GAHC010120522018

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP No. 76 of 2018

1. Rashmi Deka Baishya,
W/o- Sri Biju Baishya, Proprietor of M/S Charvi Beauty Clinic, Hengrabari Road, P.S. Dispur, Guwahati-06, District- Kamrup(M), Assam.

2. M/S Charvi Beauty Clinic at Hengrabari Road P.S. Dispur Guwahati-06, District- Kamrup(M) Assam, being represented by its Proprietor Smti. Rashmi Deka Baishya, District- Kamrup(M), Assam.

*.....**Petitioners***

-***Versus***-

Tribodh Kumar Das,
S/o- Late Subodh Kr. Das,
R/o- Sukumari, House No. 17, Bhuban Road, Uzan Bazar, Guwahati-01, District- Kamrup(M), Assam.

*.....**Respondent***

- B E F O R E -
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioners : Mr. S. Ali, Advocate

For the Respondent : Mr. S.P. Roy, Advocate

Date of Hearing : 30.11.2021
Date of Judgment : 08.12.2021

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Ali, learned counsel appearing on behalf of the petitioners and Mr. S.P. Roy, learned counsel appearing on behalf of the respondent.

2. This instant revision application has been filed under Section 115 of the Code of Civil Procedure challenging the Judgment and Decree dated 21.05.2018 passed by the Court of the Civil Judge No. 3, Kamrup (Metro) at Guwahati in Title Appeal No. 72/2014 whereby the Judgment and Decree dated 30.06.2014 passed by the Court of Munsiff No. 2 in Title Suit No. 59/2008 was affirmed. The challenge made in the instant proceeding is in two folds. Firstly, both the Courts below without taking into consideration the law applicable held that the petitioner is a defaulter in payment of rent and secondly, the Courts below had also held that the respondent herein is entitled to a decree for eviction on the ground of bonafide requirement.

3. For the purpose of convenience, the parties in the instant proceedings are referred to as per their respective status in the suit.

4. The plaintiff had instituted a Suit being Title Suit No. 59/2005 ejectment of the defendants. The case of the plaintiff in the said suit is that he is the absolute owner of a plot of land measuring 2 Kathas, 12 Lechas covered by Patta No. 29 of Dag No.202/197 of Village-Hengrabari, Mouza-Beltola upon which the plaintiff has a RCC building and the ground floor of the said building consists of 5 (five) shop rooms which have been accessed by the Gauhati Municipal Corporation as Holding No. 813/1155 of GMC Ward No. 43. It is the further case of the plaintiff that all the said shop rooms have been rented out to different tenants of which one of such shop room was rented out to the defendants which admeasures 12x24 feet and the monthly rent was Rs. 2,500/- on the basis of an oral agreement on 01.02.2007. The further case of the plaintiff is that initially after taking on rent, the defendant No. 1 ran her business with decency, dignity with quamnity but subsequently, the said tenanted premises was used for immoral purposes for which a legal notice was issued on 21.09.2007 and thereby requesting the defendants to quit and vacate the suit premises within a period of one month. However, the

defendant did not vacate. The plaintiff has also pleaded that the defendant No. 1 did not pay the rent for the month of November, 2007 onwards and on 15.12.2007, the plaintiff received a registered envelope containing a letter dated 29.11.2007 from the defendant No. 1 whereby the defendant No. 1 informed that she had sent a bank draft bearing No. 484552 dated 29.11.2007 of Rs. 2500/- towards the payment of rent for the month of November 2007 but the said envelope did not contain any such demand draft; rather a xerox copy of the alleged demand draft was annexed to the letter dated 29.11.2007. This aspect of the matter was also brought to the attention of the defendant No. 1 by the plaintiff by the communication also requested the defendant No. 1 to vacate the suit premises as the said suit premises is required to accommodate his son Sri Tridip Das who was unemployed and had got the permission from the authorities concerned for the business of Retrofitting LPG KIT. Instead of vacating the suit premises, the defendant No. 1 vide another communication dated 29.12.2007 sent a demand draft of Rs. 2,500/- as rent towards the month of December, 2007 which was returned by the plaintiff vide a letter dated 05.01.2008 thereby asking the defendant No. 1 to pay the rent in cash. It was also informed by the

communication dated 05.01.2008 that the plaintiff did not receive the demand draft dated 29.12.2007. On the basis of the said averments, the plaintiff states in his suit that the defendants were defaulters in payment for the month of November, 2007 to January 2008 and the defendant have also stopped the payment of electricity charges to the plaintiff though the said electrical charges were part and parcel of the monthly rent. It was also the case of the plaintiff that his son Sri Tridip Das was an unemployed and the suit premises was required to accommodate his unemployed son and as such, the plaintiff had a bonafide requirement of the suit premises. On the basis of the aforementioned averments, the plaintiff sought for ejectment of the defendants from the tenanted premises; for recovery of an amount of Rs. 7,500/- being the arrear rent for the months of November, 2007 to January, 2008; for realization of pendent lite and future rents if the defendants are ejected from the suit premises etc.

5. The defendant Nos. 1 and 2 jointly filed their written statements denying the statements and allegations made in the plaint. It was specifically averred in the written statement that the tenancy started on the basis of the tenancy agreement dated 01.08.1998 in respect of a room measuring 12x12 ft in the same RCC building and at that

relevant point of time the monthly rent was fixed at Rs. 1,000/- which was to be paid within the first week of every succeeding month. It was also mentioned that an amount of Rs. 50,000/- was paid by the plaintiff at the time of entering into the agreement dated 01.08.1998; out of which Rs. 20,000/- was paid as security and Rs.30,000/- as advance and out of the said advance of Rs. 30,000/-, Rs. 500/- was to be adjusted per month against the monthly rent. It was also the further case of the defendants that on 22.04.2004 another amount of Rs. 10,000/- and on 15.10.2004 an amount of Rs. 20,000/- was paid by the defendant No. 1 as advance as a larger room measuring 12x24 feet which was adjacent to the earlier tenanted premises was let out to the defendants by the plaintiff. The defendants therefore averred in their written statements that the said of Rs. 80,000/- was lying with the plaintiff as unadjusted. It was also the pleading in the written statement that the statements made in the plaint to effect that the payment of the rent was to be made in cash is completely false inasmuch as since February 2004, the defendant No. 1 has been regularly making payment of the rent @ Rs. 2500/- by way of cheque. In the said written statement, it was also stated that the allegation of non-payment of rent for the months of November 2007 onwards and

till January 2008 is on the face of it false as the said payment was duly made to the plaintiff in his bank account and in that regard, the defendants further stated that as they had an advance of Rs. 80,000/- which still was lying with the plaintiff, the question of the defendant being a defaulter does not arise. As regards the allegations pertaining to nuisance as alleged in the plaint, the same were duly refuted by the defendant stating *inter alia* that the said allegations are false and fabricated. In respect to the bonafide requirement of the plaintiff, it was stated in the written statement that there was no bonafide requirement. On the basis of the said written statement, defendants sought for dismissal of the suit with exemplary costs.

6. On the basis of the said pleadings, as many as five (5) issues were framed which for the sake of convenience is quoted herein below:

> "*1. Whether there is any cause of action for this suit?*
> *2. Whether the defendants are defaulter?*
> *3. Whether the defendants are causing nuisance?*
> *4. Whether the suit premises is bonafide required by the plaintiffs?*
> *5. To what other relief/ reliefs are the plaintiffs entitled to?"*

7. The plaintiff adduced evidence of four witnesses and exhibited 14 documents. The defendants adduced evidence of four witnesses and exhibited documents from Exhibit A to Exhibit M.

8. The Trial Court decreed the suit in favour of the plaintiff vide the Judgment and Decree dated 30.06.2014 holding *inter alia* that the plaintiff was entitled to evict the defendant from the tenanted suit premises and to recover the vacate possession of the same and further that the plaintiffs were entitled to arrear rent and future rent as prayed for. The Trial Court in respect to issue No. 3 as to whether the defendant was causing nuisance, the same was decided against the plaintiff holding that plea of indecent, immoral activities in the suit premises could not be established by the plaintiff. As regards the issue No. 2 as to whether the defendant was a defaulter in payment of rent, the Trial Court held that the defendant was a defaulter in payment of rent on the ground that the defendant was liable to pay the rent irrespective of whether there was any security money lying with the plaintiffs. The Trial Court had also taken into consideration that there was no valid deposit during the pendency of the suit in conformity with Section 5(4) of the Assam Urban Area Rent Control Act, 1972 (hereinafter for short referred to as "*the Act of 1971*") for which the

defendant was a defaulter. As regards the issue No. 4 as to whether the suit premises was bonafide required by the plaintiffs, it was held that as the son of the plaintiff Sri Tridip Das had undergone treatment under the National Institute of Mental Health and Neuro Sciences and his son has been persistently making attempts for his self-employment and was granted permission by the Commissioner of Transport, Government of Assam for Retrofitting LPG KIT at Guwahati, the plaintiff had a bonafide requirement in respect to the tenanted premises.

9. Being aggrieved, an appeal was preferred by the petitioner herein which was registered and numbered as Title Appeal No. 72/2014. The Court of the Civil Judge No. 3, Kamrup (M) at Guwahati by the Judgment and Decree dated 21.05.2018 dismissed the said appeal thereby affirming the Judgment and decree passed by the Trial Court dated 30.06.2014. In doing so, the first Appellate Court held that the defendant was a defaulter in payment of rent on the ground that the defendant failed to tender/pay the rent for the months of November, 2007 and December, 2007 (on 7th day of next following months or within fortnight i.e. in the months of December, 2007 and January, 2008) as per the agreed conditions or as per Section 5(4) of

the Act of 1972. It was also held by the Appellate Court that during the period of the trial the defendants failed to adduce evidence showing deposit of rent or process fee or even that the rent was deposited in accordance with the provisions of the Act of 1972. As regards the contention pertaining to advance rent, the first Appellate Court held that the said advance amount lying with the plaintiff cannot absolve the defendant No. 1 from her duty and liability to tender the amount of rent payable as per the agreed terms or as per law.

10. In so far as the question of bonafide requirement, the first Appellate Court held that the plaintiff had a bonafide requirement in respect to the suit premises as the petitioner required the suit premises for setting up to accommodate his unemployed son.

Feeling dissatisfied and aggrieved by the concurrent finding of facts in respect to the findings pertaining to the defendants' default in payment of rent and that the plaintiff bonafidely required the suit premises, the defendants as petitioners are before this Court in exercise of the revisional jurisdiction under Section 115 of the Code of Civil Procedure.

11. Before embarking upon the merits of the case, it would be relevant to take note of that, that this is a proceeding under Section 115 of the Code of Civil Procedure, whereby the revisional jurisdiction of this Court has been invoked. It must be noted that the Revisionsal Court is not the 2nd Court of First Appeal and as such, the question of re-appreciating the evidence does not arise. What can be exercised in a proceeding, while exercising the revisional jurisdiction is to look into as to whether there has been an error in exercise of the jurisdiction and/or there has been any illegality by overlooking or ignoring the material evidence altogether, or the finding of the Courts below suffers from perversity, or any such illegality or such finding has resulted in gross mis-carriage of justice. In other words, interference with an incorrect finding of fact for the purpose of exercising revisional jurisdiction must be understood in the context, where such findings is perverse, based on no evidence or mis-reading of evidence, or on the ground of perversity or such findings has been arrived at by ignoring or overlooking the material evidence or such finding is so grossly erroneous, if that is allowed to stand, will occasion in mis-carriage of justice.

12. Let me take into consideration the contentions raised by the parties before this Court. Mr. S. Ali, learned counsel appearing for the petitioners submits that the issue pertaining to default of payment of rent has been wrongly decided without taking into consideration that an advance amount of Rs. 80,000/- is still lying with the plaintiff and as such, the defendant cannot be held to be a defaulter in payment of rent. He further submitted that in the said suit, the question which was raised are that the defendant had committed default in payment of rent for the months of November 2007, December 2007 and January, 2008 which was an amount of Rs. 7,500/- and there was no application filed to bring on record that subsequently the defendants during the pendency of the suit the defendants defaulted and in absence thereof both the Courts below could not have held that during the pendency of the suit the defendants did not pay the rent and consequently, both the Courts could not have looked into any default beyond what has been mentioned in the plaint. In that regard, Mr. S. Ali, learned counsel submits that the Judgment of the Division Bench of this Court in the case of ***Sobha Biswas Vs. Ranjit Lodh*** reported in ***(2006) 1 GLT 479*** wherein it was categorically held that if there is no payment of rent being made during the pendency of the suit, it is

the responsibility of the plaintiff/landlord to draw the attention of the Court about the fact of non-payment of rent by way of an application which would have given an opportunity to the defendants/tenants to controvert such statements and adduce evidence properly in that regard. He further submitted that the law is well settled by the Supreme Court in various Judgments, i.e., ***M/s Sarwan Kumar Onkar Nath Vs. Subhas Kumar Agarwalla*** reported in ***(1987) 4 SCC 546***; ***Modern Hotel, Gudur Vs. K. Radhakrishnaiah and Ors***. reported in ***(1989) 2 SCC 686***; ***M.K. Mukunthan Vs. M. Pasupathi*** reported in ***(2001) 6 SCC 13***; ***Manik Chand Jain Vs. Modh. Ahiya*** reported in ***(2017) 13 SCC 199*** and ***Mohd. Salimuddin Vs. Misri Lal and Anr***. reported in ***(1986) 2 SCC 378*** to the effect that without adjustment of the advance amount, the tenant cannot be held to be in arrears and consequently, a defaulter in payment of rents. He further submits that the cross-examination of the plaintiff witness No.1 who is the plaintiff himself clearly go to show that there were amounts lying with him which far exceeded the alleged default in payment of rent. Mr. S. Ali, learned counsel submits that the claim as regards the bonafide requirement is nothing but fanciful and a mere desire. It is not at all bonafide and the plaintiff has

various other tenanted premises and to pick and choose the petitioner clearly goes to show the vindictive nature of the plaintiff to oust the petitioner by hook or by crook for which the requirement cannot be said to be bonafide. He further submits that the plaintiffs have claimed bonafide requirement on the basis of an order issued by the Commissioner of Transport, Government of Assam for Retrofitting LPG KIT and the said order of the Commissioner of the Transport is no longer in existence because in Assam, the Transport Department has not taken up Retrofitting of the said LPG KIT. He further submits that during the pendency of the litigation i.e., from the date of initiation of the litigation till the litigation is finally over, it is the requirement of law that the landlord has to show that he continues to bonafidely require the suit premises. There is nothing on record to show that the landlord/plaintiff has proven that aspect to the matter. In that regard, he placed reliance upon Judgments of the Supreme Court rendered in the case of ***Hasmat Rai and anr. Vs. Raghunath Prasad*** reported in ***(1981) 3 SCC 103*** and ***Variety Emporium, Vs. V.R.M. Mohd. Ibrahim Naina*** reported in ***(1985) 1 SCC 251***. He further submits that from the cross-examination of the D.W.-1, it could be seen that she had stated that in the year 2012, a portion of the RCC building

was rented out for the purpose of a Lodge and as such he submits that during the pendency of the litigation, the bonafide requirement of the plaintiff had eclipsed.

13. On the other hand Mr. S.P. Roy, learned counsel for the respondent/plaintiff submits that the defendants were defaulters in payment of rent for the months of November 2007, December 2007 and January 2008 and there being no payment made in accordance with the agreement between the parties or in terms with the provisions of the Act of 1972, the Courts below have rightly held that the petitioners/ defendants were defaulters in payment of rent. He further submitted that it is the duty of the tenant to pay the rent and tenant cannot dictate when the landlord is required to adjust from the advance rent. In that regard, he refers to a Judgment of the Supreme Court rendered in the case of ***Raminder Singh Sethi Vs. D. Vijayarangam*** reported in ***(2002) 4 SCC 675***. As regards the bonafide requirement, Mr. Roy submits that this is question of fact which have already been adjudicated by the fact finding Courts and there being no perversity in the said findings and more so, the plaintiff continues to have bonafide requirement in respect to the suit premises. He submits that the submission of Mr. Ali to the effect that

the plaintiff/landlord is required to show bonafide requirement of the suit premises till the finality of the litigation is completely misconceived. And in that regard, he submits that once the fact finding Court i.e. the Trial Court or the first appellate Court had already come to a finding that the suit premises is required for bonafide requirement, the burden shifts upon the tenant/the defendants to show that the bonafide requirement of the plaintiff has eclipsed during the pendency of the litigation. However, nothing had been shown by the defendants to that effect and consequently, the reliance upon the Judgments of the Supreme Court in the case of ***Hasmat Rai (Supra)*** and ***Variety Emporium(supra)*** are totally misconceived.

14. I have heard the learned counsel for the parties at length and perused the records. Let me take first the question as regards as to whether the defendants are defaulter in payment of rent. From the records, more particularly the plaint, it transpires that the plaintiffs have alleged that there was a default in payment of rent for the months of November 2007, December 2007 and January 2008. It is well established that the suit is to be adjudicated on the basis of the cause of action as it exists on the date of filing of the suit.

15. The Judgment of the Division Bench of this Court in the case of ***Sobha Biswas (Supra)*** at paragraph No. 15 had held that subsequent facts as regards non-payment of rent can be brought on record by way of proper application and manner for due consideration. However, admittedly such steps were not taken. The cross-examination of the P.W.-1 who happens to be the plaintiffs in so far as the payment of advance amount is concerned being relevant for the purpose of deciding the instant lis is quoted herein below:

> *" As per tenancy agreement of 1998 , I had taken an amount of Rs. 50000/- from the defendant of which Rs. 20000/- is security and Rs. 30000/- as advance.*
>
> *Rs. 30000/-was supposed to be adjusted towards rents at Rs. 500/- per month.*
>
> *I have adjusted a sum of Rs. 33000/- upto January 2004 and I refunded a sum of Rs. 13000/- to the defendant.*
>
> *I have received a sum of Rs. 10000/- as advance from the defendant by Cheque No. 485838 dated 22.04.2004.*
>
> *I received another sum of Rs 20000/- as advance from defendant by cheque No. 862752 dated 15.10.2004"*

16. Another aspect of the matter which requires to be taken into consideration at this stage is Exhibit-Ka which would show that since 13.05.2004, the payment of the rent has been paid to the plaintiff by the defendant by way of Cheque/Bank Transfer of an amount of Rs.

2,500/- per month and further to that the entry made on 06.02.2018 in Exhibit-Ka, an amount of Rs. 7,500/- was transferred to the plaintiff.

17. Both the Courts below held that the defendants were defaulters in payment of rent on the basis that the defendants had not paid the rent for the months of November 2007, December 2007 and January 2008 as per the agreement or in terms with the provisions of the Act of 1972 and further, during the pendency of the suit, the amount deposited in the Court was not in accordance with Section 5(4) of the Act of 1972. In view of the said finding by both the Courts below, the question therefore arises as to whether the Courts below have committed any jurisdictional error in not taking into consideration the advance lying with the plaintiff/respondent herein. From the evidence on record, one thing is clear that an amount of Rs. 10,000/- and Rs. 20,000/- paid on 22.04.2004 and 15.10.2004 are lying as advance with the plaintiffs. Now therefore, the question arises as to whether that the defendants can be held to be defaulters in payment of rent. In this regard, the Judgment of the Supreme Court, rendered in the case of ***M/s Sarwan Kumar Onkar Nath (Supra)*** which is a Judgment of three Judges at paragraph Nos. 3 and 4 observed as follows:

*"**3.** In Mohd. Salimuddin v. Misri Lal [(1986) 2 SCC 378 : (1986) 1 SCR 622] this Court has held that where in a suit by landlord for eviction of tenant it was found that the tenant, in order to secure the tenancy advanced certain amount to the landlord (although in violation of prohibition to do so as embodied in Section 3 of the Act) under an agreement containing a stipulation that the loan amount was to be adjusted against the rent which accrued, and the amount so advanced was sufficient to cover the landlord's claim of arrears of rent for the relevant period, it could not be said that the tenant was not entitled to claim adjustment of the loan amount so advanced against the rent which accrued subsequently, simply because the loan advanced was in violation of the prohibition contained in the Act. Accordingly, this Court held that as the tenant was not in arrears of rent after the adjustment of loan amount towards the rent, he was not liable to be evicted from the premises in question. This Court further observed that the doctrine of in pari delicto was not attracted to such a situation. The principle enunciated in the above case is equally applicable to the case before us.*

***4.** The learned Counsel for the respondent, however, relied upon a Full Bench decision of the High Court of Patna in Gulab Chand Prasad v. Budhwanti [AIR 1985 Pat 327] in which it had been held that any excess rent paid by a tenant to his landlord in pursuance of a mutually agreed enhancement of rent which was illegal did not get automatically adjusted against all the subsequent defaults in the payment of the monthly rent under the Act. The decree for eviction passed by the High Court of Patna in the above case has no doubt been affirmed by this Court in Budhwanti v. Gulab Chand Prasad [(1987) 2 SCC 153] . But, this Court affirmed the judgment of the High Court not on the ground that the tenant in that case was a defaulter in payment of rent but on the ground that the landlord required the premises for his bona fide use and occupation. This Court in its judgment observed that: (SCC p. 158, para 10)*

"In the view we propose to take . . . we do not think it necessary to go into the question whether the appellants had committed default in payment of rent and secondly even if they had committed default, they are entitled to adjust the excess rent paid by them over a span of 30 years without reference to the rule of 'in pari delicto'. The reason for our refraining to go into these questions is because we find the decree for eviction passed against the appellants can be sustained on

the second ground viz. bona fide requirement of the shop for the business requirements of the members of the joint family."

It is not now necessary for us to consider the correctness of the observation made by the Full Bench of Patna High Court on the question of default and the right of the tenant to claim adjustment because what was claimed by way of adjustment in the said case was a certain excess amount paid over a long period of 30 years as enhanced rent under a mutual agreement though such payment was contrary to law. But in the case before us the amount of Rs 140 had not been paid as enhanced rent under any such agreement. It was, in fact, an amount which had been paid in advance which was liable to be adjusted whenever it was necessary or required."

18. Again in the case of ***Modern Hotel, Gudur (Supra),*** the Supreme Court after taking into accounts the Judgment in ***Mohd. Salimuddin(Supra)*** *and* ***M/s Sarwan Kumar Onkar Nath(supra)*** held at paragraph No. 10 that the tenant cannot be held to be a default when the landlord already is holding to an amount which would cover the arrears. Paragraph 10 of the said Judgment is quoted herein below:

"10. *Mr. Rao building upon the ratio of these two decisions rightly contended before us that when the landlord had Rs 5000 on tenant's account with him which he was holding for years without paying interest and against the clear statutory bar there could be no justification for granting a decree of eviction on the plea of arrears of rent. In view of the fact that the stipulation that the amount would be refundable at the end of the tenancy is null and void under Section 7(3) of the Act, the amount became payable to the tenant immediately and the landlord with Rs 5000 of the tenant with him could not contend that the tenant was in default for a smaller amount by not paying the rent for some months."*

19. Further to that in the case of ***Manik Chand Jain(Supra),*** the Supreme Court after taking into consideration that after adjustment of the entire advance amount, there was a default of an amount of Rs. 7,614/- and as such held the tenant was a defaulter.

20. At this stage, the Judgment of the Supreme Court in the case of ***Mohd. Salimuddin (Supra)*** at paragraph Nos. 1 and 4 being relevant is quoted herein below:

> ***"1****. One cannot conceive of a greater judicial sin than the sin of treating the "oppressor" and the "oppressed" on a par. Or that of rewarding the oppressor and punishing the oppressed whilst administering the law designed to protect the oppressed. We would be guilty of committing this sin if we upheld the view that the tenant who advances a loan to the landlord in order to secure the tenancy (in violation of the prohibition to do so embodied in the statute enacted for his benefit) is in pari delicto. And that the court will not assist the tenant in claiming adjustment of the loan amount against the landlord's claim for rent.*
>
> ***4.*** *The view taken by the High Court is unsustainable inasmuch as the High Court has lost sight of the fact that the parties to the contract were unequal. The tenant was acting under compulsion of circumstances and was obliged to succumb to the will of the landlord, who was in a dominating position. If the tenant had not agreed to advance the loan he would not have been able to secure the tenancy. It was the landlord who was in the position of an oppressor who wanted to exploit the situation obtaining in the context of the acute housing shortage which prevailed. The tenant had either to yield to the unlawful demand of the landlord or go without a roof, for, otherwise, the landlord would not have granted the lease. The relevant provision prohibiting the payment of rent in advance embodied in the Rent Act was enacted precisely to protect the tenant from such exploitation. Obviously, he had to succumb to such exploitation, the protective law notwithstanding, as he would have*

been obliged to remain roofless. The law extended the protection but did not guarantee the roof. To deny access to justice to a tenant who is obliged to yield to the unlawful demands of the landlord in this scenario by invoking the doctrine of pari delicto is to add insult to injury, and to negate the very purpose of the provision designed for his protection. The doctrine of pari delicto is not designed to reward the "wrongdoer" or to penalize the "wronged", by denying to the victim of exploitation access to justice. The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily and by their free will joined hands to flout the law for their mutual gain. Such being the position the said doctrine embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a court of law is not attracted in a situation like the present. The law enunciated by this Court in V.S. Rahi v. Smt Ram Chambeli [(1984) 1 SCC 612 : (1984) 2 SCR 290] to which one of us (Venkataramiah, J.) was a party fully buttresses this proposition. Says the Court speaking through Venkataramiah, J.: (SCC p. 618, para 11)

"The above view is fully in consonance with the spirit behind the rule of oppression which is recognised as an exception to the doctrine that a party cannot recover what he has given to the other party under an illegal contract. "It can never be predicated as pari delicto where one holds the rod and the other bows to it" (Per Lord Ellenborough in Smith v. Cuff [(1817) 6 M & S 160, 165]). Cases which call for appropriate relief to be given to an innocent party where "one has the power to dictate, the other has no alternative but to submit" are not uncommon. Cheshire and Fifoot's Law of Contract (10th Edn.) refers to another type of case belonging to this category. At page 338 of that treatise is the following passage:

"Another type of case where the parties are not regarded as equally delictual is where the contract is rendered illegal by a statute, the object of which is to protect one class of persons from the machinations of another class, as for example where it forbids a landlord to take a premium from a prospective tenant. Here, the duty of observing the law is placed squarely upon the shoulders of the landlord, and the protected person, the tenant, may recover an illegal premium in an action for money had and received, even if the statute omits to afford him this remedy either expressly or by implication. In the words of Lord Mansfield:

> *Where contracts or transactions are prohibited by positive statutes, for the sake of protecting one set of men from another set of men: the one from their situation and condition being liable to be oppressed and imposed upon by the other; there the parties are not in pari delicto; and in furtherance of these statutes, person injured after the transaction is finished and completed, may bring his action and defeat the contract."*

21. The two Judges of Bench of the Supreme Court in the case of ***Raminder Singh Sethi (Supra)*** at paragraph No. 4 had held that in spite of the landlord having the amount of the advance rent with him, the tenant is bound to pay or tender the amount of rent falling due month by month on the date which is payable as per law or contract. In this regard Paragraph No. 4 is quoted herein below:

> ***4.*** *Every tenant is obliged to pay or tender rent to the landlord within 15 days of the month to which the rent relates. The purpose of advance rent is to protect the landlord from the unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with the arrears. The advance rent is available for adjustment or is liable to be refunded at the time of vacating of the premises except where the law or the contract between the parties provides to the contrary. We have already noticed that the provisions of the Act do not apply to the premises and, therefore, the landlord was not prevented by law from securing advance payment of rent by consent of the parties. It is not the case of the tenant that the contract between the parties provides for adjustment of rent no sooner it fell into arrears from out of the amount of advance rent. In short, the appellant tenant was not absolved of his obligation to pay the rent due month by month in spite of an amount of advance rent being available with the landlord. The High Court has rightly discarded the submission made on behalf of the appellant tenant that the landlord while serving the notice of demand on the tenant should have himself allowed an adjustment of the amount of the advance rent against the arrears and should have confined his demand only to such amount in arrears as exceeded the amount of advance rent or*

should have waited till the amount of rent in arrears had accumulated to exceed the amount of advance rent. In spite of the landlord having the amount of advance rent available with him the tenant is bound to pay or tender the amount of rent falling due month by month on the date on which it is payable as per law or contract.

22. However, the facts and circumstances on which the Supreme Court in the case of ***Raminder Singh Sethi (Supra),*** had made the above quoted observations is required to be looked into. It is relevant to take note of Paragraph No. 2 wherein it has been categorically held that the details of the arrears and advance rent are not relevant; suffice it to say if the amount of advance rent is adjusted against the amount of arrears found due and payable by the tenant then he is not in arrears. In that view of the matter Paragraph No. 2 of the said Judgment is quoted herein below:

2. *The High Court has found that on the date of initiation of proceedings, the appellant tenant was in arrears of rent which he neither paid nor tendered within two months of the date of service of notice on him demanding payment of the arrears of rent. However, it has also been found that the appellant tenant had paid some amount by way of advance rent at the time of creation of tenancy. The details of the arrears and the advance rent are not relevant; suffice it to say if the amount of advance rent is adjusted against the amount of arrears found due and payable by the tenant then he is not in arrears. On the other hand, if the amount of advance rent is not available for adjustment then the tenant is in arrears. Another relevant fact which is not in controversy is that the building wherein the tenancy premises are situated was constructed in the year 1977 when the tenant was inducted into the tenancy premises. The period of default in payment of rent is referable to the years 1978 to 1980. The eviction*

proceedings were commenced in the year 1982 when the period of 5 years from the date of construction of the building had not expired.

(Emphasis Supplied)

23. Thus, from the above, it would be seen the law as regards default of the tenant as rent in the case advance lying with the landlord would be that when the arrears of the particular period do not cover the advance amount lying with the landlord; and upon being adjusted then also the tenant is in arrears; then the tenant would be regarded as is arrears and consequently a defaulter in payment of rent.

24. Now coming to the facts of the instant case, admittedly an amount of Rs. 30,000/- is lying with the plaintiff as advance and the default which has happened is only of an amount of Rs. 7,500/-. Consequently, the defendant could not be held to be a defaulter as regards payment of rent. The Judgment in the case of ***Raminder Singh Sethi (Supra)*** has been delivered in the peculiar facts of the case and have also categorically held that if the amount of advance rent is adjusted against the amount of arrears found due and payable by the tenant then the tenant is not in arrears. In view of the above, the findings of the Courts below arrived at without taking into consideration the proper proposition of law more particularly the

Judgment of the three Judges Bench of the Supreme Court rendered in the case of ***M/s Sarwan Kumar Onkar Nath (Supra),*** I am of the considered opinion that interference is called for in so far as the findings arrived as to whether the defendants are defaulters in payment of rent. As already stated herein above, the plaintiff has not filed any application to bring on record, the subsequent events relating to non-payment of rent during the pendency of the trial. Paragraph Nos. 15 and 16 of the Judgment of ***Sobha Biswas (Supra)*** is quoted herein below:

> *15) It is always open to a party to a civil litigation to bring to the notice of the Court any subsequent fact or event having relevance to the issue involved in a lis for just, proper, and effective disposal of the dispute and to do complete justice between the parties. There is an underlying public policy behind it that a litigation must come to its finality resolving the disputes raised in the litigation. An ejectment suit under the Assam Rent control Act is tried as civil suit as per the procedure prescribed by the Code of Civil Procedure and there is no specific Rant Control Court in the State of Assam. Court is defined under Section 2 (a) of Act as court of ordinary civil jurisdiction. As discussed herein above, the scheme of the act provides that it is the duty and obligation of a tenant to pay the lawful rent due to the landlord so long as the tenant occupies the premises. During the continuation of the eviction proceeding the tenant is not absolved from paying the rent due. Accordingly, in the event there occurs any default at such stage, it is always open to the land lord to bring this fact to the notice of the court by proper application and manner, for its due consideration. On putting on record such subsequent facts or events the land lord will certainly get an opportunity to rebut the same. The decision of the learned Single Judge rendered in Mahadeo Prasad Agarwala (supra) to the effect that the cause of action of the suit on default in payment of rent for a particular period having been*

pleaded specifically, default for subsequent period cannot be taken into consideration for characterizing the tenant as a defaulter, is a finding per in curium, the learned Single judge came to the said finding inter alia on the basis that the land lord of that case having claimed damage @ 25/- per day for subsequent period such a plea will not be available to him and the non payment of monthly rent for such period is not to be considered for determining the point of defaulter. In our considered opinion, the said decision does not lay down any specific law to the effect that subsequent events cannot be considered. Accordingly, the said decision has no binding force as a precedent or otherwise.

(16) The other decision of this court as rendered in Abdul Matin Choudhury and anr (supra) to the effect that the liability to pay the rent by a tenant shall subsist all through the proceeding even when the matter is pending before the highest court and if at any point of time the land lord by prudent manner can bring to the notice of the court that even during the pendency of the proceeding the tenant has failed to discharge his liabilities and right to pay rent in favour of the land lord to get the decree for ejectment under the Act, is arrived at gaining support from the decisions rendered in L. P. A. 11/76 (R. C. Basak Vs. D. N. Pandit). In our considered opinion the said principle declared by the learned single Judge is in consonance with the scheme and object of the Act and has laid down the correct proposition of law in this regard. Accordingly, answering the referred question, we hold that a land lord can bring on record by proper method the subsequent event or facts such as default in payment of rent by the tenant during the pendency of the eviction of proceeding against him and on making such prayer the tenant would be entitled to object the same, if so desire. If the learned court finds that the tenant has defaulted in payment of such rent during the pendency of the ejectment proceeding, the court would be within its jurisdiction to pass an order of ejectment treating the tenant as a defaulter and pass appropriate orders thereon in the same suit. The land lord cannot be subjected to file successive suits for ejectment on the occasion of every default of the tenant, committed during the pendency of the eviction proceeding."

25. A perusal of the said Judgment would categorically go to show that if those subsequent events as regards non-payment of rent

during the pendency of the suit is to be taken into account by the trial Court, a proper application is required to be filed bringing on record such subsequent events/facts which then shall enable the tenant to controvert the said allegations. In the instant case, there being no such application so filed, both the Courts below could not have taken into consideration the subsequent events as regards default of payment of rent. Accordingly, the decision of the Courts below as regards the default in payment of rent for the months of November 2007, December 2007 and January 2008 and for subsequent periods pursuant to the filing of the such suit is reversed. The above observations is in respect to subsequent defaults in payment of rent after filing of the suit is only limited to eviction on the ground of default in payment of rent. The said observation does not debar the landlord to realize the rent for the subsequent defaults during the pendency of the litigation for eviction and in that regard the landlord would be entitled to file an execution application in respect to the subsequent defaults for claiming the rent and the Executing Court after giving an opportunity to the tenant could decide on the question of entitlement as regards the subsequent periods of rent during the pendency of the ejectment proceedings.

26. The next question which arises as to whether the plaintiff had bonafide requirement of the suit premises is a question of fact which had been held concurrently in favour of the plaintiff. However, the learned counsel appearing for the petitioners submits that both the Courts failed to take into consideration that the subsequent events or in other words that the bonafide requirement of the plaintiff had ceased to exist inasmuch as the bonafide requirement of the plaintiff was based upon an order the Commissioner of Transport for setting up an unit in respect of Retrofitting LPG Kit. The said order has now become infructuous due to the passage of time and as such, the plaintiff does not have the bonafide requirement in respect to the suit premises.

27. To appreciate the submissions made by the petitioners, it would relevant to refer to the Judgment of the Supreme Court rendered in the case of ***Pratap Rai Tanwani and Anr Vs. Uttam Chand and Anr***. reported in ***(2004) 8 SCC 490*** wherein the Supreme Court explains how the subsequent events in respect to bonafide requirement is to be taken note of by the Court after dealing with the various Judgments of the Supreme Court starting from ***Hasmat Rai***

(Supra). Paragraph Nos. 7 to 17 being relevant is quoted herein below:

> ***"7.*** *It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.*
>
> ***8.*** *We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of the petition. In Ramesh Kumar v. Kesho Ram [1992 Supp (2) SCC 623] a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)*
>
> *"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."*
>
> ***9.*** *The next three-Judge Bench of this Court which approved and followed the above decision in Hasmat Rai v. Raghunath*

Prasad [(1981) 3 SCC 103] has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."

10. *The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system, it shatters the confidence of the litigant, despite the impairment already caused.*

11. *The above position in law was highlighted in Gaya Prasad v. Pradeep Srivastava [(2001) 2 SCC 604] .*

12. *One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as "bona fide requirement", "genuine need", "requires reasonably and in good faith", and so on. Whatever be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.*

13. *In Ram Dass v. Ishwar Chander [(1988) 3 SCC 131] M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judge Bench, said: (SCC pp. 134-35, para 11)*

"11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as 'bona fide requirement', 'reasonable requirement', 'bona fide and reasonable requirement' or, as in the case of the present statute, merely referred to as 'landlord requires for his own use'. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the court considers it reasonable and therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

14. *In Gulabbai v. Nalin Narsi Vohra [(1991) 3 SCC 483] reiterating the view taken in Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273] it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.*

15. *Recently, in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222] this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If*

the answer be in the positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self-occupation than what has been already stated in the three precedents.

16. *The above position has remained unaffected in Atma S. Berar v. Mukhtiar Singh [(2003) 2 SCC 3] .*

17. *In the background of the factual position one thing which clearly emerges is that the High Court had considered the subsequent events which the appellants highlighted and tend to hold that the bona fide need continues to subsist. As observed in Hasmat Rai case [(1981) 3 SCC 103] the appellate court is required to examine, evaluate and adjudicate the subsequent events and their effect. This has been done in the instant case. That factual finding does not suffer from any infirmity. What the appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return and not a certainty, which is necessary to be established to show that the need has been eclipsed."*

28. Further to that, the Supreme Court in another Judgment in the case of ***Sait Nagjee Purushotham & Co. Ltd vs. Vimalabai Prabhulal and Ors***. reported in ***(2005) 8 SCC 252*** at Paragraph-7 held as follows:

"7. *In the case of Pratap Rai Tanwani v. Uttam Chand [(2004) 8 SCC 490] it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition. Their Lordships further observed that the normal rule is that the rights and obligations of the parties are to be determined on the date of the petition and that subsequent events can be taken into consideration for moulding the reliefs provided such events had a material impact on those rights and obligations. It was further observed by Their Lordships that it is a*

stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. Therefore, the courts have to take a very pragmatic approach of the matter. It is common experience in our country that specially landlord-tenant litigation prolongs for a long period. It is true that neither can the person who has started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed unless the subsequent event materially changed the ground of relief."

29. From both the Judgments quoted herein above the settled law that emerges is that the bonafide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will be relevant for moulding the reliefs provided such events have a material impact on those rights and obligations. In other words, the question of bonafide requirement is to be adjudged as on the date of the filing of the suit and it is the burden of the plaintiff or the landlord to prove the said aspect of the matter. If during the pendency of the litigation, if any subsequent event occurred which disentitles the landlord to eviction on the ground of bonafide requirement, it is the burden upon the tenant to prove that such bonafide requirement of the landlord has eclipsed as it is the tenant who seeks to disentitle the landlord a decree for eviction on subsequent events.

30. In the backdrop of the above, if we first see the pleadings, the plaintiff had averred that for his son who is unemployed and also not in good health, the suit premises is required for the purpose of accommodating him as the said suit premises is of the required size and measure. To the same averment made, the defendants have only denied the said statement in their written statement. In that regard, the plaintiff has in paragraph Nos. 15 & 16 of the evidence on affidavit, given evidence to the effect that for the son of the plaintiff the suit premises is bonafidely required. The other plaintiff's witnesses have also given similar testimony. Strangely enough there has been no cross-examination on that aspect of the matter and the said evidence remains dislodged. On the basis of the said evidence, the Courts below have come to a finding that the suit premises is required bonafide by the plaintiff for his son. This is a finding of fact and I do not see any perversity in the said finding. As regards subsequent event, the learned counsel for the petitioners submits that the order passed by the Commissioner of Transport had already become infructuous due to prolong litigation between the plaintiff and the defendants and as such there is no bonafide requirement. However, the learned counsel for the petitioners fails to take note of the fact that the bonafide

requirement of the plaintiff is based on the fact that the plaintiff's son is unemployed and the said suit premises is required for accommodating him into some employment. This still continues and there has been no materials brought on record by the petitioners'/defendants herein to disentitle the plaintiff for a decree of ejectment on the ground of bonafide requirement after the filing of the suit. In this regard, the Judgment of the Supreme Court in the case of ***Sait Nagjee Purushotham(Supra)*** at paragraph No.4, 5 and 6 being relevant is quoted herein below:

> ***"4.*** *First of all we shall take up the question of bona fide need of the landlords. So far as the partition of the property and the present premises coming to the share of the landlords are concerned, there is no dispute that the portion of the building has come to the share of the landlords and they are the owners as a result of the partition of the family properties. But the question is whether the landlords who are the owners of the portion of the building have substantiated the allegation with regard to the bona fide need or not. We have gone through the findings of the trial court as well as that of the Appellate Authority and the High Court and after closely scrutinising the same, we do not think that the finding recorded by the appellate court and the High Court can be interfered with by this Court on the ground of being perverse or without any basis. The landlords have led evidence to show that one of their sons who had requisite qualification for starting a computer institute wants to establish the same at Calicut and others for extension of their business. The trial court as well as the first appellate court and the High Court examined the statements of PWs 2 and 3 and after considering their evidence, the appellate court reversed the finding of the trial court and held that the need of the respondent landlords to start a business at Calicut, is bona fide and genuine. It was held that it cannot be said that a person who is already having a business at one place cannot expand his business at*

any other place in the country. It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. 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 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. However, the trial court held in favour of the appellant tenant. But the appellate court as well as the High Court after scrutinising the evidence on record, reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides.

5. *Learned counsel for the appellant submitted that in fact this plea of either starting business or expanding it at Calicut is nothing but a sham and it was also pointed out that some of the sons have multifarious activities and are already established in some other business and one of the sons i.e. Respondent 9 had already gone to the United States of America and he has settled there. Therefore, the need is not bona fide. We fail to appreciate that when two sons are there and if they want to expand their business at Calicut then it cannot be said that the need is a sham one. It is not possible for the landlords and their sons to wait till the disposal of the case. They have to do something in life and they cannot wait till the appellant is evicted from the premises in question. It is common experience that landlord-tenant disputes in our country take a long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not bona fide. It is alleged that one of the sons of the landlords has settled in the USA. That does not detract from the fact that the other sons of the landlords want to expand their business at Calicut. Indian economy is going global and it is not unlikely that prodigal sons can return back to the motherland. He can always come back and start his business at Calicut. On this ground we cannot deny the eviction to the landlords.*

> ***6.*** *In support of the plea of bona fide requirements by the landlords, learned Senior Counsel for the respondents sought to support the same by placing reliance on the decision of this Court, in the case of Ramkubai v. Hajarimal Dhokalchand Chandak [(1999) 6 SCC 540] in which it was observed that B was unemployed on the date of filing of the suit but in the meanwhile started some business and in that context, Their Lordships held that he cannot be expected to idle away the time by remaining unemployed till the case was finally decided. It was held that if the eldest son was carrying on business along with his mother, that does not mean that his need has not been established for starting his own business."*

31. Further to that in another Judgment of the Supreme Court in the case of ***Raghunath G.Panhale*** *(DEAD) BY LRS* ***Vs. Chaganlal Sundarji and Co***. reported in ***(1999) 8 SCC 1*** at Paragraph Nos. 9, 10 and 11 is quoted herein below:

> ***"9.*** *Next comes the decision of this Court in A.K. Veeraraghava Iyengar v. N.V. Prasad [AIR 1994 SC 2357] . In that case, this Court observed that the need was bona fide and that the tenant failed to adduce any evidence against the "experience of landlord, his financial capacity and his readiness and willingness to start jewellery shop". In Vinay Kumar v. District Judge, Ghazipur [1995 Supp (2) SCC 586] it was contended for the tenant that the son of the landlord whose requirement was pleaded, was in government service and, therefore, he could not have any bona fide need to start a private practice as a doctor. This contention was rejected. In Rena Drego v. Lalchand Soni [(1998) 3 SCC 341] it was observed that in the light of the factual position in that case, "when the landlady says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement". It was held that the circumstances of the case raised a presumption that the requirement was bona fide and that "tenant has failed to show that the demand for*

eviction was made with any oblique motive". It was held that in the absence of such evidence by the tenant, the presumption of the bona fide need stood unrebutted. In Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] it was again observed that the court should not proceed on the assumption that the requirement of the landlord was not bona fide and that the tenant could not dictate to the landlord as to how he should adjust himself without getting possession of the tenanted premises. It was stated in Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353] and in Meenal Eknath Kshirsagar v. Traders and Agencies [(1996) 5 SCC 344] that the landlord was the best judge of his requirement. In Sheela Chadha v. Dr Achharaj Ram Sehgal [1990 Supp SCC 736] it was held that the landlord had the discretion to determine his need. See also in this connection the judgment of this Court in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] . In Raj Kumar Khaitan v. Bibi Zubaida Khatun [(1997) 11 SCC 411] this Court had even stated that it was not necessary for the landlord to state in the pleadings, the nature of the business he proposed to start.

***10.** In the light of the above principles, we shall now examine the decision of the courts below. In this case, Plaintiff 1/3 (one of the legal representative of the deceased plaintiff) came forward with the plea that he was in the service of Metal Box Co. and since January 1988, due to lockout, the Company was closed down and he was not having any source of income and therefore he wanted to earn his livelihood by opening a grocery shop. The trial court and the first appellate court observed that it was necessary that the plaintiff should prove that he had lost his job and was unable to maintain his family. This, according to the said courts, was belied by the fact that in the amendment application and affidavit, Plaintiff 1/3 described his occupation as "service" and that, therefore his evidence was not acceptable. It was further held that his evidence that he lost his job*

on 15-1-1988 must also be rejected. The envelope containing notice of the lockout from the Company and the news item in the newspaper would not, it was observed, prove the lockout. The notice showed only an intention to lockout from 5-2-1988. It was stated that no documentary evidence was produced to prove that the said plaintiff lost his job. The trial court in fact went into the definition of "lockout" in the Industrial Disputes Act, 1947 and held that by a lockout, the plaintiff would not lose his job permanently and that he would get his wages when the lockout was lifted. As the plaintiff also admitted that there was a signboard at his house, with the words "Ganesh Water Supply", the plaintiff must be deemed to have started some other business. The plaintiff's evidence that he was maintaining himself by taking loans from friends was not proved by adducing other evidence. He had not taken steps to purchase furniture to furnish the proposed grocery shop and never thought of the capital required for the business. On this material, it was held that no case was made out that he was not able to maintain his family. Yet another reason was that during his father's lifetime, he, the plaintiff never thought of running a grocery shop. The plaintiff admitted that he did not resign his job. He thus had no intention of permanently running a grocery shop. It was not proved he had knowledge of the grocery business. These are the reasons given by the trial court and the first appellate court for rejecting the appellant's case. The High Court rejected the application under Article 227 on the ground that the concurrent findings of fact could not be interfered with.

***11.** It will be seen that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as*

contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the courts was absolutely wrong in law and perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India."

32. From the above two Judgments of the Supreme Court, it would be clear that for the purpose of bona fide requirement of a landlord what is required is that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. A bona fide requirement is something in between a mere desire or wish on one hand and the compelling or dire or absolute necessity on the other. The facts of the instant case coupled with the findings of both the Courts below would clearly go to show that the plaintiff is in bonafide requirement of the suit premises and accordingly, the concurrent findings of facts arrived at both the Courts below are affirmed.

33. In view of the above, as the plaintiff/respondent have been able to substantiate his case on the ground of bonafide requirement, no interference is called for to the impugned Judgment and decree dated 21.05.2018 in Title Appeal No. 72/2014 by the Court of the Civil Judge No. 3, Kamrup (M) at Guwahati whereby the Judgment and Decree dated 30.06.2014 passed in Title Suit No. 59/2008 was affirmed.

34. Taking into consideration that the defendants have been carrying on their business of a beauty parlour since long and Mr. S. Ali, learned counsel appearing for the petitioners submits that if the

defendants are immediately evicted serious irretrievable injury would be caused as it would be very difficult to immediately find an alternative location for carrying out its business. Taking into consideration that the defendants have been carrying on their businesses in the suit premises for more than a decade, it would be just and reasonable to grant them six months of time to vacate the suit premises provided that they submit an undertaking before the Trial Court within 22.12.2021 to the effect that they shall vacate the suit premises within a period of six month from date of the instant Judgment i.e. on or before 07.06.2022. Failure to submit the undertaking within the period, the plaintiff shall be entitled to initiate execution application for evicting the defendants

35. It is clarified that during this period of six months the defendants shall continue to make payment of amount of Rs. 2,500/- per month in the form of compensation to the plaintiff.

36. It is further observed that granting of extension of the period of six months subject to filing undertaking as aforesaid and the payment of compensation of Rs. 2,500/- per month during this period of six months shall not create any right or interest in favour of the defendants in respect to the suit premises. It also clarified that during

this period, the defendants shall remain in possession of the suit premises as the custodian of the plaintiff and shall not do any act or acts which may effect the rights of the plaintiff over the suit premises in any manner whatsoever.

37. The respondent herein shall be entitled to rent for the period of the eviction proceedings either through adjustment from the rent already deposited in the Court or by making an application before the Executing Court to decide on his entitlement of the rent during the pendency of the eviction proceedings and the Executing Court would permit the tenant/petitioner herein to controvert the allegations of non-payment of rent during the pendency of the eviction proceedings and thereupon decide in accordance with law.

38. With the above observation, the instant petition stands dismissed.

JUDGE

Comparing Assistant