

(1996) 12 KAR CK 0019
In the Karnataka High Court
Case No : H.R.R.P. No. 1816 of 1995

M/s. Bombay Tyres International Ltd., Bombay and another	APPELLANT
Vs	
K.S. Prakash (deceased by LR"s) and another	RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21, 21 (1) (h)
Karnataka Rent Control Rules, 1961 — Rule 14

Citation : AIR 1997 Kar 311 : (1997) ILR (Kar) 111 : (1997) 2 KarLJ 1

Hon'ble Judges : S. Rajendra Babu, J;P. Krishna Moorthy, J;Kumar Rajaratnam, J

Bench : Full Bench

Advocate : M/s. T.G. Achar and Associates, for the Appellant; V.H. Ron, for the Respondent

Judgement

This Judgment has been overruled by : Laxmidas Bapudas Darbar and Another Vs. Smt. Rudravva and Others, (2001) 7 AD 97 : AIR 2001 SC 3738 : (2001) 7 JT 135 : (2001) 5 SCALE 557 : (2001) 7 SCC 409 : (2001) AIRSCW 3452 : (2001) 6 Supreme 474

Krishna Moorthy, J.—This revision is by the tenant in a proceedings under the Karnataka Rent Control Act, 1961. The case is referred to a Full Bench mainly for determining the question as to whether during the subsistence of contractual tenancy, is it open to a landlord to resort to proceedings under the Karnataka Rent Control Act, for evicting the tenant on satisfying any of the grounds mentioned in S. 21 of the Karnataka Rent Control Act. A Full Bench of this Court in Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, held that the landlord is not entitled to evict a tenant even on satisfying the conditions mentioned in S. 21 of the Karnataka Rent Control Act, so long as the contractual tenancy subsists. This Full Bench decision was later considered by the Supreme Court in a decision reported in Sri Lakshmi Venkateshwara Enterprises Pvt. Ltd. v. Syeda Vajhiunnissa Begum ILR (1994) Kar 1659. One of the questions to be considered is as to whether the Full

Bench decision of this Court, mentioned above, still holds the field in view of the later decision of the Supreme Court in Sri Lakshmi Venkaieshwara's case and the matter is referred to a Full Bench mainly to determine that question. As the entire case is referred to a Full Bench, we are disposing of the whole case instead of answering the above question alone.

2. This revision arises out of an application by the land lord-respondents for eviction of the revision petitioner-tenant on the ground mentioned in S. 21(1)(h) of the Karnataka Rent Control Act. The case of the landlords are; that they are the owners of the schedule property bearing Municipal No. 22 (Old No. 2/1), Kasturba Road, Bangalore, after the demise of their mother Singaramma. It is the case of the landlords that their mother leased out the property in favour of M/s. Firestone and Rubber Company of India Pvt, Ltd., by executing a registered lease deed dated 10-3-1978. The revision petitioners have taken over the above company and they are using the premises for running their local office at Bangalore. The petitioners alleged that as per covenant No. 4 of the above said lease, tenants have committed default in not paying the rent for the months of April to August, 1984 and accordingly, they sent a notice dated 22-8-1994 calling upon the tenants/respondents to pay the arrears of rent and in case, they have not paid the amount determining the lease of the respondents. But, in spite of the abovesaid notice, the tenants-respondents have not paid the rent and by the notice dated 29-9-1984, the petitioners terminated the tenancy of the respondents and made a demand to deliver vacant possession of the premises.

3. The landlords have formed a partnership firm under the name and style of M/s. Seethalakshmi Hall (Retail) and M/s. Seethalakshmi Hall (Wholesale) and they are doing extensive silk business and the family of the landlords are doing silk business for the last over 60 years, they being the pioneers in silk business and leading silk merchants in Bangalore City. It is the case of the landlords that, at present, they are doing the silk business in a rented premises bearing No. 227 (Old No. 320) situated at Old Taluka Katcheri Road, Chickpet, Bangalore. The landlord of that building has filed an eviction petition in H.R.C. No. 148 of 1988 for evicting them and accordingly, they require the petition schedule premises for their bona fide use and occupation and to do their business in a larger area. It is also the case of the landlords that the petition schedule premises is most suitable for their silk business as it is situated in the most prestigious commercial area of Bangalore City and they intend to expand their business and that their requirement is reasonable and bona fide. It is further stated by the petitioners-landlords that if an order of eviction is not passed, more hardship will be caused to them and in case, they are evicted from the premises, wherein, they are carrying on the business, in pursuance to the order, passed in H.R.C. No. 148/88, they will be deprived of their livelihood and source of income and they intend to do their business in their own premises. It is further stated by them that the order of eviction, even if passed, no hardship will be caused to the tenants. On these allegations, the petition was filed under S. 21(1)(h) of the Karnataka Rent Control Act, for ejecting the tenants from the premises.

4. Though in the petition as originally filed. they had claimed eviction also on the ground that they require the petition schedule premises for its immediate demolition and re-construction, that ground was given up later and accordingly, we are not concerned with this point in this revision petition.

5. The tenants filed an objection statement admitting the fact that Late Singaramma leased out the premises in favour of the petitioner for a period 15 years with effect from 1-7-1976 and that a registered lease deed was executed by on 10-3-1978. It is the case of the tenants that, under the contract of lease dated 10-3-1978 which is for a period of 15 years, with effect from 1-7-1976. they are entitled to be in exclusive possession till 30-6-1991 in terms of the lease deed. It is their case that the eviction petition filed in the year 1988 before the expiry of lease, is not maintainable. It is further eon tended by the tenants that in clause 22 of the lease deed, they have got a right of renewal of the lease even after the expiry of the original period of 15 years. They exercised their option for renewal of the lease by issuing registered letters dated 30-4-1991 to all the landlords. But as no renewal was granted, they have also filed a suit in O.S. No. 5722/91 for specific performance of the agreement before the City Civil Court which is pending. The tenants also denied the bona fide requirement claimed by the petitioners in the eviction petition staling that they do not require the schedule premises for their business purposes. It is also slated by the tenants that the application is filed only with an intention to harass the tenants and also with the idea of alienating the properly for a moderate price, after getting them evicted from the petition schedule premises. The landlords do not require the petition schedule premises for their silk business. It is their further case that the landlords have other buildings within Bangalore City itself which could be utilised by the landlords even if they requires it for their silk business, and that the present claim for eviction is not bona fide. It is also their case that, if an eviction is ordered, more hardship will be caused to them since they are doing business in the petition schedule premises since 1956 and they have established goodwill and clientage in their business. If they are evicted from the petition schedule premises, more hardship will be caused to them and accordingly, they prayed for dismissal of the petition.

6. On the application of the tenants. the landlords filed belter particulars under O. VI. R. 5 of the Code of Civil Procedure, wherein, the landlords have stated that they are carrying on their business in partnership in a rented premises bearing No. 227 (Old No. 320) OTC Road, Chickpet, Bangalore. The said rented premises consists of ground floor and first and second floors, totally measuring about 5000 sq. ft. The landlords of the petitioners who are brothers, want to do their silk business independently and not in partnership in the schedule premises, of which, they arc the owners and for possession of which, they have filed an H.R.C. petition. It was further stated that, they desire to expand their business and for that purpose, they bona fide and reasonably require me entire petition schedule premises in the occupation of the tenants, which roughly measures about 12000 sq. ft. Each of the petitioners requires for each one of

them about 6000 sq. ft. of accommodation in the schedule premises, and that the location of the schedule premises is most suitable and convenient and is situated in the most prestigious locality of Bangalore City and for carrying their business effectively, the schedule premises is absolutely necessary. By that statement, the landlords also gave up their claim under S. 21(i)(j) of the Karnataka Rent Control Act and confined their claim only under S. 21(1)(h) of the said Act.

7. It is also relevant to note that the statement of objections were filed by the tenants after the landlord filed a better particulars as required by the tenants. During the pendency of the petition for eviction, the first petitioner Sri K. S. Prakash died on 17-4-1994 and his legal representatives were brought on record. Thereafter, the tenants filed an application to reject the eviction petition on the ground that the legal representatives of the deceased first petitioner had no right to continue the proceedings since the right to sue does not survive. That application was allowed by the Rent Control Court holding that the cause of action perishes with the death of the first petitioner and that the legal representatives had no right to continue the proceedings. Against the said order, both the petitioners and respondents preferred H.R.R.P.No. 1273/94 and H.R.R.P.No. 1495/94 before this Court. Both the petitions were disposed of by this Court by a common order dated 7-11-1994 setting aside the order and remanded the matter to decide afresh after recording evidence on the "question as to whether the legal representatives could continue the proceedings or not. Accordingly, that question has to be decided by the Rent Control Court. Both the parties adduced voluminous oral and documentary evidence and the Rent Control Court after formulating necessary points, came to the conclusion that, in spite of the subsistence of the contract, the eviction petition is maintainable, and that the legal representatives of the deceased first petitioner can continue the proceedings and that the landlords have proved that the requirements of the petition schedule premises by them is bona fide and reasonable. It was also found by the Rent Control Court that greater hardship will be caused to the petitioners if an order of eviction is declined and that, in the circumstances of the case, it is not possible to order partial eviction of the premises. The tenants have come up in revision petition against the said order before this Court.

8. In the light of the above contentions of the parties, the questions that arise for consideration in this case are :

(i) Whether the eviction petition filed by the landlords is maintainable during the subsistence of the contractual tenancy?

(ii) Whether the eviction petition could be continued by the legal representatives of the deceased K. S. Ramesh?

(iii) Whether the requirement of the petitioners is bona fide and reasonable?

(iv) The question of comparative hardship as between the landlords and tenants:
and

(v) Whether partial eviction is feasible in the circumstances of the case?

9. Point No. 1 ; The main question that has to be decided is as to whether during the subsistence of the contractual tenancy, a petition under S. 21 of the Karnataka Rent Control Act is maintainable even if the landlords satisfy any of the conditions for eviction mentioned in that section. In this case, the tenants are in possession of the premises under the lease deed evidenced by Ex. R. 1 dated 10-3-1978 and the lease was for a period of 15 years, with effect from 1-7-1976. The lease period expires only on 30-6-1991, whereas, the eviction petition was filed on 3-4-1988. It is the case of the tenants that as the contract of tenancy subsists on the date of the filing of the petition, on 3-4-1988, this eviction petition is not maintainable even if the landlords satisfy the conditions necessary for getting an order of eviction under the Karnataka Rent Control Act. Learned counsel for the tenants very strongly relied on a Full Bench decision of this Court in Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, wherein, this Court held that an eviction petition under the Karnataka Rent Control Act is not maintainable during the subsistence of the contractual tenancy. On the contrary, learned counsel for the landlords relied on a later decision of the Supreme Court reported in Sri Lakshmi Venkateshwara Enterprises Pvt. Ltd. v. Syeda Vajhiunnissa Begum ILR (1994) Kar 1659, wherein, according to him, a contrary view has been taken by the Apex Court and in the light of the above decision of the Supreme Court, the Full Bench decision mentioned above is no longer good law. The question to be decided is as to whether a contrary view has been taken by the Supreme Court from that taken by a Full Bench of this Court referred to above.

10. In Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, , the Full Bench has taken a view that, while the contractual tenancy subsists, Rent Control Act cannot be applied to evict a tenant and that the provisions of the Rent Control Act do not abrogate the rights of the parties" under the contract of tenancy. The question to be considered is as to whether the Supreme Court has taken a contrary view in Sri Lakshmi Venkateshwara Enterprises" case ILR (1994) Kar 1659. It has to be noted that if the Supreme Court has taken a different view on the question the view taken by the Full Bench cannot be given effect to. We shall now consider the question as to what is the dictum laid down by the Supreme Court in the decision referred to above.

11. In Sri Lakshmi Venkateshwara Enterprises" case the respondents therein, executed a Lease Agreement dated 6-12-1971 for a period of 32 years in respect of a vacant site for the purpose of erection of cinema theatre by the tenant-appellant and he was put in possession. Though he applied for licence for construction, it was not completed within a period of two years. The appellant made an application for renewal of licence and on objection by the landlords, renewal was not granted and the construction of the cinema theatre was not completed. The tenant defaulted in payment of arrears of rent and therefore, the

landlords filed an application under S. 21(1)(h) of the Karnataka Rent Control Act for eviction of the tenant. Pending the eviction proceedings, respondents filed an application under S. 29(1) and (4) of the Act, as the tenant had not paid the rent in spite of notice. On that application, the trial Court passed an order dated 18-8-1990 directing the tenant to pay the arrears of Rs. 3,69,000/- and granted them 30 days' time to comply with the order. As the amount was not paid within the stipulated time, an order of eviction was passed which was confirmed by this Court and an appeal was filed against the above judgment before the Supreme Court. It is seen from paragraph 5 of the judgment of the Supreme Court that the only point that was argued by the learned counsel for the appellant is that during the subsistence of the contractual tenancy for a period of 32 years, it is not open to the landlords to seek civil on under the Karnataka Rent Control Act. It was contended before the Supreme Court that, in spite of non obstante clause contained under S. 21, the provisions cannot be availed of by the landlords since the legislation is a beneficial legislation in favour of the tenant and relied on a Full Bench decision of this Court in Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, . This stand was opposed by the learned counsel for the landlords and it was contended that provisions of S. 21 of the Act can be invoked notwithstanding the contract between the parties and that the provisions contained in S. 21 of the Karnataka Rent Control Act abrogates the contract. On these arguments, it is seen that in paragraph 6 of the Judgment. Their Lordships of the Supreme Court has formulated the question that arises for consideration, viz.,

"Whether during the subsistence of a contractual tenancy, it is open to the landlord to resort to proceedings under the Karnataka Rent Control Act."

Thereafter, their Lordships have considered the question in the light of the decision of the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, . After considering the provisions of S. 21 of the Rent Control Act and considering the decision of the Supreme Court in Dhanapal.iiChcttiar's case, their Lordships do hereby held in paragraph K of the Judgment as follows:

"A careful reading of the said section shows that if anything contrary is contained in any contract that cannot prevail."

Again after considering the dictum laid down by the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal,), ii was further held as follows (in paragraph 11 of the Judgment) :

"Therefore, this authority clearly holds that the provisions of Rcm Control Act would apply notwithstanding the contract."

Again in paragraph 14, it was held :

"Further, it is not correct to hold that the Rent Control Act is a beneficial enactment only to the tenant,"

12. But no doubt, it is true that, in paragraph 12 of the above judgment,

regarding the Full Bench decision referred to above, it was stated that the statement of Full Bench will have no application to the case and their Lordships dismissed the appeal also on the ground that the claim of the appellant is barred by *res judicata*. It was also observed in paragraph 12 of the Judgment, that the effect of S. 21 of the Act on the contract entered into between the parties need not be gone into.

13. From paragraphs 8 and 11 of the Judgment of the Supreme Court in *Sri Lakshmi Venkateshwar's Enterprises* case (ILR (1994) Kar 1659), it is clear that the Supreme Court has taken a categorical view that, by virtue of the non obstante clause contained in S. 21 of the Act, nothing contrary contained in any contract can prevail over the provisions of the Rent Control Act. Their Lordships have also interpreted the decision of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, as taking the view that the provisions of the Rent Control Act would apply notwithstanding the contract. It was also held by their Lordships of the Supreme Court that it is not correct to hold that the Rent Control Act is a beneficial enactment only to the tenant.

14. In *Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others*, the Full Bench has held in paragraph 10 of the Judgment that the main provision of S. 21 along with its proviso shows that its object is not to enlarge the rights of the landlord in any manner but actually if it is restrictive of his right to recover possession. It was also held by the Full Bench that the decision of the Supreme Court in *Dhanapal Chettiar's* case would apply only to a case regarding termination of lease by issuing a notice under S. 106 of the Transfer of Property Act, that the dictum therein cannot be made applicable to the case where a term is fixed in the lease deed. It is on these two grounds that the Full Bench of this Court came to the conclusion that the provision of the Rent Control Act is not subject to the provisions of the contract of tenancy. But as stated earlier, on a reading of the decision of the Supreme Court referred to above in *Sri Lakshmi Venkateshwar's Enterprises* case, it is clear that their Lordships have taken a contrary view, viz., that the provisions of S. 21 of the Karnataka Rent Control Act would operate notwithstanding the terms contained in any contract, in other words, their Lordships have clearly held that the terms of contract between the landlord and tenant cannot prevail over the provisions of the Rent Control Act. It is clear that if the provisions of the Rent Control Act are satisfied, the landlord is entitled to get an order of eviction notwithstanding the provisions of the contract. In other words, the Supreme Court has held that the Rent Control Act is a self-contained code and the provisions therein alone would apply to determine the rights and liabilities as between the landlord and tenant and that the landlord would be entitled to get an order of eviction if any of the conditions mentioned in S. 21 of the Rent Control Act is satisfied dehors the contract between the parties. In the aforesaid Supreme Court case, their Lordships have also held that *V. Dhanapal Chettiar Vs. Yesodai Ammal*, has also taken a view that the provisions of the Rent Control Act would apply notwithstanding the contract. The Supreme Court further held that

the Rent Control Act is not intended to benefit the tenant alone. Thus, it can be seen that on an interpretation of S. 21 of the Karnataka Rent Control Act, their Lordships have held that it would operate notwithstanding any contract and that the provisions under the contract of lease between the parties can not prevail over the provisions of the Rent Control Act. Their Lordships have also interpreted the decision in Dhanapal Chettiar's case to the effect that the provisions of the Rent Control Act would apply notwithstanding the contract. When the Supreme Court has interpreted the provisions of S. 21 of the Rent Control Act as also the decision in Dhanapal Chettiar's case to the effect that the provisions of the Rent Control Act would operate, de hors the contract, we are bound by the same. On a reading of the decision of the Supreme Court in Sri Lakshmi Venkareshwara Enterprises' case, we have no hesitation to hold that their Lordships have held that the provisions of S. 21 of the Rent Control Act would operate notwithstanding the provisions contained in the contract of lease.

15. It was contended by the learned counsel for the tenants that the decision of the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, , is confined only to a case of determination of a lease under S. 106 of the T. P. Act and that the principles cannot be extended to cases where a term is provided for in the lease. Learned counsel also relied on various observations of the Supreme Court in the above decision in support of his case. But we are afraid that we cannot accept the contention of the learned counsel for the tenants. In Sri Lakshmi Venkareshwara Enterprises' case (ILR (1994) Kar 1659), the Supreme Court has considered the very same decision and has stated that the above decision clearly holds that the provisions of the Rent Control Act would apply notwithstanding the contract. The effect of the decision in Dhanapal Chettiar's case is stated by their Lordships of the Supreme Court and we are bound by the same. This Court cannot take a different view as to what was laid down in Dhanapal Chettiar's case. What is decided in Dhanapal Chettiar's case is stated by their Lordships in paragraph 11 of the Judgment of Sri Lakshmi Venkareshwara Enterprises' case. It is to the effect that the provisions of the Rent Control Act would apply de hors the contract. When the Supreme Court has laid down the law to that effect, this Court has necessarily to follow the same and we do so.

16. Great reliance was placed by the learned counsel for the tenants on paragraph 12 of the Judgment in Sri Lakshmi Venkateshwara Enterprises' case (ILR (1994) Kar 1659). Their Lordships of the Supreme Court while considering the Full Bench decision of this Court, have held that it will have no application to the case and their Lordships have also stated that the effect of S. 21 of the Rent Control Act, on the contrary, entered into between the parties, need not be gone into. The Supreme Court held that the claim of the appellant therein, is barred by res judicata as well. It is in that context, their Lordships said that the Full Bench decision will have no application to the case. So also, their Lordships have only said that the effect of S. 21 of the Act on the contract entered into between the parties need not be gone into. In other words, their Lordships only intended that the contract between the parties is not relevant in the light of the bar of res

judicata. Those observations cannot in any way take away the effect of the earlier statements by their Lordships to the effect that the provisions of the Rent Control Act would override the provisions of the contract between the parties. the principles laid down by the Supreme Court in paragraphs 8 and 11 are clear to the effect that S. 21 of the Rent Control Act would override the provisions of any contract and that the landlord is entitled for an order of eviction if he satisfies one or other conditions mentioned therein. Even assuming that those observations are only in the nature of obiter dicta, even then, it is binding on this Court.

"Normally even an obiter dictum is expected to be obeyed and followed : (See Sarwan Singh Lamba and others Vs. Union of India and others, ."

17. In view of what is stated above, we are clearly of the opinion that the decision of the Full Bench of this Court in Sri Ramakrishna Theatres Ltd. Vs. General Investments and Commercial Corporation Ltd. and others, , is no longer good law in the light of the decision of the Supreme Court in Sri Lakshmi Venkateshwara Enterprises" case ILR (1994) Kar 1659. Accordingly, we hold that a landlord is entitled to an order of eviction if he satisfies one or other conditions mentioned in S. 21 of the Karnataka Rent Control Act notwithstanding the fact that the lease under which the tenant is in possession of the premises is for a term and that it has not expired on the date when the application for eviction is filed.

18. In the view that we have taken that a petition for eviction is maintainable, notwithstanding the subsistence of the contract, the question as to whether the expiry of the lease during the pendency of the eviction petition would give a cause of action to the landlord is not necessary to be considered. So also the question as to the effect of the renewal clause and the exercise of option of renewal by the tenant does not arise for consideration and we express no opinion on the same. In view of what is stated above, we agree with the Rent Control Court that the eviction petition is maintainable and we hold Point No. 1 in favour of the landlords.

19. Point No. 2 : One of the landlords Sri K. S. Prakash died on 17-4-1994 and his legal representatives were brought on record. It is the case of the tenants that, on his death, the eviction petition abates as the legal representatives are not entitled to continue the proceedings. We are not inclined to accept this contention at all. It is clearly stated in paragraph 6 of the Eviction Petition itself that the family of the petitioners has been in silk business for the last about six decades and they are pioneers in silk business and that they are leading silk merchants in Bangalore City. This allegation in the petition is not denied and it is clearly brought out in evidence that the silk business which the landlords are carrying on is their family business. P.W.2 has given clear evidence that the silk business was started by their grand-father about 60 years ago at Dharmavaram and at Bangalore and they are doing in a rented premises. The registered partition deed executed between the landlords evidenced by Ex.P.42 dated.

22-6-1957 clearly indicate that this silk business was their family business. The subsequent partnership deed executed by the members of the family including the legal representatives of Sri K.S. Prakash evidenced by Exs.P.35, P.43 and P.44 show the involvement of the family members personally in their silk business. The decision in Yasimsab Fakruddinsab Dori Vs. Basappa, , does not in any way support the case of the tenants that on the death of the landlord, legal representatives cannot carry on with the proceedings. Their Lordships have clearly made a distinction between a family business and a profession. It is not as if the deceased landlord in this case is intending to start the silk business for the first time to attract the dictum in the above case. It is an admitted fact and it has also come in evidence that the family of the landlords are doing business in the silk for the last 60 years and that they need the present premises only for shifting their business from the rented premises where they are doing business as they are under an immediate threat of eviction. When the business is being carried on as a family concern, mere death of one of the members would not cause abatement of the Rent Control Petition. Other members of the family including the legal representatives of the first petitioner are entitled to continue the business and seek for eviction of the premises for that purpose, It is not necessary for the landlords to prove that each and every legal representative including the minors should have taken part in the business as contended by the learned counsel for the tenants. When it is established that it is a family concern, the members of the family would naturally like to continue the same and by the mere death of one of the landlords, it is not possible to hold that the eviction petition is abated. The other members of the family are entitled to continue the business and in the circumstances of this case, it cannot be said that the need of the members is not bona fide. There is absolutely no merit in this contention raised by the learned counsel for the tenants and accordingly we confirm the finding of the Rent Control Court on this point.

20. Point No. 3. The question to be considered is as to whether the Rent Control Court was right in holding that the need of the landlords is bona fide and reasonable in this case. It is an admitted fact that the landlords are carrying on their business in a rented premises. It is also an admitted fact that an Eviction petition in H.R. C. No. 148/ 81 has been filed by their landlords for evicting them from the premises and an order of eviction has also been passed, by the Rent Control Court. It is also an admitted fact that the above order of eviction was confirmed by this Court in H.R.R.P. No. 1095/95 by a Judgment dated 9-7-1996. However, the present landlords are granted time till the end of 31st March, 1997 to vacate and deliver vacant possession of the premises to their landlords. The case of the tenants in this case that the above proceedings are collusive and is only to be stated to be rejected. There is no such case in the objection nor is there any evidence to show that there was any collusion between the present landlords and their landlords in the matter or eviction proceedings. On going through the orders in those proceedings, we are clearly of the opinion that the matter has been decided on its own merits and we are not able to infer any sort

of collusion between the parties. It can thus be seen that there is an order of eviction against the present landlords to vacate the premises, in which, they were carrying on their business for a long number of years. Certainly when there is such an order as against them, it is only reasonable that they wish shift their business to their own premises which is in occupation of the tenants. In evaluating the question of bona fides, this fact has to be given much importance.

21. The main contention of the tenants in denying the bona fides of the landlords is two fold : one is that the petition is filed not for bona fide occupation but for the purpose of selling the property for a price and (ii) that the landlords have other buildings belonging to them in Bangalore City itself and their choice of the petition schedule building in the possession of the Revision petitioner by itself would show that it is not bona fide. On consideration of the materials in the case, we have no hesitation to hold that there is absolutely no merit in any of those contentions. As stated earlier, there is already an order of eviction against the present landlords for getting possession of the premises in which they are carrying on their business. There is absolutely no evidence to prove that it is the intention of the landlords to sell the building. The only document relied on by the tenants in support of this contention is a letter written by the landlords evidenced by Ex. R. 73 dated 16-4-1984 to the tenants. On going through that letter, it is clear that it does not spell out any intention on the part of the landlords to sell the building. On the contrary, it is clear from that letter itself that they are under a threat of eviction by their landlords and they have only put forth certain conditions for getting all or a portion of the building in the occupation of the present tenants. We are not able to read anything from that letter of any intention or any idea of selling the premises instead of occupying the same for their business purposes. The tenants have miserably failed to establish that the intention of the landlords is to sell the same. There is absolutely no basis for the above contention and we have no hesitation in rejecting the same.

22. In regard to the case of the tenants that the landlords have other buildings belonging to them, it has to be stated that it is well settled that. When a landlord has more than one building in possession of the tenants, it is for him to choose as to which of the building is more suitable to him for his business purposes. It is not as if the landlords are in possession of other buildings. Admittedly, all the buildings belonging to the landlords are in possession of the tenants. Perhaps, position may be different if landlords have in their possession one of the buildings. That is not the case here. All the buildings are in possession of the tenants. Ultimately, it is the landlord's privilege to choose which building he wants for his requirement unless the tenants are able to show by strong evidence that the intention of the landlord is not bona fide. The landlords have clearly adduced evidence to the effect that the other two buildings are not suitable for their business and the only suitable building is the premises which is the subject matter of this petition.

23. The other two properties which belong to the landlords are situated in O.T.C. Road which is in possession of Canara Bank and another building in Kasturba Road in possession of Voltas Ltd., So far as the building in O.T.C. road in possession of the Canara Bank, it is clearly established by the landlords that it is not suitable for their purpose. It is seen that there is no car parking space and the entire area is built up and it covers more than 18000 sq. fit. which is too large for their business purpose and it has also come out in the evidence that the building is not suitable for carrying on textile business. So far as the premises in Kasturba road is concerned, the landlords in this case are not the exclusive owners and their sisters are also entitled to a share in the same. It has also come out in evidence that the sisters have filed a suit for partition and that the landlords-petitioners are not the exclusive owners. Thus the landlords have clearly proved that the petition schedule premises is the only premises which is more suitable for their business purposes.

24. We are also not impressed by the arguments of the learned Counsel for the tenants that Kasturba Road where the petition schedule property is situated is not suitable for silk business and there are no other shops dealing in silk in that road. That by itself is not a ground to negate the bona fides of the landlords. The mere fact that there are no silk shops in Kasturba Road by itself is not a ground for holding that there is no bona fides. It is a prestigious locality in Bangalore City and there is every scope for the business therein. We do not find any merit in this contention as well.

25. In view of what is stated above, we have no hesitation in confirming the finding of the Rent Control Court that the landlords-petitioners have established their bona fide and reasonable need of the petition schedule building.

26. Point No. 4 : On the question of comparative hardship as between the landlords and tenants, we also agree with the Rent Control Court that there will be more hardship for the landlords if eviction is disallowed. As stated earlier, it is an admitted fact that there is a concluded order of eviction as against the landlords in this case, for evicting them from the premises where they are doing business. It is a family business which is being carried on by them for more than 60 years. When there is an imminent threat of eviction against them in respect of the premises in their occupation, if they are not able to get possession of the premises which belong to them, the hardship which would be caused to them will be much more than the hardship that would be caused to the tenants. They will be evicted from the premises in their occupation in pursuance to the order and they will not be in a position to carry on their business. On the other hand, it has come out in evidence that the respondent is a Big All India Company having a large turnover and having a paid up capital of 22.5 crores. It has also come out in evidence that there are other buildings available for rent in the nearby locality. The landlords have adduced evidence that the buildings are available on rent in a nearby locality, R.W. 1 in his cross-examination, has stated that they are not prepared to accept the premises on prevailing rate of rent. R.W. 1 further stated

that-their Company is not prepared to have accommodation provided in a new complex building in M.G. Road on prevailing rate of rent. From the above, it is clear that it is not as if no other buildings are available but they are not prepared to take the building on rent at the prevailing rate of rent. In the light of the above evidence, we confirm the finding of the Rent Control Court that, if eviction is refused, more hardship will be caused to the landlords than to the tenants.

27. Point No. 5: The Rent Control Court has found that partial eviction is not feasible in the circumstances of the case. The landlords have proved that they require about 12000 sq. ft. of area for doing their silk business. R.W . 1 who was examined on behalf of the respondents, during his examination, clearly admitted that the petition schedule property cannot be bifurcated and that they will not be in a position to carry on the business in a portion of the premises. If that be so the question of partial eviction is not feasible and the finding of the Rent Control Act is only to be confirmed.

28. Before parting with this case, we have to make note of a distressing feature of this case. Under Rule 14. of the Karnataka Rent Control Rules, the Rent Control Court has to follow the procedure prescribed in the CPC for trial of Small Cause Suits in deciding proceedings under the Act. In this case, voluminous evidence both oral and documentary are adduced by the parties most of which were irrelevant. Cross-examination of parties was dragged on for number of months mostly on irrelevant mailers. The issue of fact involved in this case is simple and the matter is prolonged unnecessarily by adducing irrelevant evidence. Excepting the documents which we have mentioned in the Judgment, none of the other documents were even referred to by the learned Counsel. Panics and Advocates have a duty to see that the valuable time of the Court is not wasted especially when they are overburdened with huge arrears.

In view of what is stated above, we do not find any merit in this Revision and it is accordingly dismissed with costs to the respondents fixed at Rs. 5,000/-. Tenants arc granted six months" time from today to vacate the premises.

29. Revision dismissed.