

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 26th JULY, 2017

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

RFA No.04 of 2015

Appellant : Smt. Ratna Pradhan,
W/o Late K. K. Pradhan,
R/o Arithang,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondent : Shri Kishan Deo Thakur,
S/o Ram Singha Thakur,
R/o Third lane,
Opposite State Bank of Sikkim,
Jorethang Bazaar,
P.O. & P.S. Jorethang,
South Sikkim.

Appeal under Order XLI Rules 1 and 2 read with
Section 151 of the Code of Civil Procedure, 1908

Appearance

Mr. Ajay Rathi, Rahul Rathi and Ms. Phurba Diki Sherpa,
Advocates 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. The challenge in this Appeal is to the Judgment and Decree, dated 30-06-2015, of the Learned District Judge, South Sikkim, at Namchi, in Eviction Suit No.14 of 2013, "*Ratna Pradhan*

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vs. Kishan Deo Thakur". The Learned Trial Court vide the impugned Judgment held that the Plaintiff was not entitled to the reliefs prayed for by her and dismissed the Eviction Suit.

2. The facts leading to the dispute are that, the Plaintiff/Appellant (hereinafter "Plaintiff") is the owner of a four storied RCC building measuring 20' x 30' in Jorethang Bazaar, South Sikkim. The Defendant/Respondent (hereinafter "Defendant") has been a tenant since 1997, in a portion of the ground floor of the building, measuring approximately 16' x 12' and running a Barbershop. The rent in 1997 was fixed at Rs.900/- (Rupees nine hundred) only, per month, and thereafter, from 2010 onwards at Rs.2,000/- (Rupees two thousand) only, per month, to be paid by the Defendant within the 10th day of each month, as per letter of the Plaintiff dated 05-07-2013, Exhibit 6. That, from the month of November 2012 the Defendant failed to pay the monthly rent, without assigning any reason, till the filing of the Suit, in December 2013. Around the month of March/April 2013, the Plaintiff received a Money Order from the Defendant, which she refused, being unaware of its purpose. That, even if, the Money Order was for rent, she had every right to refuse it, as the Defendant had failed to pay rent for the previous four months and was, therefore, in arrears of rent. In March 2013, she directed the Defendant to vacate the suit property on account of default of payment of rent, in vain. Besides, she has an unemployed son, a Graduate, who seeks to run a Computer Training Centre, but has not been able to acquire suitable accommodation. Hence, the prayers, *inter alia*, for directing

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the Defendant to hand over vacant possession of the suit property to the Plaintiff, as he was a wilful defaulter in payment of rent and she *bona fide* required the suit premises for her son.

3. Resisting the contentions of the Plaintiff, the Defendant denied default in rent payment or the requirement of the Plaintiff's son. That, the Plaintiff infact refused to accept the monthly rent from November 2012 including the rents despatched by Money Orders. The said refusal, according to him, was a ruse to evict him, as in the month of September 2012 she had informed him of the sale of the suit building to one Arun Ghatani. Moreover, the location of the said premises was not suitable for running a Computer Training Centre, besides which other tenants were in occupation of larger areas in the same building and the Plaintiff has several other RCC buildings located in various parts of Sikkim, where her son can be accommodated, hence, the Suit be dismissed.

4. The Learned Trial Court settled the following issues for determination;

- (1) *Whether the Suit is maintainable? (OPP)*
- (2) *Whether the suit/demised premises are required by the Plaintiff and/or her son for her/their bona fide requirement? (OPP)*
- (3) *Whether the Defendant has defaulted in payment of the concerned rent for the suit premises with effect from November, 2012? (OPP)*
- (4) *Whether the Suit has been filed only to evict the Defendant without any basis? (OPD)*

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(5) *Whether the Plaintiff is entitled to the reliefs prayed for by her? (OPP)*

5. In support of her case the Plaintiff examined herself and her son Rishi Pradhan, while the Defendant examined himself and the Postman of the Naya Bazaar Post Office, located at Jorethang. Though the wife of the Defendant had filed her Evidence-on-Affidavit, which was confirmed before the Learned Trial Court, but she was later dropped as a witness by the Defendant.

6. Taking up Issue No.3 first for discussion the Learned Trial Court reached a finding that the Plaintiff failed to prove that the Defendant had defaulted in payment of monthly rent, since November 2012. Issue No.2 was next discussed and it was concluded that the Plaintiff/her son did not require the suit premises. In Issue No.4, the Learned Trial Court found that the Suit had been filed for the purpose of evicting the Defendant without any basis. Ultimately, Issues No.1 and 5 were taken up together and it was concluded that the Suit was not maintainable, as, the grounds on which it had been filed were not substantiated and found to be false, thus, dismissing the Suit.

7. Aggrieved thereby, before this Court it was argued by Learned Counsel for the Appellant that, the Learned District Judge erred in not considering the legal position, that, under Notification No.6326–600-H&W–B., dated 14-04-1949, issued by the Health and Works Department, Government of Sikkim, the Appellant is only required to establish one of the grounds for eviction. That, the

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Appellant requires the suit premises for *bona fide* and personal occupation, as is evident from the Trade Licence, Exhibit 7, issued in the name of her son, who is unemployed and seeks to run a Computer Training Centre from the suit premises. That, the Money Order Receipts marked Exhibit 'A' (collectively) are only attested copies, which ought not to have been admitted in evidence. That, the Postman serving the Money Orders was not examined and the Money Order Acknowledgment Card does not contain the signature of the Plaintiff. That, no proof of sale of building by the Plaintiff to one Arun Ghatani has been furnished, besides which the Plaintiff was not confronted with Exhibit 'B' a letter purportedly written by her to the Defendant at the time of her cross-examination. Hence, the prayers for setting aside the Judgment and Decree of the Learned Trial Court.

8. The *contra* argument of the Respondent was that the Defendant had dispatched rent up to the month of March/April 2013 by Money Orders with no default, which the Plaintiff under cross-examination has admitted, but that she had refused the same. That, infact, the building has been sold to one Arun Ghatani for which efforts were on to evict the Defendant. That, although the Money Order receipts are attested documents, the Money Order Acknowledgment Cards containing the endorsement "refused" are in original and bear the seal of the concerned Post Office and each of the Money Order Acknowledgment Card contains an endorsement of refusal. That, Exhibit 'A' (collectively), has been proved by D.W.2, the witness of the Defendant, the Postman, who used to hand over

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the Acknowledgment Card and the money, which was unaccepted by the Plaintiff, to the Defendant. Pointing to the provisions of Section 27 of the General Clauses Act 1897 (for short "General Clauses Act") it was urged that, if documents are sent through the Post Office and the same is refused, it is deemed that the same has been served on the addressee and that Section 114(f) of the Indian Evidence Act, 1872, also lays down a similar provision. Reliance was placed on ***Puwada Venkateswara Rao vs. Chidamana Venkata Ramana¹, Harcharan Singh vs. Shivrani and Others²*** and ***Sunil Kumar Sambhudayal Gupta (Dr.) and Others vs. State of Maharashtra³*** to fortify his submissions.

9. It was next contended that the question of *bona fide* requirement for the son does not arise, as the Plaintiff has deposed that she has many houses including houses at better locations than the suit premises, where business can flourish. It is also her admission that the Suit was filed on the Defendant's refusal to enter into a Lease Agreement. Moreover, there are sixteen vacant rooms in the suit building, besides the tenanted premises occupied by the Defendant and it is an admitted fact that the Computer Training Centre of her son can be opened in any of those vacant rooms. The Trade Licence, Exhibit 7, issued to the Plaintiff's son is not for the suit premises, but for her building located at Majhigaon, and the Trade Licence Rules of Sikkim mandates that no business can be started in a house other than that mentioned in the body of the Trade Licence. Moreover, P.W.2, her son, has admitted that he is

¹ (1976) 2 SCC 409

² (1981) 2 SCC 535

³ (2010) 13 SCC 657

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only interested in evicting the Defendant from the suit premises and hence, there is no *bona fide* requirement. That, in **D. Devaji vs. K. Sudarashana Rao**⁴ it was held that, if a landlord had similar other residential building in town wherein business can be started, mere convenience of the Plaintiff or suitability of the premises cannot be looked into. In **P. Ramachander Rao vs. K. Dayanand**⁵ it was held that, if the landlord has some other accommodation to start a tailoring shop, the tenant cannot be evicted. In **N. Eswari, w/o Adinarayana vs. K. Swarajya Lakshmi, w/o Late K.V.L.N.A. Sastry**⁶, the Hon'ble Supreme Court declined the landlady's prayer of residence at Vijaywada, because she was living with her children at Hyderabad in one of her two houses. Thus, based on the touchstone of the above pronouncements, the decision of the Learned Trial Court requires no interference.

10. I have heard Learned Counsel at length and carefully considered their submissions, perused the pleadings, the evidence on record, appended documents and the impugned Judgment.

11. What arises for consideration before this Court is, Whether the Learned Trial Court was correct in reaching a finding that the Plaintiff had no *bona fide* requirement of the suit premises and there was no default in payment of rent by the Defendant?

12. For clarity in the matter, we may refer to the relevant Notification invoked by the Plaintiff;

⁴ 1994 Supp (1) SCC 729

⁵ (2005) 13 SCC 159

⁶ (2009) 9 SCC 678

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"GOVERNMENT OF SIKKIM

Health and Works Department.

Notification No.6326—600-H&W—B.

Under powers conferred in para 2 of Notification No.1366-G, dated the 28th July 1947, the following Rules have been framed to regulate letting and sub-letting of premises controlling rents thereof and unreasonable eviction of tenants as the scarcity of housing accommodation still exists in Sikkim.

1 The landlords can charge rent for premises either for residential or business purposes on the basis of the rents prevailing in locality in the year 1939, plus an increase upto 50 per cent so long as the scarcity of housing accommodation lasts.

2. The landlords cannot eject the tenants so long as the scarcity of housing accommodation lasts, but when the whole or part of the premises are required for their personal occupation or for thorough overhauling the premises or on failure by the tenants to pay rent for four months the landlords may be permitted to evict the tenant on due application to the Chief Court.

3. Any tenant may apply to this Department for fixing his rent. On receipt of such application the Department will enquire about the rent prevailing in the locality in 1939, and fix rent as per Rule (1) above.

4. Any person acting in contravention of this Notification will be liable to prosecution under para 4 of notification No.1366-066-G, dated the 28th July, 1947.

5. The tenant means those person in actual occupation. Landlords means owners of the premises.

These rules will come into force with immediate effect.

By order of his Highness the Maharaja of Sikkim.

R.B. Singh,

Gangtok,

The 14th, April, 1949.

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

Thus, the Notification deals with regulation "letting and sub-letting" of premises, controlling rents and to prevent unreasonable eviction of tenants. The spirit behind the Notification is to prevent vagrancy till such time as scarcity of accommodation prevails in Sikkim, and to prevent harassment to the tenants on account of such scarcity. The three grounds enumerated for eviction are (i) if

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the premises are required for personal occupation (ii) overhauling (iii) failure on the part of the tenant to pay rent for four months. The grounds urged herein by the Plaintiff are for *bona fide* requirement and default in payment of rent for four months by the Defendant.

13. Firstly, taking up the question of *bona fide* requirement, it may pertinently be stated here that the Plaintiff is required to establish a genuine need of the premises. In ***Damodar Sharma and Another vs. Nandram Deviram***⁷ while culling out a distinction between the expressions "genuinely requires" and "reasonably requires", it was held as follows;

"(27)

..... It is wrong to say that "genuinely requires" is the same as "reasonably requires". There is a distinction between the two phrases. The former phrase refers to a state of mind; the latter to an objective standard. "Genuine requirement" would vary according to the idiosyncrasy of the individual and the time and circumstances in which he lives and thinks. Reasonable requirement belongs to the "knowledge of the law" and means reasonable not in the mind of the person requiring the accommodation but reasonable according to the actual facts. In my opinion, in this part of Sec. 4(g), the landlord is made the sole arbiter of his own requirements but he must prove that he, in fact, wants and genuinely intends to occupy the premises. His claim would no doubt fail if the Court came to the conclusion that the evidence of "want" was unreliable and that the landlord did not genuinely intend to occupy the premises."

....."

14. It is not disputed that the son of the Plaintiff is an unemployed Graduate. For his livelihood, he seeks to open a Computer Training Centre and although he made enquiries for space

⁷ AIR 1960 MP 345

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at Jorethang Bazaar, he was unable to obtain any accommodation commensurate with his financial resources. It has been consistently argued by the Defendant that the Plaintiff is the owner of several properties in and around Sikkim and that P.W.2 himself has admitted this fact. That, should he run his business in Jorethang, it would be illegal, the Licence having been obtained for carrying out business in Majhigaon. It would be appropriate to remark here that penalty for contravening the relevant Rules of the Urban Development and Housing Department pertaining to Licences would be cancellation of Licence and is a matter entirely between P.W.2 and the Urban Development and Housing Department, Government of Sikkim, for which no interference is expected from the Defendant. Besides the Defendant is to confine his case to the property in question and it is not his place to enquire into the number of properties owned by the Plaintiff. However, the above observations aside, the Plaintiff under cross-examination has admitted that the suit building consists of four floors and sixteen rooms therein are vacant. It is also her admission that the Computer Training Centre can be opened by her son in the vacant rooms in their possession.

15. In ***Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Others***⁸ it was held that;

"4. 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

⁸ (2005) 8 SCC 252

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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 tenant-appellant. But the appellate court as well as the High Court after scrutinizing 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."

In the aforesaid case, the *bona fide* requirement of the landlord was established. While it has been laid down that a tenant cannot dictate terms to the landlord, at the same time the landlord has to be able to indicate a real and genuine need for the suit premises. While examining the case at hand, although it is not for the Defendant to dictate what the Plaintiff's son should do, nevertheless, it is clear from the evidence furnished that *bona fide* need has not been established by the Plaintiff, for the reasons discussed *supra*, consequently, on this ground, no right accrues to the Plaintiff.

16. Before embarking on a discussion on default of payment of rent, I consider it essential to clear the air with regard to the alleged sale of the building to one Arun Ghatani. Exhibit 'B' was relied on by the Defendant, a hand written notice, purportedly scribed by the Plaintiff herself. Although there is no basis in the evidence of the Defendant to conclude that Exhibit 'B' was in the hand of the Plaintiff and Exhibit 'B(a)' was her signature, but it is noticed that no cross-examination in this regard was conducted and

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hence, the Learned Trial Court has taken this evidence into consideration. Nevertheless, Exhibit 'B' nowhere reveals that the building was sold to Arun Ghatani, although the Defendant has asserted that the Plaintiff has sold the suit building to Arun Ghatani was not a false statement. An assertion made has to be substantiated by the person who makes the assertion. Section 103 of the Evidence Act clearly lays down that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless, it is provided by any law that the proof of that fact shall lie on any particular person. Infact, Exhibit 'C' would go to show that he is interested in purchasing the shop in his occupation being a tenant thereof for the last 18 years, which appears to be his staunch reason for not vacating. Thus, in the absence of any credible evidence, this Court is not inclined to rely on the version of the Defendant that the Plaintiff seeks to evict him to hand over vacant possession to Arun Ghatani.

17. That, having been settled, the afore-extracted Notification, it may be reiterated, provides for eviction of a tenant if default in payment of rent occurs for four months. Although the Plaintiff vehemently asserts default by the Defendant, the Defendant is equally vehement in his denial. According to the Defendant, the Plaintiff in her evidence has stated that the Defendant was 'presently' sending the rent of the suit premises, but she had refused it. It has to be noted that her evidence was recorded on 16-02-2015 and the word 'presently' would have to be interpreted in that context. The Defendant has not enlightened this Court as to

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whether he had been delivering the rent to her personally and how she suddenly declined to accept rent for the month of November 2012. How the refusal transpired, whether he had personally gone to deliver the rent for that month or was it sent through someone else? These are shrouded in mystery. Apart from which, perusal of Exhibit 'A' (collectively) would indicate that, the Money Order Acknowledgement Card bears the name and address of the Defendant and are in original, but the receipts allegedly addressed to the Plaintiff are in photocopy. No reasons have been put forth for non-production of the original as per the requirement of law. The Defendant has admitted that the Money Orders which form part of Exhibit 'A' (collectively), do not contain the signatures or endorsements of the Plaintiff indicating her refusal. He also admitted to having no personal knowledge as to whether the Money Orders, part of Exhibit 'A' (collectively), were tendered for delivery to the Plaintiff and that she had refused it. The evidence of the Postman, the witness of the Defendant in no way strengthens his case as in the first instance no proof of him being a Postman was ever furnished. He is unaware as to who was responsible for delivery of the Money Orders to the address or who had endorsed the refusal on the Money Order Acknowledgment Cards. He was not able to throw light on whether the Postman of Gangtok Head Post Office actually went to the house of the Plaintiff to deliver the Money Orders.

18. The further argument of the Defendant was that Section 27 of the General Clauses Act lays down that, where any Central Act

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or Regulation made after commencement of the Act authorizes or requires any document to be served by post, wherever the expression "server" 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. Pausing here for a moment, the Section importantly lays down that the letter is to be "properly addressed". The receipts filed by the Defendant would indicate that it was addressed to "*Ratna Pradhan (Gangtok) Gangtok - 737101*". This address is indeed peremptory and how the Post Office is to recognize this individual, being bereft of a detailed address defies logic, nor is its brevity explained by the Defendant. That apart, the Money Order Acknowledgment Card does not bear the stamp of the Gangtok Post Office to establish receipt at the said Post Office and the endorsement "*Refuse by Payee hence Rtn to Sender*" (*sic*), too is devoid of the stamp of the Gangtok Post Office, thereby failing to indicate that it was ever received in the Gangtok Post Office at any point of time. In ***P. S. Nirash and Another vs. Smt. Mintok Dolma Kazini and Another***⁹ this Court held that, "*Exhibit D-3 appears to be a refused Money Order of Rs.140/- only and, apart from the fact that, as rightly pointed out by the District Judge, the refusal having been denied by P.W.1 on oath, the endorsement*

⁹ AIR 1984 Sikkim 1

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"refused" on the said Money Order could not, by itself and without the evidence of postal peon, lead to any presumption that the same was tendered to the addressee and was refused by him." The situation is similar herein as the Defendant insists that the Money Orders were dispatched, but there is no proof whatsoever to establish that the Money Order was indeed addressed to the Plaintiff, or received at the Post Office, delivered to her, and refused by her except for the month of March 2013 as admitted by her. No Postman of Gangtok was examined to establish such refusal nor does the signature of the Plaintiff appear on such alleged refusal.

19. In view of the above discussions, it is clear that in the absence of any cogent proof to establish dispatch of the house rents and refusal of payment by the Plaintiff, no other conclusion can be arrived at, save the fact that the Defendant failed to pay the rents and hence defaulted. On this count, I am in disagreement with the Learned Trial Court, who after examining the evidence found that the Money Order Acknowledgement Cards, Exhibit 'A' (collectively) was sans details of the addressee, despite which he went on to conclude that the Defendant was indeed sending the monthly rent on a regular basis.

20. Consequently, the findings of the Learned Trial Court on Issue Nos.1, 3, 4 and 5 are set aside. The Plaintiff having established default in payment of rent by the Defendant from November 2012, the Plaintiff is entitled to the relief on this ground, i.e., eviction of the Defendant from the suit premises.

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- 21.** Resultant, Appeal is allowed in part.
- 22.** The Defendant shall vacate the suit premises on or before 31-10-2017 and hand over vacant possession to the Plaintiff. The Defendant shall also pay the arrears in rent from the month of November 2012, till the time that he hands over vacant possession of the suit premises to the Plaintiff as ordered herein.
- 23.** Copy of this Judgment be sent to the Learned Trial Court for information.
- 24.** No order as to costs.
- 25.** Records of the Learned Trial Court be remitted forthwith.

Sd/
(Meenakshi Madan Rai)
Judge
26-07-2017

Approved for reporting : **Yes**

Internet : **Yes**