

GAHC010000502018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/19/2018

ON THE DEATH OF MOOL CHAND KUCHERIA HIS LEGAL HEIRS
REPRESENTED BY-

1.1: ROOP CHAND KUCHERIA
S/O- LATE MOOL CHAND KUCHERIA
R/O- MAIN ROAD
BONGAIGAON TOWN
P.O AND DISTRICT- BONGAIGAON
ASSAM
PIN- 783380

1.2: VINOD KUCHERIA
S/O- LATE MOOL CHAND KUCHERIA
R/O- D.52
SECOND FLOOR
RAM PRASTHA COLONY
P.O. CHANDRA NAGAR
DIST.- GHAZIABAD
U.P.
PIN NO.- 201011

1.3: BIMLA DEVI CHORARIA
W/O- SRI VIJAY SINGH CHORARIA
C/O- INTERNATIONAL PLASTICS
36
DHARAMSHALA MARKET
S.R.C.B. ROAD
FANCY BAZAR
GUWAHATI-781001
ASSAM (daughter)

1.4: INDRA DEVI SURANA
W/O- SRI RAJKARAN SURANA
R/O- B-1

GALI NO.1
4TH FLOOR
OLD ARJUN NAGAR
DELHI-110051 (Daughter

VERSUS

M/S BONGAIGAON STORES AND ANR
MAIN ROAD, BONGAIGAON TOWN, P.O AND DIST- BONGAIGAON, ASSAM,
PIN- 783380

2:ON THE DEATH OF RAMESWAR LAL MAHESWARI HIS HEIRS AND
REPRESENTATIVES
S/O- LATE KHETULAL MAHESWARI

2.1:SMTI. DHAPU DEVI MAHESWARI
W/O- LATE RAMESHAR MAHESWARI
R/O- MAIN ROAD
BONGAIGAON TOWN
P.O. AND DIST.- BONGAIGAON
ASSAM.

2.2:SRI BRIJ RATAN MAHESWARI
S/O- LATE RAMESHAR MAHESWARI
R/O- MAIN ROAD
BONGAIGAON TOWN
P.O. AND DIST.- BONGAIGAON
ASSAM.

2.3:SRI SUNDAR LAL MAHESWARI
S/O- LATE RAMESHAR MAHESWARI
R/O- MAIN ROAD
BONGAIGAON TOWN
P.O. AND DIST.- BONGAIGAON
ASSAM

Advocate for the Petitioner : MR. R C SANCHATI

Advocate for the Respondent : MR. B. J. MUKHERJEE

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 05-06-2023

Heard Mr. R. C. Sancheti, the learned counsel appearing on behalf of the Petitioners and Mr. B. J. Mukherjee, the learned counsel appearing on behalf of the Respondents.

2. This is an application filed under Section 115 of the Code of Civil Procedure, 1908 (for short the "Code") challenging the judgment and decree dated 22.09.2017 passed by the Court of the Civil Judge, Bongaigaon in Title Appeal No.35/2010 whereby the appeal was allowed thereby setting aside the judgment and decree dated 05.08.2010 passed in Title Suit No.2/2000.

3. The facts in brief are that the Petitioners as Plaintiffs have filed a suit before the Court of Munsiff at Bongaigaon which was registered and numbered as Title Suit No.2/2000. A perusal of the plaint which was amended reveals that the Plaintiffs claims to be the owners of the room which have been described in the Schedule to the plaint. It has been further mentioned that the room which have been described in the Schedule to the plaint had fallen in the share of the Plaintiff No.3. The Defendant No.2 took the said suit room on rent for the purpose of carrying on a business of a shop. It has been mentioned that apart from the said room, he was in occupation of two rooms, one kitchen, one bathroom and one latrine on the rear side of the first floor of the building of the Plaintiffs. It was only as regards the shop room on the ground floor which is the subject matter of the dispute. It was alleged in the plaint that the Defendants have been in occupation of the suit room (hereinafter referred to as "the

Schedule Premises") since 1975 as a monthly tenant. The rent of the Schedule Premises was Rs.280/-. It has been alleged in the plaint that as per the agreement, the rent was to be paid within the 7th day of the next month however the Defendants were always irregular in paying the rent. It was alleged that the Defendants stopped payment of rent and started depositing the rent in Court since last many years without offering rent to the Plaintiffs or any one of them. It was also mentioned that the deposit so made in Court were not in accordance with the provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 (for short the "Act of 1972") inasmuch as there was no offer to the landlord and refusal of the landlord to accept the rent. It was also alleged that the rent was not deposited in the Court every month and rent for 2/3 months were deposited at a time. In paragraph 5 of the said plaint, it has been further mentioned that the plaintiff No.3 was allotted the Schedule Premises which was presently in occupation of the defendant. As the room was not available the plaintiff No.3 had to go to Ghaziabad, (Surya Nagar) for starting his business in Delhi however his business in Delhi did not prosper for which he intends to come back to Bongaigaon to start his own business in the room under the occupation of the Defendants. Therefore, from a perusal of the plaint, it would reveal that the eviction of the Defendants was sought on two grounds. First is the ground of bona fide requirement and the second is the ground of defaulter in payment of the rent.

4. It appears on record that the Defendants have filed their written statement. Various preliminary objections were taken. In paragraph No.14, it was mentioned that the Defendants were in occupation of the Schedule Premises and the existing rent for the Schedule Premises in question was Rs.280/- per month however it was denied that the rent was payable within the first week of

the next English Calendar month as claimed. It was categorically mentioned in the said paragraph that the "Tenancy was created under the Plaintiff No.1 and later on since the Plaintiff Nos. 2 and 3 also claimed ownership over the same, the answering Defendants have been regularly depositing the rent in the Court in the name of all the Plaintiffs after observing the necessary formalities as provided under the Assam Urban Areas Rent Control Act."

5. On the question of bona fide requirement, the Defendants had stated in paragraph No.15 thereby denying to the statements made in paragraph No.5 of the plaint. It was mentioned that the so called non-prospering of the business at Delhi was also a fake claim inasmuch as the plaintiff No.3 had shifted to Ghaziabad on his own with his entire family and was doing a roaring business there and the Plaintiffs have now come up with the fake plea that because of the alleged non-prospering of the business of the plaintiff No.3 at Delhi, he wants to start the business in the room occupied by the answering Defendants. In paragraph No.16, it was mentioned that the answering Defendants were never irregular in payment of rent and had been regularly depositing the rent in the Court after the rent was refused by the Plaintiff No.1 on tender. It was admitted that the rent for 2/3 months have been deposited in the Court at a time but that does mean that such deposit of rent in the Court is not regular and the other allegations that the rent deposit applications were not accompanied by the requisite Court Fee for notices and that notices to the landlords were not issued and that many rent deposit cases were dismissed for want of steps for service of notices are all false and baseless.

6. Therefore, from a perusal of the written statement filed by the Defendants, it would be apparent that there is an admission to the effect that there has been

deposit of rent 2/3 months together before the Court. It would further be seen from the written statement itself that it is the stand of the Defendants that they started depositing the rent in the Court where the Plaintiff No.1 refused to accept rent. But on the other hand it is also the stand of the Defendants that the deposit of rent was on account of claimed ownership being made by the plaintiff Nos. 2 and 3 over the Schedule Premises. As regards the bona fide requirement, it has been duly mentioned that the Plaintiffs did not have bona fide requirements and the entire family of the plaintiff No.3 was having a roaring business at Ghaziabad.

7. It further appears from the records that on the basis of the above pleadings, as many as 9 (nine) issues were framed which are as hereinunder:

- “(1) Whether there is cause of action for the suit?*
- (2) Whether the suit is maintainable?*
- (3) Whether the suit is barred by principles of waiver, estoppels and acquiescence?*
- (4) Whether the defendant is a defaulter?*
- (5) Whether the suit premise is required bonafide by the Plaintiffs?*
- (6) Whether the earlier T.S. 2/75 in the Court of the Munsiff No.1, Goalpara; the subsequent proceedings has relevancy with the present suit?*
- (7) Whether Plaintiffs are entitled to any relief as prayed for?*
- (8) To what relief/reliefs are the parties entitled to under equity and law?*
- (9) Whether the amended plaint is submitted as per the provision of the C.P.C.?”*

8. On behalf of the Plaintiffs, there were 3 (three) witnesses and the Plaintiffs

exhibited as many as 8 documents. On behalf of the Defendants, there were also 3 witnesses and the Defendants exhibited various documents which were mostly the case records of the rent deposit cases, the certified copy of the Power of Attorney, a certified copy of the judgment passed by this Court in FA No.23/1981 as well as also certain treasury challans.

9. The Trial Court vide a judgment and decree dated 05.08.2010 decreed the suit in favour of the Plaintiffs. In doing so, the learned Trial Court decided the issue of defaulter in payment of rent in favour of the Plaintiffs however the issue pertaining to bona fide requirement was decided against the Plaintiffs.

10. Being aggrieved and dissatisfied, the respondents herein who were the Defendants preferred an Appeal before the Court of the Civil Judge, Bongaigaon which was registered and numbered as Title Appeal No.35/2010. In the said appeal, the Petitioners herein who were the Plaintiffs had also filed a cross-objection being aggrieved by the determination of the issue pertaining to bona fide requirement against the Plaintiffs. The First Appellate Court vide judgment and decree dated 05.11.2013 disposed of the said appeal affirming the judgment passed by the Trial Court thereby directing eviction of the Defendants/respondents herein. However, the First Appellate Court decided the issue pertaining to defaulter in payment of rent against the Plaintiffs and decided the issue of bona fide requirement in favour of the Plaintiffs.

11. Be that as it may, a Revision Application under Section 115 of the Code was filed before this Court which was registered and numbered as CRP No.77/2014. This Court vide an order dated 03.11.2016 taking into account that the said judgment so rendered by the learned First Appellate Court was not in accordance with Order XLI Rule 31 of the Code, reversed the said judgment of

the First Appellate Court and remanded the matter back to the First Appellate Court for recording a fresh decision on the issues by discussing the evidence available on record and by keeping in mind the principles embodied in Order XLI Rule 31 of the Code. This Court further directed the First Appellate Court that taking into account that the suit is of the year 2000, an endeavor should be made to dispose of the suit within a period of 6 (six) months from the date of receipt of the record. It is in pursuance to the said order of remand by this Court, the impugned judgment and decree was passed on 22.09.2017 by the First Appellate Court thereby holding the issue of bona fide requirement as well as the issue of defaulter in payment of rent against the Plaintiffs and accordingly dismissed the suit. Being aggrieved therefore, the instant revision application has been filed before this Court under Section 115 of the Code.

12. I have heard the learned counsels for the parties and have perused the materials on record. The two primary issues which arises for consideration before this Court is as to whether the respondents herein who were the Defendants were defaulters in payment of rent and as to whether the Plaintiffs had and has a bona fide requirement of the Schedule Premises.

13. Let this Court first take into account the issue pertaining to default in payment of rent. The issue pertaining to the default in payment of rent is Issue No.4. From a perusal of the judgment of the First Appellate Court, it is relevant to note that the First Appellate Court even after taking due note of the fact that the Defendants had admitted to have made the deposit as per their convenience and as per the accepted custom for a period of 2/3 months together in advance did not decide as to whether Section 5(4) of the Act of 1972 permits deposit of rent in 2/3 months together in advance. The First Appellate Court further

observed that as there were hostility amongst the Plaintiffs and the Defendants, the offering of rent would be a mere formality.

14. In the said backdrop, let this Court take note of Section 5 of the Act of 1972. It stipulates the various grounds on which a tenant may be evicted. The proviso (e) to Section 5(1) of the Act of 1972 stipulates that when the tenant has not paid rent lawfully due from him in respect of the house within a fortnight of its falling due would come within the various grounds on which eviction can be sought for. Section 5(4) of the Act of 1972 is a further protection being given to a tenant when the landlord refuses to accept the lawful rent offered by his tenant and in that case the tenant may within a fortnight of its becoming due, deposit in the Court the amount of such rent together with the process fees for service of notice upon the landlord and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served upon the landlord and the amount of deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. It is only when the conditions set out in Section 5(4) of the Act of 1972 are fulfilled, a tenant who has made such deposit shall not be treated as a defaulter under Clause (e) of the proviso to Sub-Section (1) of Section 5. From the said provision, it is clear that to get the protection from proviso (e) to Section 5(1) of the Act of 1972, the rent to be deposited in the Court has to be the lawful rent and that too upon refusal of the landlord to accept the rent.

15. In the instant case, admittedly tenancy was on the basis of monthly rent. The rent therefore had to be paid on monthly basis. It is being an admitted case by the Defendants that 2/3 months rent were paid in advance would not come within the ambit of Section 5(4) of the Act of 1972 for providing the protection

from being evicted in terms with the proviso (e) to Section 5(1) of the Act of 1972.

16. Now, coming back to the facts of the instant case, it would be seen that the First Appellate Court did not take into consideration the said aspect of the matter and on the other hand went into the aspect that in view of the hostility, the tendering of the rent and the subsequent refusal of the rent by the landlord was a mere formality. The First Appellate Court did not take into consideration that the rent admittedly was paid in 2/3 months together which could not have been said to be a lawful rent offered on it becoming due. Furthermore, a perusal of the judgment of the First Appellate Court there is no finding that the Defendants proved that the accepted mode of payment of rent was two three months together in advance. It is also noteworthy to mention that it was the admitted stand of the Defendants that due to claim made by the Plaintiff Nos. 2 and 3, the rent was deposited in the Court. It was not the case of the Defendants that on account of hostility, the rent was deposited in the Court. It is also relevant to take note that the First Appellate Court had in fact come to a finding that the Defendants failed to substantiate by leading cogent evidence as to the deposit of the rent in 2/3 months or in a lot was the agreed mode of payment. However, most strangely, the Issue No.4 as regards defaulter in payment of rent was decided in favour of the Defendants which was absolutely contrary to law. Under such circumstances, this Court is therefore of the opinion that as the Defendants were not saved by Section 5(4) of the Act of 1972 as the said tendering of rent was not in accordance with the said provision, the Defendants were defaulters in payment of rent and therefore attracted the proviso (e) to Section 5(1) of the Act of 1972, for which the Defendants were liable to be evicted.

17. The next issue which arises for consideration is as regards bona fide requirement which was the Issue No.5. The First Appellate Court while dealing with Issue No.5 had taken into consideration the evidence which was tendered by the Plaintiffs to the effect that the Plaintiff No.3 had his business at Delhi which was shut down on account of various orders passed by the Supreme Court. But on the grounds that there was no sufficient materials pleaded and the Plaintiffs have failed to show that they had taken steps to set up their business in the tenanted premises once the same is recovered, the issue of default bona fide requirement of the Schedule Premises was decided against the Plaintiffs. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of **Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others** reported in **(2005) 8 SCC 252**. The Supreme Court at paragraph Nos. 4, 5 and 6 observed as hereinunder:

“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 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."

18. From a perusal of the above quoted paragraphs of the judgment in the case of **Sait Nagjee Purushotham & Co. Ltd. (supra)**, the Supreme Court observed that that it is always the prerogative of the landlord to decide if he requires the premises in question for bona fide use. It was observed that it is not the tenant who can dictate the terms to the landlord and advise him that what he should do and what he should not. It was observed that it is always the privilege of the landlord to choose the nature of the business and place of business. Further to that, taking into account the contextual matrix in the said case, it was further observed by the Supreme Court that it is not possible for the landlords and their sons to wait till the disposal of their case as they have to do

something in life and they cannot wait till the appellant is evicted from the premises in question. It was observed that it is a common experience that a landlord-tenant dispute in our country take a long time and one cannot wait indefinitely for resolution of the said litigation. If they want to expand their business, then it cannot be said that the need is not bona fide.

19. 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***, the Supreme Court at paragraph Nos. 9 and 11 observed what the term "bona fide requirement" implies. The said paragraphs for its relevance are reproduced hereinunder:

“9. Next comes the decision of this Court in A.K. Veeraraghava Iyengar v. N.V. Prasad. 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 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 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. 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 and in Meenal Eknath Kshirsagar v. Traders and Agencies that the landlord was the best judge of his requirement. In Sheela Chadha v. Dr Achharaj Ram Sehgal 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. In Raj Kumar Khaitan v. Bibi Zubaida Khatun 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. x x x

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."

20. From the above, therefore it would be seen that for adjudication of the issue of bona fide requirement of a landlord what is required is that it must be shown that the requirement was something more than a mere desire but not certainly be compelling or absolute or a dire necessity. It is trite that bonafide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity on the other.

21. Now coming to the facts involved in the instant case, it would be seen that the Plaintiffs case is that the Plaintiff No.3 was carrying business at Delhi and on account of various orders passed by the Supreme Court, the business establishment was closed. There is no rebuttal evidence produced by the Defendants to counter the said evidence. It further transpires from the analysis of the reasoning given by the First Appellate Court that the Plaintiffs failed to bring cogent evidence to show that as per the direction of the Supreme Court, his shop was closed for which he suffered loss in the business and wanted to come back to Bongaigaon. At this stage, this Court finds it relevant to observe

that joblessness is not a condition precedent for getting one's premises back. The only criterion is whether the requirement was bonafide. The First Appellate Court further observed that except exhibiting some newspapers being Exhibit-2 to 8, the Plaintiffs failed to prove the fact of closure of shop on account of the Supreme Court's directions and to show that the Plaintiff No.3's business suffered as a consequence of the decision of the Supreme Court. It was further observed that though the Plaintiffs have averred that they proposed to start a business of trading but in his cross examination, the plaintiff No.3 disclosed that he had not finalized the items in which the business of trading would be done. These findings of the First Appellate Court in the opinion of this Court runs counter to the well settled principles of law as above quoted inasmuch as merely because the Plaintiff No.3 having not thought about the exact business which he may start upon eviction cannot be a ground for refusal to entertain the ground of bonafide requirement. The Plaintiff No.3 had stated in his evidence that he wants to come back to Bongaigaon to start a business in the Schedule Premises. The only requirement which the First Appellate Court ought to have looked into was as to whether the requirement of the Schedule Premises by the Plaintiffs was for bona fide purpose i.e. something above mere wish but not a compelling or absolute or dire necessity. This aspect of the matter however was not looked into by the First Appellate Court in deciding the issue of bonafide requirement against the Plaintiffs.

22. Considering the above and taking into account the evidence on record, this Court therefore is of the opinion that the Plaintiffs had a bona fide requirement of the suit premises. The Issue No.5 is also decided in favour of the Plaintiffs.

23. In view of the above, the Plaintiffs therefore are entitled to eviction of the

Defendants from the Schedule Premises. Taking into consideration that the defendants have been carrying on the business of clothes since long, Mr. B. J. Mukherjee, the learned counsel appearing on behalf of the Defendants 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. The materials on record shows that the Defendants have been carrying on their business in the suit premises for more than 55 years. It would be just and reasonable in the opinion of this Court to grant the Defendants 6 (six) months time to vacate the suit premises provided that they submit an undertaking before the Trial Court within 20.06.2023 to the effect that they shall vacate the suit premises within a period of 6 (six) months from the date of the instant judgment, i.e. on or before 06.12.2023. Failure to submit the undertaking within the period, the Plaintiffs/Petitioners shall be entitled to initiate execution proceedings for evicting the Defendants.

24. It is clarified that during this period of 6 (six) months, the Defendants shall continue to make payment of the amount of Rs.280/- per month in the form of compensation to the Petitioners/Plaintiffs.

25. It is further observed that granting of extension of the period of six months subject to filing the undertaking as aforementioned and the payment of compensation of Rs.280/- per month during the period of 6 (six) months shall not create any right or interest in favour of the Defendants/respondents herein in respect to the Schedule Premises. It is also clarified that during this period, the Defendants shall remain in possession of the suit premises as the custodian of the Plaintiffs and shall not do any act or acts which may effect the rights of the Plaintiffs over the suit premises in any manner whatsoever. This aspect of

the matter shall also be mentioned in the undertaking to be filed by the Defendants before the Trial Court.

26. The Petitioners/Plaintiffs herein shall be entitled to the rent for the period during the pendency 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 their entitlement of the rent during the pendency of the eviction proceedings and the Executing Court would permit the tenant/Defendants to controvert the allegations of non-payment of rent during the pendency of the eviction proceedings and thereupon decide in accordance with law.

27. With above observations and directions, the instant revision application stands allowed.

28. Send back the LCR.

JUDGE

Comparing Assistant