THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 1st October, 2018

SINGLE BENCH : THE HON'BLE ACTING CHIEF JUSTICE MRS. JUSTICE MEENAKSHI MADAN RAI

RFA No.10 of 2016

Appellant : Taramani Devi Agarwal

versus

Respondent : M/s. Krishna Company

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

Appearance

Mr. Rahul Rathi and Ms. Phurba Diki Sherpa, Advocates for the Appellant.

Mr. Sudipto Mazumdar, Mr. Dibakar Roy and Mr. Bhushan Nepal, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, ACJ

1. This Appeal assails the Judgment and Decree, both dated 22-04-2016, of the Learned District Judge, Special Division – II, East Sikkim, at Gangtok, being Eviction Suit No.12 of 2013, *Smt. Taramani Devi Agarwal* vs. *M/s. Krishna Company*. The Learned Trial Court dismissed the Suit of the Plaintiff seeking eviction of the Defendant from the suit premises on account of default in payment of rent for four months. (The Appellant shall hereinafter be referred to as the "Plaintiff" and the Respondent as the "Defendant".)

2. The facts, as per the Plaintiff, summarised herein are that, the Defendant in the year 2001 took on rent a shop space belonging to the Plaintiff, consisting of the entire first basement floor measuring an area of 1,230 sq. ft., on a monthly rent of Rs.6,000/- (Rupees six thousand) only, payable by the 10th day of each succeeding English Calendar month. The rents were thereafter successively enhanced in various years @ 20% on the previous rent. From April, 2010 to March, 2012, the rent was increased to Rs.11,520/- (Rupees eleven thousand, five hundred and twenty) only. Although enhancement of rent for the years 2010 to 2012 was made from April, 2010, but payment by the Defendant was made in July, 2010, only, for the months of April to June, 2010, being a consolidated amount of Rs.34,560/- (Rupees thirty four thousand, five hundred and sixty) only. Thereafter, the Defendant tendered the monthly rents belatedly viz; for the months of July, 2010 on 20-08-2010, for August, 2010 on 18-09-2010, for October, 2010 on 20-11-2010 and for November, 2010 on 13-12-2010 much beyond the 10th day as stipulated. This was followed by default in payment of rents for the months of December, 2010, to March, 2011, rendering the Defendant liable for eviction under the Gangtok Rent Control and Eviction Act I 1956 (hereinafter "the Act of 1956"). Besides the shop premises were closed for the last two and half years. On account of the default, a lawyer's notice dated 29-04-2011 was issued by the Plaintiff and responded to by the Defendant on 02-06-2011 denying arrears of rent as alleged or of closure of the shop. The Defendant also sent along with its reply a Demand Draft bearing No.000334 for Rs.69,120/- (Rupees sixty nine

thousand, one hundred and twenty) only, dated 01-06-2011, in favour of the Plaintiff, drawn on the Union Bank of India, Gangtok Branch, as payment of rent for the months of December, 2010 up to May, 2011, which the Plaintiff declined to receive. A Notice dated 09-06-2011 was issued thereafter by the Plaintiff, demanding immediate vacation of the premises by the Defendant, which the Defendant failed to comply with but continued sending Demand Draft of Rs.11,520/- (Rupees eleven thousand, five hundred and twenty) only, every month as tender of monthly rent. It is averred that the reason for the refusal of rent sent by the first Demand Draft and others thereafter is that tenancy had determined on account of default in payment of rent from December 2010 to March 2011. Hence, the prayers for eviction of the Defendant and 'khas' possession of "Schedule B" premises from the Defendant, arrears of rent for the months of December, 2010 to March, 2011.

3. The Defendant contested the Suit *inter alia* contending that tenancy was on mutual understanding and good faith, the rents were payable on demand and not on the 10th day of each successive English Calendar Month as claimed. That, for the last few years rent receipts were being issued on payment of rent however no agreement for enhancing rent at a fixed percentage existed. Admittedly rent was enhanced on 09-07-2010 @ Rs.11,520/- (Rupees eleven thousand, five hundred and twenty) only, retrospectively from April to June, 2010, after a water tank was installed by them on the terrace of the Plaintiff's building and on agreement entered between the parties to construct a toilet in the

tenanted premises. The Defendant was paying the said amount till November, 2010, but from the month of December, 2010, the Plaintiff stopped demanding rent. The Defendant thus sought to make the payment personally through his staff which was refused by the Plaintiff citing taxation problems faced by the Plaintiff's husband, although rent was being accepted in the Plaintiff's name. The explanation for such refusal was that the rent would be accepted after the issue was resolved, which was accepted by the Defendant in good faith due to the long period of tenancy with the Plaintiff. Only when the Plaintiff's legal notice dated 29-04-2011 was received by the Defendant, the Plaintiff's *mala fide* purposes for refusal of rent came to light. The Defendant denied non-payment of rent but admitted that the Plaintiff returned the Demand Draft, dated 09-06-2011, for a sum of Rs.69,120/- (Rupees sixty nine thousand, one hundred and twenty) only, which was issued for the months of December, 2010 to May, 2011 and that the Plaintiff demanded that the suit premises be vacated and handed over by the Defendant. That, the Suit being harrasive deserves dismissal.

4. The issues struck by the Learned Trial Court for determination were as follows;

> **"**1. Whether the Defendant failed to pay the monthly rents in respect of the "Schedule B" shop premises to the Plaintiff for the months of December, 2010, January, 2011, February, 2011 and March, 2011, making the Defendant a defaulter, under the provisions of the Gangtok Rent Control Act, 1956 and liable to be evicted?

2. Whether the Defendant has closed the shop premises for the last more than two and half years and not been running their business from the "Schedule B" premises for the same period?

3. Any other reliefs?**"**

5. The Plaintiff examined herself as P.W.1 and her son Shyam Agarwal as P.W.2, one Pawan Agarwal, P.W.3, Govind Agarwal, P.W.4 and Rajesh Somani, P.W.5. However, during the stage of cross-examination on the non-appearance of P.W.4 and P.W.5, the Plaintiff sought to and was allowed to drop the said witnesses. The Defendant examined himself and two witnesses, being one Sushil Marda as D.W.1 and his staff Naresh Kumar Sharma as D.W.2. The other witnesses cited by the Defendant were dropped by the Defendant.

6. Thereupon, the arguments of the parties were heard and the Learned Trial Court took up each of the Issues for determination. After examining the evidence on record and hearing the final arguments of the parties, vide the impugned Judgment the Suit of the Plaintiff was dismissed.

7. While discussing Issue No.1, the Learned Trial Court embarked on an exhaustive discussion of "wilful default", garnering strength from the ratio of ***S. Sundaram Pillai and Others*** vs. ***V. R. Pattabiraman and Others***[1] and decisions of various High Courts. The Learned Trial Court concluded that the default for the months of December, 2010 up to March, 2011 did not amount to "wilful

[1] AIR 1985 SC 582

default". Issue No.2 was next taken up for discussion and it was concluded that the Plaintiff was unable to substantiate her claims with documentary evidence, and the term "Business" would include all aspects of business including storage, the Issue thus stood decided against the Plaintiff. While deciding Issue No.3 it was reasoned that the Plaintiff is not entitled to any relief other than the arrears of rent for the month of December, 2010, January, 2011, February, 2011 and March, 2011 as also arrears in rent till the filing of the Suit. In conclusion it was held that the Plaintiff failed to establish her case which was accordingly ordered to be dismissed.

8. Before this Court, Learned Counsel for the Plaintiff advancing his arguments would contend that as averred in the Plaint and as proved by the evidence of P.W.1, it is established that the Defendant had defaulted in payment of rent for the months of December, 2010, January, 2011, February, 2011 and March, 2011. The evidence of the Plaintiff pertaining to default stood undemolished in view of which the Defendant was liable to vacate the suit premises in terms of the provisions of the Act of 1956. That, P.W.2, the Plaintiff's son, has also supported and substantiated the evidence of the Plaintiff indicating that the Defendant was a defaulter and that the Defendant instead of paying the monthly rent on the 10th day of the successive English Calendar Month had started paying the rent belatedly. Besides, although it was averred by the Defendant that the suit premises was being utilised as a shop, the evidence of P.W.3, the Plaintiff's neighbour and thereby an independent witnesses, would indicate that the suit

premises was being used as a store for their goods. The Defendant being defaulters ought to vacate the suit premises.

9. The *contra* arguments of Learned Counsel for the Defendant was that, the cross-examination of the Plaintiff, the alleged recipient of the rents, reveals that she did not understand the contents of any of the documents that she had relied on and was confronted with. Her evidence reveals her ignorance of the standard rent for the tenanted premises. According to her she had not signed any documents pertaining to rent for the last fifteen years but has furnished exhibits purporting to be the rent receipts in the name of the Plaintiff which do not bear her signature. The evidence reveals that she was unaware of the rent for the period of April, 2007 to March, 2012 of the tenanted premises. It was her specific evidence that she had not filed the instant case against anyone and it was her sons who used to hand over the rent to her from time to time informing her that it was rent from the tenancy. It is also her admission that the rent of the tenanted premises used to be tendered to her husband in his shop at M. G. Marg. Contending that there was variance in pleading and proof as the Respondent had not stated that her son took care of the rents, but P.W.2. her son, had deposed to this effect, hence his evidence cannot be looked into, reliance was placed on ***Gian Chand and Brothers and Another*** vs. ***Rattan Lal alias Rattan Singh***[2]***.*** It was next advanced that the title of the property was not established, in such a circumstance the Plaintiff was not entitled to dispossess the

[2] (2013) 2 SCC 606

Defendant. Reliance was placed on ***R.V.E. Venkatachala Gounder*** vs. ***Arulmigu Viswesaraswami & V. P. Temple and Another***[3]. That, the Plaintiff has to establish her own case on the basis of evidence led by her, on which point succour was drawn from ***Nirakar Das*** vs. ***Gourhari Das and Others***[4]. The Plaintiff having failed to prove her case the finding of the Learned Trial Court bears no error.

10. The arguments of Learned Counsel were heard at length and given due consideration. The pleadings, documents and the evidence of the parties have been duly perused and considered by me as also the impugned Judgment.

11. This Court is to determine whether there was a default in payment of rent in terms of the Act of 1956, making the Defendant liable to be evicted from the suit premises on account of such default.

12. The Act of 1956 was pressed into service by the Plaintiff to prove their case. Section 4 of the Act of 1956 which is relevant for the present purposes reads as follows;

> **"GANGTOK RENT CONTROL AND EVICTION ACT I OF 1956**
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> **(Received assent of His Highness the Maharaja of Sikkim on 3Ist May 1956)**
>
> **Preamble.** Whereas it is deemed expedient and necessary to control rent and eviction of accommodation in Gangtok Bazar premises ; it is hereby enacted as follows :-
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> …….
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> 4. A Landlord may not ordinarily eject any tenant. When, however, the whole or part of the premises are required for the bonafide occupation of

[3] (2003) 8 SCC 752
[4] AIR 1995 Ori 270

> the landlord or his dependents or for thorough overhauling (excluding additions and alterations) or when the rent in arrears amount to four months rent or more, the landlord may evict the tenant on filing a suit of ejectment in the Court of the Chief Magistrate. ……. ……**"**

13. The Section provides that the landlord may not ordinarily eject a tenant, however, when grounds enumerated therein are fulfilled which also includes rent in arrears amounting to four months or more, the landlord may evict the tenant by filing a Suit for ejectment. The object of the Act of 1956 is apparent, viz; to control rent and eviction from accommodation in the precincts of the Gangtok Bazar area. Shortage of accommodation is not a new phenomenon especially in the urban areas and disputes between landlords and tenants rear its head on trivial issues, but the legislation *supra* intervenes to prohibit eviction of the tenant on any frivolous ground.

14. In ***Sidhharth Viyas and Another*** vs. ***Ravi Nath Misra and Others***[5] the Hon'ble Supreme Court was held that;

> **"10.** The object of rent law is to balance the competing claims of the landlord on the one hand to recover possession of building let out to the tenant and of the tenant to be protected against arbitrary increase of rent or arbitrary eviction, when there is acute shortage of accommodation. Though, it is for the legislature to resolve such competing claims in terms of statutory provisions, while interpreting the provisions the object of the Act has to be kept in view by the Court. Unless otherwise provided, a tenant who has already acquired alternative accommodation is not intended to be protected by the Rent Act.**"**

15. In ***Malpe Vishwanath Acharya and Others*** vs. ***State of Maharashtra and Another***[6] the Hon'ble Supreme Court said;

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[5] (2015) 2 SCC 701

[6] (1998) 2 SCC 1

> **"29.** Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants.**"**

16. Bearing the premise *supra* in mind, on the anvil of the provision of the Act of 1956 and the evidence furnished by the parties, it would be appropriate to examine whether the Plaintiff has been able to establish a case for eviction.

17. Addressing the argument of Learned Counsel for the Defendant that there was variance in pleadings and proof of the Plaintiff, reference can be made to Order VI Rule 2 of the Code of Civil Procedure, 1908, which requires pleadings to state the material facts. Sub-Rule (1) of Rule 2 requires that every pleading shall contain a statement in concise form of the material facts on which the party pleading relies for his claim or defence. This essentially is for the purpose of enabling the Opposite Parties to have knowledge of the case that he is required to meet. On this point, we may briefly look at material facts in the pleadings of the Plaintiff. It is her categorical statement that the Defendant failed and neglected to tender monthly rents in respect of Schedule 'B' premises for the months of December, 2010, up to March, 2011, even by the 10th April, 2011, and thereby became a defaulter under the provisions of the Act of 1956. In view of the default of four months the Defendant has made itself liable to be evicted from the schedule

premises. Her evidence is no different. She has deposed that the Defendant defaulted and was in arrears of rent for four months. The fact that she did not state that her son was looking after the affairs pertaining to rent, which however was elaborated in the evidence of P.W.2 does not in my considered opinion tantamount to non statement of material fact thereby resulting in variance of pleadings and proof. The material facts which reveal the cause of action has been categorically averred by her in her pleadings. Her evidence concerning the default thereby rendering the Defendants liable for eviction has withstood the cross-examination and remain undecimated. No specific question was evidently put to the witness in this context under cross-examination, neither was she confronted with the Demand Draft of Rs.69,120/- (Rupees sixty nine thousand, one hundred and twenty) only, although it was her specific statement that upon receipt of the reply of the Defendant together with the Demand Draft of Rs.69,120/- (Rupees sixty nine thousand, one hundred and twenty) only, she returned the same and demanded immediate vacation of the Schedule 'B' shop premises. Her evidence thus establishes default in payment of rent.

18. The next contention of Learned Counsel for the Defendant was that the rent was payable on demand. Evidently no Lease Deed existed between the parties. The Plaintiff could furnish no document to establish that the rent was payable by the 10th of the succeeding month, similarly the Defendant was not in possession of any document to prove that rent was payable on demand. In the absence of such a document it is relevant to resort

to the provisions of Section 106 of the Transfer of Property Act, 1882 (hereinafter "the TP Act"), which *inter alia* provides that in the absence of a contract or local law or usage to the contract, a lease of immovable property shall be deemed to be a lease from month to month terminable on the part of either a lesser or lessee by fifteen days' notice. I hasten to add that the Act of 1956 envisages no notice for eviction of a tenant, it merely requires proof of default in rent for four months or more hence Notice is not a mandate under the Act of 1956. Therefore, on applying the provisions of Section 106 of the TP Act it is evident that the tenancy shall be presumed to be a tenancy on a month to month basis. In this view of the matter, irrespective of lack of demand for payment of rent by the Plaintiff to the Defendant, it became incumbent upon the Defendant to pay the rent either at the end of the month or by the next month as was the practice, even if it was beyond the 10th of the next month. Although the Defendant was at pains to establish that rents were paid on varied dates and not the 10th of the succeeding month by cross-examining the Plaintiff on the contents of Exhibit 3 to Exhibit 44, it surely does not absolve the Defendant from payment of monthly rent, nor can rent for four months remain unpaid by them at any given point of time.

19. This leads us to another question, i.e., whether the Plaintiff has discharged the burden of proof. The Plaintiff indubitably has asserted that the Defendant was a defaulter in view of the grounds put forth above. To the contrary, the Defendant would hold that all efforts were made for payment of the rent for months when

default was alleged but rent was infact refused by the Plaintiff. We may briefly look at the law on this aspect. Section 3 of the Indian Evidence Act, 1872 (hereinafter "the Evidence Act"), defines "proved" which reads as follows;

> **"3.** ……
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> **"Proved".**—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
>
> ……**"**

20. In ***R.V.E. Venkatachala Gounder*** (*supra*) the Hon'ble Supreme Court laid down as follows;

> **"28.** Whether a civil or a criminal case, the anvil for testing of "proved", "disproved" and "not proved", as defined in Section 3 of the Indian Evidence Act, 1872 is one and the same. A fact is said to be "proved" when, if considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. It is the evaluation of the result drawn by the applicability of the rule, which makes the difference.
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> > "The probative effects of evidence in civil and criminal cases are not, however, always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for a conviction in a criminal case. Best says: 'There is a strong and marked difference as to the *effect* of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof, is a sufficient basis of decision: but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required.' (Best, § 95) While civil cases may be proved by a mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt." (See *Sarkar on Evidence*, 15th Edn., pp. 58-59.)
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> In the words of Denning, L.J. (*Bater* v. *Bater* [(1950) 2 All ER 458 : 1951 P 35 (CA)], All ER at p. 459 B-C):

> It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. So also in civil cases there may be degrees of probability.

Agreeing with this statement of law, Hodson, L.J. said:

> "Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." (*Hornal* v. *Neuberger Products Ltd.* [(1956) 3 All ER 970 : (1957) 1 QB 247 : (1956) 3 WLR 1034 (CA)], All ER at p. 977 D)**"**

21. Section 101 of the Evidence Act deals with burden of proof and provides as hereinbelow;

> **"101. Burden of proof**.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.
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> When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**"**

22. In ***Rangammal*** vs. ***Kuppuswami and Another***[7], the Hon'ble Supreme Court would hold that when a person is bound to prove the existence of any fact, it is said the burden of proof lies on that person. Thus, the burden of proving a fact always lies upon the person who asserts it. Unless such burden is discharged the other party is not required to be called upon to prove his case.

23. In ***Addagada Raghavamma and Another*** vs. ***Addagada Chenchamma and Another***[8] the Hon'ble Supreme Court has held that;

> **"12.** ..... There is an essential distinction between burden of proof and onus of proof:

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[7] (2011) 12 SCC 220

[8] AIR 1964 SC 136

> burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. The criticism levelled against the judgment, of the lower Courts, therefore, only pertain to the domain of appreciation of evidence. We shall, therefore, broadly consider the evidence not for the purpose of revaluation, but to see whether the treatment of the case by the courts below is such that it falls in the category of exceptional cases where this Court, in the interest of justice, should depart from its usual practice.**"**

24. The Hon'ble Supreme Court in ***Anil Rishi*** vs. ***Gurbaksh Singh***[9] laid down the following;

> **"9.** In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto. The learned trial court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.**"**

25. The law on burden of proof and preponderance of probability as proof in a civil dispute is thus firmly in place. P.W.1 and P.W.2 both deny that rent was tendered by the Defendant for the months of December, 2010 to March, 2011. P.W.2 denied that D.W.2 ever came to tender the rent on behalf of the Defendant. To the contrary, the Defendant's sole attempt was to establish that infact D.W.2 had been dispatched to do the necessary, D.W.2 for his part asserted that he did indeed go to P.W.2 and his brother to tender the rent which was refused. If this be so, the onus

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[9] (2006) 5 SCC 558

undoubtedly shifts to the tenant to prove by sufficient and satisfactory evidence that they tendered the rent. Unfortunately no evidence whatsoever obtains in this context from the side of the Defendant who has failed to establish by proof that as soon as the rent for the month of December, 2010, was refused, efforts were made for payment thereof by way of Money Order or any other available process. There is no documentary evidence or the presence of a witness to fortify the claim of D.W.2 that he went to tender the rent to P.W.1 and his brother. In the absence of any such proof, the Courts would be beleaguered to accept the verbal testimony. On the contrary, the Defendant has to his detriment relied upon Exhibit JJJ which is a Demand Draft dated 01-06-2011 indicating payment of a sum of Rs.69,120/- (Rupees sixty nine thousand, one hundred and twenty) only, in favour of the Plaintiff. The fact that the said Demand Draft of the aforestated sum was for the rents of December, 2010 to May, 2011, was admitted by the D.W.1, Sushil Marda and duly identified by D.W.2, Naresh Kumar Sharma, establishing default in payment of rent of not only four months, but more than four months.

26. There is no merit in the argument of Learned Counsel for the Defendant that according to the Plaintiff she had not signed any document pertaining to the rent and the rent receipts do not bear her signature. This argument was advanced to establish the ignorance of the Plaintiff pertaining to the matter in issue in the Suit. The purpose of filing the rent receipts was apparently to buttress the claim of the Plaintiff that the Defendant had deposited

rent beyond the stipulated time of the 10th of every succeeding month, making him a tenant who deposited rent erratically. This is not the concern in the instant matter, default in payment of rent for four months or more is the issue at hand.

27. While considering the argument advanced by the Defendant that the Plaintiff has not been able to establish her title over the suit premises, this Court restrains itself from adjudicating on an issue irrelevant to the matter at hand apart from which no pleadings on this count ensues.

28. The contention of the Plaintiff that the Defendant has closed the shop premises is not relevant for the present purposes either. Whether the premises are being run as a shop or otherwise, the fact admittedly remains that the premises were rented out to the Defendant and in the absence of any Lease Agreement, the Court is not in a position to adjudicate as to whether the Defendant ought to have been running it only as a shop or otherwise. The only relevant consideration would be the payment of rent regularly or default in payment thereof as already stated.

29. That having been said, at this juncture, it is but apposite to notice that the Learned Trial Court while discussing Issue No.1 already extracted hereinabove, would conclude that there was no "wilful default" on the part of the Defendant, this conclusion having been reached *inter alia* on such grounds that P.W.1 when confronted with Exhibits 45 and 46, 47, 49, 55 and Exhibit 1 failed to indentify the Exhibits besides admitting that she had not filed the case

against anyone. That apart, she lacked knowledge regarding the tenancy and P.W.2, her son, admitted that they had not demanded the rent for the months of December, 2010 to March, 2011. Besides Exhibit 3 to Exhibit 44 and Exhibit A to Exhibit 3 were received by one Pramod Agarwal, but he was not examined, while the rent receipts relied on by both parties revealed that the rents were being tendered on demand. The Learned Trial Court would also hold that there were no pleadings about the role of her son P.W.2 and the Plaintiff has failed to discharge the burden of proof.

30. Pausing here for an instant, it can be noticed on scrutiny of the Act of 1956 that Section 4 nowhere speaks of "wilful default". All that the provision envisages is that the landlord may evict the tenant **"***when the rent in arrears amount to four months rent or more***"**, "wilful default" does not find place in the Section and is therefore alien to it. The requirement for eviction under the provision would therefore be rent in arrears for the period specified, and not wilful default as sought to be emphasised by the Learned Trial Court.

31. Further, it is worth recording that although the Learned Trial Court concluded that there existed default in payment of rent nevertheless proceeded to order as follows in Issue No.3;

> **"**82. In view of the detailed discussions, observations, findings and analysis of the evidence, the plaintiff is not entitled to any relief other than the arrear rents for the month of December, 2010 January 2011, February 2011 and March 2011 and also arrear rent till the filing of the suit. Further, plaintiff also is entitled to recover the arrear rent deposited by the defendant in the office of Nazir, District court East, vide order of the Court dated 28.10.2013 during the pendency of this suit.**"**

32. The conclusion of the Learned Trial Court in Issue No.3, extracted *supra*, is in my considered opinion unfathomable. Accordingly, the impugned Judgment of the Learned Trial Court deserves to be and is accordingly set aside, save the relief granted for payment of the arrears of rent.

33. In the result, the Appeal is allowed to the extent as detailed hereinabove.

34. Consequently, the Defendant shall vacate the suit premises on or before 31-12-2018 and hand over vacant possession to the Plaintiff. The Defendant shall also pay the arrears in rent from the month of December, 2010, till the time that they hand over vacant possession of the suit premises to the Plaintiff, as ordered herein. No interest accrues on the defaulted rent amounts.

35. Copy of this Judgment and records of the Learned Trial Court be remitted forthwith.

36. No order as to costs.

37. Appeal disposed of.

Sd/-
(Meenakshi Madan Rai)
Acting Chief Justice
01-10-2018

Approved for reporting : **Yes**

Internet : **Yes**

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