

(2017) 05 SIK CK 0003
In the Sikkim High Court
Case No : 02 of 2016

**Smt. Kamala Gurung?W/o Shri Rudramani Gurung VsShri Arjun Kumar
Minda,?S/o Late Botharam Minda**

Date of Decision : 04-05-2017

Acts Referred:

Evidence Act, 1872, Section 114(g) -
Court may presume existence of certain facts
East Punjab Urban Rent Restriction Act, 1949, Section 13(3)(a)(II)

Citation : (2017) 05 SIK CK 0003

Hon'ble Judges : Meenakshi Madan Rai

Bench : Single Bench

Advocate : Sudesh Joshi, Manita Pradhan, A. Moulik, K. D. Bhutia, Ranjit Prasad

Judgement

1. This Appeal assails the common Judgment and Decree, dated 30-11-2015 of the Learned District Judge, South District, at Namchi, in Eviction Suit No. 13 of 2013 and Eviction Suit No.1 of 2014, decreeing the Suit of the Respondent in terms of his prayer in Eviction Suit No.13 of 2013, seeking a declaration that he is to enjoy his tenanted premises free from undue harassment and interference from the Appellant, her agents or servants, till such time that he is evicted by due course of Law.

2. The Respondent herein, filed Eviction Suit No.13 of 2013, against the Appellant herein, (hereinafter referred to as "Respondent" and "Appellant" respectively), under Notification No.6326-600-H&W-B of the Health and Works Department, Government of Sikkim, dated 14-04-1949 (for short "Notification of 1949"), inter alia, praying for a declaration that he is entitled to enjoy the rented premises as detailed hereinabove, as also a declaration for prohibitory injunction, restraining the Defendant (Appellant), her agents and servants from giving undue harassment to the Plaintiff (Respondent) in the enjoyment and occupation of rented premises till final disposal of the Suit.

3. The facts briefly sketched are that the Respondent a businessman, was the tenant of the Appellant and occupying a room measuring 12 feet x 15 feet for

business purposes, in the ground floor of her four storied building, situated in Jorethang Bazar, South Sikkim, from the year 1992 on a verbal agreement, with rent fixed at a sum of Rs.1,000/- (Rupees one thousand) only. After 1994, the rent was enhanced every three years by the Appellant. In July, 2011, the parties executed a Tenancy Agreement for eleven months, i.e., till June, 2012, after which the parties entered into a fresh Agreement for another period of eleven months, i.e., July, 2012 to June, 2013, fixing the monthly rent at Rs.4,500/- (Rupees four thousand and five hundred) only, with assurances by the Appellant of no further enhancement. No sooner was the second Agreement executed, she demanded enhanced monthly rent of Rs.4,950/- (Rupees four thousand nine hundred and fifty) only, which the Respondent being in a disadvantageous position, viz.; requiring the premises for business was constrained to pay. Having thus violated the terms of the Agreement, she also declared that no further Tenancy Agreement would be executed between them. The second Tenancy Agreement thus expired on 30-06-2013, but he continued as a tenant on verbal assurances and commitments. The Respondent's contention was that as Jorethang has now become a Commercial Hub, the Appellant intends to evict him and hand over the suit premises to Private Companies at a higher rent, despite no default by him in payment of monthly rent. In pursuance of this motive, on 24-07-2013 the Appellant issued a Notice denying further renewal of the Tenancy Agreement and when he was out of station on 04-12-2013, asked him to vacate the suit premises, which was repeated on 12-12-2013 and thereafter with increasing frequency. Apprehending illegal eviction from the suit premises which would lead to a pecuniary loss of Rs.2,000/- (Rupees two thousand) only, or more per day, the Suit was filed.

4. The Appellant while denying and disputing the claims made by the Respondent averred that the suit premises is required for the bona fide use and occupation of her dependent sons as stated in the Eviction Notice served by her to the Respondent, apart from which the Respondent is a defaulter having failed to pay the rent and electricity charges and is thus liable to be evicted. It is further asserted that the Respondent owns a shop house in Jorethang and ought to shift therein to enable the Appellant and her sons to run their own business. That, the provision of Law relied on by the Respondent does not enable him to file the Suit which may be dismissed.

5. In Eviction Suit No.1 of 2014, the Appellant herein was the Plaintiff while the Respondent was the Defendant. The facts therein were that she retired from service on 31-10-2012 and was drawing a meagre pension which could not sustain her family, her husband and her sons being unemployed, hence, the premises was required for their bona fide use and overhauling, added to which the Respondent was a defaulter and hence, was liable to be evicted. Admitting the execution of the Tenancy Agreement between the parties, it was averred that as per Clause 10 of the Agreement, in the event of requirement of the premises by the Appellant, she would issue Notice in writing to the Respondent, which she did on 14-07-2013, requesting the Respondent to vacate the suit premises.

Meanwhile, her sons wanted to start a business to augment her income, upon which, they applied for individual licences to run businesses from the building of the Appellant. On the failure of the Respondent to vacate the premises, the Appellant issued a Lawyer's Notice. It was reiterated that the Respondent owns a building with provision for two shops which are vacant, while he continues to occupy the Appellant's house, thereby harassing them. Hence, the prayers for payment of a sum of Rs.19,800/- (Rupees nineteen thousand and eight hundred) only, to the Appellant as arrears of rent, a decree that the suit premises are required for the bona fide use of the Appellant and her dependent sons, decree for eviction of the Defendant from the suit premises and delivery of khas possession of the suit premises, pendente lite and future rent till recovery of possession of the suit premises.

6. The Respondent denied and disputed the grounds put forth and reiterated the averments made in Eviction Suit No.13 of 2013 urging that contrary to the Respondent being a defaulter, it was the Appellant who had refused to accept rent from the month of December, 2013, having raised the rent in contravention of the Agreement, consequent to which he was sending it by Money Order. That, there is no bona fide requirement of the Appellant or her family as they own several movable and immovable properties, while the Respondent is physically challenged, his children are dependent on his income from the suit premises and his own building is still under construction and hence, the Suit be dismissed.

7. On 21-11-2014 the Learned Trial Court ordered in Eviction Suit No.1 of 2014 that it shall be consolidated with Eviction Suit No.13 of 2013 and on such consolidation, framed the following issues for determination; 1. Whether the Plaintiff-Tenant had defaulted in paying the concerned rent thereby making himself liable to be evicted from the tenanted premises? (OPD)

2. Whether the Defendant-Landlady illegally refused to accept the concerned rent owing to which the Plaintiff was constrained to send the same through Money Order? (OPP)

3. Whether the Defendant requires the tenanted premises for her bona fide use/ occupation or for that of her sons? (OPD)

4. Whether the Defendant requires the tenanted premises for thorough/major overhauling? (OPD)

5. Whether the Defendant-Landlady has been harassing the Plaintiff-Tenant only to wrongfully evict him? (OPP)

6. Whether the parties are entitled to the respective reliefs prayed by them? (OPP & OPD)

8. In Issue No.1 the Learned Trial Court arrived at the finding that there was no default in payment of rent, while in Issue No.2 it was concluded that the Appellant had illegally refused to accept the rent. Issues No.3 and 4 were also decided against the Appellant while Issue No.5 went in her favour. While deciding

Issue No.6, it was found that the Respondent is entitled to the relief at prayer (a) of his Plea and his Suit decreed accordingly, while the Suit of the Appellant was dismissed, thereby giving rise to the instant Appeal.

9. Before this Court, the averments in the Plea were reiterated in the arguments of Learned Counsel for the Appellant and it was urged that the Respondent had filed the Suit against the Appellant taking recourse to Notification of 1949 which, however, makes no provision for a tenant to seek a declaration as such. That admittedly, after the Suit was filed by the Respondent, the Appellant issued a Lawyer's Notice to him for eviction on grounds of bona fide requirement, default in payment of rent and grounds of overhauling, but the third ground is not being pressed before this Court. It is the specific plea of the Appellant that even if the Respondent vacates the suit premises, being used by him for business purposes, he will face no difficulty as he owns property in Jorethang itself. It is also canvassed that Notice is not a pre-condition for filing an Eviction Suit, nevertheless the Appellant in her magnanimity had issued the Notice. Drawing the attention of this Court to Paragraph 41 of the impugned Judgment, it was contended that the Learned Trial Court had erroneously reached the finding that the Appellant had not established bona fide requirement of the premises for herself and her sons as no mention of this appeared in her Notice and she had raised the plea only subsequent to the Suit filed against her on 21-12-2013. To the contrary, the Notice, Exhibit 3, issued by her would reveal that she had relied on Clause 10 of the Lease Agreement which categorically lays down that, in case the Lessor "requires" the premises she shall give two months' Notice in writing, ending with the last date of the month of the tenancy, to the Lessee and in fact she had given him six months' Notice instead of the required two months. That, the Respondent himself under cross-examination has admitted that he has a four storied house and the shuttered premises therein facing the road side is constructed for the purposes of a garage, which, however, finds no place in his pleadings leading to inconsistency between pleadings and proof, resulting in adverse inference. On this point, reliance was placed on Kashi Nath (Dead) through Lrs. vs. Jaganath, (2003) 8 SCC 740 and Nandkishore Lalbhai Mehta vs. New Era Fabrics Private Limited and Others, (2015) 9 SCC 755 as well as Subhash Kumar Pradhan vs. Shanti Devi, AIR 2015 Sikkim 13. That, the Learned Trial Court allowed the Respondent to exhibit attested photocopies of Money Order receipts to indicate payment of monthly rents and erroneously found that the Respondent has not defaulted in payment of rent, when in fact, such receipts are not permissible in evidence. It was urged that the object of the Rent Control Act is to prevent vagrancy for which reliance was placed on Malpe Vishwanath Acharya and Others vs. State of Maharashtra and Another, (1998) 2 SCC 1 and Kailash Chand and Another vs. Dharam Dass, (2005) 5 SCC 375. Attention was also invited to the decision of the Hon'ble Apex Court pertaining to interpretation of "the own use of the landlord" in Joginder Pal vs. Naval Kishore Behal, (2002) 5 SCC 397 and that a tenant cannot dictate terms to the landlord, for which reliance was placed on Sait

Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Others, (2005) 8 SCC 252. Moreover, merely because the tenant was in occupation of the suit premises for a prolonged period does not mean that he cannot be evicted from the suit premises as has been held by the Hon'ble Apex Court in Shamshad Ahmad and Others vs. Tilak Raj Bajaj (Deceased) through Lrs. and Others, (2008) 9 SCC 1. Hence, it was urged that the impugned Judgment and decree of the Learned Trial Court be set aside.

10. On the other hand, the stand taken by Learned Senior Counsel for the Respondent was that the mala fides of the Appellant is apparent from the fact that her sons applied for business licences only during the pendency of the Suit filed by the Appellant being 04- 04-2014. That, the Appellant has concealed the fact that her elder son is running a Rehabilitation Clinic, although such admission has emerged under cross-examination, neither did she reveal that she is drawing a pension of Rs.30,000/- (Rupees thirty thousand) only, thereby leading to an adverse inference under Section 114(g) of the Indian Evidence Act, 1872. That, the averments in the Plaint would clearly reveal that the sons merely had a "desire" to start business showing that there was no bona fide requirement, while the Respondent has not defaulted and his property being situated in a semi-urban area is not conducive for his business. It was also argued that another tenant by the name of "Gulshan" has been allowed to continue her tenancy in the same building while the Respondent is being singled out for eviction. In order to buttress his submissions, reliance was placed on Manohar Lal vs. The State of Punjab, AIR 1961 SC 418 and R. Venkataswami Naidu and Another vs. Narasram Naraindas, AIR 1966 SC 361. Reliance was also placed on the preamble of the Notification of 1949 contending that in the absence of bona fide requirement or default in payment of rent, the impugned Judgment of the Learned Trial Court requires no disturbance.

11. The rival contentions of Learned Counsel for the parties were heard at length and due consideration given to the submissions, the documents and evidence on record and the impugned Judgment have also been meticulously examined by me.

12. The questions that thus arise for determination by this Court are; (i) Whether the Appellant requires the suit premises for her bona fide use? and

(ii) Whether the Respondent defaulted in payment of rent?

13. Taking up the first question for determination, it would be apposite to refer to Notification of 1949 which for the sake of convenience is 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, Secretary,

Health and Works Department,

The 14th, April, 1949. Government of Sikkim."

14. The rationale in the preamble to the Notification of 1949 is to prevent vagrancy in view of the scarcity of accommodation prevailing in the State, as a consequence of which the Notification seeks to ensure regulation of tenanted premises, thereby protecting tenants from enhancement of rent, unreasonable eviction, thus ensuring a secured status for them. That having been said, if we traverse the contents of Clause 2 of the Notification of 1949, Landlords cannot eject tenants so long as the scarcity of accommodation lasts. At the same time, the Clause also deals with a contingency, i.e., over and above such scarcity, when the whole or part of the premises are required for the personal occupation of the landlord or for overhauling or in default of rent for four months, they may be permitted to evict the tenant on application to the Court.

15. Admittedly an Agreement of tenancy was executed between the parties as follows; (i) July 2011 to June, 2012 (ii) July, 2012 to June, 2013. Thereafter no

fresh Tenancy Agreement was entered into between the parties. Clause 10 of the latter Tenancy Agreement reads as follows; "10. That in case the LESSOR requires the said premises, the LESSOR shall give 2 month notice in writing, ending with the last date of month of the tenancy, to the LESSEE, and the LESSEE shall then vacate the lease hold premises."

In other words, as and when the Appellant requires the suit premises, she shall issue Notice and the Respondent shall vacate. Thus, the Learned Trial Court appears to have overlooked the contents of Clause 10 of the Agreement while erroneously concluding that the Notice issued by the Appellant was devoid of the ground of bona fide requirement. The exact word may not have been mentioned but the intent is clear and the words "require the premises" would obviously have to be read as bona fide requirement, as on non-requirement the premises had been let out on rent. The evidence of the Appellant clearly points to the fact that she has an unemployed husband and two unemployed sons, although it was admitted by the Appellant that the elder son runs a Rehabilitation Centre, it may be pointed out that in *Sait Nagjee Purushotham*⁷ it has been 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, there is no ground to say that the landlords already have business at Chennai and Hyderabad. That, the tenant cannot dictate terms to the landlord and advice him what he should do and what he should not, as it is the privilege of the landlord to choose the nature of the business and the place of business. The above Judgment sets to rest the point agitated by the Respondent, inasmuch as although the landlord may have a business elsewhere, he cannot be stopped from running business in his own premises if he so requires.

16. Admittedly, her son Adarsh Gurung joined the Department of Information and Public Relations in February, 2015, but the witness has voluntarily clarified that it was only for one year, at the same time the Respondent has failed to discharge his onus of proving whether Adarsh Gurung was employed on a permanent, ad hoc or contractual basis. Although the constant refrain of Learned Senior Counsel for the Respondent was that the sons of the Appellant "desire" to start business, and desire does not indicate bona fide requirement, I am of the considered opinion that one cannot split hairs on the meaning of this word when the evidence on record is to the contrary. The object of the Notification of 1949 as already pointed out is to prevent vagrancy in view of the scarcity of accommodation. But, it is the admitted case of the Respondent that he is the owner of a building situated in the Municipal area of Jorethang, the ground floor containing two rooms facing the road side. Although it has been claimed that the two rooms facing the road are for garage purposes, this has not been fortified by production of any Blue Print Plan. It has to be borne in mind that Rent Control Laws are to be construed and interpreted reasonably keeping in mind the object of the Statute as well as the rights of the landlord. The Notification invoked by the Appellant would indicate that if the landlord requires the premises for her own use, the tenant thereof can be evicted, ofcourse after fulfilling the

requirements thereof and as per due process of Law.

17. At the same time, it is appropriate to point out here that the Learned Trial Court vide its Order dated 16-06-2014, in Eviction Suit No.13 of 2013, was of the opinion that the tenant can invoke the Notification of 1949 to safeguard his rights. This appears to be incorrect observation as on perusal of the said Notification, Clause 4 provides that any person acting in contravention of this Notification will be liable to prosecution under Paragraph 4 of Notification No.1366-066-G dated 28-07-1947 (for short "Notification of 1947"). It is apparent therefore that should the tenant apprehend spiraling rent or unreasonable eviction, he is required to invoke the provisions of the aforesaid Notification of 1947 to prosecute the Appellant. Hence, on this ground alone, the Suit of the Respondent has no legs to stand. Meanwhile, it is relevant to note here that during the pendency of the Appeal, it has been fairly conceded by the Respondent that his four storied building has been completed.

18. That having been said at this juncture, what the expression "landlord" and the term "personal occupation" of the landlord entails ought to be clarified. In this context, in Nauranglall Agarwala and Others vs. Smt. Basant Kumari Sud, AIR 1981 Sikkim 22 this Court while discussing the provision of Gangtok Rent Control and Eviction Act I of 1956, held, inter alia, that there is a long catena of cases of different High Courts construing the expression "landlord" or "for the occupation of the landlord" or "his occupation" or "his personal requirement" and similar other expressions in the different enactments relating to eviction of tenants of premises prevailing in different States. That, the preponderance of those authorities is in favour of the view that such expression would not only mean to relate to the landlord himself, but would include his family and dependents and such person or persons as may be essential and necessary for the purpose of such occupation by the landlord. That, infact there is a myriad of precedents on this point laying down that such expressions are to receive and should be given a fair and liberal construction. The Court while also discussing Paul Sangay vs. Mahabir Prasad Agarwalla, AIR 1980 Sikkim 13 held that according to that decision, under the provisions of the Gangtok Rent Control and Eviction Act I of 1956, requirement of any person other than the landlord himself can furnish a ground of ejection only if such a person whether a wife, a husband, a son, a daughter or any other member of the family is a "dependent of the landlord".

19. On the same point, in Joginder Pal⁶ it is held that; "33. Our conclusions are crystallised as under:

(i) The words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression - landlord requires for "his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not

only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who would actually use the premises;

(ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

.....

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

The afore-extracted Judgments, viz; Sait Nagjee Purushotham⁷ and Joginder Pal⁶ are indicative of the evolving laws on landlord tenant relationship and the Courts are urged to adopt a practical and meaningful approach guided by the realities of life.

20. In Siddharth Vyas and Another vs. Ravi Nath Misra and Others,, (2015) 2 SCC 701 the Hon^{ble} Apex Court while referring to the decisions of Joginder Pal⁶ and Malpe Vishwanath Acharya⁴ held that the object of the Rent Law is to balance the competing claims of the landlord to recover possession and the tenant to be protected from arbitrary eviction when there is acute shortage of accommodation. A tenant who has already acquired alternative accommodation is not intended to be protected by the Rent Act.

21. In the light of the aforesaid principles, coming to the matter at hand, it is clear from the foregoing discussions that the sons are dependent on the Appellant as also her husband who is unemployed. Although the Respondent has accused the Appellant of avarice for enhanced rents, would the same adjective not be applicable to him, when, he being the owner of a building with shop space insists on remaining in tenanted premises for his convenience ignoring the necessity of the Appellant? In such a situation, in no circumstance is the Respondent entitled to the protection envisaged by the Notification of 1949, as his act flies in the face of the intent, purpose and spirit behind the Notification.

22. In view of the foregoing discussions, I am of the considered opinion that the Learned Trial Court erred in concluding that the Appellant did not have bona fide

requirement. The evidence on record indicates to the contrary and the bona fide requirement of the Appellant and her family has been established.

23. Now, to address the question of default. The Learned Trial Court had reached the finding that there is no default in the payment of rent. On careful perusal of the evidence of the Respondent, he has stated that from the month of December, 2013, he had deposited the monthly rent by way of Money Orders, addressed to the Appellant, on her refusal to accept rent. However, his deposition would go to show that he has merely alleged that the Defendant denied to accept the rent. Details of who went to hand over the rent, the date of such event and proof thereof are not forthcoming, there is no reason to give more weight to bald statements of the Respondent in the absence of substantial proof. The Appellant for her part had volunteered to depose that she had not received the monthly rent of the suit premises from the month of December, 2013, although earlier she has admitted that the Respondent is sending the rent of the suit premises to the tune of Rs.4,950/- (Rupees four thousand nine hundred and fifty) only, through Money Order, it is evident that the relevant month has not been specified. On traversing through Exhibits 7, 8, 9 and 10 which are original Acknowledgement Cards of Money Orders (contrary to the claim of the Appellant that it was in photocopy) though the sender's address bears the name of the Respondent and is said to be addressed to the Appellant, but none of the Acknowledgment Cards either bear the signature of the Appellant, neither is it endorsed therein that she had either received the payment, or that she had refused the payment. Ishwar Prasad Gupta, examined as D.W.4 alleged to be the Postman of the said area, admitted that no document has been filed before the Court which would show that Money Orders were refused by the Appellant, added to which he had no proof to establish that he was the ad hoc Postman at the relevant time. According to him, Exhibits 7, 8, 9 and 10 are some of the Acknowledgement Cards concerning the concerned Money Orders after refusal by the Appellant, he used to come back to the Post Office and handover the amount to the Respondent, along with the Acknowledgement Cards. In the absence of any proof that the witness was indeed a Postman or that he had gone to the house of the Appellant to deliver the money which she refused, this Court cannot place reliance on the mere statement of this witness. In the light of the evidence on record, I have to disagree with the finding of the Learned Trial Court that there was no default.

24. From the observations and discussions hereinabove, the findings of the Learned Trial Court in the impugned Judgment, on Issues No.1, 2, 3, 4 and 6 deserve to be and are accordingly set aside.

25. In the result, the Appeal is allowed.

26. The Respondent shall vacate the suit premises on or before 05-06-2017 and hand over vacant possession to the Appellant. He shall also pay rent from the month of December, 2013, to the Appellant till the date that he vacates the suit premises. No interest is to be paid on the defaulted rent amounts.

27. No order as to costs.

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

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