F.R.

IN THE HIGH COURT OF SIKKIM : GANGTOK

REGULAR FIRST APPEAL NO. 03 OF 2009

1. HIMAL MATCH COMPANY PVT.LTD.,
THROUGH ITS MANAGING DIRECTOR,
RANGPO, EAST SIKKIM.

2. SHRI B. K. SHRESTHA,
MANAGING DIRECTOR,
HIMAL MATCH COMPANY PVT. LTD. (HIMCO),
PRESENTLY RESIDING AT MAJITAR,
RANGPO, EAST SIKKIM.

APPELLANTS/DEFENDANTS

VERSUS

SHRI RAJ BANSI BHAGAT,
S/O SHRI PUNDEO BHAGAT,
PRESENTLY RESIDING AT MATHIA,
MIRGANG, BIHAR.

THROUGH THE CONSTITUTED ATTORNEY,
SHRI KAMLESH BHAGAT,
S/O SHRI RAJ KISHORE BHAGAT,
R/O RANGPO BAZAR,
P.O. & P.S. RANGPO,
EAST SIKKIM.

RESPONDENT/PLAINTIFF

FOR THE APPELLANTS/ DEFENDANTS	:	MR. A. MOULIK, SENIOR ADVOCATE WITH MR. N. G. SHERPA & MS. K. D. BHUTIA, ADVOCATES.
FOR THE RESPONDENT/ PLAINTIFF	:	MR. B. SHARMA, SENIOR ADVOCATE WITH MR. J. K. KHARKA AND MR. B. RAI, ADVOCATES.

PRESENT : THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

DATE OF LAST HEARING : 10.11.2009

DATE OF JUDGMENT : 16.11.2009

JUDGMENT

Wangdi, J.

This appeal is directed against the judgment and decree dated 13.04.2009 passed by the learned District Judge, East and North Sikkim at Gangtok in Eviction Suit No.5 of 2005, by which the appellants/defendants were evicted from the rented premises belonging to the respondent/plaintiff.

2. The facts of the case so far as it is relevant for the disposal of this appeal are as follows: -

(i) The respondent/plaintiff as the absolute owner of a two storied RCC building situated at Mandi Bazar, Rangpo, East Sikkim, (referred to as the suit premises) had let it out to the appellants/defendants in the year 1977 at a monthly rent of Rs.400/- and that in the year 1978, the suit premises was repaired by the respondent/plaintiff at an expenditure of Rs.2000/-.

(ii) That in the month of February, 2000, the appellants/defendants commenced with major repair works by engaging a contractor for the purpose, which was stopped by them when the respondent/plaintiff objected.

(iii) That the respondent/plaintiff stopped receiving rent for the suit premises from January, 2000 prompting the appellants/defendants to send it through money order then

onwards, which have also been refused by the respondent/plaintiff.

3. The above constitutes the substance of the relevant facts involved in the suit which are undisputed. In the suit, the respondent/plaintiff has sought for eviction of the appellants/defendants from the suit premises on the ground that the appellants/defendants had made material additions and alterations in the suit premises by demolishing some portions thereof. Therefore, it becomes apparent that the suit was filed under the provisions of Gangtok Rent Control and Eviction Act, 1956, as only under that Act, one of the grounds for eviction of a tenant is for making material additions and alterations to a rented premise without the knowledge and consent of the landlord. But then sub-section (iii) of Section 1 of the Act provides that the law would be applicable only to all buildings and constructions situate within the area of Gangtok Bazar to be fixed from time to time by the Sikkim Darbar, i.e., the State Government, in terms of Clause 3 of the Adaptation of Sikkim Laws (No.1) Order, 1975. For the sake of convenience, sub-section (iii) of Section 1 of the Gangtok Rent Control and Eviction Act, 1956 is reproduced: -

> **Section 1(iii) Extent – It shall extend to all Buildings & Construction situate within the area of Gangtok Bazar, which may be fixed from time to time by the Sikkim Darbar.**

Therefore, as the law is not applicable to premises situated at Rangpo, where the rented premise in question is situated, the suit would not be maintainable under that law, notwithstanding the fact that in earlier three decisions of this Court in the cases of ***Jokhiram*** vs. ***Mangturam : (1977) 1 Sikkim LJ 30, Shakuntala Bai*** vs. ***K. N. Dewan (1977) 1 Sikkim LJ 33*** and ***Paul Sangay*** vs. ***Mahabir Prasad Agarwalla : AIR 1980 Sikkim 13,*** doubts had been expressed as to whether the Gangtok Rent Control and Eviction Act, 1956 was at all applicable in Gangtok as the area of "Gangtok Bazar" had never been fixed by the Sikkim Darbar or by the State Government as required under Section 1 (iii) of the said Act.

4. The law governing landlord and tenants in other parts of the State is provided under Notification No.6326-600/H.&W.B., dated 14th April, 1949, and for the ends of justice the present suit may be considered to be one brought there-under. The question that would then arise would be as to whether under that notification "**material additions and alterations made to a rented premise without the written permission of the landlord**" constitutes a ground for eviction of a tenant and, if not, whether a Court constituted under that law has the jurisdiction to evict a tenant on a ground not contemplated there-under on equitable

consideration, as has been done in the present case. This question, in my view, is crucial to decide this appeal and resultantly, the original suit.

5. Mr. A. Moulik, learned Senior Advocate appearing on behalf of the appellants/defendants, apart from making submissions on the factual aspects of the case as regards the allegations of material additions and alterations alleged to have been made to the rented premises, strongly pressed the plea of non-maintainability of the suit, primarily on the ground that the Gangtok Rent Control and Eviction Act, 1956 did not apply to the area where the rented premises was situated. He further submitted that the 1949 Notification which is the law governing landlord and tenant in other parts of the State, did not prescribe for the eviction of a tenant on the ground of making material additions and alterations to a rented premise. He further submitted that the learned trial Court had exercised a jurisdiction not vested in it by law, when it passed the order of eviction on the ground of the appellants/defendants having made material additions and alterations to the suit premises by erroneously considering itself to be a court of equity.

6. As regards the allegations of having caused material additions and alterations to the suit premises are concerned, it is found that in substance, the facts remain undisputed in the pleadings contained in the written statement

as would appear from paragraphs 13 and 15 of the written statement, relevant portions of which are reproduced below: -

> **"13. .....In fact the suit premises although was occupied by the employees of the defendants it was in fact inhabitable for the working staff. Discussion was made with the landlord for certain minor maintenance works to provide proper ventilation, sanitation and water supplies for the premises. Sri Raj Kishore Prasad; the landlord had agreed to such works to be done at the cost of the defendants. Therefore the works of repairing was started. Then the defendant company had through an agreement dated 25.1.2000 deployed one Sonam Topgay Bhutia, Government Contractor and supplier to do the minor Civil Works in the suit premises to repair the complete floor and the roof of the building with arrangements for proper ventilation, sanitation, water supply etc. and also to repair the electrical installations and fittings. As per the contract, the said contractor had then started such minor repairing works. While however the contractor had proceeded with the civil works of repairing the landlord and his representatives raised protest surprisingly resiling from his earlier consent and against the terms of the lease agreement and filed the present suit. ....."**
>
> **15.....Therefore the defendants have taken up the work of minor repair and maintenance works in the suit premises to provide proper ventilation, sanitation and water supplies to the premises that too at the cost of the defendants."**
>
> *(underlining supplied)*

7. No doubt, the appellants/defendants have chosen to term the works undertaken as '**minor repair and maintenance works**' taken up with the consent of the landlord, but when we consider the extent of the works undertaken, as is quite apparent from the above pleadings (underlined) and the evidence appearing in the records, there is no manner of doubt that the works cannot but be termed as

material additions and alterations and that they were undertaken without obtaining the consent of the landlord, i.e., respondent/plaintiff. The details of the evidence have deliberately not been dealt with, as I am of the view that the question would not be material for disposing of this appeal.

8. Mr. B. Sharma, learned Senior Advocate appearing on behalf of the respondent/defendant, on the other hand, defended the judgment and decree on the following grounds:-

(a) The suit was maintainable under the provisions of Notification No. 6326-600/H.&W.B., dated 14th April, 1949.

(b) The scarcity of accommodation which existed in the year 1949, did not exist any more now and the appellants/defendants had sufficient alternative means of accommodation available to him and this by itself would constitute a ground for eviction under the 1949 Notification.

(c) There was violation of contract on the part of the appellants/defendants, in as much as, the terms of the agreement dated January 9, 1978 (Ext.D1), had been violated, thereby attracting the provisions of Section 111 of the Transfer of Property Act, resulting in the forfeiture of the lease.

(d) The affidavit of evidence affirmed by the appellants/defendants under Order 18 Rule 4(1) had not been validated, and therefore, was not valid in the eye of law, and was non-est and a nugatory.

(e) The present appeal is in violation of clause 5 of the High Court (Practice & Procedure) Rules 1991, in as much as, it has not been signed by the party.

For the aforesaid reasons, it was submitted that the appeal was liable to be rejected.

9. Taking up contention (a) raised by Mr. B. Sharma, learned Senior Advocate on behalf of the respondent/plaintiff, I have no hesitation to hold that the suit would be maintainable under Notification No.6326-600/H.&B.W., dated 14th April, 1949, as has already been held. Contentions (b) and (c) appear to be quite strange as firstly, they appear to be grossly misconceived and secondly, those points were never raised before the learned trial Court. While raising contention (b), Mr. B. Sharma has placed reliance upon the opening words of paragraph 2 of the Notification No. 6326-600/H.& B.W., dated 14th April, 1949, and it is his case that since the scarcity of accommodation did not exist any more, that by itself constituted a ground for eviction of the

appellants/defendants from the rented premises. The submission in my view, deserves outright rejection in view of what appear in the very paragraph which reads as follows: -

> **"2. The landlords cannot eject the tenants so long as the scarcity of housing accommodation lasts, but when the whole or part of the premises are required for their personal occupation or for thorough overhauling the premises or on failure by the tenants to pay rent for four months the landlords may be permitted to evict the tenant on due application to the Chief Court."**

The words "**the landlords cannot eject the tenant so long a scarcity of housing accommodation lasts"** connotes that as a matter of rule under normal circumstances, the landlords cannot eject the tenants as long as scarcity of housing accommodation lasts, but permissibility of ejectment has been provided under circumstances appearing in the words following thereafter, i.e., "**but when the whole or part of the premises require for their personal occupation or for thorough overhauling the premises or on failure by the tenants to pay rent for four months, the landlord may be permitted to evict the tenant on due application to the Chief Court."** The latter part is obviously an exception which has been carved out of the general prohibition of ejectment of tenants. Therefore, only those falling within the mischief of the grounds contained in paragraph 2 of the said Notification would they be liable for eviction from the rented premises.

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> **"2. The landlords cannot eject the tenants so long as the scarcity of housing accommodation lasts, but when the whole or part of the premises are required for their personal occupation or for thorough overhauling the premises or on failure by the tenants to pay rent for four months the landlords may be permitted to evict the tenant on due application to the Chief Court."**

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10. Contention (c) deserves similar rejection since in the suit it is not the case of the plaintiff that there was violation of agreement Ext. D1 which constituted a breach of contract by the appellants/defendants and, secondly, the provisions of Section 111 of the Transfer of Property Act, has no application in the facts and circumstances of the case from a plain reading of the section itself. Section 111 deals with the question of determination of a lease, and clauses (a) to (h) provides for the various circumstances under which the lease may be determined. Clause (g) deals with the forfeiture of lease under the circumstances mentioned therein requiring the lessor to give notice in writing to the lessee of his intention to determine the lease. It has been held that unless State Rent Acts provide for issue of a notice, notice required under Section 111 of the Transfer of Property Act would not be necessary and that the grounds contained in the Rent Acts shall be the sole factors in determining a tenancy and the eviction of a tenant. In this regard, a Constitution Bench of 7 Judges of the Supreme Court reported in ***AIR 1979 Supreme Court 1745*** in the matter of ***V. Dhanapal Chettiar*** vs. ***Yesodai Ammal*** has held as follows : -

> **"6. .....<u>The notice spoken of in Clause (g) is a different kind of notice</u> and even without the State Rent Acts different views have been expressed as to whether such a notice in all cases is necessary or not. <u>We only observe here that when the State Rent Acts provide under what circumstances and on what grounds</u>**

> **a tenant can be evicted, it does not provide that a tenant forfeits his right to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions. ..... Once the liability to be incurred by the tenant, he cannot turn around and say that the contractual lease has been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of the intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction..... "**
>
> *(underlining supplied)*

In view of the position of law indicated above, I have no hesitation to hold that the submissions made on behalf of the respondent/plaintiff is grossly misconceived, and, therefore, stands rejected accordingly.

11. Contentions (d) and (e) raised by Mr. B. Sharma appear to be absolutely hyper technical. The evidence led before the learned trial Court were never challenged and have been accepted by all parties. Order 18 Rule 4(1) of the C.P.C. does not require validation of all affidavits of evidence except for the limited purpose of the proviso thereto. We have to bear in mind that Rule 4 of Order 18 C.P.C. lays down the procedure for recording evidence and that the rules and procedures are meant to be hand-maid of justice and not its mistress. Furthermore, no objections had been raised on any grounds whatsoever with regard to the evidence by the respondent/plaintiff during the course of the trial. He rather

chose to participate in the entire proceedings without a demur and has relied upon the evidence now being impugned by him clearly establishing that no prejudice has been caused to him. Therefore, the contention stands rejected as being after thoughts and also as being hit by the principles of waiver, acquaisance and estoppel.

12. In so far as contention (e) is concerned, no doubt Rule 5 of the High Court (Practice and Procedure) Rules, 1991 prescribes that a memo of appeal requires to be signed not only by the party but also by his counsel. However, there is nothing in the rules which prohibits the Constituted Attorneys to sign on behalf of the party. In any case, such requirement hereby stands dispensed with in the larger interest of justice and the objection stands over-ruled.

13. I have dealt with the objections raised on behalf of the respondent/plaintiff, since the ones raised in contentions (a), (b) and (c) are quite technical, having some bearing on the maintainability of the appeal. Had it not been so, it would not have been necessary for the purpose of disposal of this appeal, as will appear hereafter.

14. The records reveal that on the basis of the pleadings of the parties, the learned trial Court had framed the following issues : -

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14. The records reveal that on the basis of the pleadings of the parties, the learned trial Court had framed the following issues : -

"1. Whether the suit is maintainable ?

2. Whether the defendant has made material alterations in the suit building without the prior permission of the plaintiff ?

3. Whether for such alteration if any the defendant is liable to be evicted ?

4. Whether the plaintiff is entitled to recover the arrears of rents from the month of February, 2000 ?"

In my view, in order to proceed further and deal with the issues No.2 and 3, finding on issue No.1 would be most crucial. The learned trial Court has dealt with this issue in paragraphs 9 and 10 of the judgment in the following manner: -

> **"9. On the other hand it is argued by the plaintiff that the provisions of the Gangtok Rent Control and Eviction Act.1/1956 at Sec. 12 recognizes the right of the land-lord if he carries out any addition and alteration without the approval of the land-lord. Moreover, this Court is also a Court of equity and would not be justified in overlooking the grievances of the plaintiff against the defendants in this issue in the absence of any other specific relief by which the plaintiff's grievances in the suit can be suitably remedied.**
>
> **10. It may be pointed out that the Gangtok Rent Control and Eviction Act 1/1956 is not applicable to the instant case since the said Act only extends to Building and Constructions situated within the area of Gangtok Bazar. The schedule property is admittedly in Rangpo. However, for the purpose of this issue, I find that there is no law or statutory provisions by which the instant suit cannot stand in the eyes of law, neither has the same been made out by the defendants. Accordingly, I am of the opinion that the suit is maintainable.**
>
> **Issue decided accordingly."**
>
> *(emphasis supplied)*

The findings of the learned trial Court extracted above do not appear to be consistent with the legal position obtaining in such matters and are contrary to the sound judicial principles. It is quite clear that there was no doubt in the mind of the learned trial Court that the Gangtok Rent Control and Eviction Act, 1956 had no application in Rangpo. However, it is difficult to accept that it is a court of equity when it was acting as a court under a special law prescribing specific jurisdiction upon it. It is a settled position of law that equity cannot depart from the statute and would follow the laws and rules save and accept in exceptional circumstances. In this regard, reference may be made to the decision of the Apex Court in ***Hemalatha Gargya*** vs ***Commissioner of Income Tax, A.P. and Another*** reported in ***(2003) Vol.9 Supreme Court Cases 510*** in which it has been held as follows: -

> **"10. Besides, the Scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the Income Tax Act. Where the assessees seek to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. <u>There is no scope for the application of any equitable consideration when the statutory provisions of the Scheme are stated in such plain language</u>.**
>
> **11. <u>Seen from the angle of the designated authority, which is created under the Scheme, it is clear that the authority cannot act beyond the provisions of the Scheme itself. The power to accept payment under the Scheme has been prescribed by the statute. There is no scope for the Revenue Authorities to imply a provision not specifically provided for which</u>**

would in any way modify the explicit terms of the Scheme."

(underlining supplied)

Although the above decision was rendered in the context of controversies arising out of the Voluntary Disclosure of Income Scheme, 1997 under the Income Tax Act 1961, the principle laid down therein nevertheless would be fully applicable in the present case also.

15. As observed earlier, the law governing landlord and tenants in the State other than Gangtok, is provided under Notification No.6326-600/H.& B.W., dated 14th April, 1949, and even if the suit is to be considered to be one under that law, it would be of little help to the respondent/plaintiff, as this law does not provide for eviction of a tenant on the ground of having made material additions and alterations to the rented premises. It, therefore, follows that it would be impermissible for a Court functioning under a special law which prescribes limits of its powers and jurisdiction, to pass a decree of eviction against the tenant for such violation as it would lack the necessary jurisdiction which in my view would go to the root of the case. It is a well settled position of law that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of a strict compliance with the statutory provisions and that equitable consideration has no place in such matters where the statute

contains express provisions. In this regard, we may usefully refer to ***(2003) 1 Supreme Court Cases 123*** in the matter of ***E. Palanisamy*** vs. ***Palanisamy and Others***. The relevant paragraph 5 of the judgment reads as follows : –

> **"5. .....The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains express provisions. ....."** (*emphasis supplied*)

16. In ***AIR 1994 Andhra Pradesh 164*** in the matter of ***Sheriff Iqbal Hussain Ahmad*** vs. ***Kota Venkata Subbamma and Others*** a Division Bench of the Andhra Pradesh High Court has laid down the following: -

> **"9. Equity is not available where effective and appropriate remedy is available. Equity cannot be invoked to effect the appropriate and specific remedy, available through the common, general or express law of the land. Equity always follows the law, but is not vice versa. Even where equities are equal, law prevails. But, in the instant case, the question of invocation of equity in favour of the defendants does not and cannot arise at all. Equity is basically a gloss or appendage to the common law and not a rival or competing system. Equity does not destroy the law nor create it, but assists it. Even if the Court feels that by enforcing the express law of the land, hardship is caused to the defendant there cannot be any equitable intervention. ....."**

17. In ***Raghunath Rai Bareja and Another*** vs. ***Punjab National Bank and Others (2007) 2 Supreme Court Cases 230,*** the Apex Court has held as follows: -

> **"29. .....While we fully agree with the learned counsel that equity is wholly in favour of the respondent Bank, since obviously a**

> **bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim *"dura lex sed lex"* which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant or override it."**

18. The learned trial Court while deciding Issue No.3, i.e., "Whether for such alteration if any, the defendant is liable to be evicted?", arrived at the finding that the appellants/defendants had been found to have caused major additions and alterations in the suit premises, and on such finding passed the impugned decree for their eviction there from. But when the law prescribes specific grounds on which an order of eviction can be passed by the court acting there under, it would not be permissible to do so on a ground alien to such law. If it is so done, as has been done in the present case, it would amount to rewriting the statute book which is impermissible.

19. In the facts and circumstances of the case, I am of the view that the learned trial Court has acted in excess of its jurisdiction by erroneous application of the law of equity when the provisions of the law clearly provides no room for application of such principle.

20. In the result, the appeal is allowed. The impugned judgment and decree stands set aside and the original suit

stands dismissed with the observation that it shall be open for the respondent/plaintiff to seek remedy as may be available to him in an appropriate proceeding under the law.

No order as to costs.

(Sonam P. Wangdi)
JUDGE

DISTRICT : EAST SIKKIM

IN THE HIGH COURT OF SIKKIM AT GANGTOK

(CIVIL APPELLATE JURISDICTION)

RFA No. 3 of 2009.

Himal Match Company Pvt. Ltd.
& Anr. ... Defendants/Appellants.

Versus

Shri Raj Bansi Bhagat. ... Plaintiff/Respondent.

CASE LAWS RELIED ON BY THE APPELLANTS.

1. 2003(1)SCC 123
   (E.Palanisamy Vs Palanisamy and Others.
   Head note A. Paragraphs 3,4 5 and 8.

2. 2003 (2) SCC 577
   Nasiruddin and others Vs Sita Ram Agarwal-
   Head Note B. Paragraph 35/37/40/41.

3. 2003(9) SCC 510
   Hamlatha Gargya Vs Commissioner of Income Tax A.P. and Another.
   Head Note-A. Paragraph 10/11/13

4. 2007(5)SCC 447
   Southern Petrochemicals Industries Co., Ltd. Vs Electricals inspector and Etio and others.
   Head Note-K. Paragraph 92

5. 2007(2) SCC 230
   Municipal Corporation of Delhi Vs Kimat Rai Gupta and others.
   Head note-H.

Gangtok,

Dated 11.11.2009

Filed through Counsel

N.G. Sherpa (Advocate)

For Appellant