



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

DATED : 02.05.2013

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE PIUS C. KURIAKOSE**

R.F.A. No. 01 of 2012

AND

**C.O. No. 01 of 2012
(In R.F.A. No.01 of 2012)**

1. Smt. Rajala Devi
Wife of late Shri Rameshwar Prasad,
Resident of Singtam Bazar,
P.O. & P.S. Singtam,
East Sikkim.
2. Shri Bijay Kumar Prasad
3. Shri Ajay Kumar Prasad and
4. Shri Sanjay Kumar Prasad

All sons of Late Rameshwar Prasad,
Resident of Singtam Bazar,
P.O. & P.S. Singtam,
East Sikkim. **Appellants.**

- versus -

Shri Tashi Tshering Bhutia,
Son of Shri Tshering Wangdi Bhutia,
Resident of Simick Lingzey,
P.O. Khamdong,
P.S. Singtam,
East Sikkim. **Respondent.**



For Appellants : Mr. Eklovya Rai Nagpal,
Advocate.

For Respondent : M/s. N. Rai, Senior Advocate
with Jyoti Kharka, K. T. Gyatso
and Sushant Subba, Advocates.

J U D G M E N T (O R A L)

Pius, CJ.

This Regular First Appeal is preferred by the defendants in Eviction Suit No. 06 of 2010 on the files of the District & Sessions Judge, Special Division-I, East and North at Gangtok, being aggrieved by the Decrees passed against them, *inter alia*, for recovery of arrears of rent for the period from the month of October, 2010 till September, 2011 and also for eviction on the ground of default in payment of rent continuously for a period of 4 (four) months. As the pleadings raised by the parties have been narrated in detail and almost accurately by the Court below in the impugned judgment, it is necessary to advert to them only very briefly.

2. The respondent is hereinafter referred to as the 'landlord' and the appellants are referred to as the 'tenants'. The suit was instituted by the landlord seeking eviction of the tenants on the following 3 (three) grounds: -

- (i) the defendants have defaulted for payment of
rent continuously from the month of



September, 2000 till the time of filing of the suit, i.e. on 14.09.2004;

- (ii) the landlord intends to settle his eldest sons, who achieved their majority in age and are educated unemployed youths, in a Hotel business and Manihari shop proposed to be opened in the Schedule 'A' premises (the entire building which takes in the building occupied by the tenants also). The landlord is thus in *bona fide* requirement for his personal use and occupation of the Schedule 'A' premises for the above purpose; and
- (iii) the 'B' Schedule premises (the building under the occupation of the tenants) has become dilapidated being quite old and also due to disrepair. The condition of the building is such that it requires repair and overhauling.

3. Apart from claiming eviction on the above three grounds, the plaintiff also sought for a decree of recovery of arrears of rent amounting to Rs.20,300/- being the rent, which had fallen due till the date of institution of the suit together with interest @18% p.a.

4. The tenants in the written statement filed by them would stoutly deny the allegations of the landlord regarding existence of three eviction grounds. The landlord's allegation that the tenants had defaulted payment of rent and that he was entitled for a decree for recovery of arrears was also disputed. Various other contentions including a contention that the suit is barred by limitation were raised. The existence of the landlord-tenant relationship between the parties was also denied. Even the rate of rent alleged by the plaintiff was disputed.


5. The learned District Judge, on the basis of pleadings raised by the parties, formulated the following issues for trial:-

- (i) Is the suit maintainable in its present form?
- (ii) Is there any relationship of landlord and tenant between the plaintiff and the defendant?
- (iii) Did the plaintiff's father purposely stop issuing rent receipts for rentals received by him from the defendant from February, 1991?
- (iv) Was a notice of attornment of the tenancy made by the plaintiff to the defendant after 18.2.1999?
- (v) Did the plaintiff's father demand and accept rents till well after March, 1999 that it till November, 2000?
- (vi) Did the plaintiff hand over to the defendant a document titled deed of lease dated 1.4.2001 and tell the defendant either to vacate the tenanted premises or to sign the Deed of Lease?
- (vii) Is the Schedule 'B' premises in a dilapidated condition and does the same require immediate repairs and overhauling?



- (viii) Whether the defendant is a monthly tenant under the plaintiff in respect of the suit premises or was the rent payable by the defendant on demand?
- (ix) Whether the defendant defaulted in payment of rent or not?
- (x) Whether the plaintiff requires the suit premises for bonafide use and occupation for settling his three sons in a hotel and manihari business for sustenance?
- (xi) To what relief, if any, is the plaintiff entitled to in this suit?


6. The parties went for trial on the basis of the above issues and at trial, the evidence on the side of the landlord consisted of 8 (eight) witnesses, PWs 1 to 8. PW-1 Shri Tashi Tshering Bhutia was landlord himself, PW-2 Shri Tshering Wangdi Bhutia was landlord's father PW-3 Shri Karma Tshering Bhutia, PW-4 Shri Karma Wangdi Bhutia, PW-5 Shri Karma Dorjee Bhutia and PW-6 Shri Karma Topden Bhutia were sons of the landlord, for whose purpose also the landlord wanted to evict the tenants. PW-7 Shri Suk Deo Subba and PW-8 Shri Bhagwan Shah were independent witnesses, who were cited for proving the landlord's case. On the side of the tenants, there were 3 (three) witnesses, DWs 1 to 3. DW-1 Shri Ajay Prasad was the son of the tenant Late Rameshwar Prasad. DW-2 Smt. Geeta Sharma was the post woman who has cited to prove the Money Order sent by the tenants to the landlord. DW-3 Shri Chundi Chopel Bhutia was a witness cited for proving the defence of the tenant. Documentary evidence on the side of the plaintiff-



landlord consisted of Exbt.1 to Exbt.18 and documentary evidences on the side of the defendants-tenants consisted of Exbt. A1 to Exbt. A84.


7. The Court below took up Issues No.1 to 2 first and would answer the above issues in favour of the landlord and would hold that there is landlord-tenant relationship between the parties. Issue No.3 was answered by the Court below finding that the landlord's father merely stopped the practice of issuing receipts and that system continued after the plaintiff came into ownership of the building on 28.02.1999.

8. Upon Issue No.4, the Court below would find that the defendants had attorned with the plaintiff and would answer the issue in favour of the plaintiff. In the above context, the Court below did notice that an identical issue raised in the suit, Tashi Tshering Bhutia vs. Jagdish Prasad, Eviction Suit No.1 of 2005 had been answered by the Court below in favour of the plaintiff-landlord. Issues No.5 and 8 were considered jointly by the Court below which would answer both the issues in favour of the plaintiff-landlord. Issue No. 6, which pertains to an allegation by the defendant that a document titled Deed of Lease dated 01.04.2001 was handed over by the plaintiff to the defendant with a request either to sign the Deed or to vacate the building immediately, was considered by the Court below. That issue was also answered by the Court below in favour of the



landlord on the ground of finding that the defendant whose obligation is to prove the allegation, failed in proving the same. Issue No.7 was the issue pertaining to the allegedly dilapidated condition of the building and the landlord's requirement for doing immediate repair and overhauling of the building. The Court below on appreciating the evidence adduced by the parties in relation to this issue would come to the conclusion that though it is true that the building requires some repairs, the condition of the building is not such that overhauling of the building is required. Thus, the above issue was answered against the landlord.

9. Under issue No. 10, the issue relating to the landlord's requirement of the building for bonafide use and occupation of the building for settling his 3 (three) sons in a hotel and manihari business for sustenance, the Court below would place strong reliance on the judgment of this Court in RFA No. 01 /2008 filed by Shri Jagdish Prasad the other tenant of the landlord against the landlord. The Court below would quote paragraph 8 of the judgment of this Court in RFA No. 01/2008 and conclude that this Court in that appeal wherein also the bonafides of the same requirement of the same landlord was under consideration, concluded that the evidence in that case was not sufficient and that the landlord has made out a case of suit premises for his personal occupation and also that the occupation alone cannot encompass use and occupation and




further that desire and intention as expressed by the landlord in that case amounted to requirement for use only and not requirement for occupation. Accordingly, the Court below in the light of the observation of this Court in that judgment and as the issue of requirement for occupation in the present case is identical to the requirement in that case, becomes impelled to hold against the landlord on the above issue. Accordingly the above issue was decided against the landlord.

10. The Court below would take up the issue No. 9 relating to default in payment of rent by the tenant lastly and would answer that the issue in favour of the landlord. Accordingly, the Court below would decree the suit granting the following reliefs to the landlord: -


- (i) The decree of recovery of arrear rent from the month of October 2010 till September 2011, however, declining any interest to the landlord to the rent in arrears.
- (ii) Directing the eviction of the tenant from the building on the ground of default in payment of rent only granting three and a half months time to the tenant to vacate the building.

11. It is being aggrieved by the above judgment and decree that tenants have preferred the instant appeal. In the Memorandum of Appeal the appellants raised various grounds



assailing the findings entered by the Court below in favour of the landlord and it is urged that the impugned judgment and decree to the extent the same is in favour of the landlord be set aside and the suit be dismissed. A Memorandum of Cross Objection – CO No. 01/2012 is lodged by the landlord taking objection to the findings of the Court below on issue Nos., 7 and 10. It is urged that the finding of the Court below on issue No. 7 regarding the condition of the building and the landlords requirement to overhaul the building is contrary to the evidence. It is also urged that the finding of the Court below on issue No. 10 relating to the landlords bonafide need to accommodate his 3 sons in the building to conduct hotel and manihari business is also contrary to the evidence on record.

12. I have heard the submissions of Mr. N. Rai, learned senior counsel for the respondent/plaintiff/cross objector and those of Mr. Eklovya Rai Nagpal, learned counsel for the appellants. Mr. Eklovya Rai Nagpal, learned counsel for the appellants would submit that the findings of the Court below on the issues which have been found by the Court in favour of the landlord are erroneous being contrary to law and evidence on record. Learned counsel would particularly assail the findings of the Court below on the issue regarding default by the tenant in payment of rent. According to the learned counsel, the appreciation of the evidence by the Court below was thoroughly erroneous. The Court below ignored all the mandates of



Notification No. 6326-600-H&W-B under which the Court below has to exercise a judicial discretion on the question as to whether the defendant was liable to be evicted at the instance of the landlord-plaintiff. My attention was drawn by the learned counsel to the evidence given in this case by the landlord as PW-1 and by his father as PW-2. It was submitted that it was admitted by both of them that there was no practice prevailing in the present tenancy of issuing receipts to the tenants when they pay the rent. As it had been admitted that the landlord was not in the habit of issuing receipts to the tenants when he pays the rent, the Court below should have seen that the onus of proving that the rent was in default as alleged by the landlord was on the landlord and not the tenant. The learned counsel submitted that Exhibit – 3, Register maintained by the landlord regarding receipts of rent was not legal evidence as the same was only a photocopy. There were contradictions between the oral evidence given by the landlord and landlord's father, the original landlord and these were fatal to the landlord's case. The rent was payable only on demand and even in Exhibit-1, agreement dated 01.07.1986 relied on by the landlord, there is no obligation on the part of the landlord to issue receipts to the tenant. The broad probabilities of the matter were ignored by the Court below and this has resulted in illegality and prejudice to the tenant.



13. Mr. N. Rai, the learned senior counsel per contra would support to those findings of the Court below which were in favour of the landlord. He would go on to assail the findings of the Court below which were against his client namely, the findings in the context of requirement of the landlord to overhaul the building, and to accommodate his 3 sons for the purpose of starting a hotel business and manihari business. In this context, he would address arguments at length based on the memorandum of cross-objections. According to him, the Court below has misread and mis-appreciated the judgment of this Court in RFA No. 01/2008. According to him, this Court ultimately has only confirmed the judgment of the trial Court in Eviction Suit No. 01/2005. Under that suit the trial Court had found that rent was in arrears as alleged by the landlord and had given a rent decree with interest to the landlord. The trial Court had also declared that the building occupied by the tenant Jagdish Prasad was required by the landlord for his bonafide use of personal occupation and for settling his 3 sons in a hotel and manihari business. The Court has also declared that the suit premises are required for thorough overhauling and repairs and had ordered eviction on all the 3 grounds. This Court did not interfere with that judgment at all. The observations quoted by the Court below in its judgment from this Court's judgment in RFA No. 01/2008 were mere casual observations and not findings. Mr. Rai would in this context take me over to the oral evidence given by the 3 sons of the landlord and submit that

their evidence that they are unemployed and that they need accommodation for starting hotel and manihari business in the subject building was not shaken in cross-examination. Mr. Rai submitted that Jagdish Prasad, the other tenant had already vacated the building portion – the subject matter in RFA No.01/2008 and in that portion, the landlord has already started the proposed business, by opening restaurant. This subsequent event may kindly be noticed. According to him, the findings of the Court below that building requires only some minor repairs and not thorough overhauling is contrary to the evidence. Tell-tale photographs of the building which were never disputed by the landlord were on record before the Court below. Here again the decision of the Court below to order eviction against Jagdish Prasad on the ground of overhauling was confirmed by this Court. This aspect of the matter was not noticed by the Court below.

14. Mr. N. Rai, learned Senior Counsel would fortify his submissions by the authority of a catena of decisions. The judgment of Orissa High Court in **Raghava Chandra Das vs. Bipin Behari Mohapatra and Ors. : AIR 1989 Orissa 40 (Full Bench)** and the judgments of Hon'ble Supreme Court in **Kailash Chand & Anr. vs. Dharam Dass : (2005) 5 SCC 375**, in **Adil Jamshed Frenchmen (dead) by LRs vs. Sardar Dastur School Trust & Ors.: (2005) 2 SCC 476**, in **Pratap Rai Tanwas & Anr. vs. Uttamchand & Anr. : (2004) 8 SCC**



490, in **Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabaibai Prabhulal & Ors. : (2005) 8 SCC 252**, in **Dwarka Prasad vs. Niranjan & Ors. : (2003) 4 SCC 549**, in **Akhileshwa Kumar & Ors. vs. Mustaqim & Ors. : (2003) 1 SCC 462**, in **Smt. Janeja Devi & Ors. vs. Moharam Ali : AIR 1988 SC 411**, in **Siddalingamma & Anr. vs. Mamtha Shenoy : (2001) 8 SCC 561**, in **Lingala Kundala Rao vs. Vootukuri Narayan Rao : (2003) 1 SCC 672**, in **Suhila vs. IInd Addl. District Judge, Banda & Ors. : (2003) 2 SCC 281** were among the decisions cited before me by Mr. N. Rai. In reply, Mr. Nagpal, learned counsel for the appellants would reiterate his submissions made earlier. He would rely on the judgment of the **Hon'ble Supreme Court** in **Commissioner of Income Tax, West Bengal II vs. Durga Prasad More : AIR 1971 SC 439** and argue that recitals in self-serving documents relied on by a party had to be appreciated very cautiously. According to him, the reliance placed before the Court below on Exhibit-3 which were only photocopies were not at all justified. Very strong reliance was placed by the learned Counsel on the judgment of Punjab and Haryana High Court in **Fakir Chand and Anr. vs. Bhagwan Das : (1994)108 PLR 129**, a case where Punjab & Haryana High Court accepted the case of the tenant of having paid rent even in absence of receipts issued by the landlord on the basis of oral evidence on record, which was to the effect that the landlord was not in the habit of issuing receipts.



15. I have given my anxious consideration to the rival submissions at the bar. I have gone through the rival pleadings of the parties. I have made a re-appraisal of the evidence both oral and documentary available in the case. I shall deal first with the appeal filed by the tenant where the cardinal issue that comes for consideration is correctness of the decree for eviction given in favour of the landlord on the ground of default in payment of rent.


16. Exhibit 1 properly proved on the side of the landlord is a document under which Mr. Rameshwar Prasad, the husband of appellant No. 1 and the father of other appellants, the present tenants took the building on lease from the father of the present landlord. Exhibit – 1 does not relate to the entire 'A' Schedule property, it relates only to a substantial portion of the same, but it is conceded by DW-1 the principal witness on behalf of defendants/tenants, Ajay Kumar Prasad, appellant No. 3 that after they were originally inducted in this building on the strength of Exhibit-1 another room was also taken on lease. The rate of rent mentioned in Exhibit-1 is Rs.1001/- only per month, but it is conceded by the defendant that the prevailing rate as varied from time to time is Rs. 2900/- per month. In other words, it is conceded in the evidence that the present tenancy which has been proved to be between the appellants and the respondent is one continuing on the basis of the original tenancy brought into existence through Exhibit-1. Exhibit-1 is dated

01.07.1986. These are the recitals in Exhibit -1 regarding the liability of the original tenant to pay rent.

"..... The date of rent will commence from today i.e. 1/7/86. I undertake to repay the fixed rent at the end of every month and in case of default in payment of rent at the end of every month, the landlord can evict me from the premises and can also take the matter to the appropriate court of law and the govt can also act as per this agreement."


It is true that Exhibit -1 does not contain a provision that the tenant shall take receipt from the landlord against payment of rent from him and it is also true that Exhibit -1 does not incorporate any obligation on the part of the landlord to issue receipts to the tenant whenever he receives rent from the tenant. The tenancy admittedly is not an oral one. It is a tenancy which began through a written document Exhibit-1. When the above written document obliges the tenant to pay rent to the landlord at the end of every month, the further obligation on the part of the tenant to get a receipt from the landlord whenever he makes payment is implicit. Exhibit -1 creates a tenancy from month to month and the recital in Exhibit-1 in my view cuts at the very root of tenants contentions that his liability to pay rent is only on demand by the landlord.

17. Exhibit-3 are the pages of account books maintained by the father of the present landlord pertaining to a long period from September 1992 till September, 2000. They will show that when rent was being paid on monthly basis, so, however, that the tenants were chronic defaulters and were paying amounts




larger than one month's rent towards rent in arrears. Significantly, during the period from 04.05.1999 till 02.10.2000 the rent was being paid @ Rs.2,900/- the admitted monthly rate. The contention as regards Exhibit – 3 raised before me was that the same is only a photocopy and that not the original. But as noticed by the Court below in its judgment the original of Exhibit-3 was available on the records of Eviction Suit No. 01/2005 and the Court below did compare the original with Exhibit-3, which is a Photostat copy by invoking the provisions of Order XIII Rule 10 of the CPC. The contention of the appellants was that they had discharged the rent which the landlord alleged was kept in arrears by them. In other words, the contention is that the rent was paid without insisting on any receipt from the landlord. This defence of the tenant is a highly improbable one.

18. The evidence in this case reveals that the defendants themselves are landlords of other buildings. It is brought out in evidence and it is conceded before me at the Bar also that whenever their tenants pay rent to them, they issue receipts. To imagine that such a tenant who is well aware of the necessity of issuing receipts to their tenants will pay rent to the landlord without insisting on taking receipts even after the relationship between the parties became strained (according to them by their filing complaints before the police against the landlord). The alleged payment of rent by the appellants during the disputed period was stoutly denied by the landlord and in the teeth of



such denial it was the tenants' burden to adduce cogent evidence for proving that they had regularly discharged their liability to pay the rent to their landlord. As already stated the present tenancy is in continuation of the tenancy which was originally started through Exhibit-1. Exhibit – 3 will show that during the lifetime of the original landlord the tenants were paying rent against receipts or acknowledgments in the rent register maintained by the landlord. Section 114 (d) of the Evidence Act would justify the drawal of a presumption in favour of landlord that the same arrangement continues. The tenants assert that after the present landlord became the owner the arrangement is discontinued. It is for the tenants to establish their such case. The tenants have a case that the present landlord has not issued any receipts at all to any of his tenants. Here again it should be noted that a tenant has not taken the pain to examine any of the fellow tenants or former tenants of the same building to prove the above contention.


19. I am of the view that there is no infirmity whatsoever with the findings of the Court below regarding the existence of a landlord-tenant relationship between the parties and also regarding the default by the tenants-appellants in the matter of payment of rent. In other words, the decree for recovery of money towards arrears of rent and for eviction on ground of default payment of rent are beyond challenge and are only to be confirmed.



20. I shall now deal with the landlords claim for decree of eviction on the ground of overhauling of the building and on the ground of occupation for himself and his 3 grown up sons who are said to be without employment. In this connection, I do find force in the submission of Mr. N. Rai that the Court below was not at all justified in taking the view that this Court in Jagdish Prasad's case (RFA No. 01/2008) has taken the view that the landlords claim for requirement of the building for own occupation by his sons is not bonafide. This issue is dealt with by the Court below under issue No. 10. At paragraph 54 of the impugned judgment the Court below noticed that issue No. 10 in the present case is identical to issue No. 10 in Jagdish Prasad's case. It was certainly an issue relating to the need of the very same landlord to accommodate his 3 sons in hotel and manihari business in the entire building. The Court below held in paragraph 54, as below:

"The Hon'ble High Court of Sikkim while deciding this issue vide its order dated 21.05.2010 in RFA No. 1/2008 in paragraphs 7 and 8 has discussed this issue at length."

Thereafter, at paragraph 55 of the judgment, the Court below quoted certain passages from paragraph 8 of the judgment of this Court in RFA No. 1/2008. I have carefully gone through the judgment of this Court in RFA No. 01/2008. I have noted that paragraph 7 of judgment of this Court in RFA No. 01/2008 does not contain any finding or observation



touching the merits of the landlords claim for occupation of the building for accommodating his sons in business. It is in paragraph 8 that the observation quoted by the Court below has been made. In that paragraph this Court has certainly observed as follows:

“..... It, therefore does not appear to me that there was enough evidence to suggest that the respondent had made out a case of requirement of the suit premises for his personal occupation. The desire and intention, as well expressed, addressed requirement for use only and not requirement for occupation.”


21. After saying so in paragraph 8, this Court in paragraph 9 deals with the issue of arrears of rent which was also involved in that appeal. Paragraphs 10 to 14 of the above judgment do not specifically deal with the landlord's entitlement for eviction on the ground of occupation. Paragraph 15 of the judgment deals with the eviction ground of default in payment of rent. In paragraph 16, interestingly this Court considers the question whether there is any hardship for the tenant or any other circumstance demanding consideration of special equity in favour of the tenant so as to refuse permission to evict. This Court finds that Jagdish Prasad, the tenant, owns other building in Singtam town and holds that no case of such hardship or other surrounding circumstances has been made out and concludes that the Court's discretion cannot be exercised in favour of Jagdish Prasad and ultimately at paragraph 17 of the judgment, this is what this Court has said:




"In the circumstance, for the reasons as above, there is no scope of interference with the judgment and decree under appeal, except that the appellant is given time till 31.10.201 to vacate the suit premises on condition that he will continue to deposit rent in terms of earlier orders of this Court until for the month of October, 2010."

22. In other words, the ultimate decision taken by this Court in RFA No. 01/2008 filed by Jagdish Prasad was to confirm the judgment of the trial Court in Eviction Suit No. 01/2005 under which eviction decree had been passed in favour of the landlord not only on the ground of arrears of rent but also on the ground that that the premises is required for the landlord for his bonafide use. This vital aspect of the matter was not noticed by the Court below.

23. Nevertheless, I am not inclined to order eviction on the ground of bonafide need or own occupation by the landlord straightway. I am of the view that the matter requires adduction of further evidence by the landlord and reconsideration by the Court below. The statutory requirement in terms of notification No. 6326-600-H&W-B is that landlord can be permitted to evict the tenant "when the whole or part of the premises are required for their personal occupation". An interesting argument was raised before me by the learned counsel for the appellants. The argument was that going by the definition of the term "landlord" in the notification, the landlord means owners of the building along with the landlord and not their dependant family members and own occupation for the purpose of the notification shall be




personal own occupation of the landlords themselves. In the instant case, I find some evidence adduced by the landlord to the effect that the proposed business of hotel and manihari will be conducted by him also along with his sons. But I have to say that the evidence adduced by the landlord in this context is not specific. Moreover, I find that this contention that occupation has to be personal occupation by the landlord himself and not occupation by his dependent sons is not raised before the Court below. There is one another aspect which persuades me to remit the issue whether the landlord is entitled for eviction on the ground of personal requirement back to the Court below. It is discernible from the evidence that apart from Jagdish Prasad and the present appellants there are other tenants in occupation of a small portion of the entire building in which the landlord wants to accommodate his sons for the purpose of carrying on business. When this aspect of the matter was put to Mr. N. Rai, he submitted that those two tenants namely, Nageshwar Bhagat and Harilal Bhagat, are very obliging tenants and they will vacate any moment the landlord requests them to vacate. As a matter of fact Mr. N. Rai brought these two tenants to the Court room and Ajay Kumar Prasad, DW-3 who was also present in the Court room did not dispute those two tenants as the only other tenants in possession. These two tenants have filed affidavits before this Court in which they have stated that they will surrender rooms occupied by them (in all two rooms of size 150 sq.ft.) as and when the landlord request them to do so or when



the present appellants vacate their portion of the building. I am of the view that as these affidavits are being filed for the first time before this Court and as no evidence was adduced by landlord on the side of the landlord before the trial Court to the effect that these two tenants will vacate as and when demand by the landlord. These affidavits can be accepted as evidence only after affording opportunity to the appellants to cross examine the deponents. There is yet another reason which persuades me to remit back the matter. I am informed that utilizing the space vacated by Jagdish Prasad the landlord has already started a Restaurant as a preliminary step for starting the proposed hotel and manihari business. If this is correct, the same will be a relevant subsequent event strengthening the bonafides of the claim of the landlord to accommodate his sons and himself for doing hotel and manihari business.

24. The last question arises is that the landlord's eligibility for getting eviction on the ground of overhauling. Even though some of the photographs placed on record of the side of the landlord which are not disputed would indicate that the condition of the building is unsatisfactory and may justify overhauling. I am of the view that the landlord in this case cannot aspire for eviction on the ground of overhauling. I find from the records pertaining to Eviction Suit No. 1/2005 including the judgment of RFA No. 01/2008 that the ground of overhauling the building was virtually given up by the landlord during the



course of trial in the case. Admittedly the building occupied by Jagdish Prasad is part and parcel of the larger building in which landlord wants to accommodate his sons for conducting hotel and manihari business. If the building occupied by Jagdish Prasad does not require overhauling even according to the landlord there is no difficulty for me to hold that the entire building is also not liable to be evicted on the ground of overhauling. The result of the above discussion, therefore, will be as follows: -

- (i) The appeal fails and stands dismissed,
- (ii) the decree for recovery of arrears of rent and for eviction on the ground of default on the payment of rent are confirmed,
- (iii) the decree declaring of eviction on the ground of overhauling is confirmed,
- (iv) the Eviction Suit to the extent it relates to the landlord's claim for eviction on the ground of personal occupation for the purpose of accommodating his sons for doing hotel and manihari business is remitted back to the Court below,
- (v) the Court below will afford opportunity to both sides to adduce further evidence. If the landlord wants to examine the two tenants against whom action is yet to be initiated; he is free to do so. The landlord can also adduce evidence regarding commencement of Restaurant as part of the proposed hotel in the premises vacated by the Jagdish Prasad.

- (vi) cross objection is allowed to the above limited extent,
- (vii) parties will enter appearance before the Court below on 01.07.2013 and
- (viii) Transmit the records back forthwith to the Court below. As the eviction order on the ground of default of payment of rent and the decree of recovery of money is confirmed, it is open to the landlord to execute the orders and to take possession notwithstanding the order of remit passed under this judgment.

However the Execution Court is directed to keep in abeyance proceedings for delivery for a period of three months from today till 16.08.2013 subject to the following conditions: -

- (i) The appellants shall deposit the entire arrears of rent decreed by the Court below within a period of six weeks from today
- (ii) The appellants shall also deposit or pay to the landlord the arrears of rent which has fallen due in respect to the building after the institution of the suit till date within the aforesaid period.

25. Before I part with this case, I find it necessary to make a few observations in the context of statutory position presently available in the State of Sikkim regarding eviction of tenants. I find that the eviction of tenants in the Gangtok Bazaar area is governed by the Gangtok Rent Control and Eviction Act, 1956. As for the other areas of the State not falling

within the Gangtok Bazaar Area, the rights and liabilities of the landlords and tenants in the matter of eviction are governed by Notification No. 6326-600-H & W-B. I must say that the position which obtains under the statute which governs the Gangtok Bazaar Area and the Notification which governs the other parts of the State is not satisfactory.

26. I shall straightway deal with the Notification No. 6326-600-H&W-B promulgated by an order of His Highness the Maharaja of Sikkim way back on the 14th April, 1949. The very definition given to the terms 'tenant' and 'landlord' which interestingly are exhaustive definitions are quite unsatisfactory and contrary to the definition given in rent control legislations prevailing in other parts of the country. Here in the Notification the tenant is defined as "persons in actual occupation" and landlord means "the owner of the premises". In other words anybody in actual occupation including the trespassers and licensees can be a tenant who will be liable to be evicted only in terms of the notification. Going by the definition only owners will qualify as landlords. The notification has just five clauses and it is clause no. 2 which deals with landlords right to evict the tenant and tenants' liability to be evicted. Clause no. 2 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.”

27. According to me, clause no. 2 is quite unsatisfactory and outdated as to provide for the very valuable right of the landlord to evict his tenant on valid grounds and the equally valuable right of an entrenched tenant to deny existence of specified grounds. Unlike the case of various other rent control legislations prevailing in the country, the language employed in the notification is unintelligible and capable of creating confusion to the parties, to the Court and to everybody else concerned. Clause 3 deals with fixation of rent. The power for fixation is conferred on the Health and Works Department. This situation is also not ideal as fixation of fair rent will necessitate any adjudication with participation of both the tenant and landlord in the enquiry.

28. Coming to the Gangtok Rent Control and Eviction Act, 1956 the situation seems to be slightly better. Here Sections 4 and 5 deal with eviction of tenants. Section 4 is an important section giving eviction grounds to the landlord and the same reads as follows: -

“ 4. A Landlord may not ordinarily eject any tenant. When, however, the whole or part of the premises are required for the bonafide occupation of the landlord or his dependents or for thorough overhauling (excluding additions and alterations) or when the rent in arrears amount to four months rent or more, the landlord may evict the tenant on filing a suit of ejectment in the Court of the Chief Magistrate. The tenant so evicted shall, however, have the first right to re-occupy the premises, after over-



hauling, on such enhanced rent as may be fixed by the Sikkim Darbar before it is let out to any other tenant."

Section 5 prohibits sub-letting by tenants without the consent of the landlord but sub-letting of tenant is not made a ground for eviction. Section 7 reads as follows and the same also cannot be said to be conferring any right of eviction on the landlord: -

" 7. No landlord or tenant shall keep either the whole or any part of the business premises facing the Bazar street closed down for a period exceeding six months. If he does so, the Sikkim Darbar shall have the right to take possession of the premises and let it out to any one else whom it thinks proper:

Provided the landlord will first be given the opportunity to let out such premises himself on being so directed by the Darbar."

29. Section 12 is another section which gives right of eviction to the landlord and the same reads as follows:

" 12. No tenant shall make any additions or alternations to the building, or damage the structure in any way, save in the course of ordinary wear and tear, without the approval in writing of the landlord, failing which the landlord shall have the right to evict such tenant."

Thus, one must say that there is more clarity and specificity than the notification to the provisions of Gangtok Rent Control and Eviction Act, 1956. However, I am of the considered view that even the Act, which deals only with the Gangtok Bazaar Area, does not provide for an ideal statutory situation. In these modern times, when the right to obtain eviction on valid ground and the right to defend eviction on grounds which are not genuine, are valuable rights from the points of the landlord and tenant respectively. Ideally, the Government will take requisite



steps for legislating a comprehensive law on the pattern of any one of the rent control legislations prevailing in various States of India providing for clear grounds on which an eviction can be given and also for the valid defence to the tenants to resist eviction if the same is sought on insufficient grounds.

30. Registry is directed to forward a copy of the judgment to the Chief Secretary, Government of Sikkim, Gangtok for appropriate action.

Sd/-

(Pius C. Kuriakose)
Chief Justice

02.05.2013

Approved for Reporting: Yes/No.

Internet: Yes/No.

pm/jks