

**(2012) 01 MAD CK 0038**  
**In the Madras High Court**  
**Case No : CRP (NPD) No. 461 of 2007**

|                                                    |            |
|----------------------------------------------------|------------|
| Basile Irou, Rep. by his power agent Joseph Basile | APPELLANT  |
| Vs                                                 |            |
| International Ayurvedic Health Centre              | RESPONDENT |

---

**Date of Decision :** 12-01-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2  
Pondicherry Buildings (Lease and Rent Control) Act, 1969 — Section 10(3), 14(1), 25, 29

**Citation :** (2012) 1 LW 545

**Hon'ble Judges :** T.S. Sivagnanam, J

**Bench :** Single Bench

**Advocate :** R. Subramanian, for the Appellant; R. Yashod Vardhan Senior counsel for Mr. R. Sunil Kumar, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

1. This revision, filed u/s 25 of the Pondicherry Building (Lease and Rent Control) Act, is directed against the judgment and decree dated

24.08.2006 passed in R.C.A.No.12 of 2005 on the file of the learned Appellate Authority/Principal District Judge, Pondicherry, reversing the

judgment and decree dated 04.04.2005 passed in H.R.C.O.P.No.17 of 2003, on the file of the learned Rent Controller, Pondicherry.

2. The landlord is the petitioner and the respondent is the tenant. The tenancy is in respect of a premises bearing door No.118, St. Gilles Street,

Pondicherry which was given on lease to the respondent pursuant to a lease deed dated 08.08.1990 on a monthly rent of Rs.1600/-. The landlord

tenant relationship, lease deed and the monthly rent are admitted. The petitioner filed an eviction petition on the ground that he requires the

premises for his own use and occupation and that the premises is in dilapidated

condition and requires to be re-constructed. In the eviction petition, it was stated that the petitioner was employed in France and after his retirement intends to settle down at Pondicherry permanently which is his birth place and that he does not own any other property. After the petitioner issued legal notice on 23.01.2002, calling upon the respondent to vacate, a reply was sent by the respondent stating that he is not liable for eviction and thereafter, the respondent filed a Civil Suit in O.S.No.328 of 2002 on the file of the 2nd Additional Munsif, Pondicherry alleging that the petitioner is attempting to forcibly dispossess the respondent. It was further contended that the petition premises is in dilapidated condition and the adjacent property owner on the western side had demolished their superstructure as a result of which, there is no support on the western side and the petition premises may fall down at any time. With the above facts, the petitioner sought for eviction of the respondent/tenant.

3.The respondent resisted the petitioner's claim by stating that the period of lease was ten years and initially the rent was fixed at Rs.1,000/-and increased to Rs.1,800/-as per the lease deed dated 08.08.1990 and the tenant is regularly depositing the rent into the bank account of the landlord. It is further stated that an advance of Rs.80,000/-was paid and an additional sum of Rs.16,000/-was paid by cheque to the power agent of the petitioner for carrying out repairs. The contractor appointed for carrying out the repairs abandoned the work and since the power agent could not carry out the repairs, the respondent completed the repairs by incurring additional cost of Rs.53,263/-. It is further contended that though the period of lease came to an end on 23.02.2002, the respondent is a tenant by holding over and also a statutory tenant under the Act. It is further stated that the petitioner filed an earlier eviction petition in RCOP No.72 of 1995, on the ground of committing acts of waste in the petition premises and the same was dismissed by judgment dated 31.10.1997 and the appeal filed against the said judgment was also dismissed, by the District Court on 09.11.1998. It is further stated that the petitioner is not entitled to get the premises for his personal occupation and none of the ingredients for seeking eviction on the ground of demolition and reconstruction are present and the plea raised by the petitioner lacks bonafide.

4. Before the learned Rent Controller, the petitioner's power agent/elder brother

was examined as PW-1, the Manager of Karnataka Bank

Limited was examined as PW-2 and one Mr.Ranganathan was examined as PW-3. The petitioner marked 25 documents as Exhibits P1 to P25.

Dr.L.N.Rao, the Chief Physician of the respondent was examined as RW-1 and four other witnesses were examined as RW-2 of RW-5 which

included two engineers. The respondent marked 16 documents as Exhibits R1 to R16.

5. The learned Rent Controller framed two questions for consideration, namely, (i) whether the petitioner is entitled for eviction of the respondent

on the ground of own use and occupation (ii) whether the petitioner is entitled for eviction of the respondent on the ground of demolition and

reconstruction? The learned Rent Controller answered both the questions in favour of the petitioner and ordered eviction. The petitioner was

directed to file an affidavit as required u/s 14(1)(b) of the Act within 10 days from the date of the order.

6. The respondent being aggrieved by the order of eviction preferred an appeal before the learned Appellate Authority in R.C.A.No.12 of 2005.

The learned Appellate Authority framed five questions for consideration, namely (i) whether the building is required for own occupation of the

landlord (ii) whether the building is required for demolition and reconstruction (iii) whether the landlord has sufficient means to construct a new

building (iv) whether the power-of-attorney can maintain action for eviction on the ground of demolition and reconstruction (v) whether the order

of the trial court is liable to be set aside? The learned Appellate Authority by judgment and decree dated 24.08.2006, answered all the questions

against the petitioner/landlord, allowed the appeal and set aside the order of the eviction. Aggrieved by such judgment and decree the

petitioner/landlord has filed the present Civil Revision petition.

7. The learned counsel for the petitioner contended that the finding rendered by the learned Appellate Authority is absolutely perverse and

unsustainable in law. The learned counsel submitted that the learned Appellate Authority erroneously rendered a finding that the petitioner having

gone back to France during the pendency of the eviction petition would debar him from maintaining eviction petition on the ground of own

occupation. It is further contended that the learned Appellate Authority did not

advert to the evidence on record before coming to a conclusion that the requirement of the petitioner is not bonafide. That, the learned Appellate Authority ought to have considered the status of a French National in Pondicherry before coming to a conclusion that the petitioner has not shifted permanently to Pondicherry. That the finding rendered with regard to the ground of demolition and reconstruction is absolutely perverse and in spite of the appellate authority having found that the petitioner had Rs.3,00,000/-in his bank account, yet denied the relief of eviction on the ground of demolition and reconstruction. In this regard, the appellate authority ought to have looked into the evidence of RW-3 and 4 who had stated that new construction is advisable. It is further submitted that the learned Appellate Authority erroneously held that the petitioner had not given the statutory undertaking as required to be given u/s 14(1)(b) of the Act when infact the petitioner has given such undertaking in the proof affidavit filed in the eviction petition.

8. Further it is submitted that there is no specific form in which undertaking should be given and it is not necessary to file a separate undertaking.

For this proposition, the learned counsel placed reliance on the decisions of this Court in *Thayammal Vs. K. Subramaniam*, . The learned counsel

further submitted that the eviction sought for on the ground of owners occupation and demolition and reconstruction are not inconsistent with each

other and eviction can be sought for on both grounds. For the said contention, the learned counsel placed reliance on the decision of this Court in

*Nandan Brothers and Others Vs. Kamaladevi Chandak and Others*, The learned counsel further submitted that the decision of this Court relied on

by the learned Appellate Authority in 2005 (5) CTC 585 [*Abu Tahir vs. M. Rahamathulla*] is a judgment which has been rendered without

referring to the decision of this Court in *Nandan Brothers and others*, referred supra, which has been rendered by this Court after taking note of

the various decisions of this Hon"ble Supreme Court and therefore, the learned Appellate Authority erroneously placed reliance on the decision in

2005 (5) CTC 585 [*Abu Tahir vs. M.Rahamathulla*]. The learned counsel submitted that merely because the petitioner was employed in France

cannot be a ground to disqualify him from seeking for eviction of the premises at Pondicherry for his own occupation, since the rights and status of

French National in Pondicherry is quite different. It is further submitted that it is not for the tenant to oppose the application on this ground and for

the said proposition, the learned counsel placed reliance on the decision of this Court in Muthukrishnan Vs. Sakthi Shanmugavel, . The learned

counsel further submitted that the approach of the Appellate Court should not be as though it is the criminal proceedings and the learned Appellate

Authority adopted an erroneous approach while considering the appeal arising out of an eviction proceeding. The learned counsel placed reliance

on the decision of this Court in Akbar Ali and 4 others Vs. Donian Rodrigo and another, . The learned counsel further submitted that the petitioner

has filed MP No.1 of 2011 for reception of additional documents to enable the petitioner to bring on record the subsequent events to establish that

the petitioner has since returned to India and he is a Heart patient. The learned counsel by relying upon the decision of the Hon''ble Supreme Court

in 2010 2 L.W. 804, [Mohd. Ismail vs. Dinkar Vinayakrao Dorlikar] submitted that the Hon''ble Supreme Court allowed the parties to place on

record the subsequent event which had taken place and therefore, the learned counsel submitted that by considering all these aspects the judgment

and decree of the Appellate Court calls for interference and prayed for allowing the revision and confirming the order of eviction.

9. The learned Senior counsel for the respondent submitted that power agent of the landlord was not empowered to maintain the eviction petition

on the ground of demolition and reconstruction when no such authorisation was given by the landlord and the landlord only sought for eviction on

the ground of own occupation. In this regard, the learned Senior counsel relied upon the terms of the general power of attorney dated 04.11.2002,

executed by the landlord in favour of his power agent/brother. In support of said contention the learned Senior counsel placed reliance the decision

of the Hon''ble Supreme Court in Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, . As regards the undertaking required

to be given by the landlord u/s 14(1)(b) of the Act, it is submitted by the learned counsel that there are divergent views on this point and in certain

judgments it has to be held that it is mandatory for the landlord to give such an undertaking. The learned Senior counsel further submitted that the

petitioner failed to establish that he bonafidely required the premises for his own use and occupation and what has been expressed by the petitioner

is a mere desire to occupy which is not sufficient to maintain an application for eviction on the ground of own occupation. In support of such

contention, the learned Senior counsel placed reliance on the decision of the Hon"ble Supreme Court in Deena Nath Vs. Pooran Lal, ]. As regards

the inconsistent plea, the learned Senior counsel placed reliance on the decision of this Court in 2005 (5) CTC 585 [Abu Tahir vs. M.

Rahamathulla] and submitted that the landlord cannot maintain an eviction petition on the ground of own use and occupation and for demolition and

reconstruction. With the above submissions, the learned Senior counsel prayed for dismissal of the revision petition.

10. Heard the learned counsel appearing for the petitioner/landlord as well as the learned Senior counsel appearing for the respondent/tenant and

perused the materials available on record.

11. It is on the above rival contentions, it has to be decided as to whether (i) the landlord is entitled to maintain the eviction petition on grounds of

own occupation and demolition and reconstruction and whether such pleas are inconsistent with each other (ii) whether the power agent of the

landlord was entitled to maintain the eviction petition on the ground of demolition and reconstruction and was he empowered to do so. (iii) whether

the requirement of the landlord is bonafide and whether the landlord had satisfied the conditions required for entitlement to an order of eviction on

the ground of demolition and reconstruction. (iv) whether the landlord has given the statutory undertaking as required u/s 14(1)(b) of the Act.

12. Question No.(i):-The learned Appellate Authority placed reliance on the decision of this Court in Abu Tahir vs. M.Rahamathulla, referred

supra, to hold that the claim of the landlord on the ground of own occupation and demolition and reconstruction are inconsistent and therefore, the

landlord has to elect one of such remedies. The said case was filed by a landlord and in his evidence he had stated that he wants to retain the

building to carry on business by shifting the same from another place. The landlord further stated that the building is in dilapidated condition and

requires to be demolished and reconstructed. The Court while considering the said revision petition, after considering the facts of the said case

opined that two grounds would not synchronize and the landlord has to chose one among the two. Thus, it appears that the said observation was

made while considering the facts of the said case. However, it is to be noted that the earlier decision of this Court on the very same point was not

placed before the Court for consideration. This Court in *Nandan Brothers and Others vs. Kamaladevi Chandak and others*, referred supra,

considered this very aspect and dealt with the same elaborately. The facts in the said case, was more or less identical to the facts of the present

case. His Lordship Justice M.Srinivasan, as he then was, rejected the contention regarding inconsistency as being without any substance and while

rendering such a finding, took into consideration the decision of the Hon'ble Supreme Court in 1965 2 SCJ 608 [*Ramniklal Pitambardas Mehta*

*vs. Indradanan Amartilal Sheth*], the decision of the Hon'ble Division Bench of this Court in 1967 1 MLJ 289, which decision was referred to with

approval by the Hon'ble Supreme Court in *Hameedia Hardware Stores*, represented by its partner *S. Peer Mohammed Vs. B. Mohan Lal*

*Sowcar*, . At this stage, it would be useful to refer to the relevant paragraph of the said judgment:-

4(1)(i).....According to learned Counsel, requirement for demolition and reconstruction cannot go along with the requirement for own occupation

and the two purposes are mutually exclusive. Learned Counsel placed reliance on the absence of averment in the notice Ex. Rule 3 that the building

was required by the respondents for their own occupation.

(ii) In my opinion, the contention has no substance. There is no inconsistency in the stand taken by the respondents in the notice issued by them

soon after the purchase eviction. The fact that the respondents have applied for eviction on the ground of requirement for own occupation for the

purpose of carrying on business does not mean that they have given up the earlier version that the building is very old and dilapidated. Whenever a

landlord requires a building for the purpose of his own occupation. It does not mean that he should occupy the building as it is. He is certainly

entitled to carry out certain structural alterations after getting possession of the building according to law under the same or soon after occupying

the same. The provision under which a landlord is enabled to seek possession from the tenant on the ground of requirement for own occupation is

u/s 10(3)(a)(iii) of the Act is the case of non-residential building. Under the said section, a landlord may apply to the Controller for an order

directing the tenant to put him in possession of the building if he or any member of his family is not occupying for the purpose of the business which he is carrying on a non-residential building in the city, town or village concerned which is his own. Under the first proviso to the Sub-section a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered. Under the second proviso, if a landlord has obtained possession of the building under this Clause, he shall not be entitled to apply again for possession of another building of the same nature. The Sub-section is subject to Clause(d) that where the tenancy is for a specified period agreed upon between the land lord and the tenant, the landlord shall not be entitled to apply before the expire of such period. If the Controller is satisfied that the claim of the landlord is bona fide, he shall make an order directing the tenant to put the landlord in possession of the building. It is not necessary to refer to the other parts of the Section. Thus, u/s 10(3)(a)(iii) of the Act, there is no reference whatever to the condition of the building. The section does not prescribe that a landlord who has obtained possession of the building under the Sub-section shall not in any manner alter the super structure, or effect such modifications as may be required to suit his convenience. Once the land lord gets possession of the building under the said Sub-section, he is entitled as the owner there of to make such alterations or modifications as necessary for his purposes. The provision for requirement for purposes of demolition and reconstruction is found in Section 14(1)(b) of the Act. Under that Sub-section, the Controller shall, if he is satisfied on an application made by the landlord that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession to the landlord. Under this Sub-section, it is not necessary for the landlord to say that the new building which is to be erected after the demolition of the existing building would be occupied by himself. In fact it is now settled law that under the said Sub-section, an application can be made by the landlord either on the ground that the building is so old and dilapi dated that it requires to be demolished immediately or on the ground that he



want to augment his income and therefore, requires the building for immediate demolition and erection of a new structure which would fetch him a

higher or larger income. That itself shows that a landlord who seeks possession of the building for demolition and reconstruction, is entitled to get

an order whether he proposes to occupy the new building himself or let out the same to tenant.

(iii) The Supreme Court has held in *Ramiklal Pitambardas Mehta v. Indradaman Amratlal Sheth* (1965)2 S.C.J.608, while construing a similar pro

vision in Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947) that the provision of Clause(hh) of the said Act which

provided for eviction on the ground of the requirement for demolition and reconstruction would apply to cases where the landlord does not require

the premises for his own occupation but recovers them for erecting a new building which is to be let out to tenants. The relevant provisions in the

Bombay Act corresponding to Section 10(3)(a) and Section 14(1)(b) of the Tamil Nadu Buildings(Lease and Rent Control) Act are found in

Sections 13(1)(g) and 13(1)(hh), which has been extracted in the judgment of the Supreme Court read as following:

13. (1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15, a landlord shall be entitled to recover possession

of any premises if the Court is satisfied.

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the

premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the

trust;

(hh) that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of

demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.

The statement of the law relevant for the purpose of this case found in the following passage:

We agree with the courts below that the respondents case falls under Clause(g) when he bona fide requires the premises for his own occupation.

The mere fact that he intends to make alterations in the house either on account

of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house bona fide and reasonably for his occupation, when he has proved his need for occupying the house.

There is no such prohibition either in the language of Clause(g) or in any other provision of the Act to the effect that the landlord must occupy the

house for residence without making any alteration in it. There could not be any logical reason for such a prohibition. Under ordinary law the

landlord is entitled to eject his tenant when ever he likes after following certain event. The Act restricts that general right of the landlord in the

special circumstances prevailing in regard to the availability of accommodation and the incidental abuse of those circumstances by landlords in

demanding unjustifiably high rents. The Act has provided sufficient protection to the tenants against being harassed by threat of ejectment in case

they are unable to satisfy landlord's demands. Various restriction have been placed on the right of the landlord to eject the tenant. Section 12(1)

provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to

pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they

are consistent with the provision of the Act. Section 13 provides for exceptional cases in which the landlord can eject the tenant even though he

had been paying rent regularly or be ready and willing to pay rent. The provision of Section 13 are for advantage of the landlord and the various

grounds for ejectment mentioned in that section are such which reasonably justify the ejectment of the tenant in the exercise of the landlord's

general right to eject his tenant. There is therefore no reason why restrictions not mentioned in the grounds be read into them. We do not therefore

agree with the contention that Clause(g) will apply only when the landlord bona fide needs to occupy the premises without making any alteration in

them i.e. to occupy the identical building which the tenant occupies. There is no justification to give such a narrow construction either to the word

"premises" or the word "occupies" which have been construed by this Court *Krishnalal Ishwarlal Desai v. Bal Vijakor* (1963) 2 S.C.J. 699.

There are provisions in the Act which ensures that the provisions of Clause(g) are

not abused. Section 17 provides that if the premises are not occupied within a period of one month from the date the landlord recovers possession or the premises are re-let within a period of one year of the said date to any person other than the original tenant, the Court may order the landlord, on the application of the original tenant, within the time prescribed, to place him in occupation of the premises on the original terms and conditions.; This tends to ensure that a landlord does not eject a tenant unless he really requires the premises for occupation by himself.

We are therefore of opinion that once the landlord establishes that he bona fide requires the premises for his occupations, he is entitled to recover possession of it from the tenant in view of the provisions of Sub-Clause(g) of, Section 13(1) irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alteration.

The provisions of Clause(hh) cannot possibly apply to the case where a landlord reasonably and bona fide requires the premises for his own occupation even if he had to demolish premises and to erect a new building on them. The provisions of Clause (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. This is clear from the provisions or to give certain undertaking before a decree for eviction can be passed on the grounds specified in Clause (hh).

(iv) Referring to the aforesaid judgment of the Supreme Court, Sivasubramaniaro, J., has in Ponnuswami Naicker v. K.Anandan (1988) 1

L.W.31, rejected a similar contention urged before him. In that case, the petition for eviction was filed u/s 10(3)(a)(iii) and u/s 14(1)(b) of the Act.

It was argued before the learned Judge that the petition was unsustainable as the prayers were mutually exclusive. It was contended that if really

the landlord requires the premises for his personal occupation, then the question of demolition and reconstruction would not arise and the fact that

he wants to demolish and reconstruct the building shows that there is no immediate necessity for the landlord to require the building for his personal

occupation. The said contention was repelled by the learned Judge, rightly if I may say so, who placed reliance on the judgment of the Supreme

Court in R.P.Mehta's case (1965)2 S.c.J.608, referred to above. The learned

Judge held that once the bona fide requirement for personal occupation is provided from the mere fact that a reference to Section 14(1)(b) of the Act is made in the petition and an allegation to the effect that the landlord is going to demolish the building to suit his purpose is made, it cannot be stated that the remedy available u/s 10(3)(a)(iii) of the Act is taken away. The learned Judge has taken the view that it is unnecessary to go into the question whether the prayers are mutually exclusive. I am of the opinion that the prayers are not mutually exclusive and they are complementary to each other.

(v) A similar question arose before a Division Bench of this Court in *Nathella Sampathu Chetty v. Sha Vajinjeo Bapulal* 80 L.W. 73: (1967) 1

M.L.J. 289. In that case, an application was made by the landlord to the Government for exemption of the building u/s 29 of the Act. In that

application it was alleged that on getting possession of the building which was the subject matter of proceedings, the landlord proposed to make

that building and the adjacent one, in which he was already carrying on business, in partnership with his son, into one by making structural and

other alterations to suit the needs of the business. In the application filed before the Rent Controller for eviction, the landlord required the building

u/s 10(3)(a)(iii) of the Act for the purpose of his own occupation for carrying on business. One of the arguments advanced on behalf of the tenant

before the Division Bench, which had been accepted by the appellate Authority, was inconsistent with the allegations made earlier in the application

for exemption filed before the Government. The said contention was repelled by the Divisions Bench and the view taken by the Appellate

Authority was reversed. The Division Bench held that there was no inconsistency in those allegations. The Divisiona Bench went on to hold that the

said allegations were not relevant for considering the question of bona fides and they could not affect the bona fides of the claim made in the

petition for eviction. The Division Bench also held that so long as the evidence does not justify the finding that the claim is a device and intended to

serve an oblique purpose, it will go a long way towards the claim being honest. Very little evidence might be required to find that the claim is an

honest one. The said decision was referred to with approval by the Supreme court in *Hameedia Hardware Stores*, represented by its partner S.

Peer Mohammed Vs. B. Mohan Lal Sowcar, . Hence I hold that the fact that the respondents herein claimed in the notice that the building was

dilapi dated and they proposed to demolish, the same with a view to erect a new one, does not militate against the bona fides of the claim made by

the respondents in the petition for eviction.....

13. In view of the above decision which has been rendered by following the decision of the Hon"ble Supreme Court and the decision of the

Hon"ble Division Bench of this Court, which has been quoted with approval by the Hon"ble Supreme Court, it is held that there is no inconsistency

between the two provisions and it does not prescribe that a petition for eviction on the ground of demolition and reconstruction cannot go along

with the plea of own occupation. Therefore, the finding of the learned Appellate Authority stating that these two requirements are inconsistent with

each other is incorrect and such finding is contrary to the law laid down in the aforementioned decision. Accordingly, Question No.(i) is answered

in favour of the petitioner/landlord.

14. Question No (ii):-

It is not in dispute that the power agent is none other than the brother of the landlord. I have perused the copy of the Power of Attorney executed

by the landlord. It is to be noted that the power of attorney is a General Power of Attorney, authorising the power agent to file an application

before the Rent Controller, before the Appellate Court, before the High Court and before the Supreme Court, if necessary, in connection with the

eviction of the tenant. Further, the landlord has agreed to ratify and confirm all actions of the power agent. Therefore, to state that the power of

attorney could be used only for filing an eviction petition on the ground of own occupation is an incorrect interpretation of a general power of

attorney. Further, even in the counter statement filed by the tenant in the eviction petition, he has recognised the power agent as the authorised

representative of the landlord and it is alleged that he has handed over a cheque to the power agent. The learned Senior counsel appearing for the

respondent placed reliance on the judgment of the Hon"ble Supreme Court in Janki Vashdeo Bhojwani (supra), to support his argument that the

power agent has acted beyond his authority. In terms of Order 3, Rule 2 CPC, a Power of Attorney executed for doing all acts and things

necessary in connection with the suit is admissible. When an attorney is given complete power to commence and defend all actions, claims, demands etc on behalf of the Principal, it cannot be construed as a Special Power of Attorney. Therefore, on facts the decision relied on by the learned Senior counsel is clearly distinguishable. Therefore, the finding of the appellate authority on this point, is absolutely perverse and rendered without properly appreciating the contents of the General Power of Attorney, Exhibit P4. Accordingly, Questions No.(ii) is answered in favour of the petitioner/landlord.

15. Question No.(iii) It is an admitted fact that the landlord was employed in France. Even at the time when the eviction petition was filed, the landlord specifically stated that he had retired after serving the French Government. It is common knowledge that the right of a French citizen to settle down at Pondicherry is quite different from any other foreign national settling down in any part of this country. There appears to be reciprocal arrangement as Pondicherry was one of the Territory occupied by the French. Even in the counter statement, the tenant has stated that the landlord used to frequently visit Pondicherry even when he was employed in France. It is but natural that a person who has worked in a foreign country would desire to settle down in his native land after retirement. As rightly pointed out by the learned counsel for the petitioner, we are examining the correctness of the decision rendered in an eviction petition and not in a criminal proceedings. The manner in which the Rent Control proceedings are conducted are summary in nature and there are several decision in this Court and the Hon"ble Supreme Court that the pleadings and evidence in Rent Control proceedings should not be construed as it is normally considered while deciding a regular suit. This Court in Akbar Ali and 4 others Vs. Donian Rodrigo and another, had analyzed the object of the rent control laws and what should be the approach of the authorities while adjudicating and eviction petition and held thus:

19. The lower appellate court has proceeded to discuss the case rather putting the odds against the landlords. The Rent Control Act is meant to the benefit both the tenant and the landlord. The idea is to protect the tenant from unjust eviction. It does not mean that the legitimate request of the landlord to recover possession should be turned down. The idea that the tenant

is a victimised person, and he is a weaker section of the society no longer holds good. If certain circumstances are established, then the landlord is entitled to get an order of eviction. It is not open to the Rent Controller or the Appellate Authority to place an unwarranted rigidity and construe the request of the landlord too narrowly. As held by the Supreme Court in a recent decision the court must place itself in the armchair of the landlord and construe the request. A pedantic approach is unwarranted. The approach must be to see whether under circumstances, he is entitled to an order of eviction. The approach of the lower appellate court as though it is a criminal proceeding it is trying and that the landlord must prove it beyond reasonable doubt is an approach unjust and uncalled for. The approach and the discussion by the lower appellate authority is as though they are deciding criminal proceedings. It is not a proper approach. By such approach, the appellate authority would be placing the landlord only at a disadvantage. The law does not intend to place such a handicap upon the landlord. Just as a tenant is entitled to be protected from unreasonable eviction, the landlord is equally entitled to get possession on reasonable ground. That benefit should not be deprived by placing a too narrow and too pedantic interpretation. The approach by the lower appellate court is more to pick holes in the case of the landlord, then to consider broadly whether the need is genuine or not. As a result, the lower appellate court has committed a grave error, which has led to miscarriage of justice. In adopting such a rigid stand the lower appellate court has committed grave error. Therefore, in such circumstances, I have no hesitation in holding that the order of the lower appellate court has to be set aside, restoring the order of the Rent controller. In other words, I am satisfied that the landlords have established that the requirement is genuine and therefore, they are entitled to an order of eviction.

16. After having gone through the decision aforementioned, this Court has no hesitation to hold that the learned Appellate Authority has decided the case in a manner which has not been approved of by this Court in the above decision. In my view, the appellate authority has made a hairsplitting exercise"" which ought not to have been done while deciding an appeal from an order of eviction.

17. Before the learned Rent Controller, the petitioner has produced Exhibit P6,

his bank statement to establish his means to construct on the property. That apart, the Manager of the bank was examined as PW-2. Further, Exhibits P7, P8, P9 and P10 are documents issued by the Municipal authorities and Sub-Divisional Magistrate which clearly establishes that the condition of the building was dilapidated. The chartered engineer has also issued a certificate to the said effect which was marked as Exhibit P-23. That apart, the respondent witnesses RW-3 and 4 who are chartered engineers, appear to have not disputed the condition of the building. Thus, the landlord has established by producing documents about his financial position, documents have been produced to prove the age and condition of the building and the intention of the landlord to come to Pondicherry after his retirement has also been brought out not only in the petition, but producing other documents and therefore, this Court is fully satisfied that the landlord has satisfied the three relevant conditions. Therefore, based on the evidence available, it can be safely concluded that the petitioner/landlord's requirement is not a mere desire and not a mere pretence or pretext to evict the respondent/tenant and it is held that the claim of the petitioner/landlord is bonafide. Hence, there is no necessity to advert into subsequent events as pleaded by the petitioner/landlord. Accordingly, Questions No.(iii) is answered in favour of the petitioner/landlord.

18. Question No. (iv):-

The learned Appellate Authority held that the landlord did not give the statutory undertaking before the Rent Controller at the time of filing the eviction petition and therefore, the same was a defect and this would disentitle the petitioner to any relief. Though several decisions have been relied on by the learned counsel for the petitioner to state that neither in the Act nor in the Rules any form is prescribed for the undertaking mentioned in the Section, it would be sufficient if the party while giving evidence on oath to given an undertaking which would satisfy the requirement, in my view the question need not be gone into since the petitioner/landlord has given such an undertaking in the proof affidavit which is the examination in chief, signed by the petitioner on 11.03.2004. Thus, the petitioner having given the required undertaking, question No.(iv) is answered in favour of the petitioner.

19. For all the above reasons, the petitioner is entitled to succeed in this revision



petition and accordingly, the Civil Revision petition is allowed and the judgment and decree passed by the learned Appellate Authority is set aside and the order of eviction passed by the learned Rent Controller in H.R.C.O.P.No.17 of 2003, dated 04.04.2005, is confirmed and the respondent/tenant shall vacate and hand over the vacant possession to the landlord, within a period of three months from the date of receipt of a copy of this order. Registry is directed to send back the original records within a period of three weeks from today. Consequently, connected miscellaneous petitions are closed. No costs.