad Pra 345

purpose of continuing the expanded business, the tenant was liable to be ejected. I could not appreciate how this decision could help Mr. Vakil. In the present case admittedly, the plaintiff is not in possession of any other shop of its own or in any rented premises. The plaintiff needs the suit shop for the purpose of continuing the present business. At present, the plaintiff sells the goods by canvassing orders or on the factory premises themselves. The shop which he had, has been vacated and now the plaintiff's need for the suit shop is both reasonable and genuine and is a present need, and so the finding of both the Courts on this question that the plaintiff requires the suit premises *bona fide* and reasonably for personal occupation cannot be questioned. In *Kolley v. Goodwin*<sup>4</sup>, the Court of Appeal consisting of Cohen and Evershed, L. JJ. and Lynskey J. also held that although the landlord required a part of the premises for accommodation, the lower Court was justified in finding on the evidence that the suit premises were reasonably required by the landlord for occupation as a residence for himself. In fact, the tenancy is indivisible and unless it is terminated as a whole, it would not be open to the landlord to get a part of the premises. Even though, therefore, it may be open to the Court to decree the suit partially, in so far as the question of requirement of the landlord is considered, even when a part of the premises is required honestly and reasonably, the test of the section can be said to have been satisfied. The factors which the Court considers in judging the *bona fides* or reasonableness of the requirement may have also to be considered again in the context of greater hardship. The same factors may be asked to perform their services twice over in two different contexts. If the requirement of the landlord is not reasonable for the whole of the premises and a partial decree could be passed without causing any hardship to either side, the question would be resolved on the second ground contemplated in section 13(2), Mr. Vakil in this connection relied upon the decision of my learned brother Bhagwati J. in Civil Revn. Appln. No. 797 of 1963. D/-11-3-1967 (Guj). At p. 7 of his judgment, my learned brother also holds that the word "require" imports a certain element of necessity and a mere desire on the part of the

landlord is not enough. The landlord must require the premises, that is, the need of the premises must be *bona fide* and reasonable. My learned brother therefore considered the question in the context of rented premises where the tenure of the landlord of the rented premises was insecure. In such a case, my learned brother held that his claim for possession of his own premises could, in a proper case, be regarded as amounting to *bona fide* and reasonable requirement, but, in the case where his possession of rented premises was protected under the Rent Act a mere desire on his part to occupy his own premises in preference to the rented premises could not amount to *bona fide* and reasonable requirement so as to entitle him to evict his tenant. This decision is, therefore, in the context of what was considered as unreasonable in the context. It does not help Mr. Vakil in his contention that where the landlord requires a substantial part, and proves his genuine present need, the test required in Section 13(1) (g) is not satisfied. In fact as I will presently show, the landlord's present need is genuine and reasonable for the entire suit premises. In these circumstances, the finding on the first question as to *bona fide* and reasonable requirement of the suit premises in favor of the landlord must be accepted.

4. Turning now to the next important question about greater hardship or no hardship, the contention of Mr. Vakil is based on Section 13 (2) of the Act which reads as under :

<sup>4</sup>(1947) 1 All England Reporter 810

"No decree for eviction shall be passed on the ground specified in Clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it."

The second part is as follows : "Whereas the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only."

It should be noted that this Section 13(2) relates to the ground of eviction specified in Section 13(1)(g). Once the landlord satisfies the requirement of section 13(1)(g) by proving his genuine present need of the suit premises reasonably and *bona fide*, it is obvious that there would always be some hardship to him if the premises needed by him are not given to him. That is why it is now well settled that once the landlord satisfies the requirements of Section 13(1)(g), the burden as to greater hardship is on the tenant. My learned brother Divan J., in his decision in Civil Revn. Appln. No. 237 of 1962 D/-7-12-1962 (Guj), has elaborately considered this question. He also considered the position in the light of the corresponding provisions of the English Act, namely, Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Schedule I, clause (h), which is identical with the first part of our section 13(2), and he held that, so far as the issue of greater hardship is concerned, it is obvious, looking to the language of Section 13(2) of the Act, that the onus of proving that issue of greater hardship always lies on the tenant. So far as the question of establishing the availability of the alternative accommodation is concerned, he held that it must be borne in mind that the question of alternative accommodation is but one of the circumstances, the totality of which has to be considered while deciding the issue of greater hardship. If the

burden under section 13(2) lies on the tenant, it necessarily follows that the burden of establishing different circumstances, on the strength of which the Court is to be satisfied or can be said to be satisfied about the issue of greater hardship, must also lie on the tenant, and therefore, it is not correct to say that under Section 13(2), part of the burden, namely, that of establishing alternative accommodation, lies on the landlord and that the other burden of proof regarding the issue of greater hardship lies on the tenant. My learned brother summarized the entire position as regards proof of greater hardship by holding that the entire burden of proving greater hardship lies on the tenant and it is for the tenant to establish various circumstances, including the circumstance of availability of alternative accommodation, in order to succeed on the issue of greater hardship. If no evidence is led by either side, then, the tenant would fail and the decree for possession would be passed in favor of the landlord. The Legislature, has contemplated in Section 13(2) a delicate process of weighing the relative hardships, and it in terms directs the Court to consider the most important question as to whether other reasonable accommodation is available for the landlord or the tenant amongst other factors. As Scott L. J. figuratively put it in *Chandler v. Strevett*<sup>5</sup>, in a decision of the Court of Appeal under the corresponding English section, each case must always depend on its own facts, but there are two aspects which call for consideration. The first is that it is to the balance of hardship that the Judge is directed to turn his mind, and that means that he has to add up the items of hardship proved in evidence on each side of the statutory profit and loss account or balance sheet (for either

<sup>5</sup>(1947) 1 All England Reporter 164

metaphor will serve) and then see on which party the greater hardship falls. The second is that the Judge is called on to operate the process by putting a hardship value on the various items on each side. In the case before the Court of Appeal, the landlord had a flat in which they could live whereas the tenant with his large family of children had nowhere to go and so, the Court of Appeal held that only one possible answer on the issue of greater hardship could be given, and that was one in favor of the tenant and on that finding, even the Court of Appeal reversed the finding of the County Court Judge, Bucknill L. J. at page 166 also observed that one would have to consider the nature and place of business, the size of the family, the actual residence or lack of one at the time of asking for the order. Questions of health and cost of living and innumerable other possible factors might have to be taken into account. The Judge has to consider the problem of other accommodation, but he has to consider all the circumstances of the case and then, if he is satisfied that the order for possession would cause greater hardship to the tenant than the landlord, he must not make it. The burden of proving greater hardship would be on the tenant. Somervell L. J. also observed at page 168 that in having regard to all the circumstances of the case, the Court was expressly enjoined, in deciding on the issue of greater hardship, to have regard to the question whether other accommodation was available for the tenant or the landlord. These words and the general principles of the Act make it clear that alternative accommodation, though not a condition, was the most important of the circumstances to which regard must be had. In the same volume, in the aforesaid decision in (1947) 1 All England Reporter 810, the Court of Appeal held that, on the question of hardship, the County Court Judge was entitled to have regard to the financial means of the tenant by reason of which he was in a position to obtain

accommodation, not merely by renting a house but by buying one and also the fact that the tenant had taken no real steps to provide himself with alternative accommodation. These decisions show that, one of the most important factors is, what other reasonable accommodation is available for the landlord or the tenant. The court would have to put in the scale other circumstances which would tilt the balance of hardship on either side, including the financial position, both of the landlord and the tenant, the financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and the extent of the business or their requirement of residential accommodation as the case may be, the hardship that would be caused not only to the landlord and the tenant personally but even to their family members, dependants or persons residing with them as one unit, so that the hardship of those persons would really amount to the hardship of the landlord or the tenant. The whole process of weighing the hardship is a delicate process where various factors have to be thrown into the scales and the Court has to examine how each factor tilts the balance on either side and thereafter it has to find out the final balance of hardship. Once this question is determined, keeping in mind that the burden of proving greater hardship is on the tenant, the Court would have to find out the resultant hardship on this statutory balance-sheet. Thereafter, the second part of section 13(2) comes into play which is enacted in our Act. Even though the words "no hardship" are used in the context of a partial decree, they must mean no resultant hardship, because the partial decree would deprive the tenant of some part of his premises and would require the landlord also to be satisfied with only a part. What the Legislature intends is a just balance being struck between the landlord and the tenant, so that when this factor is put in the scale, the Court would be satisfied that the scale will not be tilted on either side. It is only when such a just solution could be found, which causes no resultant hardship either to the tenant or to the landlord, that the Court could pass a partial decree. But, if even this partial decree still tilts the balance and swings it on the side of the landlord, then, the Court would have no jurisdiction to refuse to pass the decree for the entire suit premises. Thus three contingencies might arise. If the balance swings on the side of the landlord, so that there is greater hardship left to the landlord as a result of this statutory balance-sheet of hardship, the landlord must get the entire decree. If, however, the resultant balance of hardship in this balance-sheet is nil in the sense that there is a just balance and the scale swings on neither side, then, the case is one of a partial decree. It is only when the greater hardship is on the side of the tenant and the balance or the scale tilts in his favour that the decree would be refused. My learned brother Divan J. had considered this question in *Panchal Shankerlal v. Ranchhodlal*<sup>6</sup>, and he held that the decree for partial eviction could be passed under the second paragraph of Section 13 of the Act. Since this paragraph engrafts an exception to the general rule of law, it must be strictly construed and before a Court can pass a decree for partial eviction, the conditions laid down in that paragraph must be satisfied. Before any decree for partial eviction can be passed, the Court must satisfy itself that by passing such a decree, no hardship is going to be caused either to the landlord or to the tenant. Unless that satisfaction is reached by the Court, the decree for partial possession cannot be passed. At page 1042, correcting the approach of the learned trial Judge, who had held that there would not be any question of hardship as he was not ordering the defendant to vacate the entire suit premises but only a portion of the shop admeasuring 10'-8" x

9'-5" in breadth, my learned brother held that this was entirely an erroneous approach as it was obligatory upon the learned Judge to consider, in view of the issue that he had framed, whether greater hardship was going to be caused by passing the decree for eviction than by refusing to pass it and unless he came to a specific conclusion on that issue, he could not have passed any decree for eviction. My learned brother thereafter observed on the same page that it was obligatory on the Court before confirming the decree for partial eviction to satisfy itself that no hardship was going to be caused either to the landlord or to the tenant by confirming the decree for partial eviction. My learned brother also observed that the tenant, at the stage of giving evidence, could not have anticipated that the learned trial Judge was going to pass a decree for partial eviction and, therefore, it was impossible for him to prove that he could not carry on his business in the portion which the learned Judge had allowed to remain with him. In these circumstances, my learned brother had remanded the matter as there was no material in the case before him which would go to show that the tenant had led evidence on the issue of no hardship when a partial decree was being contemplated. This decision clearly applies to the facts of the present case. The learned Judge of the city Civil Court, in the present case, in terms held that in para 6 of his judgment that, in view of his finding on the issue regarding feasibility of a partial decree the question of greater hardship became insignificant and so, in his view, it was not necessary to express any final opinion on that aspect of the matter. This is the erroneous approach which was sought to be corrected by my learned brother Divan J. In such cases the lower Court must first arrive at the finding on the issue as to whom, the landlord or the tenant greater hardship would be caused. It is only when the Court arrives at a finding on that specific issue against the tenant or against the landlord that there would be some resultant hardship on either side, which would require the Court either to pass the decree or to refuse it. It is only thereafter that the Court must consider the further question whether the partial decree would strike a just balance without causing any resultant hardship to either side. The second question can be taken up by the Court only after reaching a conclusion

<sup>6</sup>(1966) 7 Guj LR 1039

on the first question. In the present case, the appellate Court has ignored the first question and attempted to answer the second question and so, it has resulted in dissatisfaction both to the landlord and the tenant and both of them are arguing before me that the additional evidence ought to have been discarded completely. The additional evidence was allowed by the learned appellate Judge to give an opportunity to both the sides, as their attention was not focused on this relevant aspect, which every Court must bear in mind if a partial decree could afford a just solution, which would strike a just balance, leaving no resultant hardship on the statutory balance-sheet. As the Court attempted to answer this second question first, it has left entirely out of consideration the most important question of availability of alternative accommodation to the tenants and has passed this decree. In fact, Mr. Shah, the learned advocate for the landlord, is light in his contention that the evidence of the plaintiff which was led before the appellate Court has been misread by the learned appellate Judge. The partner of the plaintiff, in his deposition before the trial Court, had in terms stated that they were not able to carry on their business properly because of want of a shop and a show room. If they did not get possession of the suit

shop, their business could not prosper. He further stated that he wanted the suit shop for showing and selling steel furniture. He had also added that they wanted to keep their sample furniture therein. In the additional evidence at Exhibit 20, he has stated that for display of articles he would require a show room and his minimum requirement would be of premises at least about 25 feet in depth and 15 feet in width from the front side, and if he was allowed that much space, his requirement would be satisfied for the present, though with some difficulty. The learned appellate Judge in paragraph 5 has observed that the plaintiff has categorically stated that so far as he is concerned, his requirement, would be satisfied if a part of the premises of the dimensions mentioned by him was made available to him. Therefore, there was no doubt that no difficulty would be caused to the plaintiff. This is clearly a misreading of the plaintiffs evidence. The plaintiff's requirement for a show room might be met if the space of the entire frontage twenty-five feet in depth, was given to him for the display of his articles. The plaintiff, however, had the present need even of the rear portion for keeping his sample furniture's, as the entire suit shop was required not only for the show room purpose but also for being used as a shop, where furniture could be kept for sale after it was prepared in the factory. The learned appellate Judge had also fallen into another important error, in that he completely neglected the consideration of the hardship that would be caused to the plaintiff, by the corridor carved out by the learned appellate Judge for use by the defendants both for a passage and for displaying their articles, as the plaintiff's partner was residing upstairs. The plan, Exhibit 23, produced by the defendants, shows that the suit shop has a frontage of fifteen feet abutting on the main Pankor Naka road and it has a depth from east to west of about 43 feet. Now, in the said frontage of fifteen feet, there is a collapsible gate to close the stair-case and the W. C. portion for the use of the plaintiffs partner, who resides upstairs on the first and the second floors. This portion has never been let to the defendants. The partial decree which the learned Judge has ordered is by asking the plaintiff to change the position of this stair-case by taking it in the rear portion in the three feet space given to the plaintiff beyond the twenty feet depth. The plaintiff is given the portion 9' x 20', the frontage being 9 feet and the depth being 20 feet, and the staircase has to be removed and placed in the three feet additional space allotted to the plaintiff, so as to leave to the defendants a clear space in the rear portion of about 20 feet x 15 feet. The learned Judge has passed this partial decree with a view that the defendants get the front corridor so carved put of 6' x 20' where at present the plaintiff has the staircase and the W. C. The learned appellate Judge has stated in the final part of his order that the tenants shall be able to enjoy full use of the corridor of 6' x 20' for their access to the rear portion. However, in para 5 of his judgment, the learned Judge has in terms observed that, in view of the corridor of 6' x 20', the tenant will be able to exhibit wooden articles in the front portion of the corridor and utilize the rest of it for his manufacturing activities and carrying on his selling operations. This would be creating a fresh lease of this corridor 6' x 20' which was never let to the defendants. Besides, if the defendants were to display their articles in this corridor where both the plaintiff and the defendants have a right of passage, it would result in great hardship to the family members of the plaintiff who have to use that corridor for going upstairs through the stair-case which is ordered to be removed at the back. Even Mr. Vakil argued that this type of partial decree would cause great hardship to the tenant, as he would have every

now and then to remove his articles in this corridor and at the time when the shop would have to be closed. In fact, the lower appellate Judge has not considered all these relevant aspects while coming to the conclusion that no hardship would be caused, and he has attempted to answer the second question without going into the first question itself. The whole approach of the learned appellate Judge is, therefore, completely erroneous and the decision on this question being perverse must be interfered with on the second finding as it is contrary to law.

5. Mr. Vakil, therefore, argued that, once this Court holds that a finding of fact is contrary to law and that it has vitiated the decision, this Court must only quash the impugned decision and must remand the matter to the lower appellate Court, which is the Court of facts. Mr. Vakil urged that this is a question of jurisdiction itself and the High Court would have no jurisdiction to pass any other order, except the one of remanding the matter to the lower appellate Court by arriving at a fresh finding on the questions of greater hardship and no hardship as required under Section 13(2) of the Act. I cannot accept this argument of Mr. Vakil. Mr. Vakil in this connection relied upon a decision of the Bombay High Court in *Nagayya Gurupadayya v. Chayappa Santanappa*<sup>7</sup>. by the Division Bench consisting of Dixit and Vyas JJ. In that case, the question had arisen in the context of Section 76 of the Tenancy Act which conferred powers on the Revenue Tribunal to entertain a revision application on the following grounds only (a) that the order of the Collector was contrary to law, (b) that the Collector failed to determine some material issue of law, or (c) that there was a substantial defect in following the procedure provided by that Act which has resulted in miscarriage of justice. At page 147 (of Bom LR) : (at p. 562 of AIR), the Division Bench only observed that, as there was an error apparent on the face of the Tribunal's order and as the said error had resulted in the denial of an opportunity to the tenant to show that the landlord did not want the possession of those lands for *bona fide* personal cultivation, it was clear that their Lordships must interfere, but the question was whether they should remand the matter to the Tribunal or to the Assistant Collector. In that context, the Division Bench held at page 148 (of Bom LR) : (at pp. 562-563 of AIR) that, in the light of the various decisions, the direction must be that the matter must be sent back to the Tribunal with a direction that if there was any point of law left in deciding the matter, the Revenue Tribunal should decide that point of law, and so far as the question of fact, namely, whether the landlord wanted to recover possession for his *bona fide* personal cultivation, was concerned, the Tribunal would send back the case to the Assistant Collector for recording a finding on that issue and for disposal according to law. That decision could not help Mr. Vakil for the simple reason that, in that case, the tenant was not given any opportunity to lead evidence by showing

<sup>7</sup>58 Bom LR 144 : ( AIR 1956 Bom 560)

that the landlord did not want the possession of the fields for *bona fide* personal cultivation and so the Court had to consider the narrow question as to which authority they should make the remand, whether to the fact-finding body or to the body dealing with the questions of law alone. That decision would not help Mr. Vakil in his contention that this Court would have no jurisdiction to pass a just order even when all the evidence has been led and there would be no purpose in remanding the matter, except in prolonging the hardship which is being felt by the landlord. Section 29(2) of the Act, which gives revisional jurisdiction to this Court, provides as

under :

"No further appeal shall lie against any decision in appeal under sub-section (1), but the High Court may for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit"

The revisional jurisdiction with which this Court is invested under this section 29(2) is not, therefore, merely in the nature of jurisdictional control. It extends to corrections of all errors in the overall decision which would make the decision contrary to law. The Legislature further empowers this Court in its revisional jurisdiction to pass such order with respect thereto as it thinks fit. The Legislature having invested this Court with powers of the widest amplitude to pass such orders as the Court thinks fit in order to do complete justice, it is obvious that this wide power should not be narrowly construed. In so far as Section 13(2) is concerned, it deals with the human problem of considering the relative hardships of the landlord and the tenant and to arrive at a just solution. In such cases, the highest Court of the State is given revisional powers, which are wider in scope than section 115 of the Civil Procedure Code, so that it could do substantial justice by correcting even the errors where the decision as a whole is contrary to law. In such cases, if a limitation is sought to be implied that the power of this Court would only extend to the quashing of the impugned order and no further, it would clearly defeat the purpose of this wide revisional jurisdiction. In fact, the Legislature directs this Court to pass a just order, considering all the circumstances of the case, when all evidence is on the record it would be denying justice to the party who is feeling a genuine need of the suit premises to remand the matter to the lower appellate Court only to invite its decision on this issue of hardships. Mr. Vakil sought to argue this point on the analogy of the jurisdiction of this Court in writ petitions under Article 226 where it is well settled that the Court issuing a writ of certiorari only quashes the impugned order and does not pass any further order. Mr. Vakil also tried to argue that section 103 of the Civil Procedure Code in terms provides that in second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error, or defect as is referred to in sub-section (1) of Section 100. Even in the absence of a similar provision like section 103 of the Civil Procedure Code, a similar power is conferred on this Court when the Legislature invests it with the power to pass such order as it deems fit as would be just in the circumstances of the case. The jurisdiction of this Court is to correct all errors of law going to the root of the decision, which would, in such cases, include even perverse findings of facts perverse in the sense that no reasonable person acting judicially and properly instructed in the relevant law would arrive at such a finding on the evidence on the record of the case. It would, therefore, be necessarily implied that a Court correcting such a perverse finding of fact must in the proper cases itself go into the question and arrive at such a finding itself, if all the evidence is on the record, in order that no further hardship would be caused to the party in whose favour the scale of hardship has

already tilted. To refuse to exercise such a power would really result in failure of justice itself by prolonging the hardship of the party concerned. Mr. Vakil had also in this context argued that the additional evidence ought not to have been admitted. No such objection had been raised before the lower appellate Court and, in fact, after taking a chance of getting a decision in their favour, it would not be open to the defendants to raise any such point in this revision. In fact, the lower appellate Court had itself required this additional evidence on the ground that the parties' attention had not been focused on this relevant issue which had not been framed by the trial Court. As the lower appellate Court thought of passing a partial decree, it gave an opportunity to both the sides to lead additional evidence on this question. That was exactly the approach which my learned brother approved in the aforesaid decision in (1966) 7 Guj LR 1039. I cannot, therefore, agree with Mr. Vakil that the matter ought to be remanded to the lower appellate Court to give the defendants an opportunity to fill up the lacunae in their evidence. (After considering the evidence in paras 6 and 7 the judgment proceeded).

8. If we have now to prepare the statutory balance-sheet, we would have to consider the following items and weigh their effect as to how they tilt the scale in favour of the landlord or the tenants. The first circumstance is that the landlord has proved the genuine present need of the entire suit premises for his show room and shop purposes. The landlord's factory is situated in close vicinity and one of the partners actually stays on the first and the second floors of the suit shop itself. The other merchants trading in steel furniture have their shops in the locality and five or six of them have been mentioned by the plaintiff in his evidence. It may be that they may not have a show room because a show room requires a fairly large frontage. Thus, the plaintiff has, on the one hand, established a genuine present need and a reasonable and *bona fide* requirement of the entire suit premises, and he would suffer hardship without these premises as he has no other premises where he could have his own shop. On the other hand, the defendants have a shop at Ghanchi's Wadi, another shop at Pandani Khancha and two godowns and other house properties. Thus, the landlord has no other alternative accommodation, while the tenants have an alternative accommodation for their shop purposes as well as accommodation for their manufacturing purposes where their workers can sit and where even the timber can be stored, in the shape of godowns. In fact, each brother has, on their own showing, one shop and a godown. Thus, this circumstance would definitely tilt the balance of hardship in favour of the landlord as against the tenants. The next circumstance which Mr. Vakil wants me to throw into the scale was that the landlord had a shop in Lalbhai's Wanda which he had vacated in 1955. This circumstance would really show the landlord's genuine need for a shop. The landlord had vacated the same as the shop was found to be too small for his requirements and he could not have adequate frontage for opening a show room, and in fact the defendants themselves admit that it was not in a locality suitable for the landlord's business. In fact, the landlords' efforts to secure alternative accommodation are proved by the fact that as soon as a shop was available, they purchased this suit property where they could both stay and carry on their business of a shop by investing such a large sum as Rs. 35,000. Thus, on the one hand we have a landlord who has done all within his power to get his much needed accommodation for his business; on the other hand, we have

tenants who led no evidence whatsoever as to their efforts to secure any alternative accommodation, whether of their own or in rented premises, even when they had such large funds available to them by sale of only one property for the large sum of Rs. 45,000 in the year 1960. In fact, if the defendants need any alternative accommodation, they would have made genuine efforts for which they have led no evidence. The learned appellate Judge was right in observing that even when he gave specific opportunity to the defendants to lead additional evidence, they did not avail of this opportunity by showing what is the extent of their business, what is the extent of their requirement and as to what they had done to secure other additional accommodation, if they really needed any. No evidence whatever has been led by the defendants to show what stocks they had and what area they needed for their various purposes. Therefore, this circumstance could not in any manner tilt the balance in favour of the tenants, but, really would tilt the balance on the other side, as the defendants have made no efforts whatever to secure any alternative accommodation whatsoever even when they had sufficient means to do so. The last circumstance which Mr. Vakil relied upon was that the defendants had alleged that the plaintiff had taken one shop of Harjivandas in the name of one of the partners of the firm and that the said shop in Ghanchi's Wadi, where the factory is situated, could be used by the plaintiff for his business. The learned trial Judge had visited this shop which was inside the Wadi. The plaintiff's partner Chimanlal has deposed that one of their partners who was the brother of the plaintiff had his son carrying on business of a book stall in that shop in the Dela. This shop could, therefore, not be available to the plaintiff-firm, which is a partnership firm. The learned trial Judge was, therefore, right in excluding this shop as being available to the plaintiff-firm. Thus, all the three circumstances which have been urged by Mr. Vakil, if considered, would show that the most important consideration, namely, the availability of accommodation to the landlord and the tenants, which in this case is conclusive on the question of the relative hardship, would lead to only one conclusion that the landlord has no shop whatsoever while the tenants have sufficient accommodation of two shops and two godowns which would satisfy all their needs and it is, therefore, that they have not made any efforts whatsoever to seek any alternative accommodation. Therefore, the finding as regards greater hardship issue must be in favour of the plaintiff. The next question which, therefore, arises is as to the second part of section 13(2), whether this is a case of partial decree. That issue can be answered only if I come to the conclusion that the resultant hardship, which I have already found, would be equalised by taking into consideration this additional factor so as to result in no hardship to either side. As I have already stated earlier, the lower Court's finding is based on a complete misreading of the plaintiff's evidence. The lower Court has also disregarded the question of hardship which would be caused to the plaintiff's family members and their visitors if they have to go through the corridor where the defendants have been permitted by the learned appellate Judge to display their articles. It would amount to creating a new lease of the space in the corridor which the learned appellate Judge carved out. All this has been done by the learned appellate Judge without considering the fact that the defendants led no evidence whatever to prove the extent of their business requirement by producing any books of account or their stocks register or any other documentary evidence to show why they needed any more accommodation than what is actually available to

them in the shape of the shops and two godowns at least Mr. Vakil suggested that if a passage was given of about three feet, the defendants could have access to the rear portion and such a partial decree would not cause any hardship to either side. If from the much needed frontage for the show room purposes of the plaintiff this portion was carved out for a passage of the defendants, what would remain would be the rear portion for the use of the defendants, which they could use for storage or for their manufacturing activities. On the one hand, we have a landlord who himself needs this back portion for his own show room and shop to store his articles which are big articles consisting of all steel furniture, while, on the other hand, we have tenants who have sufficient space so far as the storage of timber and manufacturing articles is concerned in the shape of the various godowns and the two shops. Thus, even on this ground, it would be all hardship on the one side, namely, the plaintiff's side, and this would not be a just solution which would strike an even balance to leave no resultant hardship to either side. Therefore, this is not a case where the second part of Section 13(2) would be attracted, because, a partial decree would even result in greater hardship to the plaintiff as against the defendants who have already sufficient available space and who do not even care to find out any more space, even though they have sufficient means for that purpose. Therefore, the finding of the trial Court that this is a case where greater hardship would be caused to the plaintiff must be confirmed, as the defendants have failed to prove that greater hardship would be caused to them if they are evicted from the suit shop. The finding of the lower appellate Court must be set aside that this is a case where no hardship would be caused if a partial decree was passed.

9. In the result, Civil Revision Application No. 710 of 1963 filed by the plaintiff must be allowed, while Civil Revision Application No. 602 of 1963 filed by defendants 1 and 3 must be rejected. I, therefore, set aside the partial decree passed by the lower appellate Court and I restore the trial Court's decree, with the only modification that the possession of the entire suit shop shall be delivered by the defendants to the plaintiff on or before 31st December 1967, which shall give them sufficient time to adjust their affairs. The rule, therefore, accordingly made absolute in Civil Revision Application No. 710 of 1963 with costs, while the rule in Civil Revision Application No. 602 of 1963 discharged with costs.

Order accordingly.