

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 04.07.2019

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RFA No.07 of 2016

Appellant : Shiva Kumar Nepal

versus

Respondent : Shankar Roy

Appeal under Order XLI Rules 1 and
2 of the Code of Civil Procedure, 1908

Appearance

Mr. N. Rai, Senior Advocate with Ms. Malati Sharma, Advocate
for the Appellant.

Mr. A. Moulik, Senior Advocate with Mrs. K. D. Bhutia and Mr.
Ranjit Prasad, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Dissatisfied with the Judgment of the learned District Judge, South Sikkim, at Namchi, in Eviction Suit No.02 of 2014, decreeing the Suit of the Respondent/Plaintiff (hereinafter, Respondent) and dismissing the Counter-Claim of the Appellant/Defendant (hereinafter, Appellant), the Appellant seeks redressal before this Court.

2. A brief factual narrative is essential for clarity in the matter. The Respondent's case is that he was a tenant in the ground and first floor of a building initially owned by one Purnima Shreshta, at a monthly rent of Rs.3,500/- (Rupees three thousand and five hundred) only, used for his residence

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and business respectively. The property was purchased by the Appellant in the year 2011. From January, 2012 he demanded an enhanced monthly rent of Rs.8,000/- (Rupees eight thousand) only, which the Respondent refused to pay, while the Appellant declined to accept the original rent of Rs.3,500/- (Rupees three thousand and five hundred) only, the intention allegedly being to declare the Respondent a defaulter and thereby evict him. Consequently the Respondent was compelled to send the rent by Money Order from January, 2012. The Appellant also employed some musclemen to intimidate the Respondent in order to expedite his eviction from the suit premises. On 12-01-2014, the Appellant coerced him in the presence of witnesses into affixing his signature on Exhibit 'A,' an Undertaking to vacate the suit premises. Pursuant thereto the Respondent issued a Legal Notice, Exhibit 2A, to the Appellant denying execution of such Agreement. The Respondent then approached the learned Trial Court 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"), seeking a declaration that he is entitled to enjoy his rented premises free from undue harassment and interference from the Appellant, his agents or servants till such time that he is evicted by due course of law. He also sought prohibitory injunction on the same grounds, till final disposal of the Suit.

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3. Denying and disputing the allegations, the Appellant in his Written Statement-cum-Counter Claim averred that he required the suit premises *bona fide*, for the purposes of opening a beauty parlour for his wife, a trained beautician and a fast food eatery for his unemployed brothers. The building also required overhauling for proper residential and commercial use, the premises having been damaged by the Respondent, though subsequently this ground was abandoned. Despite the original owner's assurance that the Respondent would vacate the suit premises within two months of registration of the building in the Appellant's name, another five months time was sought from January, 2012. Later, he agreed to vacate within a period of two months, but ceased paying rent from the same month, viz. January, 2012. On enquiry by the Appellant in the month of May, 2012, the Respondent informed him that the rent was being sent by Money Order, while enquiry from the Postal Authorities negated such remittance, thereby rendering the Respondent a defaulter. The Appellant enumerated the following prayers in his Counter-Claim;

- 'a. A decree for declaration that the defendant is the owner and the plaintiff is the tenant of the suit premises.
- b. A decree for eviction of the plaintiff from the suit premises on the ground of default on payment of house rent to the defendant for more than the statutory period for payment of monthly house rent, for the ground of *bona fide* requirement of the defendant, his wife, brothers and mother of the defendant of the suit premises and thorough overhauling of the suit premises for the purpose of remodeling or Modifying the suit

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premises for running the beauty parlour and a fast food joint.

- c. A decree for recovery of Rs.1,15,500/- being the arrear rent along with the interest at the rate of 10% per annum of the suit premises from the month of January, 2012 to the month of June 2014.
- d. A decree for Rs.6,750/- for court fees paid by the defendant for his Counter-Claim.
- e. Permanent injunction.
- f. Ad interim and temporary injunction, if prayed for.
- g. Receivership of the suit premises, if prayed for.
- h. Cost of litigation.
- i. Any other relief or reliefs as this Hon'ble Court may deem fit and proper.'

4. The Respondent, while countering the averments of the Appellant stated that the Appellant's claim of *bona fide* requirement was fallacious as the Appellant is already in possession of three storeys in the five storeyed building. The Respondent in fact had been assured by the original owner that despite the sale he would not be required to vacate the suit premises. That, his eviction would have a cascading effect on his employees who would consequently be unemployed, thereby affecting their families. Besides, the brothers of the Appellant being independent had their own sources of income and the grounds forwarded for eviction were a ploy to hire out the premises to Companies at enhanced monthly rents. That, rents for the months of December, 2013 to May, 2014, were collected by the Appellant from the Post Office, therefore, the question of

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the Respondent defaulting in payment of rent does not arise. Hence, the Counter-Claim be dismissed with costs.

5. The learned Trial Court on the basis of the pleadings of the parties settled the following Issues for adjudication;

1. Whether the suit is maintainable?
2. Whether the Defendant has been harassing the Plaintiff in order to illegally evict him from the suit premises?
3. Whether the Defendant stopped accepting the monthly rent with effect from January, 2012, owing to which the Plaintiff was constrained to send the monthly rent through Money Order which too was refused by the Defendant?
4. Whether on 12-01-2014 the Plaintiff was compelled to sign on the concerned document(s)/undertaking(s) pertaining to the suit premises/demised premises?
5. Whether the Defendant unilaterally enhanced the monthly rent of the suit premises from Rs.3,500/- to Rs.8,000/-?
6. Whether the Plaintiff is entitled to the reliefs as prayed for by him?

6. Separate Issues were framed on the Counter-Claim as follows;

1. Whether the Counter-Claim of the Defendant is maintainable?
2. Whether the Defendant requires the suit premises for his/his family's *bona fide* use?
3. Whether the suit premises need thorough overhauling?
4. Whether the Plaintiff has willfully defaulted in payment of the monthly rent from January, 2012?
5. Whether the Plaintiff is liable to be evicted on any of the above grounds?

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6. Whether the Defendant is entitled to the reliefs as prayed for by him in his Counter-Claim including arrears of rent?

7. The learned Trial Court took up Issue No.3 of the main Suit and Issue No.4 of the Counter-Claim and on consideration of the evidence and documents furnished before it, reached the finding that there is always a presumption under the law that any Registered Post sent to the correct address of the addressee has duly reached him and it was for the Appellant to rebut the said presumption, which he failed to do. That, there was no reason for the Plaintiff to have sent the monthly rent by Money Order had the Appellant been willing to accept the same and it was this refusal that constrained the Respondent to send it through Money Orders. The Issues were decided accordingly. Issue No.4 of the main Suit was taken up next and it was concluded that the Respondent had been pressurized to sign on Exhibit 'A'. While deciding Issue No.2 of the Counter-Claim the learned Trial Court concluded that the plea of requirement of the suit premises by the Appellant's wife, brothers and mother was made only to evict the Respondent without *bona fide* requirement. In Issue No.3 of the Counter-Claim it was observed that the claims regarding the suit premises/building requiring thorough overhauling were rightly abandoned by the Appellant as he was unable to prove the same. Issue No.5 of the main Suit however came to be decided in favour of the Appellant with the observation that the Respondent had miserably failed to prove unilateral enhancement of rent by the Appellant. In Issue No.2 of the main Suit the learned Trial Court

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concluded that the Respondent had proved harassment caused to him on account of the Appellant's refusal to accept the monthly rent and by pressuring him to sign Exhibit 'A'. Issues No.1 and 6 of the main Suit were decided in favour of the Respondent. Issues No.1, 5 and 6 of the Counter-Claim of the Appellant were found to be not maintainable on the Appellant's failure to establish *bona fide* use or default in payment of monthly rent. In the end result, the Suit of the Respondent stood decreed while the Counter-Claim of the Appellant was dismissed.

8. Before this Court, on the ground of *bona fide* requirement of the suit premises by the Appellant, learned Senior Counsel for the Appellant contended that the family of the Appellant also comprises of his unemployed brothers and ailing mother who is in constant need of medical attention. That, the income of the Appellant does not suffice for the upkeep of his entire family and hence the requirement of employment for his brothers by way of opening business in the suit premises in order to augment the family income. On this count, reliance was placed on ***Joginder Pal v. Naval Kishore Behal***¹ and ***Dwarkanprasad v. Niranjana and Another***². Admittedly, the Appellant and his brothers own landed property in the village with their respective shares demarcated which remain registered in their late father's name besides no income is generated therein. That, although the second, third and fourth floor of the building are

¹2002 (5) SCC 397

²(2003) 4 SCC 549

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being used by the Appellant, it is inadequate for the purposes of beauty parlour and fast food eatery, hence the requirement of the two other floors. That the Appellant's brother DW3 Hari Lall Sharma bolstered the evidence of the Appellant by stating that although he had not submitted either an Unemployment Card issued to him or Income Certificate before the Court, his elder brother requires the suit premises for the purposes as stated by him. Strength was garnered from the ratio in ***Malpe Vishwanath Acharya and Others v. State of Maharashtra and Another***³ and ***Adil Jamshed Frenchman v. Sardar Dastur Schools Trust and Others***⁴. It was vehemently denied that Exhibit A was signed by the Respondent under coercion in the presence of witnesses, and to the contrary was done voluntarily with the assurance of vacating the suit premises and handing over vacant possession to the Appellant in the month of June, 2014. In this context reliance was placed on ***Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited***⁵. That, it is now settled law that it is not necessary to establish that a person is trained or has Licence to take up a profession in the premises, all that is to be established is the *bona fide* requirement and not mere whim or desire of the landlord.

9. On the aspect pertaining to default in payment of rent by the Respondent, it was contended by the Appellant that the learned trial Court erroneously decided Issue No. 3 of the

³(1998) 2 SCC 1

⁴(2005) 2 SCC 476

⁵(2011) 10 SCC 420

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main suit and Issue No. 4 of the Counter-Claim assuming that the rent was sent by Money Order to the correct address, however Exhibit 3 reveals an incorrect and incomplete address. The Postman who allegedly delivered the money was not examined as a witness neither is there any evidence to establish refusal by the Appellant. Exhibit 3 is therefore proof of the fact of default in payment of rent for the months of January 2012 to November, 2013 which remained unreceived due to incorrect address. Rents for the months of December, 2013 to June, 2015 was sent in the Appellant's Jorethang address and duly received by him. It was also argued that the finding of the learned trial Court that the Appellant had been coerced to sign on Exhibit A is an incorrect presumption arrived at sans proof. Besides, despite the Respondent's undertaking to furnish his wife and daughter as witnesses, he failed to comply, thereby, leading to adverse inference against him. On this count reliance was placed on ***Om Prakash and Another v. Mishri Lal***⁶. To buttress his other submissions, reliance was placed on ***Ragavendra Kumar v. Firm Prem Machinery & Co.***⁷, ***Bhupinder Singh Bawa v. Asha Devi***⁸, ***Kailash Chand and Another v. Dharam Dass***⁹, ***Siddalingamma and Another v. Mamtha Shenoy***¹⁰, ***Smt. Jahejo Devi and Others v. Moharam Ali***¹¹ and ***Pratap Rai Tanwani and Another v. Uttam Chand and Another***¹².

⁶(2017) 5 SCC 451

⁷(2000) 1 SCC 679

⁸ (2016) 10 SCC 209

⁹ (2005) 5 SCC 375

¹⁰(2001) 8 SCC 561

¹¹AIR 1988 SC 411

¹²(2004) 8 SCC 490

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10. Rebutting the arguments of the Appellant, learned Senior Counsel for the Respondent urged that the Appellant's averments are false as the negotiations for purchase of the building took place around the year 2010-2011 while the Appellant married only in the year 2014. In this circumstance, the probability of the Appellant having informed the original owner of his intention to buy her property for his wife's beauty parlour is nil. That, in fact, Exhibit A was the outcome of coercion on the Respondent by the Appellant, in the presence of witnesses who were in the Appellant's house at that time. The Appellant also does not possess any Licence to run any business for his brothers while the Licence for his wife was obtained much later, hence the Appellant has not approached the Court with clean hands. It was next contended that no proof whatsoever was furnished to establish that the brothers were dependent on the Appellant or that he requires the suit premises to start a business venture for them. On this count, reliance was placed on ***Deena Nath v. Pooran Lal***¹³. Denying that the Appellant's aged mother would form a part of his family, attention was drawn to the definition of "family" as detailed in the Sikkim Allotment of House Sites and Construction of Building (Regulation and Control) Act, 1985 (for short 'Act of 1985') which describes "family" as father, mother, their minor children and major children living jointly with the parents. It was urged that the definition excludes mother or brothers whose needs cannot be taken into consideration for the purposes of *bona fide*

¹³(2001) 5 SCC 705

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requirement. To fortify this submission, reliance was placed on the ratio of ***State of Gujarat through Chief Secretary and Others v. Savitri Devi***¹⁴ wherein the Hon'ble Supreme Court held that the mother has not been included as a member of the family to the claim in Family Pension from the Government. The evidence furnished by the Appellant would lead to the unequivocal conclusion that it is a mere desire of the Appellant to be in possession of the other floors of the building although law mandates the "genuine need" of the landlord to be proved. Reliance was placed on ***Vengdasalam Pillai v. Union Territory of Pondicherry***¹⁵.

11. While resisting the arguments of the Appellant on the ground of default of payment of rent learned Senior Counsel for the Respondent advanced the argument that the address of the Appellant at Rhenock had been correctly detailed in the Money Orders remitting rent to the Appellant. That, there was only one "Professor S.K. Nepal" in Rhenock at the relevant time. The denial of acceptance of rent by the Appellant after enhancement led to remittance thereof by Money Order. The declaratory suit was a result of the coercion on the Respondent to sign on Exhibit A and refusal to receive the rents remitted by Money Orders. That, the finding of the learned trial Court that there was no unilateral enhancement of rent of the suit premises while deciding Issue No.5 of the main suit is erroneous and hence requires rectification. That in view of the aforementioned

¹⁴(1996) 1 SCC 558

¹⁵AIR 1985 SC 571

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grounds, the Appeal be dismissed. Learned Senior Counsel placed reliance on ***Commissioner of Income Tax, Bombay and Others v. Podar Cement Pvt. Ltd. and Others***¹⁶, ***Vengdasalam Pillai v. Union Territory of Pondicherry***¹⁷, ***State of Gujarat v. Savitri Devi***¹⁸, ***Haricharan Singh v. Shivrani and Others***¹⁹ and ***Deena Nath v. Pooran Lal***²⁰ to fortify this submission.

12. The rival contentions advanced by both learned Counsel have been afforded due consideration as also the evidence and documents on record and the citations made at the Bar. The impugned judgment has been perused.

13. The only point that requires consideration by this Court is:

Whether the Appellant requires the suit premises for his *bona fide* use and whether there was default in payment of rent by the Respondent?

14. It is relevant in the first instance to consider what the Notification of 1949 deals with. In this context it is essential to extract the Notification hereinbelow for convenience;

**"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.

¹⁶(1997) 5 SCC 482

¹⁷AIR 1985 SC 571

¹⁸(1996) 1 SCC 558

¹⁹(1981) 2 SCC 535

²⁰(2001) 5 SCC 705

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Paragraph does not specify that non-payment of rent should be continuously for four months. That having been said, we may now first examine the requirement for *bona fide* use of the Appellant.

15. It is the specific case of the Appellant that his brothers are dependent on him which is supported by the evidence of his brother DW3 Hari Lall Sharma and the wife of the Appellant, DW4 Beena Sharma. She has also reiterated the stand of the Appellant that he is the only member of the joint family to have a Government job and the rest of his brothers also require some work for their livelihood in view of which the Appellant has decided to open a business for them in the suit premises. Although it was argued by the Respondent that no Unemployment Card of the brothers or Licence to establish business was put forth by the Appellant, this is of no assistance to the Respondent's case. In ***Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Others***²¹ the Hon'ble Supreme Court held as follows;

"... 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 this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. ..."

It was also held therein that the tenant cannot dictate terms to the landlord about how he should utilize his own premises. It is the prerogative of the landlord to decide what he seeks to do with his property and how best to utilize it. That apart, it is also

²¹(2005) 8 SCC 252

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now settled law that a person does not require experience in business, all that the Appellant is required to establish before the Court is his *bona fide* requirement. Admittedly the Appellant and his brothers own landed property, duly partitioned, but no income is generated from the said property and they require to set up business in town.

16. In *Siddalingamma and Another (supra)*, the Appellant who was the landlady of the premises sought eviction of the Respondent under Section 21(1)(h) of the Karnataka Rent Control Act, 1961. She was residing at the relevant time in her village home and the requirements as set out in the suit was that her husband was suffering from asthma and respiratory problems for which he required medical treatment and was required to be taken to Bangalore from the village which was situated at some distance. On the demise of her spouse during the pendency of the matter, an amendment was inserted to the effect that the suit properties were required by her on account of her own ill-health. The learned trial Court held that the suit premises was required for the use of the Appellant No. 1 and her family members in view of her ill-health and for the requirement of the children in her family such as better schooling and educational facilities. The Hon'ble High Court in revision held that the husband of the Appellant No. 1 for whose sickness the shifting was required had since passed away and the cause had ceased to exist and thereby dismissed the Eviction Petition. The Hon'ble Supreme Court supporting the judgment of the learned trial Court held that the Hon'ble High Court ought to have

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adopted a realistic and objective approach rather than being skeptical about the landlady's mannerism when the need of the landlady as borne out from the amended pleadings was *bona fide* and not arbitrary, whimsical or fanciful and thus upheld the well reasoned findings of the learned trial Court. These principles hold in good stead in the matter at hand as well.

17. In *Smt. Jahejo Devi and Others (supra)* the Hon'ble Supreme Court would opine that which shop is suited best to the interest of the Respondent is a prerogative of the landlord and the tenant cannot question his choice, therefore even if some houses are vacant and the family of the Respondent (landlord) has become large and the members have become major then the requirement of the suit house is *bona fide* and reasonable. In *Joginder Pal (supra)* the Hon'ble Supreme Court interpreted the meaning of the words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 and observed that the words must receive a wide, liberal and useful meaning rather than a strict or narrow construction. It was further held that the expression that the landlord requires for "his own use," is not confined in its meaning to the actual physical user by the landlord personally but includes the normal "emanations" of the landlord. This would depend on a variety of factors such as interrelationship and interdependence, economic or otherwise between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong. It was also *inter alia* held that his

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own use would also depend on the nature and degree of relationship or the dependence between the landlord and the person who actually uses the premises, the circumstances in which the claim arises and is put forward and the intrinsic tenability of the claim. Although this ratio was also relied on by both parties, I am of the considered opinion that it is of no assistance to the Respondent's case since the Hon'ble Supreme Court was of the firm opinion that the expression "for his own use" arising in the aforementioned statute cannot be narrowly construed. This Court is indeed conscious that the law under consideration is the Notification of 1949 but the principles enunciated by the Hon'ble Supreme Court *supra* apply with equal measure in the instant matter. Besides, "family" as defined in the Act of 1985 *supra* is for the purposes of allotment of house sites inasmuch as if one family is allotted a site by the Government it is expected that the entire family will be accommodated in the building and allotment will not be given individually to each member. This definition cannot be foisted in the instant matter as it was coined for the specific purposes of the Act of 1985 and is relevant thereto and not otherwise. In ***Malpe Vishwanath Acharya and Others*** (*supra*) the Hon'ble Supreme Court while emphasizing the need of social legislations like Rent Control Act striking a balance between rival interests so as to be just, held that, the law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. That while the shortage of accommodation makes it necessary to protect tenants it is coupled with an

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obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. That, socially progressive legislation must have a holistic perception and not a short-sighted parochial approach. The power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also result in constitutional invalidity. The Hon'ble Supreme Court in ***Adil Jamshed Frenchman*** (*supra*) held that the concept of *bona fide* need or genuine requirement needs a practical approach instructed by the realities of life and it is to be assessed whether in the given facts proved by the material on record whether the need to occupy the premises can be said to be natural, real, sincere and honest. The requirement should be so as to convince the Court that it is not a mere fanciful or whimsical desire. In ***Ragavendra Kumar*** (*supra*) the Hon'ble Supreme Court was considering eviction based on *bona fide* requirement of the landlord for starting business. It was held *inter alia* that it is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has complete freedom in the matter and this could not be faulted. The decision in ***State of Gujarat through Chief Secretary and Others*** (*supra*) relied on by the Respondent which disentitles the mother from the pension is with the reasoning that when the widow of the deceased survives him then she

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would be entitled to the pension and the upkeep of the family which would be done from the said amount received. Reliance on this ratio is misplaced as here the property is purchased by the Appellant, it is for him to decide what best use he wants to put it to. That apart it is the duty of a son or daughter to look after their mother for which purpose we may also draw on the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which mandates as follows;

"4. Maintenance of parents and senior citizens.-(1)...

(2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

....."

Cross-examination did not decimate the requirement of the premises of the Appellant's mother on medical grounds.

18. The allegation that there was coercion on the Respondent to sign on Exhibit A cuts no ice since the witnesses who were examined before the learned trial Court being DW2 Hari Bhakta Sharma on a suggestion put to him has denied that the Respondent did not voluntarily desire to vacate the suit premises or that the Respondent was not ready to sign on Exhibit A. DW5 Jagat Sharma also deposed that the Respondent came to the house of the Appellant where the Appellant informed them that the premises were required by him. The Respondent thereupon stated that he would vacate the rented premises in

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six months' time. He denied that he was deposing in favour of the Appellant being of the same caste. He denied that the assembled persons and the Appellant pressurized the Respondent to affix his signature on the *Akarnama* or that the contents thereof were not read over to the Respondent. If this be the circumstance, then, as correctly pointed out by learned Senior Counsel for the Appellant, the Respondent cannot be heard to approbate and reprobate, such conduct is not worthy of approval. Hence on the allegations of coercion by the Appellant on the Respondent to sign on Exhibit A, I have to differ with the findings of the learned trial Court. Besides, Exhibit 'A' has no tangible effect on the merits of the matter in view of the law points involved and is only a peripheral matter with no bearing on the outcome.

19. Coming to the next point as to whether there was default in payment of rent by the Respondent. Section 27 of the General Clauses Act, 1897 provides as follows;

"27. Meaning of service by post.-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, **the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document**, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

(Emphasis supplied)

The learned trial Court observed that the address was sent correctly and the rents consequently delivered. Having examined

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the first page of Exhibit 3 which is collectively in four pages, it is seen that the address is mentioned as "To: Prof. S,K. Nepal (Renock)." This address is consistent for the months of January, 2012 to April 2012. There are no Acknowledgment Cards furnished before the Court to establish as to who received it or who refused to accept the rent. The provision of law extracted hereinabove assumes that service is deemed to be effected *inter alia* only if the address furnished is correct. In the absence of a correct address it cannot be assumed merely because there is only one "Professor S.K. Nepal" in Rhenock that it referred to the Appellant and none else. This could have been a consideration had the place of work been detailed in Exhibit 3. Nothing in this context is revealed in Exhibit 3, hence this is an incorrect submission, finds no credibility in the eyes of the Court and the finding of the learned trial Court on this aspect is erroneous. Consequently I am of the considered opinion that there was default in payment of rent by the Respondent.

20. Although an allegation emanated from the Respondent that there was a unilateral increase in the rent by the Appellant from Rs.3,500/- (Rupees three thousand and five hundred) only, to Rs.8,000/- (Rupees eight thousand) only, and he refused to accept the rent, no proof whatsoever on this count has been advanced, neither are there witnesses and nor is there substantiation of the allegation by way of documentation. Random statements by witnesses without proof cannot be considered by the Court and in fact requires to be castigated.

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21. On the basis of the discussions which have been detailed hereinabove, I find that the Appellant has made out a case for requirement of the suit premises for his *bona fide* use which is not a mere desire nor is it whimsical or dictated by avarice. That apart the evidence reflects default in payment of rent by the Respondent for four months, which ground by itself suffices to evict him from the suit premises.

22. Consequently, the findings of the learned Trial Court on Issues No. 1, 2, 4 and 6 of the Main Suit, Issue No.3 of Main Suit and Issue No.4 of the Counter-Claim and Issues No.1, 2, 5 and 6 of the Counter-Claim are set aside. Issue No.3 of the Counter-Claim was abandoned and requires no orders.

23. The grounds raised by learned Senior Counsel for the Respondent pertaining to the question of Rent Control Tribunal in Sikkim does not merit a discussion herein.

24. Appeal allowed.

25. The Respondent shall vacate the suit premises and hand over vacant possession to the Appellant within five months from today.

26. The Respondent shall pay the arrears in rent for the months of January, 2012 to November, 2013 and from the month of July, 2015 till the time he hands over vacant possession of the suit premises to the Appellant.

27. No interest is ordered on the defaulted rent amount.

28. No order as to costs.

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

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

(Meenakshi Madan Rai)
Judge
04.07.2019

ml

Approved for reporting : **Yes**
Internet : **Yes**