



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 7<sup>th</sup> NOVEMBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RFA No.01 of 2016

**Appellants** : 1. Smt. Kaushilya Minda (since deceased),  
W/o Late C. M. Minda,  
Minda Trade Agencies,  
Verma Building,  
National Highway,  
Gangtok,  
East Sikkim,  
through her Legal Representative  
Shri Umesh Minda,  
S/o Late C. M. Minda,  
Minda Trade Agencies,  
Verma Building,  
National Highway,  
Gangtok,  
East Sikkim.

2. Shri Umesh Minda,  
S/o Late C. M. Minda,  
M/s. Minda Trade Agencies,  
Verma Building,  
National Highway,  
Gangtok,  
East Sikkim.

**versus**

**Respondent** : Rajesh Verma,  
S/o Late Tek Chand Verma,  
Verma Building,  
National Highway,  
Gangtok,  
East Sikkim.

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

**Appearance**

Mr. Sudesh Joshi and Mr. Sisir Mothay, Advocates for the Appellant.

Dr. (Ms.) Doma T. Bhutia and Ms. Meena Bhusal, Advocates for the Respondent.



## J U D G M E N T

Meenakshi Madan Rai, J.

**1.** Assailing the Judgment and Decree passed by the Learned District Judge, East Sikkim, at Gangtok, in Eviction Suit No.03 of 2014, vide Judgment dated 29-10-2015, in which the suit was decreed in favour of the Plaintiff (the Respondent herein), the instant Appeal has been preferred.

**2.** The grounds raised in the Appeal, *inter alia*, were that, the Learned Trial Court had erred in arriving at the finding that the suit premises were required by the Plaintiff/Respondent for his *bona fide* occupation, when infact, it was required for his wife, purportedly for selling Computer spare parts and accessories and imparting Computer Training. That, the wife of the Respondent was never financially dependent upon him and, therefore, could not be considered as a 'dependent' in terms of the Gangtok Rent Control and Eviction Act I of 1956 (hereinafter referred to as the "Act of 1956").

**3.** The facts may briefly be traversed to appreciate the matter in its correct perspective. The Respondent/Plaintiff (hereinafter be referred to as the 'Plaintiff') is the absolute owner of the property in dispute being a shop measuring 10' x 30', i.e., a total of 300 sq. ft., on the southern side of the ground floor, in a seven storied building by the name "Verma Building", located on the National Highway, Gangtok, East Sikkim, which fell in his partition share along with the entire second floor in the said



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building, vide a Partition Deed dated 15-06-2005. His father, Late Tek Chand Verma, had leased out the suit property to the Appellant No.1 (Defendant No.1 since deceased), mother of the Appellant No.2, (hereinafter "the Defendant No.2") for a period of ten years, vide a Lease Deed dated 19-07-1976, to run a Hardware Shop at a monthly rent of Rs.600/- (Rupees six hundred) only, according to the English Calendar. It is averred in the Complaint that the suit premises is in the use of the Defendant No.2 as his Office-cum-Shop for selling petty electrical and hardware articles in the name of "Minda Trade Agency", besides which he has other business of supplying hardware and electrical items from his warehouse, situated opposite the Police Headquarters, on the National Highway, after procuring the articles from Siliguri. That, the Defendant No.1 had started residing permanently in Siliguri where both Defendants own a flat as also a flat in Gangtok, below M. G. Marg, opposite the Police Headquarters and a godown and therefore, do not require the suit premises. After the Plaintiff became the owner of the disputed property, he informed the Defendants of his ownership on which the Defendant No.2 started depositing the monthly rent in the joint Savings Bank Account of the Plaintiff and his wife, Mrs. Sunila Verma. That, the Defendant No.1 has been allowed peaceful possession of the suit premises for the last thirty-six years from August, 1976 but, now the situation of the Plaintiff has completely changed as he is on the verge of retirement while his wife has already retired. They are in occupation of Government Quarters at Syari, Deorali, East Sikkim, which he will be required



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to vacate. The suit premises is *bona fide* required by him as after his retirement he is required to augment his income by running a Computer spare parts and accessories shop along with his wife for which a Trade Licence has been obtained in the name of his wife. He has to finance the medical education of his daughter anticipated at Rs.5,00,000/- (Rupees five lakhs) only, to Rs.8,00,000/- (Rupees eight lakhs) only, per annum and subsequently, her marriage. That apart, being a Cardiac patient, he is likely to incur yearly medical expenditure expected to be about Rs.75,000/- (Rupees seventy five thousand) only. Hence, the prayers enumerated in the Plaint.

**4.** In the Written Statement of the Defendants, it was, *inter alia*, averred that prior to five years the Defendant No.2 was supplying electrical articles to Government Departments which has since been discontinued. That, the Defendant No.1 mostly resided in Gangtok, but was required to go to Siliguri for medical treatment due to her various ailments. Admittedly, the Defendants have a residential flat below M. G. Marg, Opposite the Police Headquarters and a rented godown space, but it is not a shop space. It is only the suit premises from where the Defendants earn their living for which there have been no defaults in monthly rents. Admittedly, the Plaintiff was on the verge of retirement, but his wife had sought voluntary retirement and they have no financial constraints as both would avail of retirement benefits. That, selling Computer spare parts and accessories and imparting Computer Training can be started on



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the second floor inherited by the Plaintiff, which he has however let out on rent. It is admitted that although a legal Notice was received by the Defendants from the Plaintiff, however, the same did not merit vacation of the suit premises by the Defendant No.1 and, hence, the non-compliance. It is denied that the Plaintiff requires the suit for *bona fide* occupation.

**5.** The Learned Trial Court settled two issues for determination, viz.,

- (i) Whether the Plaintiff requires the suit premises for his *bona fide* occupation?
- (ii) Any other reliefs.

**6.** The Plaintiff examined five witnesses including himself, while the Defendant No.2 examined only himself. After considering the evidence on record and the relevant provisions of Law, the Learned Trial Court passed the impugned Judgment and Decree.

**7.** Referring to the Act of 1956, the points canvassed before this Court by Learned Counsel for the Appellant/ Defendant, was that the *bona fide* occupation of the premises must be for the landlord or his dependents. That, in the instant matter, it is evident that the wife who seeks to run a business, selling Computer spare parts and accessories and imparting Computer Training in the suit premises was never financially dependent on the Plaintiff. He invited the attention of this Court to the decision of **Paul Sangay vs. Mahabir Prasad Agarwalla**<sup>1</sup>,

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1. AIR 1980 Sikkim 13



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wherein a Division Bench of this Court had held that mere desire of the landlord is not enough but there should be an element of need, in other words *bona fide* requirement. That, in the instant case, it is merely a desire, as apparent from the statement of the Plaintiff that it was their “dream plan” with no *bona fide* requirement. Referring to Paragraphs 33 and 35 of the impugned Judgment wherein the Learned Trial Court recorded that the Defendant had not disputed that they owned alternative accommodation close to the suit premise, it was vehemently contended that this finding was erroneous as the alternative accommodation pertained to residential premises, whereas the suit property is commercial accommodation. Basing his arguments on Section 101 of the Indian Evidence Act, 1872, it was contended that the Plaintiff has two properties, of which he claims that he requires the suit premises for himself and his dependent wife, but he has not discharged his burden as per Law. On this count reliance was placed on ***Rangammal vs. Kuppuswami and Another***<sup>2</sup>. It was also urged that a certified copy of the Sale Deed Document dated 07-04-1996, filed by the Defendant No.1 had been taken into consideration by the Learned Trial Court to arrive at the finding that the Defendant No.1 had purchased two floors (ground floor and the first floor) of RCC building from one Durga Khati measuring 10' x 30', but the document had never been exhibited in the Learned Trial Court. On this argument, reliance was placed on the decision of ***Life Insurance Corporation of India and Another vs. Ram Pal Singh Bisen***<sup>3</sup> wherein it was held that

2. (2011) 12 SCC 220

3. (2010) 4 SCC 491



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*"Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court."* That, the Learned Trial Court also opined that the existence of an adjoining shop space (with closed green shutter) would show that the said premises could be used for business purposes with proper renovation, but this conclusion too was drawn without any evidence being led on this aspect, added to which the ground floor is not at the road level and cannot be used as a shop. Hence, the opinion of the Learned Trial Court in the impugned Judgment in Paragraphs 33 to 35 are without any basis.

**8.** In the next limb of his argument, it was urged that although the Plaintiff during the pendency of the suit had retired from service, no effort was made to amend the pleadings, as a result of which there is variance in the pleadings and the evidence of the Plaintiff, inasmuch as in his evidence before the Court he has stated that, he retired as a Secretary to the Government of Sikkim after having served for 35 years, but his pleadings reflect that he would be retiring. On this point, reliance was placed on ***Nandkishore Lalbhai Mehta vs. New Era Fabrics Private Limited and Others***<sup>4</sup> wherein at Paragraph 39 it was held that *"In our considered opinion, the Division Bench of the High Court was perfectly justified in holding that unless the plaint is amended and a specific plea is taken that the Mill Mazdoor Sabha had agreed for the proposed sale on certain terms and*

4. (2015) 9 SCC 755



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conditions offered by the respondents herein, the two letters viz. Exts. P-27 and P-28 could not have been taken into consideration at all.” Reliance was also placed on ***Kashi Nath (Dead) through Lrs. vs. Jaganath***<sup>5</sup> wherein at Paragraph 17 it was held that “As noted by the Privy Council in *Siddik Mohd. Shah v. Saran* [AIR 1930 PC 57 (1)] and *Trojan and Co. v. Rm. N. N. Nagappa Chetiar* [AIR 1953 SC 235] when the evidence is not in line with the pleadings and is at variance with it and as in this case, in virtual self-contradiction, adverse inference has to be drawn and the evidence cannot be looked into or relied upon.” The attention of this Court was also drawn to the decision in ***Nauranglall Agarwala and Others vs. Smt. Basant Kumari Sud***<sup>6</sup> at Paragraph 29 wherein the Court concluded “I do not think that the plaintiff, not having pleaded such a case in her plaint even remotely, but having pleaded some other and different case specifically and categorically, can be allowed to found her claim on such new grounds. .... that in a given case relief may be granted even on a ground not specifically pleaded, provided there can be or has been no prejudice or surprise to the other party”. That, in ***Subhash Kumar Pradhan vs. Shanti Devi***<sup>7</sup>, this Court has held that —

“12. It is almost well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. The law is well settled that no party can travel beyond its pleadings and all necessary facts must be pleaded in the pleadings of a party so that the opposite party may be in a position to know as to what case he has to defend and thus, nothing comes before him as a surprise at the time of the evidence.”

That, in view of the arguments canvassed and the decisions relied on, the impugned Judgment of the Learned Trial Court be set aside.

**9.** Resisting the argument of the Appellant/Defendant, it was pointed out by Learned Counsel for the Respondent/Plaintiff

5. (2003) 8 SCC 740

6. AIR 1981 Sikkim 22

7. AIR 2014 Sikkim 13





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that in the first instance the Appeal is infructuous, the Defendant No.1 having passed away on 03-02-2016 while the Appeal was filed on 19-02-2016. The Defendant No.2 has no *locus standi* as he was never the tenant of the Plaintiff and admittedly there is no Tenancy Agreement between the Plaintiff and the Defendant No.2. That, as the Defendant No.2 himself has denied that he is the tenant of the Plaintiff, therefore, the question of him stepping into his mother's shoes does not arise.

**10.** It is next contended that the Trade Licence for the suit premises is in the name of his deceased mother which is not transferable, resultant, he is not even eligible to run the shop in the suit premises. Relying on the ratio of ***Janki Vashdeo Bhojwani and Another*** vs. ***Indusind Bank Ltd. and Others***<sup>8</sup> it was submitted that the Defendant No.2 cannot depose for the Defendant No.1 since he was only four years old when the Tenancy Agreement of 1976 was entered into and merely because he is the Power-of-Attorney holder he is not eligible to depose of facts which are not in his personal knowledge. It was further urged that the Power-of-Attorney was not exhibited and, therefore, was unproved.

**11.** Arguing on the *bona fide* requirement of the Respondent/Plaintiff attention of this Court was drawn to ***Sidharth Vyas and Another*** vs. ***Ravi Nath Misra and Others***<sup>9</sup>, it was canvassed that the object of any rent law is to balance the competing claims of the landlord and the tenant and while interpreting the provisions, the object of the Act has to be kept in

8. (2005) 2 SCC 217

9. (2015) 2 SCC 701



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consideration. That, in the instant matter, if the object of the Act of 1956 is to be considered in the first place, the Defendant No.2 is not a tenant of the Plaintiff, and secondly, the Act is to prevent vagrancy. In view of the fact that Defendant No.2 has alternative residential accommodation, the question of him becoming vagrant, does not arise. That, in **G. C. Kapoor vs. Nand Kumar Bhasin and Others**<sup>10</sup> discussing the case of **Raghunath G. Panhale vs. Chaganlal Sundarji and Co.**<sup>11</sup>, it was, *inter alia*, held by the Apex Court “that it was not necessary for the landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it”. He merely has to show a *bona fide* requirement which in the instant case the Plaintiff through his evidence has clearly set out. Reference was also made to **Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Others**<sup>12</sup> wherein the Apex Court had reached the finding that “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.”

**12.** Taking her argument forward, Learned Counsel painstakingly pointed to the provisions of the Act of 1956 and contended that it should be so interpreted as to advance the cause of justice instructed by the realities by life and practical wisdom and relied on **Kailash Chand and Another vs. Dharam Dass**<sup>13</sup>. In this matter while dealing with the Himachal Pradesh Urban

10. (2002) 1 SCC 610

11. (1999) 8 SCC 1

12. (2005) 8 SCC 252

13. (2005) 5 SCC 375



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Rent Control Act, 1987, the Hon'ble Apex Court held that "*The rent control legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the courts at times lean in favour of the landlords is the one which permits the landlord to seek eviction of the tenant on the ground of requirement for his own occupation, residential or non-residential. .... While the tenant needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant*".

**13.** That, in ***Shrimati Shakuntala Bai vs. K. N. Dewan***<sup>14</sup> this Court held that "*The word "dependant" would mean a person who is either living with the plaintiff or gets financial or other material support for his upkeep*" and in the instant case the Respondent and his wife live together bring his wife within the ambit of dependant. The pension of the husband and wife would not suffice to pay for their daughter's education and expenses besides which necessary financial arrangements have to be made for her marriage and, therefore, the requirement of the premises to enable them to run a shop. That, the Defendant No.1 failed to appear before the Lok Adalat indicating her disinterest in retaining the suit property. That, in view of the entire grounds set out hereinabove, the Learned Trial Court has not erred in his Judgment and, therefore, the Appeal be dismissed.

**14.** I have heard the submissions of Learned Counsel for the parties at length and given due consideration. I have also

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14. 1977 (1) Sikkim Law Journal 33



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perused the records of the Learned Trial Court along with the documents and provisions of the Laws relied on and perused the impugned Judgment and the citations made at the Bar.

**15.** The moot point that falls for consideration is whether the premises are required *bona fide* by the landlord?

**16.** Before deliberating on the above point, it would be expedient to first deal with the other points raised by Learned Counsel in their arguments, the first pertaining to Power-of-Attorney holder. According to Section 1A of The Powers-of-Attorney Act, 1882, a Power-of-Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it. Power-of-attorney is also defined under Section 2(21) of The Indian Stamp Act, 1899, and in Section 182 of The Indian Contract Act, 1872. All the definitions point to the authority of an agent viz., his power to affect his principal's position by doing acts on his behalf, such a relationship having arisen on grounds of ailment, old age or place of residence of the principal or other considerations. Order III Rules 1 and 2 of The Code of Civil Procedure, 1908 (in short "CPC"), empowers the holder of the Power-of-Attorney to 'act' on behalf of the principal. In ***Janki Vashdeo Bhojwani***<sup>8</sup> (*supra*) deliberating on this point the Hon'ble Apex Court succinctly laid down that—

**"13.** ..... In our view the word 'acts' employed in Order 3 Rules 1 and 2 CPC confines only to in respect of 'acts' done by the power-of-attorney holder in exercise of the power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the



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acts done by the principal not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

The only argument of the Plaintiff pivots on the point that the Defendant No.1 was four years old when the Tenancy Agreement was entered into and therefore, this fact was not in his personal knowledge making him incompetent to depose on this fact. I find that this is not even germane to the issue at hand since the Plaintiff himself admits that the Defendants were allowed to be in peaceful possession for thirty-six years, thereby admitting the Tenancy Agreement. This point thus merits no further discussion.

**17.** That having been settled, coming to the *locus standi* of the Defendant No.2, bearing in mind the argument of the Learned Counsel for the Plaintiff which to avoid prolixity are not being reiterated, on this count, we may refer to the decision in *H. C. Pandey vs. G. C. Paul*<sup>15</sup> wherein it was held that—

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, **the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant.** It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to us that the view taken in *Ramesh Chand Bose* [AIR 1977 All 38] is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under Section 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed."

15. (1989) 3 SCC 77



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Thus, this soundly quells the argument of Learned Counsel for the Plaintiff/Respondent on the question of locus.

**18.** So far as the question of non-appearance of Defendant No.1 in the Lok Adalat is concerned, it would do well to point out that the Lok Adalat is a Forum where the parties amicably settle the matter by arriving at a compromise, if either party does not seek to appear before the Lok Adalat to compromise the matter, they cannot be coerced nor on any insinuation or conclusion be drawn from such conduct.

**19.** Learned Counsel for the Defendant for his part had argued that no amendments were made in the pleadings after the retirement of the Plaintiff, as at the time the suit was filed the Plaintiff was in service and he retired on 31-10-2014 during the pendency of the suit. That, therefore, the pleadings and the evidence are at variance. On this count, we may refer to the provisions of Order VI Rule 2 of the CPC, which requires that the pleadings state the material facts. Sub-Rule (1) lays down that every pleading shall contain, and contain only, a statement in a concise form, of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. The object of the Section is to avoid taking the opposite party by surprise and to enable him to prepare his defence. In the absence of specific pleadings a party cannot be allowed to lead evidence. In **V. Narayanaswamy vs. C. P. Thirunavukkarasu**<sup>16</sup> the Hon'ble Apex Court

<sup>16.</sup> (2000) 2 SCC 294



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dismissed an Election Petition as it did not reveal material particulars.

**20.** In the case at hand, on perusal of the Plaint in Paragraph 9, it has been stated "*That when the Plaintiff retires from the said Government Service, he has to vacate the Government Quarter and has to handover the same to the Government of Sikkim. Therefore, the suit premises which is occupied by Defendant No.2 is required by Plaintiff on a bonafide ground*". In Paragraph 11 it is further stated "*That after retirement, the Plaintiff will have no source of income and requires the shop suit premises to carry out business so that he can meet expenditure towards running his family, daughter Miss Vernica Verma higher education (sic) and subsequently for her marriage and towards his personal medical treatment etc.*" The records reveal that during the pendency of the suit he retired from service. The pleadings categorically reflect that he is likely to retire from service. Consequently, the Defendant have not been taken by surprise and it would be too pedantic to require the Plaintiff to amend his pleadings merely on his retirement, the contingency of which is reflected in his pleadings.

**21.** That apart, in ***Kedar Nath Agarwal and Another*** vs. ***Dhanraji Devi and Another***<sup>17</sup> relied on by this Court in ***Subhash Kumar Pradhan***<sup>7</sup> (*supra*) it was held that "*In Kedarnath (supra)* it was held that the basic rule is that the rights of the parties should be determined on the basis of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencing of the suit/action. ***This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the Court to consider changed circumstances.***" It may also be

<sup>17</sup>. 2004 AIR SCW 5789



pointed out that even in the decision relied on by Learned Counsel, i.e, **Nauranglall Agarwala**<sup>6</sup> (*supra*), it has been specifically held “*that in a given case relief may be granted even on a ground not specifically pleaded, provided there can be or has been no prejudice or surprise to the other party*”. In view of above ratio and considering that the material facts had been stated in the Plea and the fact that Defendant have obviously not been taken by surprise, I find no force in the submissions of Learned Counsel for the Defendant on this aspect.

**22.** Having said that, I now come to the moot point, it is essential to point out that so far as rent control and eviction is concerned, Sikkim is governed by the Act of 1956 and the Government of Sikkim Health and Works Department Notification No.6326—600-H&W—B dated 14-04-1949 (in short “Notification of 1949”) in terms of the provision of Article 371F(k) of the Constitution of India which commences with a *non obstante* clause and reads as follows;

**“371F. Special provisions with respect to the State of Sikkim.—**Notwithstanding anything in this Constitution,—

.....

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;”

**23.** We may now briefly refer to the relevant portion of the Act of 1956. Section 4 of this Act lays down that —

**“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





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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."

**24.** The provisions of the Notification of 1949 are not being discussed herein as the Act of 1956 is the only relevant enactment for the present purposes as it pertains to the area in which the suit premises is situate, i.e., Gangtok Bazar. Learned Counsel for the Defendant had argued that the Division Bench of this High Court in **Paul Sangay**<sup>1</sup> (*supra*) and the decision of the Single Bench of this High Court in **Nauranglall Agarwala**<sup>6</sup> (*supra*) has clearly held that under the Act of 1956, requirement of a non-dependent family member will not amount to *bona fide* requirement of landlord. In this context, the facts in **Paul Sangay**<sup>1</sup> (*supra*) were that the Respondent therein sought eviction of the Appellant from the suit premises in view of the fact that he wanted to settle his two sons in their own independent business and the Court observed that "*that being so, any requirement for such a business in which the plaintiff admittedly would have no role or share or interest cannot be regarded as a requirement for the occupation of the plaintiff-landlord according to the ratio of the Supreme Court case or for "his personal occupation" as the said expression has been used in Sakuntala Bai's case.*" The Supreme Court case referred to *supra* was **D. N. Shanghavi & Sons vs. Ambalal Tribhiban Das**<sup>18</sup>.

**25.** In the matter at hand, the Plaintiff has laid out in his Evidence-on-Affidavit that "*Today the Defendant no.1 does not require*

<sup>18.</sup> AIR 1974 SC 1026



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*the suit premises let out to her for the simple reasons (sic) that she is staying at Siliguri in their flat and Defendant No.2 is well established in his businesses and they have purchased two flats i.e. ground floor and the first floor in the vicinity of the suit premises opposite Police Headquarter out of the 6<sup>th</sup> storied building. Whereas in my case the situation has changed that earlier me and my wife was (sic) in Government service and staying in Government quarter at Syari but now both of us are retired from the Government Services on 31<sup>st</sup> October, 2014 and 31<sup>st</sup> July, 2012 and respectively, (sic) as such, we had to vacated (sic) the government quarter occupied by us and now shifted to our building on the second floor of the Scheduled-"A" properties of the instant suit. Therefore the suit premise is required by me on bonafide use and occupation and for bonafide use and occupation for my dependants."* This evidence is in tandem with his averments in the Plaint where he has stated "That When the Plaintiff retires from the said Government service, he has to vacate the Government Quarter and has to handover the same to the Government of Sikkim. Therefore, the suit premises which is occupied by Defendant No.2 is required by Plaintiff on a bonafide ground." It was also averred that "That after retirement, the Plaintiff will have no source of income and requires the shop suit premises to carry out business so that he can meet the expenditure towards running his family, daughter Miss Vernica Verma higher education (sic) and subsequently for her marriage and towards his personal medical treatment etc." These facts, clearly establish the *bona fide* requirement of the Plaintiff.

**26.** At the same time, it may be pointed out although Learned Counsel for the Plaintiff relied upon ***Sakuntala Bai***<sup>14</sup> (*supra*) for interpretation of the word 'dependant', the said Judgment is prior in time to ***Paul Sangay***<sup>1</sup> (*supra*) and pertains to a Judgment by a Single Judge.



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**27.** From the evidence of the Plaintiff and his witnesses, it is clear that both the Plaintiff and his wife have retired from Government service. She may have taken voluntary retirement but this does not change the position. They require the premises for the purposes of selling Computer spare parts and accessories and imparting Computer Training to augment their income on account of the medical education of their daughter and preparation for her future. The yearly medical expenses of the Plaintiff is another concern. Indubitably the Defendant No.2 has alternative residential accommodation and a godown in Gangtok. Defendant No.2 also owns accommodation in Siliguri and clearly would not be out in the streets or without a shelter over his head if evicted. In ***Sait Nagjee Purushotham***<sup>12</sup> (*supra*) the Apex Court has laid down that 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 the tenants cannot be heard to say that the landlord already have their business at other places. The tenant cannot dictate terms to the landlord and advise him what he should do and what he should not. It is for the landlord to choose the nature and place of business. With regard to the argument of Learned Counsel for the Defendant that the contents of the documents have not been proved, I find that it is not even essential for the facts and purposes of the instant case.

**28.** In the circumstances as set out in the matter at hand, can the Defendant pick and choose the accommodation he desires? I am afraid the answer has to be in the negative.



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Another question that arises is when Plaintiff requires the premises for himself, would it be fair to say that it is the commercial accommodation of the Defendant. Further, if a wife is financially independent would it mean that she has to live in a separate establishment apart from her husband? Then what of the bond of marriage or is dependency to be confined only to financial dependency, would it not be as arbitrary interpretation of the Act of 1956?

**29.** While thus on the question of interpretation of rent control legislations, we may usefully refer to the ratiocination in ***Yadvendra Arya and Another* vs. *Mukesh Kumar Gupta***<sup>19</sup>, the Apex Court in Paragraph 13 held as follows;

“**13.** In *Joginder Pal v. Naval Kishore Behal* [(2002) 5 SCC 397] it was held as follows:

“6. In *Malpe Vishwanath Acharya v. State of Maharashtra* [(1998) 2 SCC 1] this Court emphasised the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. ‘The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society.’ (SCC p.22, para 29) While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a short-sighted parochial approach. Power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also in constitutional invalidity.

\* \* \*

.....

32. .... If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled-for

19. (2008) 2 SCC 144



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and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.

33. (i)-(iv) \* \* \*

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii).

(SCC pp.413-14, paras 31-33)"

This lays down that the concept of requirement must be construed meaningfully and, in my considered opinion in the case at hand, the requirement of the husband and his wife cannot be bifurcated on grounds of financial independence. There has to be a holistic approach and interpretation of the concerned provision.

**30.** In the same Judgment *supra* while relying on the decision of **Bega Begum vs. Abdul Ahad Khan**<sup>20</sup> the Court speaking in the context of reasonable requirement of landlord as a ground for eviction, cautioned that the Courts should guard against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. Reference was also made to **Kewal Singh vs. Lajwanti**<sup>21</sup>

20. (1979) 1 SCC 273

21. (1980) 1 SCC 290



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wherein it was held that while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord. That the concept of *bona fide* necessity should be meaningfully construed so as to make the relief granted to the landlord real and meaningful. In **Joginder Pal vs. Naval Kishore Behal**<sup>22</sup> it was, *inter alia*, held that the Court has to strike a balance between the need of protecting the tenant from unjustified evictions and the need for eviction when ground for eviction is one such as the requirement of the landlord. It went on to emphasise that construction on the expression “for his own use” cannot be made in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life.

**31.** What must be culled out from all of the above is that the Courts ought to have a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both sections of the society.

**32.** In **Kailash Chand**<sup>13</sup> (*supra*) while interpreting the provisions of the Himachal Pradesh Urban Rent Control Act, 1987 it was observed that rent control legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the Courts at times lean in favour of the landlords is the one which permits the landlord to seek eviction of the tenant on

22. (2002) 5 SCC 397



the ground of requirement for his own occupation, residential or non-residential.

**33.** Recently, in the decision of ***Sidharth Vyas***<sup>9</sup> (*supra*) the Hon'ble Apex Court referred to the decision of ***Joginder Pal***<sup>22</sup> (*supra*), ***Malpe Vishwanath Acharya vs. State of Maharashtra***<sup>23</sup> and again reiterated that the rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords and legislative intent has to be respected by the Courts while interpreting the Laws. But, it is being uncharitable to legislatures if they are contributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords. In Paragraph 10 of ***Sidharth Vyas***<sup>9</sup> (*supra*) it was held that—

**"10.** The object of rent law is to balance the competing claims of the landlord on the one hand to recover possession of building let out to the tenant and of the tenant to be protected against arbitrary increase of rent or arbitrary eviction, when there is acute shortage of accommodation. Though, it is for the legislature to resolve such competing claims in terms of statutory provisions, while interpreting the provisions the object of the Act has to be kept in view by the Court. Unless otherwise provided, a tenant who has already acquired alternative accommodation is not intended to be protected by the Rent Act."

**34.** All the above Judgments squarely lays down that although tenants have to be dealt with favourably in rent control legislations to ensure that they are not left without a roof over their heads and to guard them against unscrupulous landlords,

23. (1998) 2 SCC 1



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but at the same time when the landlord puts forth the grounds of *bona fide* use the Courts have to be circumspect and interpret the law accordingly to mete out even handed justice.

**35.** Thus, in the case at hand, it would do well to apply the principles enunciated in the decisions referred to hereinabove. Although it was argued that burden of proof has not been discharged by the Plaintiff, I find that this argument of Learned Counsel for the Defendant has no legs to stand since the evidence on record would prove otherwise. It is specific from the evidence the purposes for which the premises are required and it is not for the Defendant to dictate terms to the landlord as to which place and how he should use his premises if *bona fide* requirement is established.

**36.** There is no difference in the spirit and object of the Act of 1956 from all of the above decisions. It is obviously based on justice equity and good conscience which all Courts are required to abide by. Therefore, in view of all of the reasons enumerated hereinabove, the decision of the Learned Trial Court warrants no interference.

**37.** In the result, the Appeal is dismissed.

**38.** No order as to costs.

Sd/-  
( **Meenakshi Madan Rai** )  
**Judge**  
07-11-2016

Approved for reporting : **Yes**

Internet : **Yes**