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MATTULAL
v.
RADHE LAL
April 23, 1974

[D. G. PALEKAR AND P. N. BHAGWATI, JJ.]

Madhya Pradesh Accomodation Control Act, 1961—*Section* 12(1)(f)—*Bona fide requirement—Proof of.*

B *High Court—Findings of fact by First Appellate Court—Jurisdiction in Second Appeal to interfere with findings of fact.*

Fact, questions of—Mixed questions of fact and law—Madhya Pradesh Accommodation Control Act, 1961, *s.* 12(1)(f)—*Finding on bona fide requirement if question of fact or mixed question of law and fact.*

The respondent-landlord having failed in his attempts to recover possession of the non residential premises from the appellant, entered into a lease deed C by which he gave a lease of the premises to the appellant for a period of two years. After the expiry of the period of lease the appellant continued in possession as a monthly tenant. Two years after the expiry of the lease period the respondent again filed suit for eviction on the ground that the *bona fide* required the premises for starting his own business as a dealer in iron and steel materials, a ground for eviction recognised by s. 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961. The trial court granted a decree for eviction. The first appellate Court set aside the decree for eviction. It came to the finding that the business of dealer in iron and steel materials which the D landlord wanted to start was a totally new business for him, that there was no evidence to show that the landlord made the necessary preparations from which inference could be drawn that he wanted to start the new business, and that for nearly two years, after the expiry of the lease, the landlord did not take any steps to terminate the tenancy. Therefore, the first Appellate Court held that what the evidence showed was mere assertion on the part of the landlord which fell short of the proof required. The High Court, in second appeal, held that it was established that the requirement of the landlord was *bona fide*. It pointed E out that the first Appellate Court had fallen into an error in holding that unless the respondent showed that he had made preparations for starting the business it could not be held that he *bona fide* required the premises. The High Court relied on the objective facts that the respondent had as far back as 1959 sought to recover possession of the premises for the purpose of the new business and that having discontinued the business he was carrying on and surrendered the premises, it was but natural that the respondent wanted to start this new business. The High Court thus came to the conclusion that the respondent had succeeded in establishing that he *bona fide* required the premises for the purpose F of starting business as a dealer in iron and steel materials.

In appeal by Special Leave to this Court it was contended by the appellant—tenant that in reversing the findings of the First Appellate Court on the question of *bona fide* requirement of the premises by the respondent, the High Court exceeded its jurisdiction in second appeal; since the finding that the respondent did not *bona fide* require the premises for the purpose of starting his own business was a finding of fact, it was not open to the High Court to interfere with it unless it could be shown that it was vitiated by an error of law. The respondent on the other contended that the finding in regard to the question of G *bona fide* requirement was a mixed finding of law and fact and the High Court was, therefore, entitled to examine its correctness.

Allowing the appeal,

HELD : The High Court exceeded its jurisdiction in second appeal in reversing the decision of the First Appellate Court and passing a decree for eviction against the appellant. [137F]

(1) The issues whether the respondent required the shop for the purpose H of starting new business as a dealer in iron and steel materials, and, if so, whether his requirement was *bona fide* were both questions of fact. Their determination did not involve the application of legal principles to the facts established in the evidence. The findings of the First Appellate Court on these issues were no doubt inferences from other basic facts, but that did not alter

the character of these findings and they remained findings of fact. Therefore, the conclusion of the First Appellate Court that the respondent did not *bona fide* require the shop premises for the purpose of starting new business as a dealer in iron and steel materials represented a finding of fact and could not be interfered with by the High Court in second appeal unless it was shown that in reaching it a mistake of law was committed or that it was based on no evidence or was such as no reasonable man could reach. [135F-H]

Sarvate T. B. v. *Nemichand,* 1966 M.P. Law Journal 26, followed. (Supreme Court.)

Smt. Kamla Soni v. *Rup Lal Mehra,* C.A. No. 2150 of 1966, dec. on 26th September, 1969, not followed. (Supreme Court).

(2) Mere assertion on the part of the landlord that he requires a non-residential accommodation in the occupation of tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is *bona fide*. The word 'requires' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show, the burden being upon him, that the genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. The First Appellate Court did not misdirect itself in regard to these matters. [135G-136C]

(3) The First Appellate Court was clearly in error in relying on two circumstances, namely, that the respondent had not made preparations for starting the new business and that he had asked for possession of the whole of the premises and not merely a portion of it, in support of the finding of fact reached by it. But, that would not entitle the High Court to interfere in second appeal and set aside this finding of fact so long as there was some evidence to support it and it could not be branded as arbitrary, unreasonable or perverse. [136D-E]

(4) There was evidence to sustain the finding of fact arrived at by the First Appellate Court. The respondent had been trying to obtain the possession of the premises from the appellant since as far back as 1952 and it was apparent that the respondent was anyhow bent upon evicting the appellant from the premises. The respondent allowed the appellant to continue as a monthly tenant for a period of two years after the expiry of the period of lease and did not take any steps to terminate the tenancy and recover possession of the shop from the appellant. Moreover, the respondent had no experience in the business of dealing in iron and steel materials and it was entirely a new business so far as he was concerned. These circumstances, borne out by the evidence on record and held established by the First Appellate Court clearly supported the finding of fact. Nor could this finding of fact be said to be arbitrary, unreasonable or perverse so as to merit interference by the High Court in second appeal. [136E-137B]

CIVIL APPEALATE JURISDICTION : Civil Appeal No. 2180 of 1970.

Appeal by special leave from the judgment and order dated the 14th August, 1970 of the Madhya Pradesh High Court at Gwalior in Second Appeal No. 48 of 1969.

D. V. Patel and *S. K. Gambhir,* for the appellant.

L. M. Singhvi and *Rameshwar Nath,* for respondent.

The Judgment of the Court was delivered by

BHAGWATI, J.—It is common to find that having regard to acute shortage of non-residential as well as residential accommodation in the urban areas, litigation between landlord and tenant for recovery of rented premises is usually bitterly contested and fought to a finish right upto the highest court. This is what has happened in the present case. Twice foiled in his attempt, the respondent filed a third suit to recover possession of a shop let out to the appellant. The suit resulted in a decree for eviction by the Trial Court, but on appeal the decree for eviction was reversed by the Additional District Judge and on still further appeal, the judgment of the Additional District

A Judge was set aside and the decree for eviction was restored by the High Court. The appellant challenges the judgment of the High Court in this appeal preferred by special leave.

The respondent is the owner of a house situate in Lohia Bazar in the city of Gwalior. The house consists of a shop on the ground floor and residential accommodation on the first floor. The respon-
B dent is in occupation of the residential accommodation on the first floor since the past few years. The ground floor shop, which may hereinafter for the sake of convenience be referred to as the Lohia Bazar shop, has been in the possession of the appellant as a tenant for the last about thirty years. The appellant carries on business as a dealer in iron and steel materials in this shop. Originally the rent of this shop was Rs. 8/- per month but it was subsequently increased
C from time to time and ultimately in 1946 it was fixed at Rs. 25/- per month.

It appears that towards the end of 1952 the respondent decided to evict the appellant from the Lohia Bazar shop and with that end in view, filed a suit for recovery of possession of Lohia Bazar shop. The respondent claimed that he genuinely required the Lohia Bazar
D shop for personal use and the Trial Court, accepting this requirement, passed a decree for eviction against the appellant. The decree for eviction was, however, reversed by the Additional District Judge in appeal since according to Madhya Bharat Premises Restriction Act, Sy. 2006, which was in force at the material time, requirement of the landlord of non-residential premises for industry or business was not a valid ground for eviction of the tenant. This suit was
E accordingly dismissed by the Additional District Judge on 8th December, 1956.

Within a few months after the dismissal of this suit, however, the respondent, undaunted by this reverse, filed another suit against the appellant for recovering possession of the Lohia Bazar shop. By the time this second suit came to be filed, the Madhya Pradesh Ac-
F commodation Control Act, 1955 had come into force and under the provisions of that Act, a landlord could recover possession of rented premises from the tenant only on certain specified grounds. One of the grounds in case of non-residential accommodation was that the landlord genuinely required the accommodation for continuing or starting his own business. Now, the respondent was throughout this period carrying on business as a grocer in a shop situate in Phalke
G Bazar which was taken by him on rent from one Vishwanath. With a view to availing himself of this ground for eviction under the Madhya Pradesh Accommodation Control Act, 1955 the respondent pleaded that the landlord of the Phalke Bazar shop had given him a notice to quit and he, therefore, genuinely required the Lohia Bazar shop for continuing his grocery business. Before the suit came up for hearing, the respondent amended the plaint with the leave of the
H Court in March 1959 by introducing a plea that he wanted to start business as a dealer in iron and steel materials and the Lohia Bazar shop was genuinely required by him for the purpose of starting this business. This suit also followed the same pattern as the earlier

one : the Trial Court passed a decree for eviction, but it was reversed in appeal by the Additional District Judge. The limited ground on which the Additional Judge negatived the claim of the respondent for possession was that the respondent was in occupation of the Phalke Bazar shop which constituted "other accommodation in the city" and that, on the terms of section 4(h) of the Madhya Pradesh Accommodation Control Act, 1955, he was disentitled to obtain a decree for eviction against the appellant. The Additional District Judge accordingly dismissed the suit by a judgment dated 4th August, 1962.

Thereafter, the respondent, having failed in both his attempts to recover possession of the Lohia Bazar shop from the appellant, entered into a lease deed dated 15th September, 1962 with the appellant by which he gave a lease of the Lohia Bazar shop to the appellant for a period of two years with effect from 15th September, 1962 at the rent of Rs. 60/- per month. Though the period of the lease expired on 15th September, 1964, the appellant continued in possession of the Lohia Bazar shop as a monthly tenant of the respondent paying the same rent of Rs. 60/- per month. It appears that some time in 1964—the exact date does not appear from the record—the respondent voluntarily surrendered possession of the Phalke Bazar shop to the landlord and closed down his grocery business. The appellant alleged that the respondent gave up possession of the Phalke Bazar shop to the landlord in consideration of receipt of premium in cash but this allegation was held not established both by the Trial Court as also by the First Appellate Court. The respondent did not have any other occupation after he gave up his grocery business.

On 17th August, 1966, after a period of inaction of about two years, the respondent renewed the fight against the appellant with added vigour and plunged into the turbulent waters of litigation by filing a third suit to recover possession of the Lohia Bazar shop from the appellant. There were two grounds on which possession of the Lohia Bazar shop was sought by the respondent. One ground was arrears of rent but that was wholly without substance, and was abandoned at the earliest stage. The second was the real ground urged on behalf of the respondent and that was that the respondent *bona fide* required the Lohia shop for starting his own business as a dealer in iron and steel materials. This was a ground for eviction recognised by section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 which had come into force in the meantime repealing the Madhya Pradesh Accommodation Control Act, 1955. The appellant disputed that the respondent required the Lohia Bazar shop for starting his own business or that his requirement was *bona fide* and alleged that in any event the respondent had other accommodation in the city and hence he was not entitled to recover possession of the Lohia Bazar shop under section 12(1)(f) of the Act of 1961. The Trial Court on a consideration of the evidence led on behalf of both the parties came to the conclusion that the respondent was without any occupation since about two years prior to the filing of the suit and he had no other shop in the city in which he could carry on business and he, therefore, *bona fide* required the Lohia Bazar shop for starting his own business as a dealer in iron and steel materials. The Trial

A Court negatived the plea of the appellant that the respondent was carrying on business as commission agent and moneylender and he did not really mean to start a new business as dealer in iron and steel materials and that was merely a ruse adopted by him for the purpose of securing possession of the Lohia Bazar shop from the appellant. The Trial Court accordingly upheld the claim of the respondent for recovery of possession under section 12(1)(f) of the Act of 1961 and passed a decree for B eviction against the appellant.

The appellant being aggrieved by the decree for eviction preferred an appeal to the Additional District Judge and since the Court of the Additional District Judge is the final court of fact, we would set out the findings of fact reached by the Additional District Judge in some detail. The Additional District Judge on an appreciation of the evidence came C to the following findings. The respondent was about 63 years of age when he filed the suit but that was no ground for saying that he could not *bona fide* and reasonably think of starting a new business. Though it was stated by the respondent in his evidence that he had in the past carried on business as a dealer in iron and steel materials, that was contradicted by his own witness Chotelal and it was, therefore, evident that the business of dealer in iron and steel materials for which he claimed D to require the Lohia Bazar shop, was totally a new business for him. The plea of the respondent was that he wanted to make a humble beginning in this new business but even so he asked for possession of the whole of the Lohia Bazar shop and not merely a portion of it. The respondent had not led any evidence to show that "he had arranged for necessary capital to be invested or——approached Iron & Steel Controller for the required permits" or "made agreements to receive stocks" E of iron and steel materials. There was no material on record to establish that the respondent had made preparations from which inference could be reasonably drawn that, but for possession of the Lohia Bazar shop, the respondent was in a position to start the new business. Though the period of two years for which the lease of the Lohia Bazar shop was granted by the respondent to the appellant expired on 15th September, F 1964, the respondent did not take any steps to obtain possession of the Lohia Bazar shop for a period of about two years and it was only in the middle of 1966 that he put forward the plea that he wanted to start business as a dealer in iron and steel materials and required possession of the Lohia Bazar shop for that purpose. It is true that the appellant had failed to show that the respondent was carrying on business as commission agent or moneylender, but that did not establish the *bona fide* requirement of the respondent for possession of the Lohia Bazar shop. It G was also evident that the object of the respondent in filing the suit was not to obtain enhancement of rent from the appellant but that too was not a circumstance which lent any positive support to the case of the respondent. The burdent of establishing that he *bona fide* required the Lohia Bazar shop for starting business as a dealer in iron and steel materials was on the respondent and this burden, according to the H Additional District Judge held that what the evidence showed was mere assertion on the part of the respondent that he wanted to start business as a dealer in iron and steel materials in the Lohia Bazar shop and that fell far short of the proof required to establish that the respondent *bona fide* required the Lohia Bazar shop for starting this

new business. The Additional District Judge accordingly set aside the decree for eviction passed against the appellant and dismissed the suit of the respondent.

This led to the filing of a second appeal in the High Court by the respondent. The High Court pointed out that the Additional District Judge had fallen into an error in holding that unless the respondent showed that he had made preparations for starting the business of dealer in iron and steel materials, such as making arrangements for capital investment, permits from the Iron & Steel Controller etc., it could not be held that he *bona fide* required the Lohia Bazar shop for starting such business. The High Court observed that when the respondent stated in his evidence that he required the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials, there was no cross-examination of the respondent challenging the truth or *bona fide* of his statement and no attempt was made on behalf of the appellant to show that the respondent was not in a position to start such business, or that he lacked the necessary resources for that purpose, and his statement coupled with the other objective and outward facts must, therefore, be taken as sufficient to establish that he required the Lohia Bazar shop for starting this new business and his requirement was *bona fide*. The outward and objective facts on which the High Court relied as supporting the assertion of the respondent were : firstly, the respondent had as far back as March 1959 sought to recover possession of the Lohia Bazar shop for the purpose of starting this new business and it was not for the first time in the middle of 1966 that he dishonestly put forward this idea only with a view to securing possession of the Lohia Bazar shop from the appellant and secondly, the respondent having closed down his grocery business and surrendered possession of the Phalke Bazar shop to the landlord was without occupation for well nigh two years and it was, therefore, natural for him to want to start this new business in the Lohia Bazar shop in order to earn a living. The High Court thus came to the conclusion that the respondent has succeeded in establishing that he *bona fide* required the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials and since he had admittedly no other shop in the city, he was entitled to recover possession of the Lohia Bazar shop from the appellant. On this view the High Court reversed the judgment of the Additional District Judge and restored the decree for eviction passed by the Trial Court. Hence the present appeal by the appellant with special leave obtained from this Court.

The main ground on which the appellant attacked the judgment of the High Court was that, in reversing the finding of the Additional District Judge on the question of *bona fide* requirement of the Lohia Bazar shop by the respondent, the High Court exceeded its jurisdiction in second appeal. The jurisdiction of the High Court hearing second appeal, contended the appellant, was limited only to examining whether the decision of the Additional District Judge suffered from an error of law and since the finding of the Additional District Judge that the respondent did not *bona fide* require the Lohia Bazar shop for the purpose of starting his own business as a dealer in iron and steel materials was a finding of fact, it was not competent to the High

A Court to interfere with it, unless it could be shown that it was vitiated by an error of law which was not the position in the present case. This contention of the appellant requires serious consideration.

It is settled law that the High Court in second appeal cannot re-appreciate the evidence and interfere with findings of fact reached by B the lower appellate court. The lower appellate court is final so far as findings of fact are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law. It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction in second appeal. If the finding recorded by the lower appellate court is one of law or of mixed law and fact, the High C Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse. This position was indeed not disputed by the learned Advocate appearing on behalf of the respondent but his contention was that the finding D of the Additional District Judge in regard to the question of *bona fide* requirement of Lohia Bazar shop by the respondent was a mixed finding of law and fact and the High Court was, therefore, entitled to examine its correctness, and if it was found to be wrong, interfere with it even while exercising jurisdiction in second appeal. The question which, therefore, arises for consideration is whether the finding of the Additional District Judge that the respondent did not E *bona fide* require the Lohia Bazar shop for the purpose of starting the business of a dealer in iron and steel materials was a pure finding of fact or a mixed finding of law and fact. If it was the latter, the High Court would have a much larger freedom to interfere, but not so if it was the former, in which case only certain limited grounds would be available to the appellant to attack the finding.

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Now it is obvious that the issues whether the respondent required the Lohia Bazar shop for the purpose of starting a new business as a dealer in iron and steel materials and if so, whether his requirement was *bona fide* were both questions of fact. Their determination did not involve the application of legal principles to the facts established in the evidence. The findings of the Additional District Judge on G these issues were no doubt inferences from other basic facts, but that did not alter the character of these findings and they remained findings of fact. There is, therefore, no doubt that the conclusion of the Additional District Judge that the respondent did not *bona fide* require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials represented a finding of fact and it could not be interfered with by the High Court in second appeal H unless it was shown that in reaching it a mistake of law was committed by the Additional District Judge or it was based on no evidence or was such as no reasonable man could reach. This was precisely the ground on which a Bench of four Judges of this Court in

Sarvate T. B. v. *Nemichand*(1) set aside the judgment of the Madhya Pradesh High Court which had interfered with the decree passed by the District Court dismissing a suit for eviction filed by the landlord against the tenant. The District Court, sitting as a court of first appeal, had taken the view, on an appreciation of the evidence, that the requirement of the premises by the landlord for his residence was not genuine, but in second appeal the Madhya Pradesh High Court reversed this finding and passed a decree for eviction against the tanant. This Court set aside the judgment of the Madhya Pradesh High Court on the ground that the finding reached by the District Court on an appreciation of the evidence that the landlord did not genuinely require the premises for his residence was a finding of fact and the Madhya Pradesh High Court had no jurisdiction in second appeal to disturb this finding. Shah, J., speaking on behalf of the Court, summed up the legal position in the following words :

> "The District Court considered the evidence for the purpose of ascertaining whether the respondent honestly or in good faith required the premises and held that the respondent failed to establish the case pleaded by him. This finding of the District Court was based on appreciation of evidence and was binding upon the High Court and the High Court had no power to reverse that finding... The Legislature has imposed a restriction upon the jurisdiction of the Court to pass a decree against the tenant in a suit in ejectment by the landlord; and the onus of proving the conditions, on proof of which alone the protection may not be claimed, lies upon the landlord. The burden of proving that he genuinely requires non-residential accommodation within the meaning of section 4(h) therefore lies upon the landlord. Whether in a given case, that burden is discharged by the evidence on the record is a question of fact. It must however be observed that mere assertion by the landlord that he requires for his use the premises in the occupation of his tenant raises no presumption that he genuinely requires the premises for his use. The District Court held that the respondent failed to establish that he genuinely required the premises in suit primarily on two grounds-- (i) that he had in the first instance claimed that he required the premises for his residence and after the suit was remanded to the trial Court, he set up the plea that the premises were required for business purposes and abandoned his earlier case, and (ii) that the nature and extent of that business carried on by the respondent were such that no additional accommodation could have been honestly claimed by him. The inference of fact raised by the District Court was pre-eminently reasonable. In any event the High Court has no jurisdiction in second appeal to set aside the conclusion reached by the District Court based on that inference of fact."

(1) 1966 M. P. Law Journal 26.

A This decision, apart from principle, should conclude the question, but we find that there is one later judgment of this Court where a different view seems to have been expressed. That is the judgment in *Smt. Kamla Soni* v. *Rup Lal Mehra*(1). This case was decided by a Bench of three judges and the judgment was delivered by Shah, J., who was one of the members of the Bench. The learned Judge, speaking on behalf of the Court, observed in reference to section B 39(2) of the Delhi Rent Control Act which confers an identical power on the High Court to interfere only where there is an error of law :

> "The argument that the learned Judges of the High Court exceeded their jurisdiction under s. 39(2) of the Delhi Rent Control Act, when they reversed the finding of *bona* C *fide* requirement of the appellant, has no substance. Whether on the facts proved the requirement of the landlord is *bona fide* within the meaning of s. 14(1)(e) is a finding on a mixed question of law and fact. An inference that the requirement of the appellant in the present case was *bona fide* could not be regarded as conclusive."

D Now there can be no doubt that these observations made in *Smt. Kamla Soni's case*(1) are plainly in contradiction of what was said by this Court earlier in *Sarvate T. B.'s* case.(2) It is obvious that the decision in *Sarvate T.B.'s* case(2) was not brought to the notice of this Court while deciding *Smt. Kamla Soni's* case(1), or else this Court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gain said that it is not possible E to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in *Sarvate T.B.'s* case(2) as against the decision in *Smt. Kamla Soni's* case(1) as the former is a decision of a larger Bench than the latter. Moreover, on principle, the view taken in *Sarvate T.B.'s* case(1) commends itself to us and we think that is the right view. We must, therefore, hold that the finding of the Additional District Judge that the respondent did not F *bona fide* require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials was a finding of fact and not a finding of mixed law and fact.

The question would still remain whether there were proper grounds on which this finding of fact could be interferred with by the High Court. It is now well settled by several decisions of this Court including the decision in *Sarvate T.B.'s* case(2) and *Smt. Kamla* G *Soni's* case(1) that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is *bona fide*. The test which has to be applied is an objective test and not a subjective one and merely because H a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would

(1) C. A. No. 2150 of 1966, decided on 26th September, 1969.
(2) 1966 M. P. Law Journal 26.

not be enough to establish that he requires it for that purpose and that his requirement is *bona fide*. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show the burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. The Additional District Judge did not misdirect himself in regard to these matters, as for example, by misconstruing the word 'required' or by erroneously placing the burden of proof on the appellant and no error of law was committed by him in arriving at the finding of fact in regard to the question of *bona fide* requirement of the respondent, which would entitle the High Court in second appeal to interfere with that finding of fact.

The respondent, however, contended that the finding of the Additional District Judge that the respondent did not *bona fide* require the Lohia Bazar shop for the purpose of starting new business as a dealer in iron and steel materials was vitiated, firstly because he erroneously assumed that unless the respondent showed that he had made preparations for starting this new business, such as making arrangements for capital investment, approaching Iron & Steel Controller for the required permits etc., it could not be said that the respondent *bona fide* required the Lohia Bazar shop for such new business, and secondly because he relied wrongly and unjustifiably on the fact that the respondent had asked for possession of the whole of the Lohia Bazar shop and not merely a portion of it. Now there can be no doubt that these two circumstances relied upon by the Additional District Judge were wholly irrelevant. It is difficult to imagine how the respondent could be expected to make preparations for starting the new business unless there was a reasonable prospect of his being able to obtain possession of the Lohia Bazar shop in the near future. It is a common but unfortunate falling of our judicial system that a litigation takes an inordinately long time in reaching a final conclusion and then also it is uncertain as to how it will end and with what result and unless the respondent could be reasonably sure that he would within a short time be able to obtain possession of the Lohia Bazar shop and start a new business, it would be too much to expect from him that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stock of iron and steel materials when he would not know whether he would at all be able to get possession of the Lohia Bazar shop, and if so, when and after how many years. So also we do not see how the respondent could possibly ask for possession of a portion of the Lohia Bazar shop. The Lohia Bazar shop was given on rent under a single tenancy and even if the requirement of the respondent extended only to a portion of this shop, he had no other option but to terminate the tenancy and seek to recover possession of the whole shop. The Additional District Judge was, therefore, clearly in error in relying on these two circumstances in support of the finding of fact reached by him. But that would not entitle the High Court to interfere in second appeal

A and set aside this finding of fact so long as there was some evidence to support it and it could not be branded as arbitrary, unreasonable or perverse. There is no doubt that here there was evidence to sustain the finding of fact arrived at by the Additional District Judge. The respondent had been trying to obtain possession of the Lohia Bazar shop from the appellant since as far back as 1952 and it was apparent that the respondent was any how bent upon evicting the appellant B from the Lohia Bazar shop. Though the period for which the lease was granted by the respondent to the appellant expired on 15th September, 1964, the respondent allowed the appellant to continue as a monthly tenant in respect of the Lohia Bazar shop and did not, for a period of about two years, take any steps to terminate the tenancy of the appellant and recover possession of the Lohia Bazar shop from the appellant. If the respondent was really serious about C starting the new business of a dealer in iron and steel materials, he would not have waited for a period of two years before taking action to recover possession of the Lohia Bazar shop from the appellant. He would have bestirred himself immediately as soon as the lease, which prevented him from asking for possession, expired. Moreover, the respondent had no experience in the business of dealing in iron and steel materials and it was entirely a new business so far as he D was concerned, and it would indeed be strange and unusual—taxing the credulity of the Court—that the respondent, who was all his life a grocer, should at the age of 63 years, want to start a new business as a dealer in iron and steel materials—a business in which he had no experience at all. These circumstances, borne out by the evidence on record and held established by the Additional District Judge, E clearly supported the finding of fact reached by the Additional District Judge that the respondent did not *bona fide* require the Lohia Bazar shop for starting business as a dealer in iron and steel materials. Nor could this finding of fact be said to be arbitrary, unreasonable or perverse so as to merit interference by the High Court in second appeal. There can, therefore, be no doubt that the High Court in reversing the decision of the Additional District Judge and passing a F decree for eviction against the appellant.

We, therefore, allow the appeal, set aside the decree for eviction passed by the High Court against the appellant and dismissed the suit of the respondent. There will be no order as to costs all throughout.

Appeal allowed.

K.B.N.