

JAI PRAKASH GUPTA (D) THR. LRS.

v.

RIYAZ AHAMAD & ANR.

(Civil Appeal No. 7207 of 2009)

OCTOBER 28, 2009

[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (Act No. 13 of 1972) – s. 21(1)(a) – Application for release of shop by landlord on the ground of bonafide need of his son – Allowed by appellate court – During pendency of writ petition by tenant, subsequent development of facts – High Court remanding the case to appellate court for fresh consideration – Justification of – Held: Not justified – Writ court could not consider the effect of the subsequent developments on the bonafide need of landlord as well as comparative hardship of parties on material facts, without proper evidence on record – Application for amendment of release application to be filed – In view of long pendency, writ petition restored – High Court to decide the matter on the basis of the evidence and the findings by appellate court on the limited issue – Subsequent events.

Subsequent events – When relevant – Held: Subsequent developments of fact or law which have a material bearing on the entitlement of the parties to relief are relevant, at any stage of the proceeding.

The original landlord-father of the appellant filed application for release of the shop on the ground that he required the shop to use it as an office space to establish the appellant; and that the tenant would not suffer hardship. The Prescribed Authority rejected the application. However, the appellate authority allowed the same. Tenant filed writ petition. During the pendency, the

A original landlord died and legal representatives were substituted. The original landlord's wife and the father of the tenant also expired. Tenant filed a supplementary affidavit that after the death of the original landlord, the appellant inherited all his residential and commercial
B property, thus, the need of the landlord became fully satisfied. The appellant filed counter affidavit that in 15 years of litigation his bonafide requirement increased; and that after the death of the father of the tenant, the tenant inherited a house. High Court set aside the
C judgment of the appellate court in view of the subsequent developments and remanded the case back for disposal to the appellate court to consider the effect of such subsequent developments on the bonafide need of the appellant and also on the question of comparative hardship of the parties. Hence the present appeal.
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Partly allowing the appeal, the Court

HELD: 1.1. A suit or an original proceeding is to be tried in all its stages on the cause of action as it existed
E on the date of its commencement. The only exception to this rule is that a Court may take notice of events, which have happened since the institution of the suit or the original proceeding and grant relief to the parties on the basis of the altered conditions, is applied in cases where
F it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. [Para 16] [536-H; 537-A]
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1.2. Subsequent developments of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court, even at any stage of the
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proceeding, is not precluded from taking a cautious cognizance of the subsequent developments of fact and law to mould the relief. Keeping these principles in mind and considering the nature of subsequent developments as brought out by the parties during the pendency of the writ petition, a solution within the scope of this exception is to be found out. Therefore, the test is whether the subsequent events of fact have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief awarded before consideration of such subsequent events. [Para 21][538-F-H; 539-A]

Rai Chand Mandal and Anr. vs. Biswa Nath Mandal and Ors. XX CLJ 107; Nuri Mian vs. Ambica Singh and Anr. 24 CLJ 140; Pratap Rai Tanwani vs. Uttam Chand 2004 (8) SCC 490; Ramesh Kumar vs. Kesho Ram 1992 Supp. (2) SCC 623; Chote Khan vs. Mohammad Obedalla Khan AIR 1953 Nagpur 361, referred to

2.1. In the instant case, the death of the father of the appellant is taken as a valid excuse by the tenant to argue that since the appellant had other options for accommodation and for starting an office as a Chartered Accountant, he could, without any hardship, forgo his claim to the shop in dispute. If it is an admitted position that the appellant acquired a house behind the shop in dispute, then he has to prove by evidence that the said house available is not suitable for starting an office space for his Chartered Accountancy firm. The findings of the appellate court are insufficient to decide the matter in the light of the subsequent developments. The occurrence of the subsequent developments has not been denied upon by the appellant, in fact, has been accepted by him. But the landlord/appellant has also, by his counter affidavit, pleaded that in view of the long pendency of the proceeding for release, his requirement has increased as

A the two sons and a daughter have grown up and, therefore, the requirement of the landlord/appellant has to be adjudged in the light of the statements made by him in the counter affidavit. [Para 22] [539-B-E]

B 2.2. It is to be seen whether there is any change in the nature of the claim of the appellant consequent upon the occupation of a house in vacant condition behind the suit building and also consequent upon the death of the father of the original landlord, who was running a business in the suit building which had fallen vacant because of the death of the father of the appellant and also the accommodation that was available to the parents of the appellant would also be taken into consideration for the purpose of coming to a finding as to whether the appellant still requires the shop in dispute or not. That apart, the tenant submitted, the occupation of house, which was used for running the printing business of his deceased father has come to the use of the landlord/appellant, and therefore, the requirement of the landlord has already been fulfilled. Moreover, in the light of the fact that the tenant now has alternative space for his business, it has to be seen whether such alternative space is suitable enough for the tenant and whether he can shift there without substantial loss. [Para 22] [539-F-H; 540-A]

F 2.3. High Court was fully justified in setting aside the order of the appellate court in view of the fact that all the facts stated need to be gone into after taking evidence on such facts. The effect of the subsequent developments on the bonafide need of the instant landlord as well as the comparative hardship of the parties on material facts could not be taken into consideration by the writ court without proper evidence on record. However, considering the age of the litigation i.e. 15 years and if the matter is sent back to the appellate

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court, the proceeding may continue for another 15 years, that the High Court was not justified in sending the case back to the Appellate Court for fresh decision in the light of the subsequent developments. [Para 22] [540-B-D]

2.4. It would have been appropriate and proper and in the interest of justice for the High Court to keep the writ petition pending before it and send back the issue on the effect of subsequent developments and supplementary affidavit and counter affidavit on bonafide requirement and comparative hardship to the appellate court and after the appellate court taking evidence, it shall send back to the High Court, the evidence that would be taken and also the findings arrived at thereon. In the event, the appellate court finds it difficult to take evidence on its own, it will be open to it to frame the issue and send the same to take evidence to the Prescribed Authority who, in turn, will take the evidence of the parties and send the same to the appellate court for the purpose of considering the issue of bonafide requirement of the landlord/appellant and comparative hardship of the parties. [Para 22] [540-E-G]

2.5. In view of the statements made in the counter affidavit filed by the appellant to the extent that he has got two grown up sons and a daughter and that being the position, the requirement of the appellant has increased and, therefore, the tenant/respondent is liable to be evicted, it would be open to the landlord/appellant to file an application for amendment of the original release application for the purpose of incorporating the fact of the requirement of two sons and a daughter by amending the same to which it would be open to the respondent/tenant to file written objection. [Para 22] [540-G-H; 541-A]

2.6. For the purpose of coming to a positive conclusion on the bonafide need of the appellant and the comparative hardship of the parties on the basis of the

- A subsequent developments, the matter is to be examined on further evidence after restoring the writ petition before the High Court with a direction in the manner indicated in view of the fact that the justice has already been delayed for a long time. The judgment of the High Court is set aside. [Paras 23 and 24] [541-C, D]

Case Law Reference:

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| | XX CLJ 107 | Referred to | Para 16 |
| C | 24 CLJ 140 | Referred to | Para 17 |
| | 2004 (8) SCC 490 | Referred to | Para 18 |
| | 1992 Supp.(2) SCC 623 | Referred to | Para 19 |
| D | AIR 1953 Nagpur 361 | Referred to | Para 20 |

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7207 of 2009.

E From the Judgment & Order dated 11.12.2007 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1112 of 2001.

Mona Rajvanshi, Anurag Kashyap, Bishwajit Kumar Shahi, B.P. Gupta for the Appellant.

F The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. In spite of repeated opportunities having been granted to the respondents to contest this appeal, the respondents had failed to appear at the time of hearing.

G 2. Leave granted.

H 3. This appeal by way of Special Leave arises from the Judgment and final order of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.1112 of 2001 dated 11th of December, 2007, whereby the High Court had set aside

the Judgment and order of the Additional District Judge, Meerut and remanded the same to it to consider the effect of subsequent developments which had occurred, on the question of bonafide requirement of the landlord and also on the comparative hardship of the parties.

4. The brief facts, which are necessary for decision of this appeal are as follows :-

On 17th of December, 1992, the father of the present landlord, viz. Late Sri Jai Prakash Gupta had filed an application under Section 21(1)(a) of the U.P. Act No. 13 of 1972 (hereinafter referred to as "the Act") before the Prescribed Authority at Meerut for the release of the Shop No. 51, situated at the Ground Floor in House No. 64, Banshipura, Suraj Kund Road, Meerut (hereinafter referred to as "the shop in dispute"). It was pleaded in the application for release that the landlord required the shop in dispute for his bonafide need to use the same as an office space to establish his son in the profession of Chartered Accountancy. It was alleged that the tenant was running a big business of 'Verk' job in Khairnagar in Meerut City and that he would suffer no hardship since he had kept the shop in dispute unutilized. The tenant not having vacated the shop in dispute which would be required for the bonafide requirement of the landlord, the landlord was constrained to file the application for release.

5. The tenant entered appearance and contested the application for release by filing a written objection denying the material allegations made in the application for release. It was specifically denied that the landlord required the shop in dispute for the above mentioned purpose and, therefore, the tenant sought for dismissal of the application for release filed by the landlord.

6. Parties adduced evidence and issues were framed by the Prescribed Authority in which one of the issues was whether the landlord required the shop in dispute for his bonafide

A requirement for starting an office for his Chartered Accountant son. After framing issues and after the parties had led evidence in support of their respective claims, the Prescribed Authority rejected the application for release, *inter alia*, holding that since the landlord was in occupation of a space available in the first floor, where he along with family members are residing, he could very well use the same as the office of his Chartered Accountant son and such space, being available to the landlord, shall be sufficient for their requirement. It was further held by the Prescribed Authority that there was no need to consider the case of comparative hardship of the parties when bonafide requirement of the landlord was not proved.

7. Aggrieved by the said decision of the Prescribed Authority, the landlord filed an appeal under Section 22 of the Act and on 14th of December, 2000, the Additional District Judge, 11th Court at Meerut, allowed the appeal filed by the landlord and set aside the order of the Prescribed Authority *inter alia* holding that the landlord required the shop in dispute for the use as mentioned above, as he was of the view that it was an appropriate place for the son to start his office as a Chartered Accountant. It was further held on consideration of the materials on record that the tenant would not face much hardship if the shop in dispute was released in favour of the landlord since the father of the tenant had sufficient space for 'lathe work' in an alternative place. Keeping in view the professional requirement of the son of the landlord to start his office of chartered accountancy for which the landlord needed more space, the order of the Prescribed Authority was set aside and the application for release was allowed by the Appellate Court.

8. Aggrieved by this order of the Appellate Court, the tenant filed a writ petition, which came to be registered as Civil Misc. Writ Petition No. 1112 of 2001 before the High Court of Judicature at Allahabad. During the pendency of the writ petition, the original applicant for release of the shop in dispute

i.e. the father of the present appellant died and in his place, the heirs and legal representatives of the original appellant were substituted by the High Court by an order dated 25th of August, 2005. During the pendency of the writ petition, it was brought on record that the mother of the appellant and the father of the tenant had also expired. On 23rd of May, 2007, the tenant, by a Supplementary Affidavit, alleged that after the death of the original appellant, the present appellant, Mr. Manoj Kumar Gupta, the only son of the original appellant (since deceased), has inherited all his residential and commercial property and, therefore, the alleged need of the landlord had become fully satisfied, rendering the release proceeding infructuous. The tenant, in the said Supplementary Affidavit, further alleged that the printing business conducted by the deceased father of the present landlord had ceased to exist and consequent thereupon, one big hall and two rooms came in possession of the present landlord.

9. Replying to this supplementary affidavit, the present landlord, by a counter affidavit, however, claimed that in 15 years of litigation, his bonafide need had become more pressing and genuine as he now has two sons aged about 17 and 16 years and one daughter aged about 13 years. Moreover, it was alleged in the counter affidavit that his wife was running an Education Centre on the first floor of the shop in dispute. It was further alleged in the counter affidavit filed by the present landlord that after the death of the father of the tenant, the tenant had inherited a house at Khairanagar, Meerut, in which the tenant and his family members are now residing and also carrying on the workshop of 'lathe machine'. Therefore, the present landlord alleged that the subsequent developments brought in by the tenant and the counter affidavit filed by the present landlord, were not at all material so as to nullify the need of the landlord.

10. The writ petition thereafter came up for hearing before the High Court of Allahabad on 11th of December, 2007 and

A the High Court had set aside the Judgment of the Appellate
Court dated 14th of December, 2000 in view of the subsequent
developments as noted in the supplementary affidavit filed by
the tenant and the counter affidavit filed by the appellant and
remanded the case back to the Appellate Court to consider the
B effect of such subsequent developments on the bonafide need
of the present landlord and also on the question of comparative
hardship of the parties.

C 11. Feeling aggrieved, the present landlord has preferred
this instant Special Leave Petition, which on grant of leave, was
heard in presence of the learned counsel for the parties.

D 12. Before us, the learned counsel appearing for the
present landlord contended that the subsequent developments,
as stated in the supplementary affidavit as well as in the counter
affidavit, were not at all material enough to negate the need of
the shop in dispute of the present landlord and, therefore, there
was no reason for the High Court in the exercise of its Writ
Jurisdiction to remand the matter back to the Appellate Court,
which in no way, can help the cause of justice, rather it will
E aggravate the hardship of the landlord by delaying the matter
for another 15 years. The learned counsel for the landlord also
submitted that the High Court, while setting aside the Judgment
of the Additional District Judge, Meerut and remanding the
matter to it, had failed to record any reason as to why an order
F of remand was necessary and the findings already arrived at
by the Appellate Court were perverse, apart from relying on the
sole subsequent event of the death of the parents of the
appellant and also the father of the tenant along with the fact
that the present landlord had acquired house behind the shop
G in dispute in a vacant condition.

H 13. As noted earlier, no one has entered appearance on
behalf of the tenant at the time of hearing of this appeal to
controvert the submissions made by the learned counsel for the
present landlord.

14. Having carefully examined the submission of the learned counsel for the landlord/appellant and after going through the impugned Judgment of the High Court as well as of the Appellate Court and also the supplementary affidavit and counter affidavit filed by the parties and other materials on record, we are of the view that the only question that needs to be decided is, whether the High Court was justified in remanding the case back for disposal to the Appellate Court on the sole reasoning of subsequent developments, without looking at the findings of the Appellate Court and secondly, that even assuming the order of remand was necessary in the facts and circumstances of the case and in view of the subsequent developments that had taken place in the meantime, an order of limited remand was required only to decide the question of bonafide requirement on the subsequent developments that had taken place in respect of which supplementary affidavit and counter affidavit were filed by the parties before the High Court. From the impugned Judgment, the High Court had noticed that since the parents of the present appellant were dead, more accommodation would be available to the landlord not only from the inherited property but also from the accommodation, in which the parents used to reside. It was also pointed out by the High Court in the impugned order that the present landlord had acquired a house behind the shop in dispute in a vacant condition during the pendency of the proceedings. From the counter affidavit filed by the landlord/appellant, it appears that at the present moment, two sons and a daughter had grown up and, therefore, the requirement had also increased. Accordingly, the landlord/appellant sought to contend that even if his parents had died and the accommodation that was available to his parents would now be available to the landlord/appellant, but still then in view of his growing sons and daughter, the need of the shop in dispute would still remain. Therefore, now the question remains to be seen is whether the facts, as stated hereinafter, would be relevant to decide the bonafide need of the landlord/appellant and comparative hardship under the Act after amending the pleadings in the original release

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- A application to bring on record the requirement of the two sons and one daughter. It is true that on the death of the parents of the landlord/appellant, more space for accommodation would become available to the landlord/appellant, the question would still be there to consider whether such space available now on
- B the death of the parents of the landlord/appellant would be reasonable and suitable for the purpose of starting an office for him. It was brought to the notice of the High Court that the two sons and the daughter have grown up, therefore, the requirement of the landlord/appellant, at the present moment,
- C would also increase. It is a fact which may be gone into by the Court if the landlord/appellant is permitted to amend his pleading bringing the fact namely, the requirement of his two sons and a daughter.

- D 15. In our view, there cannot be any argument that the facts brought in by way of subsequent developments are relevant and it certainly needs to be gone into on evidence. But since the litigation is pending for the last 15 years, that is to say, from 1992, we are of the view that instead of setting aside the entire order of the Appellate Court and sending the case back to the
- E same for fresh decision on subsequent developments which were brought before the High Court, only an order of limited remand to the Appellate Court ought to have been passed by the High Court, keeping the file pending before it and after receiving the evidence on the effect of subsequent
- F developments on the question of bonafide need and comparative hardship from the Appellate Court and the finding of the Appellate Court on such question, considering the entire evidence and also the supplementary affidavit and counter-affidavit filed by the parties and other materials on record, the
- G Writ Petition can be decided afresh.

- H 16. It is true that a suit or an original proceeding is to be tried in all its stages on the cause of action as it existed on the date of its commencement. The only exception to this rule is that a Court may take notice of events, which have happened

since the institution of the suit or the original proceeding and grant relief to the parties on the basis of the altered conditions, is applied in cases where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. [See *Rai Chand Mandal and another vs. Biswa Nath Mandal and others*; XX CLJ 107]. This was the view expressed by Sir Ashutosh Mukherjee, J. (as His Lordship then was) on this question when subsequent developments should be taken into consideration by the Court during the pendency of a proceeding or of a suit or even at the appellate stage.

17. The same view has been expressed yet in a later decision of the Calcutta High Court to the effect that where it is shown that the original relief claimed by reason of subsequent change of circumstances become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. [See *Nuri Mian vs. Ambica Singh and another* 24 CLJ 140]

18. Again in *Pratap Rai Tanwani vs. Uttam Chand* (2004 (8) SCC 490), this Court also held that subsequent developments can be taken into consideration to afford relief to the parties, provided only when such developments had a material impact on those rights and obligations.

19. Similar was the view expressed in *Ramesh Kumar vs. Kesho Ram* [1992 Supp. (2) SCC 623 where this Court observed as follows :-

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. *Wherever subsequent events of fact or law which have a material bearing on the entitlement of*

A *the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief." (Emphasis supplied).*

B 20. It also reminds us of a celebrated Judgment of a Full Bench decision of the Nagpur High Court in *Chote Khan vs. Mohammad Obedalla Khan* [AIR 1953 Nagpur 361], in which the view of the Court to take note of the subsequent developments specially at the appellate stage was taken up for consideration. Hidayatulla, J (as His Lordship then was) held as under :

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E "on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of an action. *No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right of the plaintiff. (Emphasis supplied)*"

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H 21. In view of the discussions made hereinabove, it is therefore, a settled proposition of law that subsequent developments of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court, even at any stage of the proceeding, is not precluded from taking a cautious cognizance of the subsequent developments of fact and law to mould the relief. Keeping these principles in mind and considering the nature of subsequent developments as brought out by the parties during the pendency of the writ petition, we are of the view that we will have to find out a solution within the scope of this exception. Therefore, the test is whether the subsequent events of fact have a material bearing on the entitlement of the parties to relief or on aspects which bear on

the moulding of the relief awarded before consideration of such subsequent events. A

22. In the present case, the death of the father of the appellant is taken as a valid excuse by the tenant to argue that since the present landlord had other options for accommodation and for starting an office as a Chartered Accountant, he could, without any hardship, forgo his claim to the shop in dispute. Again, if it is an admitted position that the present landlord has acquired a house behind the shop in dispute, then he has to prove by evidence that the said house available is not suitable for starting an office space for his Chartered Accountancy firm. In this connection, we have examined the factual findings of the Appellate Court and concluded that the recorded findings are insufficient to decide the matter in the light of the subsequent developments. The occurrence of the subsequent developments has not been denied upon by the appellant, in fact, has been accepted by him. But the landlord/appellant has also, by his counter affidavit, pleaded that in view of the long pendency of the proceeding for release, his requirement has increased as the two sons and a daughter have grown up and, therefore, the requirement of the landlord/appellant has to be adjudged in the light of the statements made by him in the counter affidavit. Thus, the issue that needs to be examined now is whether there is any change in the nature of the claim of the present appellant consequent upon the occupation of a house in vacant condition behind the suit building and also consequent upon the death of the father of the original landlord, who was running a business in the suit building which had fallen vacant because of the death of the father of the appellant and also the accommodation that was available to the parents of the appellant would also be taken into consideration for the purpose of coming to a finding as to whether the appellant still requires the shop in dispute or not. That apart, the tenant submitted, the occupation of house, which was used for running the printing business of his deceased father has come to the use of the landlord/appellant, and therefore, the requirement of the landlord B
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- A has already been fulfilled. Moreover, in the light of the fact that the tenant now has alternative space for his business, it has to be seen whether such alternative space is suitable enough for the tenant and whether he can shift there without substantial loss. Therefore, we are of the view that the High Court was fully
- B justified in setting aside the order of the Appellate Court in view of the fact that all the facts stated herein need to be gone into after taking evidence on such facts. The effect of the subsequent developments on the bonafide need of the present landlord as well as the comparative hardship of the parties on
- C material facts could not be taken into consideration by the Writ Court without proper evidence on record. However, considering the age of the litigation i.e. 15 years and if the matter is sent back to the Appellate Court, the proceeding may continue for another 15 years, we are of the view that the High Court was
- D not justified in sending the case back to the Appellate Court for fresh decision in the light of the subsequent developments as noted hereinabove. In our view, it would have been appropriate and proper and in the interest of justice for the High Court to keep the Writ Petition pending before it and sent back the issue on the effect of subsequent developments and
- E supplementary affidavit and counter affidavit on bonafide requirement and comparative hardship to the Appellate Court and after the Appellate Court taking evidence, it shall send back to the High Court, the evidence that would be taken and also the findings arrived at thereon. In the event, the Appellate Court
- F finds it difficult to take evidence on its own, it will be open to it to frame the issue and send the same to take evidence to the Prescribed Authority who, in turn, will take the evidence of the parties and send the same to the Appellate Court for the purpose of considering the issue of bonafide requirement of
- G the landlord/appellant and comparative hardship of the parties. In view of the statements made in the counter affidavit filed by the landlord/appellant to the extent that he has got two grown up sons and a daughter and that being the position, the requirement of the present landlord has increased and,
- H therefore, the tenant/respondent is liable to be evicted. That

being the position, we are, therefore, of the view that it would be open to the landlord/appellant to file an application for amendment of the original release application for the purpose of incorporating the fact of the requirement of two sons and a daughter by amending the same to which it would be open to the respondent/tenant to file written objection.

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23. For the reasons aforesaid, we are, therefore, of the opinion that for the purpose of coming to a positive conclusion on the bonafide need of the present landlord and the comparative hardship of the parties on the basis of the subsequent developments, as noted hereinearlier, the matter needs to be examined on further evidence after restoring the Writ Petition before the High Court with a direction in the manner indicated above in view of the fact that the justice has already been delayed for a long time.

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24. For the reasons aforesaid, we set aside the Judgment of the High Court and restore the Writ Petition and direct the High Court to decide the same in the manner indicated above.

25. Accordingly, the High Court is requested to decide the writ petition within 6 months from the date of the supply of a copy of this order to it without granting any unnecessary adjournments to either of the parties in the light of the directions made hereinabove.

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26. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

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N.J.

Appeal partly allowed.