

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 18th NOVEMBER, 2016

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

RFA No.03 of 2015

Appellant : Pradeep Golyan,
S/o Late Om Prakash Golyan,
R/o Jorethang,
P.O. & P.S. Jorethang,
South Sikkim.

versus

Respondent : Durga Prasad Mukhia,
S/o Late P. B. Mukhia,
R/o Jorethang,
P.O. & P.S. 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. Kesang Diki Bhutia and Mr. Ranjit Prasad, Advocates for the Appellant.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for the Respondent.

CO No.05 of 2015

Appellant : Durga Prasad Mukhia,
S/o Late P. B. Mukhia,
R/o Jorethang,
P.O. & P.S. Jorethang,
South Sikkim.

versus

Respondent : Pradeep Golyan,
S/o Late Om Prakash Golyan,
R/o Jorethang,
P.O. & P.S. Jorethang,
South Sikkim.



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Cross Objection under Order XLI Rule 22(1)
and (2) read with Section 151 of the
Code of Civil Procedure, 1908

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for the Appellant.

Mr. A. Moulik, Senior Advocate with Mrs. Kesang Diki Bhutia and Mr. Ranjit Prasad, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Appeal has been preferred by the Appellant/Defendant assailing the Judgment and Decree, both dated 30-06-2015, in Eviction Suit No.01 of 2013, of the Learned District Judge, South Sikkim, at Namchi, decreeing the suit in favour of the Respondent/Plaintiff. A Cross Objection was also filed by the Respondent/Plaintiff assailing the finding of the Learned Trial Court in Issue no.3.

2. The Regular First Appeal and the Cross Objection are taken up together as they arise out of the same impugned Judgment.

3. The Plaintiff before the Learned Trial Court and the Respondent herein, (hereinafter referred to as the "Plaintiff") had sought for eviction of the suit premises by the Defendant, Appellant herein, (hereinafter referred to as the "Defendant"), and for recovery of arrears of rent. The facts before the Learned Trial Court as averred by the Plaintiff was that in a family partition, he



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had received three rooms including the suit property as his share on the ground floor of a building, situated in Jorethang, South Sikkim, of which two rooms collectively measuring 30' x 15' are the suit premises, in the occupation of the Defendant. The third room measuring 9' x 15' is in the occupation of another tenant Anil Kumar Gupta, at a monthly rent of Rs.2,000/- (Rupees two thousand) only. In addition to the said three rooms, he received three other rooms on the first floor of the same building which is utilised as his residence. Another room in the terrace of the building also fell in his share and is being used as a kitchen. The suit property was initially rented out to the father of the Defendant in the year 1993, at a monthly rent of Rs.1,100/- (Rupees one thousand and one hundred) only. On his death in the year 2000, the tenancy was continued by the Defendant, at a monthly rent of Rs.1,800/- (Rupees one thousand and eight hundred) only. Apart from the said property, the Plaintiff has no other house or buildings anywhere. In May, 2011, the Plaintiff sought to enhance the rent, which was declined by the Defendant, instead without the Plaintiff's consent, he unilaterally started sending monthly rent amounting to Rs.2,500/- (Rupees two thousand and five hundred) only, through Money Orders, from the same month. That, the Defendant used to make advance payments for rent which were duly adjusted on a monthly basis by the Plaintiff, a balance of Rs.35,182/- (Rupees thirty five thousand one hundred and eighty two) only, remains in the advance credit of the Defendant. Thus calculated, balance arrears of Rs.13,418/- (Rupees thirteen thousand four hundred and



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eighteen) only, from the month of May, 2011 up to July, 2013, are due from him. That, the rents received from the tenanted premises of the Defendant and Anil Kumar Gupta are the only source of income of the Plaintiff, who lost his eyesight due to health complications in the year 2003 and was dependent on his wife for his daily needs. Subsequently, his wife developed an ailment in her leg, thereby requiring their eldest daughter Ms. Sabnam Mukhia to resign in April, 2013, from her private job, where she had been employed from 2000, to assist her parents. Being thus unemployed, she requires to start a business in Jorethang to generate income and to take care of her parents for which Trade Licence for readymade garments has already been obtained by her. In the circumstances, the premises in occupation of the Defendant being *bona fide* required, a request was made to him to vacate and hand over possession of the suit property. On his refusal, the suit was filed, *inter alia*, with the prayers that the Defendant be evicted from the suit premises on the ground of *bona fide* requirement of the Plaintiff, for the use of his daughter and a direction to the Defendant to make good the arrears of rent, with interest till the premises are vacated.

4. The Defendant, in his Written Statement repudiated the grounds put forth by the Plaintiff and contended that, the suit was filed merely to harass him on his refusal to enhance the rent, which the Plaintiff habitually increases. As the Plaintiff refused to accept the monthly rent, he had no option but to forward it through Money Orders which were declined by the Plaintiff. He



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denies having defaulted in payment of rent and asserts that the suit premises is being utilised as a godown by him, being unsuitable for running a shop. That, there is no *bona fide* requirement and the Trade Licence had been obtained illegally, as the younger daughter of the Plaintiff, was working as a Under Secretary in the UD&HD, Government of Sikkim, hence the suit be dismissed.

5. The Learned Trial Court after perusing the pleadings and hearing the Learned Counsel for the parties, framed the following issues;

- (i) *Whether the suit is maintainable?*
- (ii) *Whether the suit properties/demised properties are required by the Plaintiff and/or his family members for their bona fide requirement?*
- (iii) *Whether the Defendant has defaulted in payment of the concerned rent for the suit premises w.e.f. May, 2011?*
- (iv) *Whether the suit has been filed only to evict the Defendant without any basis?*
- (v) *Whether the Plaintiff is entitled to the reliefs prayed for by him?*

6. The Plaintiff and Defendant examined themselves and three other witnesses each.

7. The Learned Trial Court while deciding Issue no.2, first, was of the view that the suit premises was required *bona fide* by the Plaintiff/his daughter. Issue no.3 was decided against the Plaintiff as the Court found no default in payment of rent by the Defendant. Issues no. 1, 4 and 5 were taken up together and decided in favour of the Plaintiff, and the suit decreed accordingly.



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8. Before this Court, the arguments raised by Learned Counsel for the Appellant-Defendant are that, the *bona fide* requirement of the Plaintiff-Respondent has not been proved as no grounds have been indicated to show that the requirement is genuine. That, a distinction has to be made between 'desire' and 'requirement' and in the instant case, there being no proof of *bona fide* requirement, it is merely the desire of the Plaintiff. The Defendant had been asked to vacate only because he had not agreed to enhancement of rent, which was abruptly foisted on him with difficult terms and conditions. Had he consented, then the question of eviction would not have arisen. That, it is indeed surprising that the Plaintiff's elder daughter had given up her job in 2013 when the father allegedly became visually impaired in 2003 itself and in such a situation the parents ought to have moved to her place of work. That, the other tenant Anil Kumar Gupta has not been evicted as he was agreeable to the enhanced rent.

9. Learned Senior Counsel for the Defendant while referring to the rent control enactments in this State submitted that, the Gangtok Rent Control and Eviction Act I of 1956 (in short "Notification of 1956"), prescribes that eviction may be effected when the tenanted premises are required for the "**landlord or his dependents**", whereas the Government of Sikkim, Health and Works Department, Notification No.6326—600-H&W—B, dated 14-04-1949, (in short "Notification of 1949"), which is applicable in the instant case, only speaks of the "**personal occupation**" of the



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landlord. That, as the premises admittedly are required for the Plaintiff's daughter, hence the question of personal occupation of the landlord does not arise and consequently, *bona fide* requirement of the Plaintiff is not established. To fortify his submissions, reliance was placed on ***Rahabhar Productions Pvt. Ltd. vs. Rajendra K. Tandon¹, Gangtok Auto Works Pvt. Ltd. and Others vs. Tobgyal Wangchuk Tenzing Namgyal and Others², Pratap Rai Tanwani and Another vs. Uttam Chand and Another³ and Ram Dass vs. Ishwar Chander and Others⁴.***

10. The Plaintiff-Respondent filed a Cross Objection to the Appeal raising the claim that although the Learned Trial Court had found no default in payment of rent, however, if one were to consider the evidence on record, it is explicit that the Defendant was paying a monthly rent of Rs.1,800/- (Rupees one thousand and eight hundred) only, which the Plaintiff had sought to increase and the Defendant was not agreeable to. The Defendant unilaterally started sending a sum of Rs.2,500/- (Rupees two thousand and five hundred) only, by Post which was not accepted by the Plaintiff, being devoid of agreement, therefore, rent has not been received by the Plaintiff from the month of May, 2011, resulting in arrears, but the finding of the Learned Trial Court is to the contrary. Learned Senior Counsel Shri A. Moulik for the Defendant countered that although the rent was sent by Post it was forwarded to the correct address of the Defendant and it was by choice that the Defendant did not accept the rent. Relying on

1. (1998) 4 SCC 49
 2. AIR 1985 Sikkim 23
 3. (2004) 8 SCC 490
 4. (1998) 3 SCC 131



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Har Charan Singh vs. Shiv Rani and Others⁵ it was contended that Section 27 of the General Clauses Act, 1897, deals with the topic "Meaning of service by post" and where a document is sent by post in the correct address, it is assumed that the service has been effected meaning thereby that the rents sent by post were in the knowledge of the Defendant. Reliance was also placed on ***State of M.P. vs. Hiralal and Others***⁶ wherein the Hon'ble Apex Court while deliberating on the Supreme Court Rules, 1966, Pt.II, Or.XV, R.11 held that where the addressee Respondents manage to send the notices returned with postal remarks "not available in the house", "house locked" and "shop closed", the notices were deemed to have been served.

11. During the course of the submissions, however, Learned Senior Counsel Shri N. Rai for the Plaintiff conceded that there was no default in payment of rent, but undoubtedly arrears accrued on account of non-acceptance of rent by him forwarded by Post. That, however, the Learned Trial Court in its impugned Judgment had failed to direct payment of the amount due from the Defendant.

12. With regard to *bona fide* requirement of the Plaintiff, it was contended by Learned Senior Counsel Shri N. Rai that the daughter perforce had to resign due to the ill health of her parents and had to obtain a Trade Licence for the purpose of running the business of readymade garments, which would enable her to earn an income. The documentary evidence clearly

5. AIR 1981 SC 1284

6. (1996) 7 SCC 523



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establishes that the Plaintiff is 100% disabled visually, while the Plaintiff's wife also has leg ailments and had suffered a brain stroke. There is no denying that she is seriously ill and unable to care for the Plaintiff as she was incapacitated, thus, requiring the intervention of their elder daughter who had to resign from her private service. That, the premises can be run as a shop and merely because the Defendant was using it as a godown, it is incorrect to say that its suitability is limited to the said purpose. In fact, there are other shops being run in the same lane. That, Anil Kumar Gupta has not been ousted as income is generated for the family from his tenancy and the cross-examination of the Appellant himself would indicate the requirement of the daughter for starting a business. That, a second house of the Plaintiff has already been sold to one Om Prakash Gupta, who for his part has deposed as P.W.4 and stated that he has purchased the second house. To fortify his submissions, he has placed reliance on ***Shamshad Ahmad and Others*** vs. ***Tilak Raj Bajaj (Deceased) through Lrs. And Others***⁷, ***Sait Nagjee Purushotham & Co. Ltd.*** vs. ***Vimalabai Prabhulal and Others***⁸. That, the daughter had to take over as admittedly the Plaintiff's son died and in such circumstances, the comparative hardship of the landlord and the tenant are to be weighed. On this count, reliance was placed on ***Badrinarayan Chunilal Bhutada*** vs. ***Govindram Ramgopal Mundada***⁹. It is further submitted that the Appellant himself has a five storied house, located near the Police Station in Jorethang and, therefore, the

7. (2008) 9 SCC 1

8. (2005) 8 SCC 252

9. (2003) 2 SCC 320



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question of his lacking accommodation does not arise. It was also contended that the tenant cannot dictate terms to the landlord, on which reliance has been placed on ***Dwarkaprasad*** vs. ***Niranjan and Another***¹⁰.

13. I have heard the rival submissions of Learned Senior Counsel at length and given my anxious consideration. I have also carefully perused the evidence and documents on record as well as the impugned Judgment.

14. As the Plaintiff has conceded that there was no default in payment of rent, the only question that falls for consideration of this Court is whether the Defendant ought to be evicted from the suit premises on account of the *bona fide* requirement of the Plaintiff or whether the suit has been filed without any basis?

15. So far as rent control and eviction is concerned, Sikkim is governed by Notification of 1956 and 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;"

¹⁰. (2003) 4 SCC 549



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That, having been said, the disputed premises fall outside Gangtok and, therefore, Notification of 1956 is not relevant for the present purposes. I will, therefore, confine my discussions to the Notification of 1949, which is pertinent for the purposes of the matter at hand. For convenience, the provisions thereof are being reproduced hereinbelow;

"GOVERNMENT OF SIKKIM

Health and Works Department.

Notification No.6326—600-H&W—B.

Under powers conferred in para 2 of Notification No.1366--G, dated the 28th July 1947, the following Rules have been framed to regulate letting and sub-letting of premises controlling rents thereof and unreasonable eviction of tenants as the scarcity of housing accommodation still exists in Sikkim.

1 The landlords can charge rent for premises either for residential or business purposes on the basis of the rents prevailing in locality in the year 1939, plus an increase upto 50 per cent so long as the scarcity of housing accommodation lasts.

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.

3. Any tenant may apply to this Department for fixing his rent. On receipt of such application the Department will enquire about the rent prevailing in the locality in 1939 , and fix rent as per Rule (1) above.

4. Any person acting in contravention of this Notification will be liable to prosecution under para 4 of notification No.1366-066-G, dated the 28th July, 1947.

5. The tenant means those person in actual occupation. Landlords means owners of the premises.

These rules will come into force with immediate effect.

By order of his Highness the Maharaja of Sikkim.

R.B. Singh,

Gangtok,

The 14th, April, 1949.

**Secretary,
Health and Works Department,
Government of Sikkim."**



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The object of the Act is to ensure that there is no unreasonable eviction of tenants as scarcity of housing exists in Sikkim. Thus, the grounds available to a landlord for evicting his tenant are;

- (i) *when the whole or part of the premises are required for their personal occupation*
- (ii) *or for thorough overhauling of the premises*
- (iii) *or on failure by the tenants to pay rent for four months.*

16. In the instant matter, we are not concerned with either the overhauling of the premises or the default in monthly rent. It is confined to *bona fide* requirement of the landlord, the concomitant question arising thereof is; whether the requirement of the landlord brings within its ambit the requirement of his immediate family, i.e., wife and children?

17. In *Dwarkanprasad*¹⁰ (*supra*), the Hon'ble Apex Court while dealing with the question as to whether the premises in suit were reasonably and *bona fide* required by the landlord for occupation by himself held that "***Really the question would be to interpret the word "himself", that is, what meaning is to be given to the word "himself"? Is it to be confined to the plaintiff alone or can it include the requirement of family members of the plaintiff, that is, his son, brothers and sisters etc.?***" On this question, reliance was placed on *Institute of Radio Technology vs. Pandurang Baburao*¹¹ wherein it was held that "*the relevant words used in the Bombay Rent Restriction Act, 1939 were: "own occupation". It was argued on behalf of the tenant that this meant that the premises must be required by the landlord for his occupation. Repelling the*

11. AIR 1946 Bom 212



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argument it was observed that the words "his own occupation" mean occupation of himself and all persons who are dependent on him. The landlord had appeared as a witness in this case and had stated that his family consisted of his son, his widowed sister, her two daughters, two daughters of his daughter and his cousin. The Court was satisfied that those persons were the plaintiff's dependants and therefore, were entitled to live along with him. Therefore the word 'himself' occurring in the Act which is subject-matter of the present case has to be read as himself and members of his family." Reference was also made to the decision in **Balabhadra Beharilal vs. Premchand Lalchand**¹² wherein a Division Bench of the High Court was considering the need of the widowed daughter and her children as members of the family of the landlord. It was observed that;

"3. The main point canvassed before us was that the need of the widowed daughter and her children must be deemed to be the need of the landlord. In our opinion, the contention of the petitioner is correct and must be upheld. No doubt, after marriage the daughter passes out of the father's family and goes into that of the husband. But the fact of marriage does not sever the blood relationship which exists between a father and his daughter. The existence of this relationship does give rise to certain moral obligations. Where, in pursuance of such moral obligations, a father affords support to his daughter and her children, their needs become his needs."

It was, *inter alia*, concluded by the Hon'ble Apex Court that *bona fide* requirement of the landlord is not confined to him alone but includes the requirement of his family members.

18. On the same lines, in **Kailash Chand and Another vs. Dharam Dass**¹³ where Section 14(3) of the Himachal Pradesh Urban Rent Control Act, 1987, was in question, it was held by the Hon'ble Apex court that—

"24. The expression "his own occupation" as occurring in sub-clause (i) of clause (a) of Section (3) is not to be assigned a narrow meaning. It has to be read

12. AIR 1953 Nag 144

13. (2005) 5 SCC 375



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liberally and given a practical meaning. "His own occupation" does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in *Joginder Pal v. Naval Kishore Behal* [(2002) 5 SCC 397] and *Dwarkaprasad v. Nirnajan* [(2003) 4 SCC 549]. It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for "his own occupation".

19. Thus, the above Judgments clearly postulate what that the words "personal occupation" or "his own occupation" or "landlord's occupation" mean. On the touchstone of the ratiocination *supra* the object and spirit of the Notification of 1949 cannot be said to be any different from that of the above decisions. Thus, it is clear that the term "personal occupation" in the Notification of 1949, extends to occupation and requirement of not only the landlord, but brings without its ambit the immediate and extended joint family of the landlord or where the existence of a relationship gives rise to certain moral obligations, such as, extending shelter to a married daughter.

20. Now, coming to *bona fide* requirement by the Plaintiff. The evidence on record indicates firstly that both the Plaintiff and his wife are suffering from physical ailments as substantiated by medical reports. Their only son has evidently passed away and the younger daughter is married. It is only the elder daughter who was employed in a Hotel in Gangtok from the year 2000, who is left to tend to her parents. Although it was argued by Learned Senior Counsel for the Defendant that the parents ought to have



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moved to her place of work, on this aspect, it may be stated that apart from there being no such legal compulsion, the physical and medical condition of the parents have to be taken into consideration. Exhibit 1A, which is a Certificate for Persons with Disabilities, issued by the Senior Consultant (Ophthalmology), STNM Hospital, Government of Sikkim, Gangtok, dated 12-04-2012, certifies that the visual disability of the Plaintiff is 100%. The argument that the daughter had resigned from work only in 2013 whereas the visual disability of the Plaintiff had commenced from 2003 itself, is answered by this document, inasmuch as the daughter was left with no option but to come and take care of her parents after her father was 100% visually impaired. At the same time, Exhibit 2, a Medical Report pertaining to the Plaintiff's wife dated 13-12-2012, indicates that she is suffering from early degenerative changes in her knee joint, apparently till her own disability she was taking care of the Plaintiff and hence the belatedly resignation of their daughter from her job. Exhibit 3, which is of February, 2014, further indicates that the Plaintiff's wife was also hospitalised for hypertension and acute haemorrhage in a portion of the brain. The only source of income is from the tenanted premises in dispute and that of Anil Kumar Gupta, but the daughter seeks to establish a business in the premises occupied by the Defendant by running a business in readymade garments, for which she has obtained a Trade Licence as well. As the younger daughter is married, there is no question of relying on her income, therefore, there is no question of mere 'desire' but is clearly a genuine 'requirement' of the Plaintiff.



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21. In *Sait Nagjee Purushotham*⁸ (*supra*) the Hon'ble Apex Court has held 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 landlords are already have their business at other places. The tenant cannot dictate terms to the landlord and advise him as to what he should or should not do. It is always the privilege of the landlord to choose the nature and place of business.

22. We may also usefully refer to *Bega Begum* vs. *Abdul Ahad Khan*¹⁴ which is *pari materia* to the fact in controversy. The Court was dealing with the Jammu and Kashmir Rent Act and, *inter alia*, held that; "*The owner of the property cannot be denied eviction and compelled to live poorly merely to enable the tenants to carry on their flourishing business activity at the cost of the landlord. The fact that there is no other means for the landlord to augment his income except by getting the tenancy premises vacated compared against the conduct of the tenant who having obtained the premises for a fixed number of years has overstayed and enjoyed the premises for a long period of time are relevant factors not to deprive the landlord from the possession over the tenancy premises and recording a finding of no equity in favour of the tenants continuing in possession any further.*" The relevant factors, of course, which need to be considered, are the comparative inconvenience, loss, trouble and prejudice.

23. While discussing scarcity of accommodation, it would be apposite to state that the Defendant admittedly owns a five storied building in Jorethang itself. Therefore, the question of him

14. (1979) 1 SCC 273



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being reduced to vagrancy on account of lack of accommodation has to be answered in the negative. Obviously the comparative hardship is tilted in favour of the landlord. In this context, support may be drawn from the decision in ***Sidharth Vyas and Another vs. Ravi Nath Misra and Others***¹⁵ wherein it was held as follows;

"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."**

24. From the observations hereinabove and the discussions, I find no reason to interfere with the decision of the Learned Trial Court save to the effect that the arrears of rent from May, 2011, to be calculated till the Defendant vacates the suit property, shall be made over to the Plaintiff. Interest on the arrears prayed for, however, is not granted in view of the facts and circumstances of the case as discussed herein above. The impugned Judgment of the Learned Trial Court stands modified accordingly.

25. In the result, the Appeal is dismissed. The Cross Objection is allowed in part.

26. The Defendant shall vacate the suit premises on or before 31-12-2016 and hand over vacant possession to the Plaintiff.

^{15.} (2015) 2 SCC 701



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27. Copy of this Judgment be sent to the Learned Trial Court for information.

28. In the circumstances, no order as to costs.

29. Records of the Learned Trial Court be remitted forthwith.

Sd/-
(**Meenakshi Madan Rai**)
Judge
18-11-2016

Approved for reporting : **Yes**

Internet : **Yes**

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