



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

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

**RFA No.10 of 2014**

**Appellant** : Shri Laxuman Prasad,  
S/o Late Ram Prasad,  
R/o Sirwani Road,  
P.O & P.S. Singtam,  
East Sikkim.

versus

**Respondent** : Shri Jagdish Prasad,  
S/o Late Kapur Chand,  
R/o Singtam Bazaar,  
P.O. & P.S. Singtam,  
East Sikkim.

**Appearance**

Mr. A. Moulik, Senior Advocate with Mrs. K. D. Bhutia and Mr. Ranjit Prasad, Advocates for the Appellant.

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

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

**J U D G M E N T**(24<sup>th</sup> November, 2014)**Wangdi, J.**


**1(i)** Eviction Suit No.6 of 2011 was filed by the Respondent-Plaintiff, Jagdish Prasad, against the Appellant-Defendant, Shri Laxuman Prasad, in respect of a shop room measuring about 10' x 25' on the road level at Singtam, East Sikkim, on grounds of default in payment of house rent, requirement of the premises for the purpose of his personal use and occupation and, also for the Appellant-Defendant having used the premises rashly and negligently rendering it in a state of disrepair.

**(ii)** The Learned Principal District Judge, East Sikkim at Gangtok, while rejecting the ground of default decreed the suit in favour of the Respondent-Plaintiff by finding that he required the suit premises *bona fide* for his personal use and occupation and for the purpose of thorough overhauling by her impugned judgment dated 15-05-2014. It is against this judgment that the Appeal has been preferred.

**2(i).** The Respondent-Plaintiff's case was that he is the absolute owner of the four storied RCC building situated at Sirwani Road, Singtam, East Sikkim in which the Appellant-Defendant is a tenant in respect of a shop at the road level measuring about 10' x 25' at a monthly rent of ` 2,510/-. It was alleged that the Appellant-Defendant had defaulted in payment of house rent for the premises from the month of January, 2011, rendering himself a defaulter apart from him having failed to pay electricity charges from the month of January, 2011 and, also using the premises rashly and negligently. It was averred that the Respondent-Plaintiff required the suit premises for his personal *bona fide* use as he was in need of it for running his business since he had been evicted from the rented premises of one Tashi Tshering Bhutia where he was running his business. It was under the compelling circumstances arising from the order of eviction that the Respondent-Plaintiff had shifted his shop to a godown on the basement of his own building which, as per him, measured only 7' x 6', the other portion of the building adjacent to the suit premises on the road level having been already occupied by his eldest son, who

had separated from the family, where he was running his shop.

(ii) It was stated that the Respondent-Plaintiff had requested the Appellant-Defendant to vacate the suit premises as he required it for his *bona fide* use to run his business which the Appellant-Defendant refused to accede. A legal notice dated 29-10-2010 issued to the Appellant-Defendant also went unheeded and instead, by a reply from his Advocate, asked the Respondent-Plaintiff to withdraw his legal notice. Efforts made to settle the matter with the intervention of the Municipal Councillor and local gentries also failed to evoke any response from the Appellant-Defendant. It was further averred that the suit premises was also required by the Respondent-Plaintiff to settle his youngest son and grandson in business to be run in the suit premises. That although the youngest son had obtained a trade licence in the year 2002 for running a ready-made furniture business, he was unable to start it due to lack of space on refusal by the Appellant-Defendant to vacate the suit premises. It was further stated that the Appellant-Defendant owned a two storied RCC building near the Singtam Bridge, 31A



National Highway from where he could conveniently run his business. Under these circumstances, that the Respondent-Plaintiff, *inter alia*, prayed for a decree of eviction of the Appellant-Defendant from the suit premises.

**3.** In his written statement, the Appellant-Defendant denied all material allegations in the plaint. It was denied that he was a defaulter in payment of rent and payment of electricity charges. That the eldest son of the Respondent-Plaintiff, Nanda Kishore Prasad, had not separated but was rather living in a joint family with the Respondent-Plaintiff sharing a common kitchen. It was asserted that even though the business of the Respondent-Plaintiff was being run in the basement of his building, it was doing well and that the Respondent-Plaintiff and his youngest son, Jugal Kishore Prasad, were carrying on joint business in the room occupied by his eldest son, Nanda Kishore Prasad.

**4.** On the basis of the pleadings, the Learned Trial Court framed as many as seven issues which are reproduced below: -



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- (i) Whether the suit is maintainable?
- (ii) Whether the defendant is liable to be evicted from the tenanted premises on the ground of *bona fide* requirement and occupation for setting his business as well as his youngest son and the grandsons?
- (iii) Whether the defendant defaulted in payment of house rent occupied by him from the month of January 2011 till May, 2011?
- (iv) Whether defendant is liable to pay the arrears of rent of Rs.12,550/- for the defaulted period?
- (v) Whether the defendant is paying electricity charges to the plaintiff of the premises occupied by him from the month of January, 2011?
- (vi) Whether the defendant has been using the suit premises rashly and negligently?
- (vii) To what relief or reliefs, is plaintiff entitled?

5. Of the above, issues no.(iii), (iv) and (v) were decided in favour of the Appellant-Defendant, while issues no.(i), (ii), (vi) and (vii) in favour of the Respondent-Plaintiff holding that the Respondent-Plaintiff required the suit premises for his *bona fide* personal use and occupation and that the suit premises having been used



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rashly and negligently required thorough overhauling as contemplated under Notification No.6326-600-H&W-B dated 14-04-1949 (in short the "1949 Notification") which is the law governing landlord and tenant in Sikkim except Gangtok area. The issue pertaining to default in payment of rent having been decided in favour of the Appellant-Defendant, the Appeal is directed against the finding on the personal use and occupation and the use of the premises rashly and negligently by the Appellant-Defendant.

**6(i).** Mr. A. Moulik, Learned Senior Counsel, appearing on behalf of the Appellant-Defendant, assailed the finding of the Learned Trial Court that the Respondent-Plaintiff required the suit premises for his personal use and occupation as there was no such requirement faced by him since he was already running his business on the basement of his building which was doing well as had been established by the fact that the sale were good as revealed from the sale receipts, Exhibits D1 to D26.

**(ii)** The necessity for the use of the suit premises for starting the business of his youngest son and his



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grandson was also belied by the fact that they were employed in running a 'Mill' business along with the Respondent-Plaintiff under a trade licence issued in the name of the wife of one Tashi Wangdi Bhutia. It is asserted that the necessity of the suit premises claimed by the Respondent-Plaintiff was not a genuine necessity as admittedly the Respondent-Plaintiff was already running his shop at the basement floor of his building. It was urged that the basement floor was not a godown as alleged by the Respondent-Plaintiff there were at least three other tenants who were successfully running their business on the same floor. Apart from this, it was submitted that the Respondent-Plaintiff was admittedly also running another business of a "Mill".

*(iii)* Relying upon the evidence of P.W.3, Kanhaiya Lal Pandit, Mr. Moulik would urge that the size of the basement floor being 8' x 18', it was not a godown but a well-run shop. The youngest son of Respondent-Plaintiff, Jugal Kishore Prasad, is not unemployed but is engaged in business in running the "Mill" along with him as admitted in his evidence by the Respondent-Plaintiff appearing as P.W.1. As per the Learned Senior Counsel, the claim of



the *bona fide* requirement of the suit premises for starting the business of his son is also falsified by the fact that the legal notice issued by him to the Appellant-Defendant did not contain such claim. He goes on to urge that the very evidence of the youngest son of the Respondent-Plaintiff, P.W.2, Jugal Kishore Prasad, establishes that he was engaged in a business of STD and Xerox machine in a tenanted premises owned by one Kumar Rai at Singtam Bazaar and that his elder brother, Nanda Kishore Prasad, runs his own business separately. These facts also reveal that neither the youngest son, Jugal Kishore Prasad nor his elder brother, Nanda Kishore Prasad, were dependants of the Respondent-Plaintiff.

(iv) He would strongly contend that the evidence of P.W.3, Kanhaiya Lal Pandit, abundantly reveals that the business of the Respondent-Plaintiff being run in the basement floor was doing very well thereby belying the claim of the Respondent-Plaintiff to the contrary. The Learned Senior Counsel would also submit that the Respondent-Plaintiff had falsely projected the size of the shop at the basement floor as 7' x 6' when it is in the evidence of his own witness, P.W.3, that it was actually



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8' x 18' which, as per him, would amount to concealment of fact. It was submitted that the grounds for eviction set up by the Respondent-Plaintiff were mere pretext to evict the Appellant-Defendant and that it was not sincere and honest. Reference in this regard was made to ***Pratap Rai Tanwani and Another vs. Uttam Chand and Another : (2004) 8 SCC 490***. As per him, the fact that the shop in the godown was doing well and further that he was also running a business of "Mill" would indicate that the need being projected by the Respondent-Plaintiff was not a pressing or actual need but, rather a fanciful one. Reliance on this was made to ***Deena Nath vs. Pooran Lal : (2001) 5 SCC 705***.

(v) On the finding on issue no.(vi), i.e., whether the Appellant-Defendant has been using the suit premises rashly and negligently, it was asserted that the issue had been wrongly interpreted to bring it within the scope and purview of thorough overhauling being one of the grounds of eviction of a tenant under the 1949 Notification. It was his contention that the issue as to whether or not the suit premises required thorough overhauling was not even framed, proved and corroborated by the Respondent-



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Plaintiff. No evidence had at all been led by the Respondent-Plaintiff to substantiate this claim and that rash and negligent use of a premise is not one of the grounds for eviction under the 1949 Notification and, therefore, the Learned Trial Court had fallen in grave error in arriving at such finding.

**7(i).** Mr. N. Rai, Learned Senior Counsel, appearing on behalf of the Respondent-Plaintiff, on the other hand, would submit that after the Respondent-Plaintiff had been unsuccessful in the eviction suit filed against him by his previous landlord, Tashi Tshering Bhutia, in whose premises the Respondent-Plaintiff had been running his business, shifted his business under compelling circumstances to a godown of the basement floor of his own building which measured only 7' x 6'. Apart from it being in the basement floor as he had no other suitable premises, the other portion adjacent to the suit premises on the roadside was occupied by his eldest son, Nanda Kishore Prasad, who had separated from the family.

**(ii)** When his requests made to the Appellant-Defendant to vacate the suit premises in order to enable



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him to shift his shop there was not acceded to and was delayed on some pretext or the other, a legal notice was issued to him calling upon him to vacate and deliver vacant possession of the premises to the Respondent-Plaintiff on the expiry of 30-11-2010. The Appellant-Defendant, however, instead sent a reply through his Counsel vide letter dated 20-11-2010 refusing to act in terms of the legal notice but rather demanded recall and withdrawal of the legal notice. Even the efforts at settlement through the intervention of the Municipal Councillor and local gentries of Singtam area failed to persuade the Appellant-Defendant culminating in the Respondent-Plaintiff in filing the suit.

**(iii)** Mr. Rai re-emphasised that the youngest son and the grandson of the Respondent-Plaintiff were unemployed and that the suit premises was required by him to start business for them. Although the youngest son of the Respondent-Plaintiff, Jugal Kishore Prasad, had obtained a trade licence for the trade of ready-made furniture on 02-03-2002, he has been unable to set up the business due to the refusal of the Appellant-Defendant to vacate the suit premises. It was submitted that the



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Appellant-Defendant has a two storied RCC building of his own near the Singtam Bridge, 31A National Highway falling within Singtam town where he can conveniently run his business.

(iv) Mr. N. Rai went on to submit that the Respondent-Plaintiff apart from making personal requests to the Appellant-Defendant also approached different authorities to persuade him to vacate the premises in view of his dire necessity. Reference in this regard was made to an application, Exhibit 11, submitted to the Officer-in-Charge, Singtam Police Station and Exhibit 12, a memorandum of the meeting held on 18-05-2011, 27-04-2011 and 16-05-2011 convened by the Ward Councillor, Singtam Bazaar Nagar Panchayat and various other Social Organisations of the area. It was submitted that there is no denial on the part of the Appellant-Defendant that the Respondent-Plaintiff required the suit premises for shifting his business from the premises from where he had been evicted except to contend that such requirement did not exist as he was successfully running his business at the basement floor of the building.

(v) Referring to the evidence of the Appellant-Defendant as D.W.1, his son Suresh Prasad, D.W.2 and Sukhnandan Prasad, D.W.3, it was submitted that the fact that the son of the Respondent-Plaintiff was unemployed stood clearly admitted. From these, the necessity of the suit premises for the personal use and occupation of the Respondent-Plaintiff stood fully established. Mr. Rai would re-emphasise the trite position that the personal use of the landlord would bring within its ambit all extensions of the landlord including his wife, unmarried daughter or son or other members of the family who are dependant on him. Reference were made in this regard to ***Ashok Kumar Rai*** vs. ***Girmi Goparama (Sherpa)*** : ***AIR 2012 Sikkim 29*** and ***Kailash Chand and Another*** vs. ***Dharam Dass*** : ***(2005) 5 SCC 375***.

(vi) Rebutting the contention of the Appellant-Defendant that the necessity of the suit premises being projected by the Respondent-Plaintiff was a fanciful one and an afterthought as the basement floor to which he had shifted was also suitable to run a business and that the business of the Respondent-Plaintiff was doing well, it was submitted that the suit premises was better located for



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business and in law, it was permissible for him to choose that place by seeking eviction of the Appellant-Defendant. He would refer to ***Sait Nagjee Purushotham & Co. Ltd.*** vs. ***Vimalabai Prabhulal and Others: (2005) 8 SCC 252*** to contend that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not and that it was always the privilege of the landlord to choose the nature of the business and the place of business. Reference was also made to ***Smt. Jahejo Devi and Others*** vs. ***Moharam Ali : AIR 1988 SC 411*** to urge that what shop is suited best to the interest of the Respondent is the prerogative of the landlord and the tenant cannot question his choice.

**(vii)** As per Mr. Rai, even from the evidence of D.W.2 Suresh Prasad, it would be apparent that the suit premises is a better place for business. Despite efforts on the part of the Appellant-Defendant to prove otherwise, it stands established that Jugal Kishore Prasad, the youngest son of the Respondent-Plaintiff, is unemployed. From the evidence of the witnesses of both the Respondent-Plaintiff as well as the Appellant-Defendant, it clearly reveals that the youngest son was only assisting the father in his



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business and that the business of STD and Xerox machine and being run in the premises of one Kumar Rai is that of his eldest son. The Appellant-Defendant had failed to bring any evidence to prove his assertion that Jugal Kishore Prasad, the youngest son, was having his independent business. To the contrary, it has been amply proved that he is a dependant of the Respondent-Plaintiff thereby lending credence to his case that he also required the suit premises for establishing a business in order to settle his son. Relying upon ***Akhileshwar Kumar and Others*** vs. ***Mustaqim and Others*** : ***AIR 2003 SC 532***, it was submitted that simply because the son was assisting his father in the family business did not mean that he should never start his own independent business. Reliance was also placed upon ***Sait Nagjee Purushotham (supra)*** in submitting that the claim of the Respondent that he required the suit premises to start the business of his son was only a pretext, was unsustainable on the established and admitted position that the son was only assisting in the family business. As per the Learned Senior Counsel, the need of the Respondent-Plaintiff was a pressing one and that it was not possible for him and his





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son to wait endlessly for the suit premises to be vacated. The fact that the son was assisting in the family business did not detract from the need of the Respondent-Plaintiff to establish him in his own business in the suit premises.

**(viii)** In view of the undisputed position that that the Respondent-Plaintiff had been evicted from the tenanted premises where he had earlier been running his business, the fact that the premises to which he shifted in his own building at the basement which was also undeniably used as a godown and, that his youngest son was unemployed and a dependant of the Respondent-Plaintiff, it was sufficient to convince one that his need to occupy the suit premises is natural, real, sincere and honest. Mr. Rai strongly relies upon ***Siddalingamma and Another*** vs. ***Mamtha Shenoy : (2001) 8 SCC 561*** to urge this proposition.

**(ix)** Under the aforesaid facts and circumstances, as per the Learned Senior Counsel, the Respondent-Plaintiff having fully established the necessity of his personal use and occupation, no fault could be found in the impugned judgment for this Court to interfere.

(x) On the question pertaining to the finding on the use of the suit premises rashly and negligently by the Appellant-Defendant, it was submitted that although rash and negligent use of a premises is not one of the grounds of eviction, its necessity for thorough overhauling being in a dilapidated condition certainly is. Mr. Rai would urge that the issue was essentially raised in relation to the dilapidated condition in which the suit premises had been rendered necessitating thorough overhauling. Use of the premises rashly and negligently was the cause of it being rendered so. The evidence which the Respondent-Plaintiff had led was to prove that aspect as would be apparent from the photographs, Exhibit 5 (collectively) which have gone uncontroverted. No evidence to the contrary was produced on behalf of the Appellant-Defendant. It was under these circumstances, as per the Learned Senior Counsel, that the Learned Trial Court arrived at the finding that the suit premises was in a dilapidated condition requiring thorough overhauling. He submits that the impugned judgment on this issue being a well-considered one it did not necessitate any interference.



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**8(i).** I have heard the Learned Senior Counsel for the parties and considered their submissions in the light of the evidence on record. From the warring contentions, the pleadings and the evidence, I find that there is no dispute of the fact that the Respondent-Plaintiff had been required to shift his business from the tenanted premises of one Tashi Tshering Bhutia as a consequence of an eviction order passed by the Learned District Judge, Special Division – I (I/C), Gangtok in Eviction Suit No.1 of 2005 by judgment dated 31-03-2008, Exhibit 7, which was upheld in RFA No.1 of 2008 preferred by him before this Court by judgment dated 21-05-2010, Exhibit 8.

**(ii)** The question for determination in the case, therefore, is as to whether or not the Respondent-Plaintiff require the suit premises for his personal use and occupation to shift his business. It is the case of the Respondent-Plaintiff that he had requested the Appellant-Defendant to vacate the suit premises which was in his own four storied RCC building facing the Singtam-Sirwani Road at Singtam Bazaar in order to enable him to shift his business there. When such requests did not evoke any response, he was perforce made to shift to a godown



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situated in the basement floor of that building. Since this premises was unsuitable, he persisted with his request to the Appellant-Defendant refusal of which necessitated in him issuing a legal notice which was not responded to in a desired manner compelling him to file the suit for eviction against him. It is his case that out of the two premises facing the Singtam-Sirwani Road, one was already occupied by his eldest son, Nanda Kishore Prasad, who had separated from the family and was running his business, while the other was being occupied as a tenant by the Appellant-Defendant. The contention on behalf of the Appellant-Defendant is that there is no pressing necessity for the Respondent-Plaintiff to seek for his eviction from the suit premises as he was already running his shop successfully at the basement floor.

**(iii)** On a careful examination of the evidence, there can be no doubt of the pressing situation faced by the Respondent-Plaintiff as it has come in his cross-examination that he had stored his business items for one month in the shop of his eldest son in which he was running the business of STD and Xerox machine in the house of one Kumar Rai from where he shifted to a



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godown in the basement floor of his own building. That the Respondent-Plaintiff shifted his business temporarily for one month to the shop of his eldest son in the premises belonging to Kumar Rai is corroborated by the Appellant-Defendant in his own evidence. It, therefore, stands established that the Respondent-Plaintiff was indeed going through a difficult circumstance caused by the eviction order passed against him from the premises of Tashi Tshering Bhutia at Singtam Bazaar where he had been running his business.

(iv) The other question that would naturally arise and, which is one being seriously questioned on behalf of the Appellant-Defendant, is as to whether or not after having shifted his business to the basement floor of his own building, it would still be permissible for him to seek eviction of the Appellant-Defendant from the suit premises on the ground of its requirement for his personal use and occupation as provided under the 1949 Notification.

(v) Firstly, the Appellant-Defendant refutes the premises in the basement floor being unsuitable for running business both in size and location as compared to



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the suit premises and that it was at all being used as a godown. He has asserted that besides the Respondent-Defendant, there were three other persons who were successfully running their business on that basement floor which would prove that the plea of the necessity of the suit premises for the personal use and occupation of the Respondent-Plaintiff is a fanciful one and not honest.

**(vi)** Secondly, it contended that there was no actual necessity for the Respondent-Plaintiff to seek for the eviction of the Appellant-Defendant from the suit premises as he was also running another business of a "Mill" in the building of Tashi Wangdi Bhutia against a licence issued in the name of the wife of the said Tashi Wangdi Bhutia.

**(vii)** Third contention is that the Respondent-Plaintiff also runs a joint business with his eldest son, Nanda Kishore Prasad, which negated his plea of his necessity to shift his business to the suit premises.

**(viii)** I am, however, not impressed by the contentions as the evidence and the materials on record do not appear to support the Appellant-Defendant on any of those. The Appellant-Defendant appearing as D.W.1 in



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his own evidence admits that the Respondent-Plaintiff requested him to vacate the shop premises for facilitating him in opening his shop there and, that the basement floor was being used as a temporary residence of one Shatrughan Prasad which was actually a godown and, also that the business of STD and Xerox machine was being run by his eldest son. Even in the evidence of D.W.2, Suresh Prasad, the son of the Appellant-Defendant, it is admitted in corroboration to the evidence of Respondent-Plaintiff and Appellant-Defendant, that the Respondent-Plaintiff had initially shifted to Kumar Rai's shop and that the suit premises is on the front side facing the Singtam Bazaar which is a big complex and very good for running business. D.W.3, Sukhnandan Prasad, has deposed in his cross-examination that the suit premises is at the road level of the building of the Respondent-Plaintiff and his shop is at the basement below the road level. From these, it clearly emerges that the suit premises is larger and, otherwise also, irrespective of the sizes regarding which much was sought to be made out, it was better located for running business as it faced the main Bazaar as compared to the one in a godown on the basement floor.



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(ix) Under similar facts and circumstance as the present one, the Hon'ble Apex Court in ***Smt. Jahejo Devi (supra)*** has been held as under: -

"2. .... What shop is suited best to the interest of the respondent is a prerogative of the landlord and the tenant can't question his choice, therefore, even if some houses are vacant and the family of, the respondent has become large and the members have become major then the requirement of the suit house is bona fide and reasonable. ...."

Similarly, in ***Sait Nagjee Purushotham (supra)*** it has been held as under: -

"4. .... It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. ...."

[underlining mine]

In ***Siddalingamma (supra)***, the following propositions has been laid down: -

"9. Rent control legislation generally leans in favour of tenant; it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of the landlord for his own





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occupation of use of the tenanted accommodation which treats the landlord with some sympathy. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* [(1999) 6 SCC 222] this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by material on record the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises. In *Deena Nath v. Pooran Lal* [(2001) 5 SCC 705] this Court has held that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire." [underlining mine]

(x) On the anvil of the above propositions, the facts and evidence discussed earlier would undeniably lead to an answer in the affirmative that the need of the Respondent-Plaintiff is *bona fide*. Adopting a practical approach instructed by the realities as revealed from the admitted position of the suit premises being better located than the one occupied presently by the Respondent-



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Plaintiff at the basement floor, it cannot but be said that his need is *bona fide*. As held in the above decision, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the Appellant-Defendant's continued occupation in suit premises. In my view, the Respondent-Plaintiff has been able to make out the case of his necessity of the suit premises for his personal use and occupation on the above facts and circumstances alone.

**(xi)** Having held so on the first contention, the other two shall be dealt with as we take up the other questions raised on behalf of the Appellant-Defendant as will follow hereafter.

**(xii)** The necessity of the suit premises by the Respondent-Plaintiff had apparently also been set up for settling his youngest son, Jugal Kishore Prasad, and his grandson in business. It has been contended on behalf of the Respondent-Plaintiff that Jugal Kishore Prasad is unemployed and, therefore, he intends to set up a business for him for which a licence was obtained by the son in the year 2002 but, has been unable to establish it

for want of space and the refusal of the Appellant-Defendant to vacate the suit premises.

**(xiii)** Mr. A. Moulik, Learned Senior Counsel, has no doubt stressed that Jugal Kishore Prasad is not unemployed as he is running the business of "Mill" in the building of Tashi Wangdi Bhutia against a licence issued to the wife of the said Tashi Wangdi Bhutia and is also engaged in the business of STD and Xerox machine with his eldest brother, Nanda Kishore Prasad, in the premises belonging to Kumar Rai at Singtam Bazaar. These contentions do not appear to have any substance as it is in the firm and undemolished evidence of the Respondent-Plaintiff that he is actually looking after the "Mill" business as a caretaker and that his son Jugal Kishore Prasad resides with him and also looks after the "Mill" business categorically denying that he is the owner of the "Mill". Curiously, the son, Jugal Kishore Prasad, has not at all been examined on this aspect. No material has been produced at all by the Appellant-Defendant to substantiate the claim. Even as regards the assertion that he is engaged in the business of STD and Xerox machine with his eldest brother, Nanda Kishore Prasad, no evidence has



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been produced on behalf of the Appellant-Defendant except to make a suggestion in the cross-examination of Jugul Kishore Prasad on this which has been denied by him. To the contrary, it has rather been deposed by him and, as noted earlier also admitted by the Appellant-Defendant (D.W.1) and his son (D.W.2) that the elder brother, Nand Kishore Prasad, runs his own business of STD and Xerox machine in the tenanted premises owned by Kumar Rai at Singtam Bazaar. Further, he has affirmatively answered to a question put to him in the cross-examination that his elder brother had separated from the joint family in a family partition and was doing his own business and maintaining his family. There is also a clear admission by the Appellant-Defendant that Jugul Kishore Prasad is not employed anywhere and that he and his father, the Respondent-Plaintiff, are living in the same house from which it can be reasonably inferred that Jugul Kishore Prasad is a dependant of his father.

**(xiv)** From these discussions, it cannot but be held that the youngest son of the Respondent-Plaintiff, Jugul Kishore Prasad, is firstly a dependant of the Respondent-Plaintiff and secondly, he has no business of his own

although a licence was obtained by him as far back as in 2002 to run a ready-made furniture shop. If it is to be accepted, towards which the Appellant-Defendant is strenuously endeavouring, that Jugal Kishore Prasad is indeed engaged in business in the rented premises of Tashi Wangdi Bhutia and Kumar Rai and not in his own premises, then the need of the suit premises by the Respondent-Plaintiff for his personal use would rather stand established.

(xv) The law as to whether the need of a dependant son cannot be construed to be the need of the landlord or not is well-settled which has been discussed in **Ashok Kumar Rai (supra)** where this Court has, after analysing several decisions of the Hon'ble Apex Court, held that the requirement of the members of the family of the landlord or of those dependant on the landlord, is the landlord's own requirement. Reference may also be made in this regard to **Kailash Chand (supra)**. Considering the above trite position, it can unhesitatingly be held that the need of the son is the need of the Respondent-Plaintiff for his personal use or occupation. Therefore, even on this account, the Respondent-Plaintiff has been successful in



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making out a case for eviction against the Appellant-Defendant. I, therefore, do not find any error in the impugned judgment that calls for interference.

(xvi) Next, is the question on the finding on issue no.(vi), i.e., whether the Appellant-Defendant has been using the suit premises rashly and negligently. For better appreciation, we may reproduce below the relevant portion of the 1949 Notification: -

“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.”

[underlining mine]

On a perusal, the Notification provides for three grounds of eviction of a tenant, i.e., (a) if the premises are required for the landlord's personal occupation; (b) for thorough overhauling the premises and (c) failure by the tenants to pay rent for four months. Out of the three grounds, the third ground having been decided against the Respondent-Plaintiff is not an issue before us but, only in respect of the first two. From the foregoing discussions,

the first ground has already been found to have been established against the Appellant-Defendant. Dealing with the issue no.(vi) which has gone against the Appellant-Defendant, the question for determination is as to whether or not use of the suit premises rashly and negligently would fall within the ambit of the second ground of the suit premises requiring thorough overhauling and, as to whether the finding of the Learned Trial Court in answering the question in the affirmative is correct or not.

**(xvii)** Apparently, the 1949 Notification does not contemplate use of premises rashly and negligently as one of the grounds for eviction. The Learned Trial Court appears to have held this issue against the Appellant-Defendant as in its opinion it falls within the purview of thorough overhauling. While doing so, the Learned Trial Court has relied upon the document marked Exhibit 5 (collectively) which are photographs of the suit premises and the residence. It has been noted that from the photographs, Exhibit 5 (collectively), the premises were in a dilapidated condition that required thorough overhauling to make it fit for human habitation. The Learned Trial Court, while appreciating that there is no scope in the

1949 Notification for evicting a tenant for having used the suit premises rashly and negligently, has opined that where there is rash and negligent use it leads to the condition of the building as reflected in Exhibit 5 (collectively).

**(xviii)** I am inclined to agree with the Learned Trial Court. It has not been denied by the Appellant-Defendant and his son D.W.2, Suresh Prasad, that the photographs, Exhibit 5 (collectively), pertain to the suit premises in their evidence except to deny that they were using the suit premises rashly and negligently. The condition as depicted in the photographs, Exhibit 5 (collectively), would clearly reveal the deplorable condition in which the suit premises are in and, therefore, as rightly held by the Learned Trial Court, such condition would only result from the use of the premises rashly and negligently.

**(xix)** I, therefore, have no hesitation in upholding the finding on issue no.7 thereby confirming the decree passed by the Learned Trial Court (i) declaring that the Respondent-Plaintiff is in *bona fide* requirement of the suit premises and, (ii) for eviction of the Appellant-Defendant



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from the suit premises by handing over its vacant and peaceful possession to the Respondent-Plaintiff.

**9.** For the aforesaid reasons, the Appeal has to fail and is accordingly dismissed.

**10.** No order as to costs.

**11.** A copy of this judgment and the original case records be transmitted to the Court of the Learned Principal District Judge, East Sikkim at Gangtok, for necessary compliance.

Sd/-  
( S. P. Wangdi )  
Judge  
24-11-2014