

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Appellate Jurisdiction)

DATED : 24-07-2012

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**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**RFA No.02 of 2012**

Shri Ashok Kumar Rai,  
S/o Shri Radha Prasad Rai,  
R/o Daragaon,  
P.O. Tadong,  
East Sikkim.

... **Appellant/Defendant**

versus

Shri Girmi Goparama (Sherpa),  
S/o Late Sarki Sherpa,  
R/o Daragaon,  
P.O. Tadong,  
East Sikkim.

... **Respondent/Plaintiff**

For Appellant : Mr. A. Moulik, Senior Advocate with  
Mr. Manish Kr. Jain and Mr. Ranjit  
Prasad, Advocates.

For Respondent : Mr. K. T. Bhutia, Senior Advocate  
with Ms. Bandana Pradhan and Ms.  
Nisha Rajliwal, Advocates.

**J U D G M E N T**

**Wangdi, J.**

The Appellant in this Appeal seeks to set aside the judgment and decree dated 30-11-2011 (hereinafter referred to as the "impugned judgment") in Eviction Suit No.01 of 2010 passed by the Learned District Judge,

Special Division – II, East Sikkim at Gangtok, by which the suit filed by the Respondent for eviction of the Appellant from the suit premises and for arrears of rents together with future rent was decreed.

**2(a).** In the original suit the Respondent's case in so far as it is material for the purpose of this Appeal is that the Appellant was a tenant under him in respect of two premises out of which one was at the road level and the other at the basement at a monthly rent of ₹ 2100/- and ₹ 1100/- respectively exclusive of water, sewerage and electric charges, to be paid within the fifth day of each succeeding month with the month being computed as per the English calendar. That the Appellant had been irregular in payment of the rent commencing from the month of December, 2004 which he used to send through strangers and ultimately defaulted in doing so continuously from the month of September, 2007 to January, 2008 and, therefore, made himself liable to be ejected under the relevant law governing tenancy. It was also the case of the Respondent that he required the suit premises for his personal use as well as for the use of his family members who were residing with him. It was urged that the

premises at the road level was required for starting business by his unemployed wife and daughter-in-law, the latter having issued with a trade licence for the business of tailoring and Mahihari items. The premises at the basement floor was required by the Respondent for settling his married son who along with his family was sharing in the same premises, as the Respondent, a retired ageing Secretary of the State Government, wanted his son to be near him in a separate establishment.

**(b).** It may be pertinent to note that apart from the above the Respondent had also alleged that the suit premises required thorough overhauling and repairs, that the Appellant had unauthorisedly inducted a large number of strangers to live with him and that he had tampered with the electric connection leading to the tenanted premises and also defaulted in payment of electricity, water and sewerage charges. However, parties chose not to address this Court on those and confined their arguments only on the question of personal use and default in payment of rent.

**3(a).** In the written statement filed on behalf of the Appellant the Respondent's plea of requirement of the suit

premises for his personal use was denied on the ground that apart from the suit premises there were others within the same building that were available which the Respondent could use for the purposes asserted by him.

**(b).** In so far as the allegation of default in payment of rent is concerned, it was not denied that there was no such default except to state that the Appellant had tendered the monthly rents for September and October, 2007 to the Respondent through his representatives but was refused by him and that after such refusal the Respondent desired that a fresh agreement of tenancy be executed and that the Appellant should desist from tendering rent through postal money orders. The Appellant thereafter was engaged in the medical treatment of his daughter and the death ritual of his parents till 25-02-2008 and returned to Gangtok only on 01-03-2008 after which he tendered the rents for the months of September, 2007 to January, 2008 to the Respondent through his representatives and that when it was refused he remitted those through postal money orders which also was refused by the Respondent.

4(a). Mr. A. Moulik, Senior Advocate, appearing for the Appellant, submitted that the ground for *bona fide* requirement set up by the Respondent cannot be sustained on the grounds as set out in the Plaint. As per him, the son of the Respondent apart from being employed lives with him and that his daughter-in-law is not his dependent as they owned a taxi and have their own income and establishment. So far as the necessity of the wife of the Respondent is concerned, Mr. Moulik's submission was that it was not credible that she would be required to set up a business as the Respondent was a retired Secretary of the Government of Sikkim. Referring to the decision of this Court in the case of ***Paul Sangay vs. Mahabir Prasad Agarwalla : AIR 1980 Sikkim 13*** it was submitted that it was necessary for the son, daughter-in-law and wife of the Respondent to have entered the witness box to establish that they indeed required the premises for the purposes as pleaded by the Respondent but as they did not the sole evidence of the Respondent and his witnesses would be rendered as *hearsay* evidence and, therefore, unreliable.

(b). On the question of default in payment of rent Mr. Moulik urged that the non-payment of rent for the periods

commencing from September, 2007 to January, 2008 was not a wilful default but, caused due to *bona fide* difficulties faced by the Appellant resulting from the time taken in treating his daughter and attending to the illness and ultimately the death of his parents during that period. This, as per Mr. Moulik was compounded by the refusal of the Respondent to receive the rents for the months of September and October, 2007, tendered by him. Reference was placed in support of this case to the case of ***Premchand Ranka vs. A. Vasanthraj Khatod and Others : (1992) 1 SCC 369*** and the case of ***Chordia Automobiles vs. S. Moosa and Others : (2000) 3 SCC 282.***

**5(a).** Mr. K. T. Bhutia, Senior Advocate, appearing on behalf of the Respondent, on the other hand, submitted that the Respondent has been successful in establishing the personal requirement as pleaded by the Respondent in view of the unimpeachable evidence on record in proof thereof. Although, it was a fact that the son was employed in Government service this, however, did not detract from the established evidence of the need of wife of the Respondent and his daughter-in-law in respect of a portion of the suit premises to set up a business and the other portion for its

conversion as a garage to park the vehicle. The fact of the son being employed also cannot unsettle the factum of his requiring suit premises at the basement floor for settling his son as pleaded and proved by the Respondent. As per him, the Appellant has not been able to disprove these facts and that the Respondent has been fully supported by his witnesses in their unshaken evidence.

**(b).** As regards the default in payment of rent, Mr. Bhutia submitted that in view of the clear admission of the Appellant having defaulted in paying the rent from September, 2007 to January, 2008 the Appellant undeniably became liable to be evicted under the law which stipulated default in payment of rent for four consecutive months as a ground available to a landlord for eviction of a tenant.

**6(a).** Upon hearing the Learned Counsels for the parties, I find that there are only two questions requiring determination in the present Appeal are — (i) whether the Respondent is in need of the suit premises for his "personal use" and occupation and, (ii) whether the Appellant defaulted in payment of rent making him liable under the law for eviction from the suit premises.

(b). It has already been noted before that the parties chose not to press the other questions but preferred to limit themselves only to these issues. Under such premises, my findings are as shall follow hereafter.

(c). However, before doing so, it is essential to note that the Learned Trial Court appears to have proceeded on a wrong premise that the suit is one under the Gangtok Rent Control and Eviction Act, 1956, when this Act has application only to "Gangtok Bazar" as would have been fixed in terms of Sub-Section (iii) of Section 1 thereunder. The suit premises in the present case undoubtedly falls in "Tadong" an area which is quite distinct and separate from "Gangtok Bazar". This, however, does not mean that there is no law governing landlords and tenants. By Notification No.6326—600-H &W—B dated 14-04-1949, rules have been framed to regulate letting and sub-letting of premises, controlling rents thereof and unreasonable eviction of tenants in Sikkim. The grounds for eviction of tenants are set out in Clause 2 of the said Notification which reads as under:-

**"GOVERNMENT OF SIKKIM**  
**Health and Works Department.**

Notification No.6326—600-H & W—B.

.....

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.

.....

Gangtok,  
The 14th, April, 1949.

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

[underlining supplied]

**(d).** As can be seen from the above provision, one of the grounds on which the landlords can eject a tenant is when whole or part of the premises in question is required for their personal occupation.

**(e).** The distinction between the Gangtok Rent Control and Eviction Act, 1956 and the rules under the above Notification of 1949 is that while the latter prescribes "personal occupation" of the landlords as one of the grounds for eviction of tenants, the Gangtok Rent Control and Eviction Act, 1956 in Section 4 stipulates "bonafide occupation of the landlord or his dependents" for the purpose. In my view, the substance of the provisions in the two statutes as would be relevant for the purpose of

this Appeal is that a tenant can be ejected if the premises under his occupation is required by the landlord for his "personal use". Delving further into the scope of these provisions would be purely academic and shall be reserved for consideration in an appropriate case if and when it arises. With these observations, I may now proceed to deliberate on the issues necessary for determination in the present Appeal.

**7(a). Requirement for personal occupation**

In *Kailash Chand and Another vs. Dharam Dass* : (2005) 5 SCC 375 while dealing with a case arising out of Section 14(3) of the Himachal Pradesh Urban Rent Control Act, 1987, the substantive portion of which is similar to the one in the present case, it was held as under:-

"24. The expression "his own occupation" as occurring in sub-clause (i) of clause (a) of sub-section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. "His own occupation" does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in *Joginder Pal v. Naval Kishore Behal* and *Dwarkaprasad v. Niranjan*. It was held that the requirement of members of family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of

society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for "his own occupation".

25. .... The rent control legislations are generally heavily loaded in favour of the tenants and the provision dealing with which the courts at times lean in favour of the landlords is the one which permits the landlord to seek eviction of the tenant on the ground of requirement for his own occupation, residential or non-residential. There are weak amongst the tenants as also amongst the landlords. (See *Joginder Pal case*, SCC paras 9 and 32.) Take the case of a landlord knocking the doors of the court seeking its assistance for a roof over his head or for a reasonably comfortable living, when he is himself either in a rented accommodation or squeezing himself and his family members in a limited space, while the tenant protected by the rent control law is comfortably occupying the premises of the landlord or a part thereof. Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom. While the tenant needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law." [underlining supplied]

(b). In *Adil Jamshed Frenchman (DEAD) BY LRS. VS.*

*Sardar Dastur Schools Trust and Others : (2005) 2 SCC*

476 it has been *inter alia* held as follows:-

"8. .... The concept of *bona fide* need or genuine requirement needs a practical approach instructed by the realities of life. In *Deena Nath v. Pooran Lal* this Court reiterated

that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire."

[underlining supplied]

(c). When we consider the facts of the present case as regards the question of requirement for "personal occupation" it is difficult for this Court to accept that the requirement set up by the Respondent is a mere whim or a fanciful desire. The plinth area of each floor is admittedly just about 900 sq. ft. commencing from road level upwards with the entire building consisting of 4½ stories out of which the Respondent occupies two floors. We find the area and dimension of the building given in the "Schedules A and B" to the Plaint which are reproduced below:-

"SCHEDULE OF THE SUIT PREMISES

Schedule A.

North West part of road level floor of the of the (sic) plaintiff's four and half storied building situated in besides 31-A, National Highway, Daragaon, P.O. Tadong, East Sikkim. The said road level floor is consisting of two rooms, open verandah/space in front (East) side, and a toilet having 14 ½ ft. X 26 ft. in total which includes veandah/front space towards East side measuring 1½ ft. X 4 ft.

Schedule B.

North West part of basement floor of the plaintiff's four and half storied building situated besides 31-A, National Highway, Daragaon, P.O. Tadong, East Sikkim. The said basement floor is consisting of the bed room, sitting room, kitchen and toilet

having 14 ½ ft. X 18 ft. in total and open verandah in front of it measuring 14 ½ ft. X 4 ft."

(d). The Respondent is a person of standing and stature having retired as a Secretary to the State Government. It is a settled position that the requirement of a landlord would depend upon his status and position in society. There is, therefore, no reason to disbelieve that he requires a comfortable accommodation to live with his family consisting of wife and a minor daughter, a comfort to which he is used to. It is quite natural that he would like his son to be settled within his only holding consisting of 4½ storied building so that they are nearby him to be at his call at the time of his requirement having regard to the fact that he is an ageing retired Government servant. The requirement felt by him to establish his daughter-in-law in a business to be run with his wife on the road level premises also cannot be considered as a mere whim or a fanciful desire. The requirement has been further established by the evidence of his daughter-in-law having in her possession a trade licence for tailoring and running a Manihari shop which could not be utilised for want of a suitable accommodation. No doubt, it has come in the evidence of P.W.2, Purnima Roy alias Pradhan that she was

running a tailoring shop under that trade licence in a premise as a tenant under the Respondent but, this cannot dispel the factum of the inability of the daughter-in-law in running those trades herself for want of a suitable accommodation, i.e., an accommodation where both those trades could be run. It is undeniable that a premise on the road level which faces the street would be most suitable for commercial purposes and convenient for converting a part thereof as a space for a garage. The decision in the case of **Paul Sangay (supra)** referred to by Mr. Moulik is clearly distinguishable from the present one and is fully covered by the cases of **Kailash Chand** and **Adil Jamshed (supra)** referred to above. The fact that the son, daughter-in-law or the wife of the Respondent have not entered the witness box would not make any difference as they are the members of his family thereby bringing them within the ambit of the term "personal use" as appearing in the 1949 Notification.

(e). On examination of the case, I find that on the question of "personal occupation" the material averments contained in the Complaint reads as under:-

"8. That the plaintiff at present requires the suit premises for his personal use as well as for the use

of his family members residing with him and who have no independent income. The suit premises is required for starting business by the wife of the plaintiff who has no earnings and his daughter-in-law who is unemployed. .... The plaintiff at this age and due to ill health require his family members to reside with him to support him. The only son of the plaintiff Shri Sonam Goparma and daughter-in-law are required to reside with the plaintiff. Besides the said son plaintiff has a minor school going daughter and his wife.

9. That the plaintiff also requires the premises, at road level floor, to park his vehicle and would like to use the premises converting the part of it as garage and shop room for his wife and daughter-in-law. The suit premises situated at the basement floor are required for establishment of a house for his grown up married son who intend to have separate establishment. The plaintiff would like to keep his son with himself in the house and intend to live near to him allowing separate establishment to him in the basement floor." [underlining supplied]

(f). In his written statement the Appellant while controverting the above has no doubt denied the allegations but nothing material has been set out in displacing those averments as grounds for eviction. The Respondent who pleads requirement of the suit premises for "personal use" has appeared as P.W.1 and asserted all material facts which appear to have been well-sustained in his cross-examination and find that following specific statements have been extracted in his cross-examination:-

"..... It is true that the building in which I reside and the suit premises is situated is four and half storied building. It is true that I reside at half of the first floor and full of the second floor and on half floor of the terrace I used as kitchen and Mandir. .... It is true that my only son

owned a Mahindra Armada taxi vehicle.  
....."

**(g).** These statements further strengthen the case of the Respondent that the suit premises is indeed required for his "personal use" considering the size of the house which he owns and occupies and the need for a garage on a portion road level of the suit premises. P.W.2, Purnima Roy alias Pradhan has corroborated the fact of the daughter-in-law of the Respondent having in her possession a trade licence when she states very categorically that "it is true that initially I run (sic) my business using the trade licence of daughter-in-law of the plaintiff but I do not know the year on (sic) which I used the same". The evidence of P.W.3, Chandra Tamang also corroborates the case of the Respondent having limited space under his occupation in his own building when she states the following:-

"8. That beside the landlord (Plaintiff) Shri Girmee Goparma and his wife his married son, his daughter and daughter-in-law leaves (sic) with him. Mrs. Girmee Goparma and his daughter-in-law are unemployed and stay in their house on upper floor. Recently his daughter-in-law has also delivered a baby."

**(h).** This witness was not cross-examined on this and, therefore, the statement has remained uncontroverted and nothing has been brought on record by the Appellant to

prove these facts otherwise. The only stand taken by the Appellant on this as already discussed above is that such facts do not constitute grounds for eviction for the purposes of "personal use" of the Respondent and that his wife, daughter-in-law and son having not entered into the witness box, such evidence would be a *hearsay* evidence and, therefore, unreliable.

(i). As observed earlier, the facts and circumstances obtaining in the case of **Paul Sangay (supra)** is quite different and distinguishable. In that case it was held that when the landlord had asserted that the premises in question was required by his son who wanted to establish an independent business the son ought to have entered the witness box as a witness to depose on that. As he did not, it was held that the evidence of the other witnesses would be only a *hearsay* evidence. It was observed that, had it been the case of the father, that he required the premises to establish his son in business a different consideration might have arisen. Reference may be made to the following portion of the judgement:-

"26. Neither Chothmull Joshi, P. W. 2, nor Pharamlal Prasad, P. W. 3, was a summoned witness. I should not be understood to mean that an unsummoned witness cannot be relied on; but I

only propose to take this fact into consideration in assessing the credibility of this witness, P. W. 2. P. W. 2 has further stated that the plaintiff has only two rooms and a kitchen in his possession while it is the definite evidence of the plaintiff, P. W. 1, himself that he is in possession of the three storeys of the four-storeyed building. This is again a fact which, I think, I should take into consideration in deciding the credibility of this witness. But everything apart, what strikes me most in this case is that it is not the case of the plaintiff at any stage that he requires the suit-premises as he genuinely intends to establish his sons in business but his case all-through is that his sons have said that they want to start separate and independent business and the suit-premises are necessary therefor. The two sons, Chiranji Lal and Khemchand, have not come or been examined as witnesses in this case and the only evidence about their intention to start business is that they said so to P. W. 1 and also to P. W. 2. I am afraid that unless these two sons themselves come forward and depose that they genuinely and honestly intend to start a business, the evidence of P. W. 1 and P. W. 2 that they told them that they wanted to start separate business must be rejected as hearsay. I have already pointed out that the plaintiff has nowhere stated that it is he who has decided to settle his sons in business and different considerations might have arisen if the plaintiff could and did say so. But as the plaintiff has nowhere said so and the so-called evidence of the plaintiff and P. W. 2 as to the intention of the two sons to start business is to be rejected as hearsay, I am afraid that there is nothing on record from which I can conclude that the suit-premises are genuinely and bona fide required for any business which the two sons are alleged to have intended to start. Non-examination of the two sons, who would have been the best witnesses to state as to whether they genuinely and honestly intend to start separate business and that the suit premises are required therefor, without any explanation for their non-examination, cannot but raise an adverse inference against the plaintiff's case. I, therefore, hold that the plaintiff has failed to prove that the suit-premises are required for his bona fide occupation or for the bona fide occupation of his dependents and the decree for ejection granted by the learned District Judge cannot, therefore, be sustained and must be set aside."

[underlining supplied]

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**(j).** Quite different from the above, in the case at hand as is apparent from the averments extracted earlier, the specific case of the Respondent is that the suit premises is required for his "personal use" as well as for the use of his family members residing with him who have no independent income. That he "requires the premises, at road level floor, to park his vehicle and would like to use the premises converting the part of it as garage and shop room for his wife and daughter-in-law" and that "the suit premises situated at the basement floor are required for establishment of a house for his grown up married son who intend to have separate establishment." The decision, therefore, does not in any manner support the case of the Appellant.

**(k)** The other plea taken by the Appellant to repudiate the case of the Respondent of "personal use" is that the Respondent has another shop room at the basement floor of the same building which could be used by him or his family members to start a business. That apart, it has also been asserted that there are two more shop rooms in the same building that have been let out to others where business of grocery, vegetables and fruits is being

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run and in the other a tailoring shop which the Respondent could opt for by getting those vacated. In my view, even if such assertions are taken to be true it does not affect the case of the Respondent against the Appellant as the prerogative to choose the place of running a business or otherwise lies with the landlord and not with the tenant. In the case of **Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Others : (2005) 8 SCC 252** it has been held that "it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business".

(I) In **A. K. Mukherji vs. Prodip Ranjan Sarbadhikary and Others : AIR 1988 Calcutta 259** a

Division Bench of that Court has held as under:-

"15. It has also been urged by Mr. Dasgupta that, the plaintiff-respondent has another tenant in the same building but has admittedly taken no steps to sue him in ejection. If a plaintiff-landlord has several tenants and the premises in occupation in any of them would satisfy his requirement, he would obviously have to make a choice and in such a case if he has satisfactorily proved his reasonable requirement in respect of the premises occupied by the defendant-tenant, the fact that he has not proceeded against any other tenant cannot, by itself, militate against his claim for reasonable requirement and we find the decision of P. N. Mookerjee, J. in Sumatibala v. Heramba, (1956) 60

Cal WN 783 at p.785 and that of a later Division Bench in Lakshminarayan v. Dwarka Nath, (1968) 72 Cal WN 846 at p.851 to be clear authorities for this view. ...."

[underlining supplied]

I am in respectful agreement to the above proposition which is fully applicable to the facts in the present case.

(m). In view of the facts and circumstances and the evidence appearing on the records there can be no manner of doubt that the Respondent has been able to make out a case for eviction of the Appellant on the ground of requirement of the suit premises for his "personal use". It is also relevant to note here that the term "personal use" would bring within its ambit all extensions of the landlord including his wife, unmarried daughter, son or other members of the family who are dependent on him. In the very case of **Paul Sangay (supra)** it has been observed as under:-

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"19. I am aware of the long catena of the cases of the different High Courts construing the expression "landlord", or "for the occupation of the landlord", or "his occupation", or "his own occupation" and similar expressions in the different enactments relating to eviction of tenants of premises prevailing in other States and that the preponderance of those authorities is in favour of the proposition that such expressions would not only mean or 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. In fact, there is a myriad of precedents on this point

laying down that such expressions are to receive and to be given a fair and liberal construction.  
....." [underlining supplied]

**8(a). Default in payment of rent**

As observed earlier, there is no denial of the fact that the Appellant defaulted in payment of rent for the months of September, 2007 to January, 2008, but has sought to explain this as not being wilful. This I find from the following portions of the written statement:-

"21. .... It is stated that the Defendant had tendered the monthly rent for the month of September and October, 2007 to the Plaintiff through his representative which was refused by the Plaintiff. After refusing to accept the rent for the month of September and October, 2007 the Plaintiff desired to have a fresh agreement of tenancy and advised the Defendant not to send postal money orders any further as he was going to a tenancy agreement drawn and would hand over the same to the Defendant. The Plaintiff even told the wife of the Defendant to advised (sic) the Defendant not to send rent through postal money orders since he was going to draw a fresh tenancy agreement.

The Plaintiff having refused to accept the monthly rent for the month of September and October, 2007 and having ask the Defendant to send rent through postal money order, the Defendant went to Patna in the last week of November, 2007 for a plastic surgery of his daughter and started her treatment which was complete by 18/01/2008. In the meantime, the ailing father of the Defendant was being treated who expired on 19/01/2008. Defendant got involved in performing the death rites of his father which was completed on 03/02/2008. Thereafter, the mother of the Defendant fell sick and she also expired on 08/02/2008 and her death

rites were completed on 25/02/2008. After closing all the affairs, Defendant came back to Gangtok on 01/03/2008 and thereafter tendered the rent due for the month of September, October, November, December 2007 and January 2008 to the Plaintiff through his representative and the Plaintiff having refused to accept the rent as usual, the Defendant sent the rent through postal money order which was also refused by the Plaintiff.

....."

**(b).** In his deposition also the Appellant has made the following statements.

**"10.** I say that, when I tendered the monthly rent to the Plaintiff for the month of September and October, 2007, through my representative, he refused to accept the same and because of that reason, I started tendering the monthly rent through postal money order. Thereafter, I came to know from my wife that the Plaintiff personally visited my place and request my wife to advise me to not to send the monthly rent through postal money order and or through any third person, as he desires to execute a fresh Tenancy Agreement and hand over the same to me.

**11.** I say that in the last week of November, 2007, my daughter got seriously ill and accordingly, I went to my native place i.e. Bihar for treatment of my daughter. That the treatment of my daughter alongwith her plastic surgery was completed on 18/01/2008. Thereafter, I was all prepared to return to Gangtok, however, unfortunately, on 19/01/2008, my ailing father died and I was engaged in performing his death rites till 03/02/2008. That as soon as the death rituals of my late father was over, my mother fell sick and she also expired on 08/02/2008 and her death rites was completed on 25/02/2008.

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12. I say that, unaware, of the evil intentions of the plaintiff, I was under the impression that, as the Plaintiff has desired to execute fresh tenancy agreement and I was also preoccupied in performing ritual as aforesaid, I decided to pay the monthly rent for the month of September, October, November, December 2007 and January 2008, after returning to Gangtok. That after completion of entire affairs, I reached Gangtok on 01/03/2008 and thereafter, I tendered the aforesaid monthly rent to the Plaintiff through my representative. But, to my utter dismay, the Plaintiff, deviating from his commitments to execute a fresh tenancy agreement, refused to accept the said rent, because of which I was again compelled to pay the same through postal money order, but as expected by me, the Plaintiff refused to receive the same. Therefore, it is apparent that, to evict me from the suit premises by filing the present suit, the plaintiff illegally created the grounds for eviction, deceiving me."

(c). Almost in verbatim statements have also come in the evidence of his wife, Smt. Madhu Devi Rai, D.W.3, but considering the surrounding circumstances as will be alluded later, they do not inspire confidence of this Court even at least as those being probable truth. The only independent evidence is that of D.W.2, Vikash Kumar, but no reliance can be placed upon this also in view of the following statements appearing in his cross-examination:-

"..... I do not know the date, year and month from when the defendant used to sent (sic) the money orders to the plaintiff as rent. I do not know the name of any persons i.e. friends of the defendant who used to carry the rent to the plaintiffs (sic). I do not know when the treatment of the daughter of the defendant was completed. I do not know when the father & mother of the defendant had expired. It is true that the date,

year and the month of the completion of the treatment of the defendant's daughter & the death of his parents was given by me on in my evidence on affidavit as per the information given to me by the defendant. It is true that I do not have personal knowledge about the death of his parents of the treatment of his daughter. I do not have personal knowledge as to when the death rites of the parents of the defendant was completed.  
....."

**(d).** Quite obvious from the above, the evidence of D.W.2 is *hearsay* and, therefore, unreliable. Serious doubt also arises on the reasons put forth by the Appellant for the default as (i) the representative, Rakesh Kumar, who was said to have been sent by the Appellant to tender the rents for September and October, 2007 was not examined by him although admittedly he is alive and residing with the Appellant as it appears from his deposition that "the name of my staff through I tendered the monthly rent of Sept & Oct. 2007 is Rakesh Kumar. Rakesh Kumar is still alive and residing with me" and, (ii) the claim of the Appellant and his wife as D.W.3 that they had left for Bihar since the month of November, 2007 until March, 2008 is belied by the fact that the shop in the suit premises on the road level had throughout been operating as appearing in paragraph 18 of evidence-in-chief of the Appellant where he has made claims for losses to his business continuously from the

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month of April, 2005 to November, 2008; from the evidence of P.W.3, Chandra Tamang, the next door neighbour of the Appellant when she states that "the shop house of the Defendant situated at road level floor of the building being closed at any day. It was never closed in the year 2007 and 2008" and from the evidence of D.W.3, Madhu Devi Rai, the wife of the Appellant when she states that "the financial loss suffered by my defendant husband from business would in average come to Rs.3,000/- (Rupees Three Thousand) only per month, from the month of April, 2005. Accordingly, the total loss till the month of November 2008 would come to Rs. 1,32,000/- (Rupees One Lakh Thirty Two Thousand) Only".

**(e).** In spite of the fact that the Appellant had two other servants living with him which is apparent from his statement that "I have two staffs and they are residing with me", neither of the two were examined as his witness thereby clearly leading this Court to reasonably draw an adverse presumption against the Appellant under Section 114 (g) of the Indian Evidence Act, 1872.

**(f).** The reasons also do not appear to be convincing as it is not understood as to what prevented the Appellant

during his absence from tendering the rent or at least attempted in doing so through his servants who were residing within the tenanted premises or through those who had been running the Appellant's liquor shop in the vicinity of the tenanted premises the existence of which have been revealed in the evidence of P.W.2, Purnima Roy alias Pradhan, the next door neighbour of the Appellant, P.W.3, Chandra Tamang also a neighbour and D.W.2, Vikash Kumar.

*(g)*. Notwithstanding the above position, even assuming that reasons given by the Appellant for having failed to pay the rent as claimed by him are accepted as true, the law applicable in the State, i.e., 1949 Notification referred to above, does not make such reasons as exception to the ground of default as provided under the second clause thereof. The word "wilful" which is emphasised by Mr. Moulik by seeking reliance upon the case of ***Chordia Automobiles (supra)*** in my view, is quite mis-placed since in that case Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was under consideration where the proviso and the exception thereto read as under:-

"5. ....

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

*Explanation I.*—For the purpose of this subsection, *default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent.....*

....."

**(h).** The decision is, therefore, *sui generis* as it was rendered in the facts and circumstances where the above provision fell for consideration while examining as to whether or not the default to pay or tender rent in that case was "wilful". The provision is, therefore, widely different from the one which is presently under consideration. It would be fallacious to import expressions in a statute when the statute itself is clear and unambiguous. It has been held in a catena of decisions, one of which is the vintage case of ***Srimati Renula Bose vs. Rai Manmatha Nath Bose and Others : AIR 1945 Privy Council 108***, that "it is contrary to all rules of construction

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to read words into an Act unless it is absolutely necessary to do so" as that would amount to reframing the legislation.

**9.** For all these, I see no reason as to why a different view should be taken from that of the Learned Trial Court and accordingly uphold the impugned judgment.

**10.** In the result, the Appeal is dismissed.

**11.** No order as to costs.

**12.** Let a copy of this judgment along with the original records of the case be transmitted to the Learned Trial Court forthwith for compliance.

  
( S. P. Wangdi )  
Judge  
24-07-2012

Approved for reporting : Yes/No

Internet : Yes/No