

(2004) 03 CAL CK 0017

In the Calcutta High Court

Case No : S.A. 129 of 2002 S.A. No. 129 of 2002

Sri Chittaranjan Pal

APPELLANT

Vs

Sri Bankim Chandra Biswas and Others

RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25, 100
West Bengal Premises Tenancy Act, 1956 — Section 13(6)

Citation : (2004) 2 CALLT 299 : 108 CWN 320

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee, Sajal Kumar Chel and Satyajit Basu, for the Appellant; Susanta Kumar Kundu, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Mitra, J.—This second appeal has been preferred by the defendants being the appellants herein challenging the judgment and decree dated 20.9.2000 and 30.9.2000 respectively passed by learned Civil Judge (Senior Division) 1st Court at Ranaghat, Nadia, in Title Appeal No. 15 of 1997 affirming the judgment and decree dated 30.05.1997 and 03.06.1997 respectively by the learned Munsif, 2nd Court at Ranaghat, Nadia in T.S. No. 37 of 1996 (originally T.S. No. 213 of 1991).

2. The case as has been made out by the plaintiff's Kamala Bala Biswas in the plaint is inter alia as follows:

The defendant Chittaranjan Pal is a tenant under the plaintiff Kamala Biswas in pursuance of a Written Agreement at a monthly rental of Rs. 20/- payable according to Bengali calendar by the first of the month following the month for which rent relates. The defendant is a defaulter since Kartick 1393 B.S. The plaintiff resides in holding No. 34 which consists of two bed rooms. There is no kitchen. A portion of verandah is covered and is being used as store room and remaining portion of verandah is used as kitchen. There is a Thakur Ghar

covered with asbestos measuring 8" x 6". The plaintiff is the owner of three holdings. One comprising of two bed rooms occupied by the plaintiff. The other holding being No. 36 consists of one bed room occupied by tenant Kala Chand Sarkar and another holding being No. 35 consists of a single room occupied by defendant. The plaintiff has a family of six members consisting of herself, her son, son's wife, one grand daughter aged 30 and 22 years and one grandson residing with plaintiff as a member of her family since he was eight months old and his mother being expired his father married for second time.

3. The plaintiff requires two more bed rooms apart from bed rooms which are in her possession and a kitchen and the suit premises is required for her own use and occupation. The plaintiff has no other suitable alternative accommodation. The husband of plaintiff is a co-owner of a premises three miles away and wholly occupied by co-owners. The plaintiff has been residing at Ranaghat from 1956 for her health, education and other civic comfort. Plaintiff is suffering from her trouble and a separate room and constant treatment at Ranaghat is necessary. The plaintiff is owner of three holdings, and one holding comprises two rooms which is occupied by plaintiff. The other is holding No. 36 which consisting of one bed room only occupied by tenant Tarachand Sarkar and another holding No. 35 consisting of a single room occupied by the defendant according to the plaintiff notice u/s 13(6) of West Bengal Premises Tenancy Act was served through learned advocate and the cause of action for suit arose on 8.8.1989 at Ranaghat. The plaintiff prayed for decree for eviction of the defendant from the suit premises and decree for preliminary and final mesne profit and decree for cost and also for any other relief which the plaintiff is entitled to in law.

4. Subsequently, the plaintiff filed a petition for amendment of the plaint. In the amendment petition, the plaintiff stated that suit has been filed on the ground of reasonable requirements and the requirements of the plaintiff has increased after the institution of the suit which is required to be incorporated in the plaint since requirement at the date of judgment is material. The said amendment application was allowed to be treated as part of the plaint. The introduction through by amendment application are as follows;

A. The plaintiff has covered verandah of the building and converted into two class rooms. The grandson of the plaintiff to get any employment and as such to have occupation in life he has started a school and covered the vacant verandah of the building wherein classes are conducted. But there is still further necessity of more space and rooms. The grandson is qualified as B.Sc. and B.A.

B. The plaintiff's grandson Sri Kushal Biswas resides in plaintiff's family as an educated unemployed youth. He started an English Medium School in 1992 in a part of the residential holding of the building being holding No. 49 Swami Vivekananda Sarani (Old holding No. 34) which is part of this suit building. At present there are four classes in the school in the pre-primary stage and the number of students is 74. The school has become very popular and there is growing pressure from guardians for admission of more and more students. Due

to paucity of accommodation the grandson of the plaintiff is not in a position to take new students. It is also necessary to open new class in primary stage but for want of accommodation the school cannot be elevated to primary stage.

C. The suit building comprises of six rooms in the ground floor and three rooms in the first floor. In the front side (i.e. western side) of the ground floor there are four rooms along with adjacent verandah. In these four rooms there were four tenants out of whom one tenant viz. Biswanath Shaw vacated his room but Raghunath Shaw a tenant conspiring with few others put a lock on the door of that room and as a result that room cannot be used at present. In the other three rooms there are three tenants including the defendant. Besides the said four rooms there are two other rooms and an open verandah in the Eastern Side of the ground floor. Out of the said two rooms one room is used as office of school and the other room is used as a class room. For want of accommodation, the plaintiff grandson has been holding two classes by covering the open verandah of the ground floor measuring 6" x 6" in breadth. That verandah is adjacent to the suit room separated by a wall with the provision of a door for connecting eastern verandah with the suit room.

D. There are three rooms and two covered verandahs in the first floor. All the three rooms in the first floor were used as bed rooms by the members of the plaintiff's family. Out of the covered verandahs one is used as a "Thakur Ghar" and the other as "Kitchen". One of the two rooms of the first floor is being used now as class room.

E. 11 rooms are necessary for plaintiff's grandson's school, eight class rooms = four for pre-primary, four for primary, one office room, one teacher's room and one visitor's room which is to be also used as waiting room for guardians who will come to take back their wards.

F. The plaintiff's family comprises six members, including the plaintiff, plaintiff's family includes his son Sri Bankim Chandra Biswas, daughter-in-law Smt. Arati Biswas unmarried granddaughter Kumari Beauty Biswas aged about 29 years, grandson Sri Kushal Biswas, plaintiff's pre-deceased daughter's son Sri Jaso Biswas who is aged about 35 years and is a physically handicapped. As the requirement has increased the plaintiff now reasonably requires five bed rooms, one kitchen, one Thakur Ghar" requires and 11 rooms for the purpose of her grandson's school. The suit room is situated in the front side of the ground floor of the building and is very suitable for being used as a class room of the plaintiff's grandson's school.

G. The defendant has closed his business in the suit premises and has kept the suit premises under lock and key for about four years. The defendant is conducting his business at his own house 57, Swami Vivekananda Sarani and in order to close the business in the suit premises he has surrendered electric connection and meter to the electricity authority on 25.03.1991.

5. As stated above by order No. 35 dated 28.03.1994 the said amendment was

made part of the plaint.

6. The plaintiff filed another amendment application on 28th March, 1996. The proposed amendment in the amendment application was as follows:

Paragraph 8 of the plaint be cancelled and replaced by the following para:

That the plaintiff is owner of five holdings and the suit building consists of five holdings comprising six rooms on the ground floor and three rooms on the first floor and the plaintiff has described in details of the possession and position of the suit building in paragraph 8C.

This second amendment application was also allowed and made part of the plaint by order No. 72 dated 10.04.1996.

7. The defendant filed Written Statement and contested the suit. In the Written Statement the defendants stated that the suit is barred by limitation and by principle of waiver, estoppel and acquiescence. The suit is barred by provision of Section 34 of the Specific Relief Act. The plaintiff has no cause of action. The defendant denied the allegations made out in the plaint, alleging that the schedule of the suit property as given in the plaint is vague and is not identical to the portion occupied by the defendant. It is admitted that the monthly rent is Rs. 20/- but it is not correct that it has been agreed upon that the rental of each month is to be paid within first day of the subsequent month. The defendant denied the allegation that he is a defaulter. The defendant alleged that with male fide intention the plaintiff did not accept the rent and the defendant sent the rent through money order and the plaintiff refused to accept the same. Plaintiff wants to evict the defendant with an intention to induct new tenant a big amount as "Selami". Defendant in the W.S. also stated that the suit holding does not comprise of two bed rooms and in fact the defendant has in possession of three bed rooms. The defendant also denied that there is no kitchen in his possession. It was stated that the earlier kitchen is being used as "Thakur Ghar" and on construction of two rooms one is being used as kitchen and the other as store room. The defendant also alleged that it is not correct that the tenanted premises is part and parcel of the dwelling house. The suit premises is situated at a market place. The defendant also alleged that surrounding the suit premises there are different shop rooms of different persons. Just by the side of the shop room of the defendant there is one Grill shop of one Sri Kala Chand Sarkar and there are two rooms of two other tenants Biswanath Shaw and Raghunath Shaw.

8. The defendant also alleged that it is not correct that there are six members in the family of the plaintiff. The grandson of the plaintiff does not reside in the family at present and he works at Naihati and resides there at his paternal residence. The defendant denied that the plaintiff requires two bed rooms or a kitchen or the suit property is required for his own used and occupation. The defendant also alleged that it is not correct that the plaintiff has no alternative suitable accommodation. It was alleged by the defendant that the husband of the plaintiff was Zamindar at Barhatta and there the plaintiff has got a very big two

storeyed building and when the plaintiff goes to look after their landed properties at Barhatta she used to reside at her said house at Barhatta. The plaintiff can easily reside at Barhatt which is a healthy place and the plaintiff is not suffering from any disease. It was further alleged that since 1956 the plaintiff has been residing at Ranaghat. That apart at the upper floor of the holding where the plaintiff resides at the first floor there are six rooms which have been constructed recently and have been tenanted to a school three months back. At present a school is running there. The suit premises is a business premises. From the date of taking over the room on tenancy the defendant has been in possession of the said shop room and makes business of essential commodities and battery repairing works there. It is known to the plaintiff very much that the suit property is not used as residential premises, so the plaintiff cannot ask for recovery of possession of the suit property. The defendant further alleged that it is not correct that the plaintiff occupies three holdings and in fact that plaintiff is the owners of five holdings. In the holdings in which the plaintiff resides there are three bed rooms. Apart from the holding mentioned by the plaintiff there are two other holdings, in one Biswanath Shaw is in possession and in the other Raghunath Shaw is in possession. The defendant denied that the plaintiff required the suit premises and the defendant prayed that the suit should be dismissed.

9. The defendant also filed two additional W.S. against two amended portions of the plaint. In the first additional W.S. the defendant denied the averments made in paragraphs "8A to 8C made out in the amendment application.

10. The defendant denied in specific each and every statement made by the plaintiff in those two amendment applications. The defendant in the additional W.S. averred that there is no reasonable requirement of the plaintiff and the suit be dismissed.

On the above pleadings the learned trial Judge framed the following Issues:

1. Is the suit maintainable in law?
2. Is the defendant a defaulter in payment of rent in respect of the suit premises?
3. Does the plaintiff require the suit premises for her own house and occupation?
4. Has the plaintiff any other suitable accommodation for her house and occupation?
5. Is the first notice of ejectment cancelled?
6. Is the second notice of ejectment legal and valid?
7. Is the plaintiff entitled to get the decree as prayed for?
8. What other relief, if any, is the plaintiff entitled?
11. On contest the learned trial Judge decreed the suit with costs against the defendant. The defendant was allowed one month's time to vacate the suit

property failing which the plaintiff was granted liberty to put the decree into execution. The learned trial Judge also granted the decree of preliminary and final mesne profit.

12. The defendant preferred appeal against the said judgment and decree passed by the learned trial Judge and the said first appeal was dismissed on contest without costs. The judgment and decree passed by the learned Munsif were affirmed.

13. Hence this second appeal.

14. At the time of hearing of the instant appeal under Order XLI Rule 11 of the CPC on 16th October, 2001. The Hon'ble Division Bench formulated the following substantial questions of law for decision in this appeal:

1. Whether the Courts below erred in law in not holding that since the defendant has filed additional Written Statements in the lower Appellate Court and since the same has been allowed, the Court of appeal below ought to have sent the case back on remand enabling the defendant to adduce evidence to prove his case made out in the additional W.S. or not.

2. Whether the Courts below erred in law in not holding that since the suit for eviction filed by the plaintiffs, against one tenant being Title Suit No. 3 of 1992 has been dismissed and inspite of preferring an appeal by the plaintiff's, the plaintiffs have withdrawn the said appeal, which clearly shows that the plaintiffs do not require the suit premises for their own use and occupation in view of the fact that the plaintiffs withdrew the said appeal realising that they would not be able to prove their case for reasonable requirement or not.

3. Whether, the Court of Appeal below erred in law in not holding that in order to prove the case made out in the additional W.S. of the defendant and which has not been denied by the plaintiffs, the Court of Appeal below ought to have sent the case back on remand for proving the same by adducing evidence and by getting an order of appointment of an advocate Commissioner to ascertain the actual structure extended by the plaintiffs during the continuation of the suit and further as to whether that will suffice the accommodation already available to the plaintiffs or not.

15. The learned counsel for the appellant submitted that the plaintiff has got sufficient accommodation inasmuch as from report of learned advocate Commissioner it is found that there are three bed rooms in the first floor and besides that two covered verandahs--one is used for kitchen and one Thakur Ghar. In the ground floor there are six rooms including one school's office and the plaintiffs do not require any more room. The learned counsel for the appellant also submitted that additional W.S. was filed by the defendant and the plaintiffs did not object to it and the learned Appellate Court below went on wrong by not remanding the matter for taking fresh evidence. The learned counsel for the appellant further submitted that in the year 1993 against one

tenant suit for eviction was filed and ultimately when the same culminated in the first appeal, the appeal was withdrawn by the landlord. From such action of the landlord the presumptive conclusion arrives that the landlord did not require any further room. The learned counsel for the appellant submitted next that the residential building at Barhatta was not inspected by Commissioner and the learned Court below acted on surmise holding that the house of the Barhatta was dilapidated. The learned counsel for the appellant then submitted that the appellant Court below should have appointed pleader Commissioner for the purpose of inspection of the Barhatta house as well as for the accommodation after the remand. The learned counsel for the appellant relied on the decision reported in *Hasmat Rai and Another Vs. Raghunath Prasad*, . The learned counsel relying on this judgment submitted that the Hon''ble Apex Court in this judgment has observed that reasonable requirement is to be found or considered on the date of judgment. The learned counsel for the appellant submitted that in this case there were six rooms in possession of the plaintiffs/landlords, three in first floor and three in ground floor. The learned counsel for the appellant again submitted that since the first Appellate Court after filing of the additional W.S. by the defendant or after acceptance of the same did not send the matter on remand for taking evidence the principle laid down by the Hon''ble Apex Court was not followed, that is, the requirement on the date of judgment was not considered. The learned counsel for the appellant in this regard relied on another judgment reported in 1998 WBLR page 241 (*Chameli Singh v. Shyam Sunder Neogi*) relying on this judgment the learned counsel for the appellant submitted that it is settled principle of law that when an additional W.S. is submitted in the Appellate Court and that is accepted by the Court the contents of the said additional W.S. should be tested on evidence. The learned counsel for the appellant submitted that Section 96 for the CPC cast a duty on the first Appellate Court to scrutinize the judgment of the trial Court and since the first Appellate Court is the last Court of fact, the Appellate Court below should have been more cautious and should have remanded the matter back to the trial Court for taking evidence after the amended Written Statement was accepted. The learned counsel for the appellant in this regard relied on a judgment reported in *Santosh Hazari Vs. Purushottam Tiwai (Dead)* by Lrs., . The learned counsel for the appellant submitted that in this judgment the Hon''ble Apex Court has held that "First Appeal is a valuable right of the parties and unless restricted by law, the whole case is there in open for re-hearing both on questions of fact and law. The judgment of the Appellate Court must therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court. The task of an Appellate Court affirming the judgment of the trial Court is an easier one. The Appellate Court agreeing with the view of trial Court need not restate the effect of the evidence or reiterated the reasons given by the Court, expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice. We would, however, like to sound a note of caution. Expression of general agreement with the

findings recorded in the judgment under appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it.

16. The learned counsel for the appellant submitted that in the instant case the Appellate Court below failed to perform its duty when it did not reach conclusive finding regarding the requirement of the plaintiffs. The learned counsel for the appellant then relied on a decision reported in *Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc.*, The learned counsel for the appellant laid emphasis on the observations made in paragraph 32 of the said judgment of the Hon^{ble} Apex Court is quoted hereinbelow:

"Admittedly Section 100 has introduced a definite restriction on the exercise of jurisdiction in a second appeal as far as the High Court is concerned. Needless to record that the CPC Amendment Act, 1976 introduced such an embargo for such definite objects and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact even if erroneous will generally not be disturbed but where it is found that the findings stands vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an elements of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-a-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication what is required is a categorical finding on the part of the High Court as to perversity. In this context reference being had to Section 103 of the Code which reads as below:

"103. In any second appeal the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal--(a) which has not been determined by the lower Appellate Court or both the Courts of first instant and the lower Appellate Court, or

(b) Which has been wrongly determined by such Court, or

(c) Courts by reason of a decision on such question of law as is referred to in the Section 100.

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above the legality of finding of fact cannot but be termed to be a question of law. We reiterate however, but there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with."

17. The learned counsel placing reliance on the above judgment submitted that it is therefore amply clear that when the question of perversity comes in, the second Appellate Court can interfere in concurrent finding of fact also. The

learned counsel for the appellant submitted that in the instant case the learned Appellate Court below did not perform his duty, did not consider the ultimate requirement of the plaintiffs/landlords and this Court should send the matter back to the trial Court setting aside the judgment and decree of the Appellate Court below for coming to a conclusive finding as to the requirement of the plaintiff/landlords.

18. The learned counsel for the respondent on the other hand submitted that the learned Court below as well as the learned Appellate Court rightly came into the concurrent finding that the plaintiff requires the said premises for their own use and occupation. The learned trial Court in its Judgment rightly came to the conclusion that Barhatta house may be an alternative accommodation but it is not suitable accommodation and if the respondents are to use Barhatta house they will have to split up the family and it is a settled position of law that the Court cannot direct the landlord to split up his or their family or families only to accommodate the tenant. The learned counsel for the respondent submitted further that both the Courts below held that there is reasonableness in the requirement or there is bona fide requirement of the plaintiffs/landlords. The learned counsel for the respondent submitted that filing of additional W.S. does not ipso facto require the matter to be remanded for additional evidence. It is to be seen as to whether any further evidence is necessary on the basis of additional W.S. for deciding the issue in question. The learned counsel for the respondent submits that if the Appellate Court finds that on the basis of additional Written Statement further evidence is necessary then and then only the Appellate Court will send the matter on remand and in the instant case the additional W.S. has described that the plaintiffs have alternative accommodation and the rooms description of which have been mentioned in the additional W.S., are not sufficient, even if the description of the rooms mentioned in the additional W.S. are accepted. The learned counsel for the respondent submitted that bona fide requirement is a finding of fact and that fact finding has been made concurrently by both the Courts below. The learned counsel for the respondent, in this respect relied on a decision reported in *Har Narain Daga Vs. Heeralal and Others*, . The learned counsel of the respondent relied on the observations made in paragraphs 6 and 7 of this Judgment of the Hon'ble Apex Court which are quoted hereinbelow:

"We have perused the judgments passed by the trial Court, the first Appellate Court and the High Court. The question of bona fide personal necessity is essentially a question of fact on which all the three Courts have concurrently held against the appellant. The case of the respondent that he needs the room on the ground floor for use by himself and his four growing children (sons) has been accepted by the Courts below. The Courts have also accepted the case that the respondent who is an assistant teacher in a Government middle school is often approached by students for giving private coaching, for the purpose of which he needs the room on the ground floor. In view of the concurrent findings recorded by the Courts below the High Court was justified in not interfering with the

finding in the second appeal."

"On the question of comparative hardship as provided u/s 14 of the Act we find that the trial Court having accepted the case of the landlord that his need for the room on the ground floor as a part of his residential accommodation for use of himself and members of his family, compared it against the use of the room by the tenant for commercial purpose. The Court took note of the fact that members of the family of the tenant are carrying on business at different places in the town and the room in question is used by the appellant and some employees occasionally. No particular use of the room appears to have been brought forth in the material placed by the tenant. Weighing the present use of the premises in question by the tenant and the need for its use by the landlord the trial Court held that the balance for weighing the comparative hardship tilted in favour of the landlord. The said finding was accepted by the Appellate Court and the High Court. The finding does not suffer from any serious illegality. Therefore, the High Court cannot be faulted for declining to interfere with it in second appeal. Further we find that the High Court has taken care to protest of the tenant in making the observation that in case the room in question is not used by the landlord for the purpose for which the eviction has been ordered then he (tenant) will be entitled to be put in possession of the room as provided in Section 15 of the Act."

19. The learned counsel for the respondent submitted that the existence of an alternative accommodation will not suffice. This alternative accommodation must be reasonable and in this regard the learned counsel for the respondent relied on a decision of the Hon"ble Apex Court reported in M.L. Prabhakar Vs. Rajiv Singal, . The learned counsel for the respondent further submitted that in this judgment the Hon"ble Apex Court has observed that new plea/additional plea involving questions of facts regarding another alternative accommodation available to landlord cannot be allowed to be raised in the second appeal. The learned counsel for the respondent submitted that the residential building at Barhatta may be an alternative accommodation but it is not suitable accommodation. The learned counsel for the respondent relied on the observations made in paragraphs 8, 9 and 12 of this decision which are quoted hereinbelow;

"It is thus to be seen that the suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background."

"On these tests let us consider the facts of this case. The trial Court has come to the conclusion that the daughters do not stay with the landlord. However, even the trial Court accepted that the wife, the son (who is the present respondent) and his family members stayed with the landlord. The daughters and their family members occasionally visited and stayed. The High Court has also proceeded on the footing that the daughters only occasionally visit. The High Court has held that one additional room may be required for an occasional visit by the other

relatives. The High Court has thus found that the requirement of the landlord would be five rooms. In our view, it cannot be said that there is any infirmity in these findings. It was urged that in the premises presently available there are already available five rooms. In support of this, reliance is placed upon the sketch plan which had been produced by the appellant during the cross-examination of the daughter of the landlord. In the sketch plan it has been shown as if there are four bed rooms and one drawing and dining room. This sketch plan is identical to a sketch plan produced by the landlord. The only difference is that in this sketch plan a passage has been shown as drawing and dining room. In our view, the High Court was right in not relying in the sketch plan, which had been merely put to the daughter in cross-examination. The daughter had denied the correctness of this plan. The correctness was not proved by anybody else. Even otherwise the evidence of one of the witnesses of the appellant shows that the sketch plan produced by the landlord is correct. The appellant witness admits that the drawing and dining room are as shown in the sketch plan produced by the landlord."

"It must be mentioned that for the first time in this SLP, a point has been taken that the landlord has constructed a building at Greater Kailash and that Bungalow is also available to him. We were shown the counter filed by the respondent in the SLP wherein the reply to this averment is as follows:

(xix) The petitioner/tenant has also falsely alleged that the landlord has property at Greater Kailash, New Delhi. In fact the landlord's wife owned a plot of land at Greater Kailash, New Delhi. The said property is not reasonably suitable for the landlord and his family for the reason inter alia that it is 17 km. away from the present residence. The family has been staying at the said residence for the last nearly three decades. It is accustomed to live in the present locality. It has friends, acquaintances and relatives living about the said premises. Over a period of time they have got accustomed to live in the said premises. The place of work of respondent No. 1 at Basant Road, is within 5 km. of the present residence, as opposed to 12 km. from Greater Kailash, New Delhi."

"We have not allowed the appellant to urge this point in this appeal as these are disputed questions of fact which should have been placed before the Rent Controller so that proper evidence should have been taken on this. However, it is clear that the landlord is getting the appellant evicted on the ground on their bona fide personal requirement. If, therefore, in the near future it is found that this was a false ground and that after getting the appellant evicted the premises are not being used for personal use of the landlord and his family as claimed, the appellant will be at liberty to adopt appropriate proceedings for restitution and to get back the premises from the respondent."

20. The learned counsel for the respondent lastly submitted that both the Courts below have considered the comparative hardship of the landlord and tenant and decided that the plaintiffs have got bona fide requirement in respect of the suit premises and the second Appellate Court should not interfere in the said

concurrent finding and since the entire evidence has been considered the requirement has been considered on the basis of evidence and the Appellate Court below has discussed the issues in details and also discussed the position of requirement after filing of the additional Written Statement. The judgment and decree passed by both the Courts below cannot be termed to be perverse.

21. Heard the learned counsel for the respondent. Considered the evidence on record and also considered the judgment and decree of both the Courts below.

22. The substantial questions of law which have been framed by the Hon'ble Division Bench is whether after acceptance of the additional Written Statement remand in the instant case by the Appellate Court below for taking fresh evidence is necessary or not Order XLI, Rule 25 in this regard is quoted hereinbelow:

"25. Where the Court from whose decree appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take, additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefore (within such time as may be fixed by the Appellate Court or extended by it from time to time).

23. From the language of Order XLI, Rule 25 of the Code quoted above it is clear that trial Court if has omitted to frame any issue or try any issue or to determine question of fact, which is essential for determination of the rights of the parties in the suit then and then only the Appellate Court below will send the matter on remand. On perusal of the entire judgment of the Appellate Court below it does not appear that any issue is there which has not been framed for determination of the lis involved or which has not been tried or any further evidence is essential for the determination of the bona fide or reasonable requirement of the landlords and as such since the appellant has only filed and amended Written Statement trying to create certain contradiction of facts or trying to raise certain new issues it cannot be said that essentially the Appellate Court below should have remanded the matter back to the trial Court for taking additional evidence. It appears from the judgment and decree passed by the Appellate Court below that the question of bona fide requirement has been discussed in details and the Appellate Court below after consideration of additional W.S, also came to the conclusion that the plaintiffs reasonably require the suit premises and the requirement is bona fide and the Appellate Court below also discussed the availability of the number of rooms the members of the family of the plaintiffs and their requirements and came to the conclusion that no further evidence on the basis of additional W.S. is necessary for the determination of issue in question and the evidence on record which is already there is sufficient for coming to conclusion on the factum of reasonable requirement or bona fide

requirement of the plaintiffs. Since the requirement on detail comparison has been discussed and the Appellate Court below is satisfied that the trial Court came to right findings in as far as the reasonable requirement is concerned, in my opinion the said decision of the Appellate Court below should not be disturbed in this second appeal. This Court also on consideration of the entire evidence on record do not find anything which requires remand and provisions of the Code do not say that only because additional Written Statement has been filed and accepted by the Appellate Court below the case is to be sent back for adducing fresh evidence, even if on detailed consideration on the Appellate Court below finds that evidence on record already there is sufficient enough to decide the lis and even if the statements made in the additional Written Statement is accepted that does not defeat the claim of the plaintiffs.

24. In view of the discussions made above the second appeal is dismissed. The Judgment and decree passed by the Appellate Court below affirming the judgment and decree of the learned trial Judge is affirmed. The decree may be drawn up accordingly. The defendant/ appellant is allowed three months time to vacate the suit premises failing which the landlord/respondent will be at liberty to put the decree in execution. In the facts and circumstances of the case the parties will bear their own costs.

Let the LCR be sent down to the Courts below forthwith.

Urgent xerox certified copy, if applied for, will be supplied to the parties expeditiously.