



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

S.B. : HON’BLE MR. JUSTICE S. P. WANGDI , JUDGE

RFA No.05 of 2014

Appellant : Shri Hotilal Prasad,
S/o Late Ramlal Prasad,
R/o Majhigaon,
Jorethang,
South Sikkim.

versus

Respondent : Dr. Sakuntala Sharma,
D/o Shri H. B. Sharma,
R/o Circular Road,
Jorethang,
South Sikkim.

RFA No.06 of 2014

Appellant : Shri Mani Kumar Tiwari,
S/o Late Ramagya Tiwari,
R/o Majhigaon,
Jorethang,
South Sikkim.

versus

Respondent : Dr. Sakuntala Sharma,
D/o Shri H. B. Sharma,
R/o Circular Road,
Jorethang,
South Sikkim.



RFA Nos.05, 06 and 07 of 2014

Hotilal Prasad and Others vs. Dr. Sakuntala Sharma

RFA No.07 of 2014

Appellant : Niamudin Hussain,
S/o Late Noor Hussain,
R/o Majhigaon,
Jorethang,
South Sikkim.

versus

Respondent : Dr. Sakuntala Sharma,
D/o Shri H. B. Sharma,
R/o Circular Road,
Jorethang,
South Sikkim.

Appeal under Order XLI Rules 1 and 2 of
the Code of Civil Procedure, 1908

Appearance

Mr. A. Moulik, Senior Advocate with Mrs. K. D. Bhutia, Advocate for the Appellants-Defendants.


Mr. N. Rai, Senior Advocate with Ms. Bindu Gurung and Ms. Tamanna Chhetri, Advocates for the Respondent-Plaintiff.

J U D G M E N T

(10th December, 2014)

Wangdi, J.

1. These three Appeals are taken up together as they pertain to the suit premises occupied by the



Appellants-Defendants in the same building owned by the Respondent-Plaintiff at Jorethang, South Sikkim and involve common questions which can be disposed of by a common judgment.

2. The Appellants-Defendants in these Appeals seek to assail the judgments and decrees dated 31-03-2014 passed by the Learned District Judge, South Sikkim at Namchi decreeing the Eviction Suits against the Appellants-Defendants for the eviction from the suit premises directing that vacant possession of the tenanted premises be handed over to the Respondent-Plaintiff within a period of three months from the date of the impugned judgments.

3. Initially, Eviction Suits No.04, 05 and 01 of 2008 were filed by the Respondent-Plaintiff against the Appellants-Defendants in RFA Nos.07, 06 and 05 of 2013 respectively from each of the premises held by them as tenants under the Respondent-Plaintiff on the grounds of default in payment of rent, necessity of the premises for the purpose of its thorough overhauling and for *bona fide* use and personal occupation of the

Respondent-Plaintiff. These Eviction Suits were dismissed by judgments dated 26-12-2012 by the Learned District Judge, South and West Sikkim at Namchi against which the Respondent-Plaintiff preferred RFA Nos.07, 06 and 05 of 2013 respectively before this Court.

4. The Appeals were heard by a Single Bench constituted by the then Hon'ble Chief Justice who upon hearing upheld the findings of the Learned Trial Court that the Respondent-Plaintiff had failed to make out the case of default and requirement of the suit premises for thorough overhauling set up by her but, was pleased to remand the case for a fresh decision on the one pertaining to her claim of requirement of the premises for her personal use and occupation by judgment dated 26-07-2013. It was held that the Respondent-Plaintiff ought to be given an opportunity to adduce further evidence of substantiating that the claim projected by her for commencement of Nursing Home is a genuine one and that the same is not a ruse to evict the tenants. It was accordingly directed that the Respondent-Plaintiff should be permitted to adduce

whatever further evidence she wants to adduce in support of her claim for eviction on the ground of her own occupation and also to permit the tenants to do so to counter the additional evidence produced by the Respondent-Plaintiff.

5. On the case thus being remanded, the Learned Trial Court took up the only surviving issue to be decided by it, i.e., whether the Appellants-Defendants are liable to be evicted from the tenanted premises on the ground of *bona fide* requirement of the Respondent-Plaintiff. This was the common issue in all the three Suits.

6. In pursuance of the direction contained in judgment dated 26-07-2013 passed by the Hon'ble High Court in the Appeals, the Respondent-Plaintiff examined two witnesses, namely, Dr. Pratima S. Bharati (Sharma) and Dr. Manoj Bharati, who are the eldest sister and brother-in-law respectively of the Respondent-Plaintiff and, the Appellants-Defendants examined seven more witnesses including themselves

as additional evidence and exhibited several additional documents.

7. On consideration of the oral and documentary evidence and after hearing the parties, the Learned Trial Court decided the issue in favour of the Respondent-Plaintiff and accordingly passed a decree ordering eviction of the Appellants-Defendants from the respective premises held by them vide judgments dated 31-03-2014.

8(i). Although, in the Memo of Appeals several grounds have been taken to assail the impugned judgments of the Learned Trial Court, however, during the arguments, Mr. A. Moulik, Learned Senior Counsel, appearing on behalf of the Appellants-Defendants, primarily raised the following: -

- (a) The ground of personal occupation set up by the Respondent-Plaintiff was not *bona fide* but, only a pretext excuse to evict the Appellants-Defendants from the suit premises.
- (b) The Respondent-Plaintiff being a Physiotherapist was not qualified to run a

Nursing Home. The building in which the suit premises is situated is not suitable for running a Nursing Home as it is located in a crowded area inside a bazaar with only one motorable road for access and ingress which too remain closed every 'Haat' day and for a month during the 'Maghe-Mela'.

- (c) The Learned Trial Court had overlooked the evidence of Dr. Govind Lama where he had stated that he had not received the applications Exhibits 6(A) and 6(B) which the Respondent-Plaintiff claims to have submitted to the Department of Health and Family Welfare, Government of Sikkim, thereby negating the very basis of her case of necessity of the premises to set up a Nursing Home thereby establishing the Respondent-Plaintiff's oblique motive in preferring their eviction from the suit premises.
- (d) That the additional evidence adduced by the Respondent-Plaintiff as a consequence of the order of remand had made no difference to her case of *bona fide* requirement of the suit

premises as nothing of substance had come out therefrom to reinforce her case of such requirement.

(ii) Pressing the Appeal, Mr. A. Moulik submitted that the onus placed upon the Respondent-Plaintiff in pursuance of the judgment of this Court dated 26-07-2013 had not been discharged. The Respondent-Plaintiff had failed to establish her *bona fide* regarding requirement of the suit premises to run a Nursing Home. The evidence of Dr. Pratima S. Bharati, her elder sister and Dr. Manoj Bharati, her brother-in-law, have not substantiated her claim. It was urged that being a Physiotherapist, the Respondent-Plaintiff was not technically qualified to run a Nursing Home. The evidence of Dr. Manoj Bharati, her brother-in-law, could not be relied upon as his claim that he had resigned from service under the Manipal Central Referral Hospital, Tadong, East Sikkim, was belied by the certificate produced by him which, as per him, showed that he was still in service in that Hospital as on 30-05-2013 which is stated to be the last day of his tenure. Mr. Moulik would further urge that the case of

the Respondent-Plaintiff that she intends to run a Nursing Home in the building wherein the suit premises are located with her elder sister, Dr. Pratima and her husband, Dr. Manoj, would not be of any help in establishing of her *bona fide* of the requirement of the suit premises as they were not her dependants.

(iii) It was next contended that the Respondent-Plaintiff was not being honest and was resorting to misleading the Court by relying upon two purported applications Exhibits 6(A) and 6(B), said to have been submitted by her to the Department of Health and Family Welfare, Government of Sikkim, as has been established by the evidence of Dr. Govind Lama, Director of that Department, which reveals that those applications were not at all submitted to the Health Department. As per him, those applications were not even signed nor received by the authorities as would appear on the face of those documents. Thus, the very basis of the case of the Respondent-Plaintiff that she intended to set up a Nursing Home in her building was not at all proved. To the contrary, it establishes

the Respondent-Plaintiff's oblique motive get the Appellants-Defendants evicted from the suit premises.

(iv) Referring to the additional evidence produced by the Appellants-Defendants, namely, Mohan Kumar Agarwal, Madan Kumar Gupta, Niamudin Hussain, Mani Kumar Tiwari and Hotilal Prasad, it was submitted that the building in which the suit premises is situated is a residential area in a bazaar and surrounded by shops and residences and further that the size of the building being small is not suitable for setting up a Nursing Home. It is also in the evidence of these witnesses that considering the location of the building and the likelihood of health hazards being created for the general public, it would not be permissible in law to establish the Nursing Home there. Besides these witnesses, two other witnesses, namely, Sunil Kumar Gupta and Ajay Chowdhary, were produced to convey the unsuitability of the building for running a Nursing Home for another reason being that the road leading to that remain inaccessible and closed during Sundays and Wednesdays, due to market ('Haat') being held on that stretch and movement of vehicles strictly

prohibited and that the position remains the same during the month of January every year due to 'Maghe-Mela' celebrations. As per the Learned Senior Counsel, evidence of these witnesses also establishes the fact that the area where the building is located is also very small bereft of parking space and facilities for disposal of waste materials.

(v) Mr. Moulik went on to submit that the evidence of Dr. Sarita Lama, Additional Director, Health and Family Welfare Department, Government of Sikkim, would be of no assistance to the Respondent-Plaintiff as the application, Exhibit 11, was submitted by her only on 21-09-2013 seeking permission to open a Nursing Home which is a date post the judgment of this Court dated 26-07-2013, thereby clearly indicating that it was prepared for the purpose of the case. Moreover, in the note of the said Dr. Sarita Lama, Exhibit 12, false information appears to have been given by Mr. H. B. Sharma, father of the Respondent-Plaintiff, in stating that the Nursing Home was already in operation for six months prior to the date of application.

(vi) Mr. A. Moulik would thus contend that the Respondent-Plaintiff had failed to prove the *bona fide* of her requirement and that her case is not sincere and honest but a pretext for evicting the Appellants-Defendants.

(vii) In support of his submission, Mr. Moulik sought to rely upon ***Deena Nath* vs. *Pooran Lal* : (2001) 5 SCC 705** and ***Adil Jamshed Frenchman (Dead) By Lrs.* vs. *Sardar Dastur Schools Trust and Others* : (2005) 2 SCC 476**. We need not cite the other decisions placed by him as being repetitive on the same point.

9(i). Mr. N. Rai, Learned Senior Counsel, appearing on behalf of the Respondent-Plaintiff, on the other hand, submitted that having regard to the parameters set out by this Court in its judgment dated 26-07-2013, the Respondent-Plaintiff has produced the necessary evidence to establish the *bona fide* of her requirement of the suit premises. It was submitted that the Respondent-Plaintiff is a qualified Physiotherapist who has the honest intention to set up

a Nursing Home in the building where the suit premises are located with the help and assistance of her sister, Dr. Pratima S. Bharati and her brother-in-law, Dr. Manoj Bharati, who are qualified doctors having obtained MBBS degrees duly registered with the Medical Council of Bihar. The Respondent-Plaintiff by setting up the Nursing Home intends to stand on her own feet by converting the building which is the only one owned by her into a Nursing Home with her sister and brother-in-law. As per Mr. Rai, these facts have not been demolished. He would further submit that the building being situated in the heart of the Jorethang town, it is most suitable for a Nursing Home with easy access to the general public.

(ii) The fact that the only road leading to the Nursing Home remains free of traffic during the 'Haat' days and during the 'Maghe Sankranti Mela', would be of no relevance as it can be approached conveniently on foot as has been established by the evidence of the Appellants-Defendants' own witnesses. The evidence of Sunil Kumar Gupta, D.W.9, reveals that the waste materials are cleared by the Municipality vehicles

regularly and are disposed of in the dumping yard at Sipshu constructed by the Government of Sikkim. It was also urged that these facts were not relevant to displace the plea of *bona fide* made on behalf of the Respondent-Plaintiff on the requirement of the suit premises for setting up a Nursing Home. Permission, as per him, is required from the concerned authorities of the State Government and the fact that her application is under process is established by Exhibits 11 and 12 referred to on behalf of the Appellants-Defendants.

(iii) On the question of unreliability of the Respondent-Plaintiff's applications Exhibits 6(A) and 6(b) is concerned, he would submit that from the evidence of Dr. Govind Lama, it is evident that his reply, Exhibit 'H', to the application, Exhibit 'G' under the Right to Information Act, 2005 (in short the "RTI") in RFA No.05 of 2014, conveying that the department had not been received any such application, clearly appears to have been sent on a presumption as he did not find rubber seal and the memo number of the Health Department on those documents and also

because he was unable to identify the signatures endorsing the receipt of those applications. The expression "*I do not think*" used by him in his deposition would undeniably lead one to arrive at such conclusion.

(iv) Mr. Rai seriously assailed the correctness and sanctity of the reply sent by Dr. Govind Lama to the application under the RTI Act submitted by Hotiall Prasad, Appellant-Defendant in RFA No.05 of 2014 in stating that he was not the Public Information Officer appointed under the Act for the Section dealing with the applications Exhibits 6(A) and 6(B), as would appear from his own evidence. When admittedly, no Public Information Officer had been appointed to deal with the Clinical Establishment Section which under the law it was mandatory, the least that would have been expected of the department was to send the reply through Dr. Sarita Lama, who was the Programme Officer of that Section.

(v) The other aspect which Mr. Rai stressed was that Mohan Kumar Agarwal, Madan Kumar Gupta

produced by the Appellants-Defendants were those against whom order of eviction had been kept suspended by the judgment of this Court dated 26-07-2013 while, Hotilal Prasad, Mani Kumar Tiwari and Niamudin Hussain are Appellants-Defendants in the present Appeals and therefore, were, unreliable as being interested witnesses.

(vi) Summing up his submission, it was urged that the Respondent-Plaintiff had been able to establish that she was a qualified Physiotherapist duly enrolled in the Indian Association of Physiotherapists who intends to set up a Nursing Home in her own building in which the suit premises are located with the help and assistance of her sister and brother-in-law who were also qualified doctors. He submits that the endeavour on the part of the Appellants-Defendants to project the unsuitability of the location and size of the building to set up a Nursing Home was not of significance as it was not their concern as those are matters to be left on the best judgment of the Appellants-Defendants.



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(vii) In support of his submission, a large number of decisions of the Hon'ble Supreme Court was placed, some of which are —

- (a) ***Smt. Jahejo Devi and Others* vs. *Moharam Ali* : AIR 1988 SC 411;**
- (b) ***Siddalingamma and Another* vs. *Mamtha Shenoy* : (2001) 8 SCC 561;**
- (c) ***Akhileshwar Kumar and Others* vs. *Mustaqim and Others* : (2003) 1 SCC 462;**
- (d) ***Sait Nagjee Purushotham and Co. Ltd.* vs. *Vimalabai Prabhulal and Others* : (2005) 8 SCC 252;**
- (e) ***Ragavendra Kumar* vs. *Firm Prem Machinery and Co.* : AIR 2000 SC 534;**
- (f) ***Pratap Rai Tanwani and Another* vs. *Uttam Chand and Another* : (2004) 8 SCC 490;**
- (g) ***Kailash Chand and Another* vs. *Dharam Das* : (2005) 5 SCC 375;**
- (h) ***Adil Jamshed Frenchman* (*supra*);**
- (i) ***Ashok Kumar Rai* vs. *Girmi Goparama (Sherpa)* : AIR 2012 Sikkim 29; and**
- (j) ***Smt. Rajala Devi and Others* vs. *Shri Tashi Tshering Bhutia* : (2013) 36 Sikkim Law Journal 1.**

10(i). I have considered the rival contentions raised on behalf of the parties and have examined the evidence on record.

(ii) In order to arrive at a decision, it is essential first to examine the scope of the enquiry in the light of the judgment of the Hon'ble High Court dated 26-07-2013 in RFA Nos.03, 04, 05, 06, 07 of 2013, as the judgments of the Learned Trial Court impugned in these Appeals were rendered in pursuance of the cases being remitted by the said judgment. On a perusal of the judgment, the limits of enquiry in the Suit, as correctly noticed by the Learned Trial Court, is on the question of *bona fide* of the requirement of the suit premises for her own use set up by the Respondent-Plaintiff. As would appear from paragraph 43 of the judgment, the Hon'ble High Court appears to have been convinced of the requirement felt by the Respondent-Plaintiff but, had stopped short of passing an order of eviction against the Appellants-Defendants as it was of the opinion that the Respondent-Plaintiff ought to be given an opportunity to establish by sufficient evidence that her claim is *bona fide* so as to justify passage of an eviction order against the Appellants-Defendants. We may reproduce the material part of the judgment which reads as under: -

"52. As already pointed out, the landlady has a degree in physical medicine only. Whatever may be her background and capabilities, on her own showing that she will not be able to conduct a Nursing Home by herself, she will be able to conduct a Nursing Home only if her sister and brother-in-law assist her or associate with her. The non-examination of both or at least either of them as a witness on her side is as of now fatal to her claim for own occupation. Mr. N. Rai, learned senior counsel, during the course of his arguments requested that opportunity be given to the landlady for examining her sister and brother-in-law, at least one among them. Despite the stiffness of Mr. Moulik's opposition, I am inclined to afford opportunity to the landlady to adduce further evidence for substantiating before the Court below that the claim projected by her for commencement of Nursing Home is genuine one and that the same is not ruse to evict the tenants. In fact during the course of arguments in the case I enquired of Mr. Rai whether his client the landlady will be ready to assure this Court by filing an affidavit or undertaking that if she gets possession of the entire building, she will utilise the building for the purpose of commencing the Nursing Home and for that purpose only. Mr. Rai answered my query in the positive; in fact the landlady did file an affidavit. The above affidavit reads as follows: -

- "1. That I am the Appellant in RFA No. 3, 4, 5, 6 and 7 of 2013 as such I am conversant with the facts and circumstances of the matter.
2. That in pursuance to the assurance and undertaking given by me before this Hon'ble Court during the course of hearing dated 22.07.2013, I would like to state as under: -
 - a) That I undertake to use the suit premises for opening up and



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running the nursing home if the Respondents in RFA No.3 to 7 of 2013 vacate the suit premises in my favour.

- b) That I do not intent to sell the suit premises. I want to open up the Nursing Home therein for my livelihood.
- c) I shall not let out the suit premises to the other persons if the Respondents in RFA 3 to 7 of 2013 vacate the same.
- d) That after receiving the vacant premises, I shall renovate, prefabricate and remodel the suit premises to suit it for running a Nursing Home therein.
- e) I intend to name the above referred Nursing Home as "Good Will Nursing Home".

54. In view of filing of the above affidavits, I am inclined to feel in these cases that the landlady may be able to prove that her need is *bona fide*. As already observed by me by referring the judgment of the Supreme Court in **Ganpat Ram Sharma vs. Gayatri Devi : (1987) 3 SCC 576**, rent control legislation is a welfare legislation both for landlord/landlady and tenant. In that while benefitting the tenants by preventing their eviction on frivolous grounds and by controlling the rent payable by them, it benefits the landlady by assuring them of eviction upon existence of a valid ground. I am of the view that considerations of justice demand that the landlady be given an opportunity to adduce further evidence of whatever nature as she



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wants for substantiating that the bona fide needs the building for commencement of Nursing Home with the assistance of her sister and brother-in-law. I do not think any legal prejudice will be occasioned to the tenants by affording such opportunity as they are continuing in possession of the building without any modification regarding the rate of rent."

[underlining mine]

(iii) As would appear from the extract of the judgment, the essence of it would clearly be that the Respondent-Plaintiff should be given an opportunity to adduce further evidence of whatever nature for substantiating her claim that she *bona fide* needed the building for setting up a Nursing Home with the assistance of her sister and brother-in-law.

(iv) Having set the scope and ambit of enquiry in the Suits, we may now examine as to whether or not the Respondent-Plaintiff has been able to establish the *bona fide* of her claim based on the limits of the onus placed on her in the judgment of the Hon'ble High Court.

(v) As already noted while discussing the rival contentions, the Respondent-Plaintiff upon remand has examined two additional witnesses and they are, her

elder sister, Dr. Pratima S. Bharati and her brother-in-law, Dr. Manoj Bharati, who are indisputably qualified medical doctors and whose evidence was felt imperative by this Court and, was considered fatal if both or at least either of them was not examined. These witnesses have in their evidence most unequivocally have stated that they would help the Respondent-Plaintiff in running the Nursing Home and act as permanent doctors. This part of the evidence has stood firm and undemolished in the cross-examination. Mr. Moulik's effort to falsify the claim of Dr. Manoj Bharati of his having resigned from the Manipal Central Referral Hospital by referring to the certificate, Exhibit 13, does not appear to be of any substance as would appear from the reading of the very certificate. In his evidence, Dr. Manoj Bharati has stated that he had served in the Sikkim Manipal Institute of Medical Sciences from October, 2007 to 30-05-2013 and the certificate appears to have been issued on the very last day of his service, i.e., 30-05-2013. In my view, this would corroborate his evidence as it would be quite natural for him to have obtained

the certificate on the last day of his office. The certificate clearly mentions that Dr. Manoj Bharati "*had been*" posted as Senior Resident in the Department of Radiodiagnosis. Nothing further can be read into this, at least not in the manner as Mr. A. Moulik would like to us to.

(vi) I also do not find any reason to doubt the veracity of the evidence of Dr. Pratima S. Bharati and her husband, Dr. Manoj Bharati, that they would act as permanent doctors in the proposed Nursing Home to be set up by her sister, Respondent-Plaintiff, and help her in running it.

(vii) Next, as regards the contentions raised on behalf of the Appellants-Defendants on the want of technical qualification of the landlady to run a Nursing Home, size of the Nursing Home and unsuitability of the location are concerned, I do not think there is any scope for further enquiry on these aspects as those have been duly considered and rejected by this Court in its judgment dated 26-07-2013. Even as regards the allegation of oblique motive attributed to the

Respondent-Plaintiff as well as non-obtaining of licence from the Health Department and the other departments have similarly been considered by the same judgment and rejected. The relevant portions of the judgment are reproduced below: -

"45. The *bona fides* is a state of mind. Therefore, direct evidence regarding the same can only be oral. Further evidence which is capable of being adduced regarding the *bona fides* of the claim for own-occupation is circumstantial evidence. In other words, it is possible for a tenant to show from the circumstances attending on a given case that the case of the landlord or landlady that he or she has the *bona fide* need to occupy the building after evicting the tenant is not a genuine one. The landlady before me is a young unmarried graduate in physical medicine. Her case is that she needs to evict the tenants who are in occupation of substantial portions of a 5 storied building belonging to her situated in Jorethang an important town of South Sikkim. Evidently the above 5 storied building a portion of which is occupied by the 5 tenants before me is the only building belonging to the landlady. The landlady's need is to start a Nursing Home. The landlady is not a qualified medical practitioner. Therefore, commencement and conduct for a Nursing Home by her is possible only with the assistance of qualified medical practitioners. According to her, her sister and brother-in-law are qualified medical practitioners and they are all willingness to assist her. The above case at least at first blush would appear to be an honest one as one cannot find anything unreasonable in a young physical medicine graduate. thinking in terms of commencement a nursing home along with her sister and brother in law, both of them doctors, in a building situated in a commercial area in an important town of the State especially when the said building is shown to be the only



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building belonging to the landlady. But then the learned counsel for the respondents have highlighted several aspects and circumstances which may indicate that the landlady's claim is not a genuine one and that her idea is to evict the tenants under one pretext or the other. One circumstance which was highlighted before me by Mr. Moulik was that the building is not a very big one for commencing a big nursing home; that the building is not situated in a serene atmosphere; it is situated among the bustles of a commercial town, that the area where the building is situated is not hygienic etc. These submissions do not have much appeal to me especially as the landlady before me has no other choice. The 5 storied building a portion of which are occupied by the tenants before me is the only building belonging to the landlady. Law allows a certain amount of latitude to the landlady in the matter of deciding on the nature of business or activity to be conducted by her for eking out a living. When the landlady has only one building and when she is graduate in physical medicine, the wisdom behind her decision to commence a nursing home in the above building, in my view, cannot be ordinarily questioned by the tenants unless there are clinching circumstances to show that the eviction proceedings are initiated with oblique motives. Even though several contentions have been urged including a contention that the landlady does not have title (a contention which did not find favour with the court below), the tenants in this case have not contended that the landlady has any specific oblique motive in evicting the tenants. It is not contended that the landlady's idea is to let out the building to somebody else that the landlady's idea is to dispose of the building; for a very huge price after getting possession. The circumstance that no specific oblique motive is attributed to the landlady is a circumstance which very much supports the landlady's case that she is projecting a genuine need.

46. But the learned senior counsel's submission that the 5 storied building offends the rules and further submission is that the 5 storied building is not big enough up to accommodate nursing home do not appeal to



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me. As for the size of the building, I have noticed that nursing homes of various sizes do exist and it is always open to the landlady and her sister and brother in law to have a nursing home of the size which can be accommodated in the 5 storied building. As for the minimum standards, I will only say that if the landlady her sister and brother in law (once they start the nursing home) do not maintain the required standard they will not be given patronage by the patients and the statutory authority concerned on report being received by them regarding non maintenance of minimum requisite standards will take appropriate steps. The tenants do not have to be worried about that aspect at this stage.

47.

Mr. Moulik's submission about the non-obtaining of licence from the Health and other various Departments also do not appeal to me, as obtaining of licence is possible only in respect of vacant buildings." [underlining mine]

(viii) The questions thus having been heard and finally decided in RFA Nos.3 to 7 of 2013. It would not be permissible again for this Court to enter into those questions. Even otherwise, I respectfully agree with the findings recorded by the Bench constituted by the former Hon'ble Chief Justice of this Court without any hesitation.

(ix) However, we have noticed that on behalf of the Appellants-Defendants, questions have been raised as regards the truthfulness of the claim of the

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Respondent-Plaintiff having submitted the applications marked Exhibits 6(A) and 6(B) and on a purported misleading aspect contained in the note of Dr. Sarita Lama marked Exhibit 12.

(x) Although, these questions would, in my view, be immaterial in deciding the issue under consideration, i.e., the *bona fide* of the claim of the Respondent-Plaintiff, we may nevertheless deal with those as it has been seriously pressed on behalf of the Appellants-Defendants.

(xi) First, let us deal with the applications marked Exhibits 6(A) and 6(B) which are said to have been submitted by the Respondent-Plaintiff to the Department of Health and Family Welfare in the light of the evidence of Dr. Govind Lama, a Director of the department. The Learned Senior Counsel for the Appellants-Defendants would submit that in his reply, Exhibit 'H' in RFA No.5 of 2013 to the RTI application, Exhibit 'G', Dr. Govind Lama had conveyed that the department had not received the applications Exhibits 6(A) and 6(B) which, as per him, falsified the claim of

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the Respondent-Plaintiff that she had submitted those applications. On a close examination of these documents, it would be apparent from the endorsements contained therein that those had indeed been received by the department. We find that the documents being copies of the original, have been duly attested by an Officer of the rank of no less than an Additional Director in the Directorate of Sericulture, Forest, Environment and Wildlife Management Department, Government of Sikkim, lending credence to its genuinity. From the evidence of Dr. Govind Lama, it also emerges that applications for opening Nursing Home, Medical Clinics and Medical Shops, are dealt with by the Clinical Establishment Section of the Department and, that Section at the material time did not have a Public Information Officer appointed under the RTI Act, 2005. The reply, Exhibit 'H', to the RTI application, Exhibit 'G', was given in the manner stated therein on the assumption that the applications had not been submitted to the department simply because he did not find the seal and memo number of the Health Department on those documents and, was also unable

to identify the signatures endorsing receipts thereof. I am inclined to agree with the Learned Senior Counsel for the Respondent-Plaintiff that in the absence of a Public Information Officer, the application ought to have been dealt with by Dr. Sarita Lama who was the Programme Officer of the Clinical Establishment Section, as she would be aware of the matters relating to that Section. Under these circumstances, it cannot be said that the reply Exhibit 'H' issued by Dr. Govind Lama reflects the correct position rendering it as an unreliable piece of evidence.

(xii) As regards the application, Exhibit 11, submitted by the Respondent-Plaintiff to the Director of Health and Family Welfare, Government of Sikkim, seeking approval for opening a Nursing Home, it is no doubt true that it was submitted after the judgment of this Court dated 26-07-2013 but, for that reason alone it cannot be said that the exercise was taken for the purpose of this case. It rather reinforces the seriousness on the part of the Respondent-Plaintiff in setting up the Nursing Home. We find that in her application, Exhibit 11, the Respondent-Plaintiff has

recorded that earlier also she had applied for the licence [meaning the applications, Exhibits 6(A) and 6(B)] but it was not issued. The note of Dr. Sarita Lama, the Programme Officer, who is also the Additional Director of the department, establishes that the applications had indeed been submitted and was under consideration. In her note, Exhibit 12, she no doubt has also noted that Mr. H. B. Sharma, father of the Respondent-Plaintiff had informed that the Respondent-Plaintiff along with Dr. Pratima S. Bharati and Dr. Manoj Bharati were managing the clinical establishment for the last six months. However, this does not detract from the fact that an application Exhibit 11 had indeed been submitted by the owner of the building being the Respondent-Plaintiff and, in that application, the information said to have been given by Mr. H. B. Sharma do not find mention at all. I, therefore, have no hesitation in rejecting the contention on this aspect.

(xiii) The decisions cited at the bar by Mr. A. Moulik propounds the well-settled position of law that when a claim of requirement of the landlord for *bona fide* occupation of the tenanted premises is raised, the

Courts are expected to enquire as to whether the requirement by the landlord is a real requirement or a mere whim or is fanciful desire or is simply a ruse to evict the tenant. These principles have to be considered on the facts and circumstances of each case. In the case at hand, I do not find any reason to disbelieve the *bona fide* of the Respondent-Plaintiff in claiming the suit premises for her own personal use and occupation to set up a Nursing Home. The standard of proof called upon her by this Court in the judgment dated 26-07-2013 appears to have been satisfied fully by producing Dr. Pratima S. Bharati and Dr. Manoj Bharati as witnesses.

(xiv) From the portion of the judgment of this Court reproduced above, it is also evident that the Respondent-Plaintiff in due compliance to the orders of this Court had filed an affidavit wherein she has undertaken, *inter alia*, to use the suit premises for opening and running the Nursing Home and that she would not sell or let out the suit premises to the other persons. In view of filing of that affidavit, this Court was inclined to feel that the landlady might be able to

prove that her need was *bona fide* for which purpose opportunity was given to her to adduce further evidence for substantiating that she *bona fide* needed the building for commencement of the Nursing Home with the assistance of her sister and brother-in-law. When we consider this with the earlier observations in the judgment that the non-examination of both or at least either of them, i.e., her sister and brother-in-law, as a witness on her side was, as of then, fatal to her claim for own occupation, the extent of onus of such proof had been clearly spelt out. The onus thus placed upon the Respondent-Plaintiff, in my considered opinion, stands fully discharged by her by examining her sister and the brother-in-law as witnesses and, in their evidence they have fully supported the case of the Respondent-Plaintiff.

(xv) As held in ***Pratap Rai Tanwani (supra)*** “one of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation” and

that the *“need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord”* and that *“the only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question of himself – whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If answer be in the positive, the need is bona fide.”*

(xvi) The aforesaid position of law has remained unchanged and consistently accepted in the later judgments of the Hon’ble Supreme Court.

(xvii) In the context of the present case having regard to the undisputed fact of the Respondent-Plaintiff being an unemployed qualified Physiotherapist and who is the owner of the 5 (five) storied building in which the suit premises are located and, which is the only commercial property owned by her, reinforced further by the established position that she is being supported by her sister and brother-in-law who are for

both qualified doctors, nothing further would require to prove her *bona fide* in establishing her Nursing Home.

11. For the reasons stated above, I have no hesitation in upholding the impugned judgments passed by the Learned Trial Court as being a well-considered and, therefore, in confirming the directions contained therein.

12. In the result, the Appeals are dismissed.

13. No order as to cost.

14. A copy of this judgment and the original case records be transmitted to the Court of the Learned District Judge, South Sikkim at Namchi, for necessary compliance.

(S. P. Wangdi)
Judge
10-12-2014