

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.5327 of 2015

ORDER :

The revision petitioner is the tenant against whom the eviction petition R.C.No.84 of 2006 is filed by the revision respondent-owner[under Section 10(2)(i), 10(3)(iii)(b), 10(2) (ii) of the Andhra Pradesh Building (lease, rent and eviction) Control Act, 1960, (for short, 'the Act'], of the appended schedule premises viz., mulgi No.15-8-381 at ground floor and cellar under premises No.15-8-380 to 382 situated at Feelkhana, Begum Bazar, Hyderabad, Andhra Pradesh, more fully shown in the plan and bounded as follows; North: Road, South: neighbour's property; East: Mulgi 15-8-380 and small passage of neighbour's property and West: Mulgi 15-8-382 and neighbour's property. The plan appended to the schedule is exhibited in the rent control case as Ex.P-10 in referring as rough plan.

2. The averments in nutshell of the eviction petition are that the schedule premises was let out on monthly rent of Rs.3,200/- orally commencing from 1st day of every calendar month to pay the rent on or before 5th day of every succeeding month and the rent lastly paid was for the month of October, 2005 on 01.11.2005 and later with malafide intention with no valid ground, the respondent-tenant failed to pay for three months till 31.01.2006 despite demands including by notices dated 16.11.2005 and 19.12.2005, thereby he is a willful defaulter and is liable to be evicted on that ground and his reply notices dated 16.12.2005 and 27.01.2006 are

false. The landlord filed a small cause suit (S.C.No.61 of 2006) for recovery of three months rent supra before the Additional Chief Judge, City Civil Court, Hyderabad which is pending. The further averments besides on willful default supra for eviction are that the landlady got two sons Vallabh and Vittal who want to start their own metal business in the petition schedule premises which is centrally located in the commercial area, where brass metal business are carried out by various businessmen and is suitable for brass and metal business and is required for her two younger sons named supra to start their business. It is also averred that the tenant willfully even denied title of the landlady by disputing jural relationship even estopped, having paid rents earlier and for she is absolute owner, particularly in his reply notice dated 06.12.2005, taking advantage of some typographical errors in her notice dated 16.11.2005 which made her to give another notice dated 19.12.2005 supra that, the schedule premises was constructed in the year 1988 and thereby pressed for eviction of the respondent-tenant.

3. The same is resisted by the counter of the respondent-tenant contending that husband of the petitioner-owner by name Ramakrishna Sharma negotiated the tenancy terms and entered into rental agreement in March, 1990 obtained in his favour in the presence of two attestors and another person by names Devi Chand, Ramaswamy and Nagulu. The petitioner's husband Rama Krishna Sharma and his children started collecting rents at their convenience and rent was also enhanced from Rs.800/- to

Rs.3,200/- from time to time under threat of eviction. At the time of entering tenancy, an amount of Rs.50,000/- by deposit, collected by Rama Krishna Sharma and later from time to time in April, 1990 Rs.4,00,000/- collected by him. It is further averred that whenever he is tendering the rent receipts were handing over either by husband of the petitioner or son of the petitioner by name Santhosh (Upadhyay) who used to purchase brass and steel articles from the respondent for his business purposes and by adjusting the same towards rents and from 1996 to October, 2005 from such adjustment, the account was fully settled and while so, there was a demand to enhance the rent of Rs.3,200/- to Rs.10,000/- p.m. by son of the petitioner and as the respondent-tenant could not oblige, the petitioner got issued notice dated 18.11.2005 (Ex.P-2=R1) with false allegations that her sons require the schedule premises for which he issued reply dated 06.12.2005, Ex.P-6=R2 and remitted the rent of November, 2005 by money order on 07.12.2005 without prejudice to the contest of the respondent-tenant, in the name of husband of the petitioner who refused from which the respondent issued notice dated 12.12.2005 (Ex.R-9) vide Ex.R-10 postal receipt and Ex.R-11 acknowledgement (Ex.R-3 to R.8 are the money order receipts, postal receipts and acknowledgements and return of money order refusal dated 09.12.2005) to the husband of the petitioner calling upon him to furnish bank account to deposit the rents and he issued reply dated 19.12.2005 Ex.R-12=P-7 saying he is no way concerned with the schedule property. The rents of November and December, 2005

remitted by money order was also refused. On legal advice, the respondent sent the rent of three months from November, 2005 to January, 2006 on 29.01.2006 which the petitioner received (Exs.R-13 to R-22 are the respective money order receipts, acknowledgments refused returns and later subsequent received acknowledgements on re-sending), later he sent notice dated 27.01.2006, Ex.R-23=P8 and later he received summons in the eviction petition. In the eviction petition when the counsel for respondent-tenant tendered rent to the counsel for the petitioner on 26.02.2006, same was received vide receipt dated 27.02.2006. There is no default to seek eviction on that ground muchless willful default and the petition is thereby liable to be dismissed. Insofar as the small cause suit claim of S.C. No.61 of 2006 for Rs.9,600/- sought for recovery that was already deposited and collected by the petitioner in the suit. So far as the personal requirement sought for the sons by names Vallabh and Vittal of the petitioner, same is not bonafide as petitioner and her family members are owners of the property at Begum Bazar and also other joint family property besides the schedule property in which they are carrying on business of brassware and also pan shop and there is another mulgi which fell vacant that was let out to the tenant on higher rent at Feelkhana. So far as denial of title of the petitioner concerned, it is contended in the counter that he never denied the title of the petitioner and he tendered rent only on the basis of legal advice to the petitioner and the allegations contra are false.

It is there from submitted that there are no grounds to seek for eviction and the eviction petition is liable to be dismissed.

4. From the respective contentions of both parties supra, the Rent Controller formulated three points for consideration viz., (1) as to existence of jural relationship between the parties, (2) whether respondent-tenant committed default in payment of rent and same tantamounts to willful default, if any and (3) as to the requirement for commencing brass business of her sons is whether bonafide.

5. In the course of enquiry before the Rent Controller, on behalf of the petitioner, one of her sons by name Vallabh (Upadhyay) who is the person filed the eviction petition as G.P.A holder (vide Ex.P-9, dated 28.01.2006) on behalf of the petitioner from the cause title of the petition, deposed as P.W-1 and cause examined another person Jagadish Parashad Joshi and placed reliance on Exs.P-1 to P-16 of which Ex.P-1 is counter foil of rent receipt dated 05.11.2005, Exs.P-2 to P-8 are the notices, reply, rejoinder and reply to it respectively referred supra besides Ex.P-9 G.P.A and Ex.P-10 rough sketch referred supra and Exs.P-11 to P-16 are certified copies of the proceedings in Small Cause Suit No.61 of 2006 petition affidavit, counter and order in I.A. No.449 of 2006, written statement, decree and judgment therein. On behalf of the respondent-tenant, besides himself as R.W-1 cause examined one Shaik Sadiq Ali as R.W-2 and placed reliance upon Exs.R-1 to R-73 of which besides Exs.R-1 to R-23 referred supra, Ex.R-24 is certified

copy of sale deed dated 22.10.2002 and R.25 is the Photostat copy of lease deed of March, 1990 and Exs.R-26 to R-73 are the rent receipts passed in favour of the petitioner.

6. It is from the evidence on record, the rent Controller vide order dated 09.02.2011 allowed the petition for eviction granting two months time to the tenant to vacate.

7. The findings of the Rent Controller in answering the points formulated supra mainly so far as jural relationship that the subsequent correspondence after filing of the eviction petition in sending the money order in the name of the petitioner and the counter of the respondent showing he never denied the title of the petitioner is suffice to hold that there is relationship of landlord and tenant between the petitioner and the respondent. Coming to willful default on point No.2, the observation is that P.W-2 is examined to support the evidence of P.W-1 stating that he used to collect rents from respondent and respondent did not pay rents from November, 2005 till January, 2006 and after filing of the eviction petition and counter, the rent was tendered on 26.02.2006 to the counsel for the petitioner by the respondent and that was received and receipt was passed on 27.02.2006 and once such is the case, it is the burden lies on the tenant to prove from the same is not willful default. In this regard, the tenant contends that husband of the petitioner was the person entered into lease agreement with negotiation and he paid the rents by money orders that were refused from November, 2005 to January, 2006 and for

the notices of the petitioner under Ex.P-1, he issued reply under Ex.P-2 and in Ex.P-1, it is mentioned that the petitioner is landlady but in Ex.P-2 reply he denied the averments of tenant under her and continued to send amounts through money order to her husband, even after Ex.P-1 notice and by issuing his notice to her husband to furnish bank account and on his reply, he stated no way concerned with the schedule property; he continued to send the money orders for November and December, 2005 and it is only on legal advise three months rents when sent by money order, the petitioner refused and it is after the eviction petition filed amount tendered to the counsel for the petitioner referred supra that was accepted and passed receipt. Further, the receipt dated 27.02.2006 did not see the light and the tenant did not adopt procedure under Section 8 of the Act even before that. No doubt, Ex.R-25 photostat copy of the lease deed of March, 1990 entered by the respondent is not with petitioner but with her husband. However, in due course of time, he paid the amount of the three months rent covered by the small cause suit (S.C.No.61 of 2006) maintained by the petitioner from the husband of the petitioner refused to receive rent sent by money orders including by the petitioner. No doubt, the Ex.R-26 to 73 receipts were earlier passed by the husband of the petitioner only and not by the petitioner as landlady and those demonstrate the rents increased time to time from Rs.820/- to Rs.3,200/-p.m. Having so held, the Rent Controller however answered the point No.2 also against the respondent and in favour of the petitioner of willful default.

Coming to point No.3 of the bonafide requirement of the schedule premises to commence Brass business by the petitioner's younger sons viz., Vittal and Vallabh concerned, Vallabh-P.W-1, G.P.A holder of the petitioner (one of the three sons of her). In his cross-examination stated that he and his brother are unemployed for the past 15 years and they require the schedule property and said requirement was informed to the respondent for the first time in the year, 2005 only though for the past 15 years they did not do any kind of business from his sitting usually in the shop of his brother-in-law who was doing waste paper business. P.W-1 admitted that one Sri Vinayaka Material Merchant-Badarilal of the adjoining mulgi was got vacated by them about 8 months or one year before his deposition and in cross-examination, said Mulgi is in their possession that was not let out. He also deposed that there is a pan shop near the petition schedule property. It is observed that it is not believable of P.W-1 and his brother for the past 15 years being unemployed or lying idle with no avocation in the requirement to proposed business in Brass in the schedule premises, apart from P.W-1 admitted about Vinayaka Material Merchant got vacated the mulgi about 8 months or one year back and it is in the possession of them and besides said Mulgi there is a pan shop near the schedule property being run by his father and said admission of P.W-1 disproved bonafide requirement of the petition schedule property required for commencing business of petitioner's sons. The Rent Controller further observed by discussing the evidence of P.W-2 that P.W-2 deposed that about

there are three mulgis in the ground floor and there are two tenants of whom one is Badarilal from the date of construction till last year when he vacated and the other is in the occupation of the respondent as tenant since the date of construction and the petitioner's another son Vittal for whom the petitioner sought the petition schedule property to carry on business, however he is carrying on his business in the shop vacated by Badarilal. In view of all the above, the bonafide requirement for commencing Brass and Metal business by petitioner's sons Vallabh and Vittal is not proved in finding on point No.3 against the petitioner. However, on point No.2 of willful default, the eviction is ordered.

8. When the tenant impugning the eviction order with adverse findings against him, maintained R.A. No.99 of 2011 and the landlord impugning the adverse finding on point No.3 supra maintained R.A. No.114 of 2011. In both the matters, by common disposal the appellate Court on 13.07.2015, allowed both the appeals while holding the so called willful default is not correct, however there is a bonafide personal requirement in granting four months time to the tenant to vacate on the ground of bonafide personal requirement. The findings of the appellate Court for such a conclusion in answering the points formulated viz., whether tenant committed willful default in payment of rents or not and whether landlady requires the premises for business purpose of her sons; were that the admissions made by P.W-1 in his cross-examination that it is true that his father has executed the rental agreement with Badarilal and executed a rental deed with

respondent. Immediately thereafter, however, he has chosen to depose that there is no written rental agreement with respondent. In such circumstances, normally Courts expect the tenant who pleads written lease, to prove about its existence, from the landlady says lease is oral. P.W-1 is no doubt, the son of landlady and he deposed pursuant to the G.P.A given by her (Ex.P-9) and no way incompetent to depose muchless to sign when Rule 7(3) of the Rules 1961 under the Act, enables a G.P.A being agent as per Section 182 of the Contract Act, can sign and also within the meaning of Order III C.P.C. The tenant was sought for eviction by the landlady from the shop in question which is at the ground floor of the building is also with cellar portion of the building measuring 36 x 20 feet used as godown which is not in dispute and the landlady claims right from Ex.P-2 legal notice of her two younger sons Vallabh and Vittal gained experience in metal business and wanted to commence their business and schedule premises is required for the same. Though it is the contention of the tenant of there are other non-residential premises available and landlady in possession and though Section 10(3)(iii)(b) postulates that the landlady has to state the details of the other properties owned and possessed in the town, she purposefully omitted to mention the details. In this regard, P.W-1, no doubt, deposed that shop No.15-8-72 the other residential property at Hyderabad purchased by her father being Kartha of their family and P.W-1 admitted about the other tenant of the adjacent premises i.e., Vinayaka Metal Works vacated about eight months or one year ago. Therefrom the claim

of bonafide requirement was rejected by the Rent Controller. P.W-1 deposed of the petition schedule premises required for his business purpose and his evidence shows he gained experience to do the business and when the petition schedule property claimed in the Ex.P-2 notice for business of the two sons with godown facility in the cellar and the shop at ground floor as more convenient and suitable for the proposed business of them and in and around there are Brass business shops and the business proposed to commence is in Brass. The owning of pan shop nearby the premises being run by father of P.W-1 and the husband of the landlady no way disentitle the requirement of the schedule premises in question from the scrutiny of evidence and legal position, the landlady is entitled to evict the tenant on the ground of bonafide requirement though there is no willful default and the Rent Controller ought to have seen the bonafide requirement as exists. The additional evidence sought to adduce in the appeal to introduce a new fact as to tenant secured alternative accommodation by showing in a wedding invitation, his address as besides the Petrol Pump as Katedan area, cannot be permitted to say it is alternative accommodation available to the tenant for the business for no such plea muchless evidence as on date to consider the so called additional evidence.

9. The landlady did not file any revision, but for by the tenant- the revision petitioner on hand. The contentions in the grounds of revision are that when the landlady already got a non-residential premises, the Court ought to have rejected the eviction

sought on the ground of personal requirement and the non-examination of the landlady leads to adverse inference being the party having personal knowledge, failed to appear, so to draw and the lower appellate Court went wrong in appreciation of the evidence for mere filing of eviction petition through G.P.A does not absolve her in coming to witness box to depose the facts within her knowledge for no reasons to withhold from deposing, for not even a case of P.W-1 was collecting rents and that to the exchange of notices were between landlady and the tenant and not by P.W-1 as G.P.A holder on behalf of his mother for G.P.A was dated 28.01.2006 later to the Ex.P-2 notice and reply and evidence of power of attorney holder cannot be treated as evidence of original party and Ex.R-25 filed which is Photostat copy of the rent agreement entered between the tenant and the husband of the petitioner showing by him as landlord and when the tenant wanted to lead secondary evidence, it was permitted and same was exhibited as Ex.R-25 even the executant i.e., the husband of the petitioner did not chose to come to disprove the contents therein or about receiving of the deposit amount of Rs.50,000/- referred therein and the lower appellate Court also totally ignored the admissions of P.W-1 and ill-appreciated the evidence on record and that too when adjoining mulgi when vacated as per the admission of P.W-1 about 8 months or one year back and lying vacant in their possession from which the bonafide requirement seized its purpose from the other premises available when it is pleaded of the

requirement for the joint business of the two younger sons from its availability and thereby sought for allowing the revision.

10. Whereas, it is the contention of the learned counsel for the landlady-revision respondent that the lower appellate Court order holds good so far as the bonafide requirement concerned and the other vacant premises is not a suitable accommodation apart from one of the two younger sons shown doing business therein and P.W-1 requires the suit premises as claimed and the purpose is in subsistence and no way seized leave about no willful default and no denial of title from the findings made final from which no further argument is raised though any of the findings even can be attacked without even filing an appeal by the landlady and thereby sought for dismissal of the revision.

11. In the course of oral submissions by Sri V.Achyutanand, learned counsel for the revision petitioner and by Sri V.L.N.G.K. Murthy, the learned Senior counsel for the revision-respondent, both submitted propositions as per their respective contentions and those are being discussed as per the contest hereunder.

12. Before going into the facts, it is to mention on the scope of revision placed reliance by both sides on the Constitution Bench (5Judge Bench) expression of the Apex Court in *Hindustan Petroleum Corporation Limited V. Dilbahar Singh*¹ by referring to catena of expressions of the Apex Court in deciding a rent control matter on a reference from conflict of the two three Judge

¹ (2014)9 SCC 78

Bench decisions to resolve one is of *Rukmini Amma Saradamma V. Kallyani Sulochana*² and the other *Ram Dass V. Ishwar Chander*³ of which *Ram Dass* supra followed earlier three Judge bench expression of the Apex Court in *Moti Ram V. Suraj Bhan*⁴, the case on hand before the Constitution Bench under Haryana Urban (Control of Rent and Eviction) Act, 1973 and the revision powers conferred therein under Section 15(6) as to could it interfere with the finding of fact arrived by the first appellate Court authority from the expression in *Rukmini Amma* supra and revisional Court is not entitled to re-appreciate the evidence contra to the earlier expression in *Ram Dass* supra of revisional Court is able to re-appreciate the evidence while considering the findings of fact of the first appellate Court and the reference connected with several matters under various Rent Control Acts including Section 20 of the Kerala Act, 1965 and Section 25 of the Tamil Nadu Act, 1960 and the revisional provisions under those Acts are not similar to Section 115 of C.P.C as a general provision conferring revisional jurisdiction on the High Court, the larger bench observed that the terms used legality or propriety or regularity or correctness (though there is some difference in the language of the revision provision in the three rent control enactments supra, the power is substantially similar and not significantly different). In *Moti Ram* supra three Judge bench expression of 1960 it is a case under East Punjab Urban Rent (Restriction) Act, 1949 Section 15 using the word legality or propriety and the Court held therein that the

² (1993)1 SCC 499

³ AIR 199-0 SC 1422

⁴ AIR 1960 SC 655

revisional power conferred under Section 15 of the Act is wider than the revision power under Section 115 of C.P.C. In a later two Judge bench expressions of *Dattonpant Gopalvarao Devakate V. Vithalrao Maruthirao Janagaval*⁵ under Section 50 of Mysore Rent Control Act, 1961, it was held the revision powers are as narrow as under Section 115 C.P.C. and not wide enough to make the High Court a second Court of first appeal and by referring to another two Judge Bench in *M/s. Sri Rajalakshmi Dyeing Works V. Ranga Swamy Chettiar*⁶ of Section 25 of Tamilnadu Buildings (Lease and Rent Control) Act that followed *Dattonpant* supra which says appeal and revision are expressions of common usage in Indian Statute and the distribution of jurisdiction between the two is well known though not well defined, for appellate jurisdiction ordinarily involves a hearing on law as well as fact, however, in case of second appeal limited in some way and revisional jurisdiction is analogues to power of superintendence and may some times be exercised even without which is being invoked by a party and conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising Tribunal within the bounds of their authority to make them act according to the procedure established by law and according to the well defined principles of justice. Revisional jurisdiction is always included in appellate jurisdiction but not vice versa. In *Sri Rajyalakshmi Dyeing Works* supra, the apex Court said in unequivocal words that concurrent findings, based on evidence, cannot be touched

⁵ (1975)2 SCC 246

⁶ (1980)4 SCC 259

upon by the High Court exercising revisional jurisdiction under Section 25 of Tamilnadu Rent Control Act and same was followed in *P.R.Krishnamachari V. Lalitha Ammal*⁷ under the same Act. The three Judge Bench of the Apex Court in *Ram Dass* supra related to Section 15 of the East Punjab Rent Restrictions Act, having noticed the scope of revision laid down in *Dattonpant* and *Rajyalakshmi Dyeing Works* supra observed that the scope of revisional powers of High Court, where the High Court is required to be satisfied that the decision is according to law that is considered in *Bell & Co. Ltd V. Waman Hemraj*⁸ that was approved by Apex Court in *Hari Shankar V. Rao Giridhari Lal*⁹. However, so far as Section 15 of East Punjab Rent Restrictions Act, 1949 concerned, it enables the High Court to satisfy itself as to the legality and propriety of the order under revision as much wider jurisdiction which enables in appropriate cases to examine the correctness of the findings of fact also, though the revisional Court is not a second Court of first appeal. But in *Rukmini Ammal* supra of 1993, the three Judge bench with reference to Section 29 of the Kerala Rent Control Act, observed that the use of the word 'propriety' also of the word propriety defined in *Raman & Raman V. State of Madras*¹⁰ at page 264 from Oxford English Dictionary as fitness, appropriateness, suitability that is in conformity with the requirements of rule or principle; rightness, correctness, justness and accuracy. Therefore, the re-appreciation of evidence is not

⁷ 1987 (Supp.) SCC 250

⁸ AIR 1938 Bombay 223

⁹ AIR 1963 SC 698

¹⁰ 1956 SCR 256

called for but the pleadings and evidence have to be examined to satisfy the legality or regularity of the order of the lower authorities. The Three Judge bench in *Rukmini Amma* supra also referred *E.V.Mathai V. Subordinate Judge, Kottayam*¹¹ and *Raichand Jain V. M.S.Chandrakanta Kosla*¹²; of which *Rai Chand Jain* relied upon the three Judge Bench of *Ram Dass* supra. The Constitution Bench observed therefrom that, apart from *Dr.B.Sankara Narayan V. Punjab National Bank*¹³ while dealing with Section 25 of the Tamilnadu Rent Control Act, observed that finding of first appellate Court could not be reversed upon by re-assessment of evidence, as observed in *Shiva Swaroop Gupta V. Dr.Mahesh Chand Gupta*¹⁴ in relation to Section 25(b) of Delhi Rent Control Act, 1958 of High Court cannot enter into re-appreciation of evidence, merely because just inclined to take a different view of the facts as if it were a Court of facts, but is obliged to consider the order on the touch stone of whether it is according to law and for that limited purpose, may enter into re-appraisal of evidence as to the conclusion arrived by the Tribunal below is wholly unreasonable and is one that no reasonable person acting with objectivity could have reached on the material available. The constitution Bench also referred another two Judge bench expression of *Ram Narain Arora V. Asha Rani*¹⁵ of Delhi Rent Control Act, saying High Court could examine the facts in order to find out whether Rent Controller had correctly or on a

¹¹ (1969)2 SCC 194

¹² (1991)1 SCC 422

¹³ (1995)4 Supp. 675

¹⁴ (1999)6 SCC 222

¹⁵ (1999)1 SCC 14

firm legal basis approached the matters on record to decide the case. Pure finding of fact though not opened to interfere, a finding of fact given on a wrong premise of law certainly would be open to the revisional Court to interfere. The Constitution Bench further observed from the other two Judge Bench expression of the Apex Court in *M.S.Jaheed V. K.Raghavan*¹⁶ under Section 50 of the Karnataka Rent Control Act, 1961 which referred *Central Tobacco Co.,Bangalore V.Chandra Prakash*¹⁷ and *Bhoolchand V. KayPeeCee Investments*¹⁸ in its conclusion that under Section 50 of the Act, High Court in revision is entitled to re-appreciate the evidence with a view to find out whether order of the Small Cause Court/ Rent Controller was legal or not. The Constitution Bench also referred another two Judge Bench expression of the Apex Court in *Ubaiba V. Damodaran*¹⁹ in relation to Section 20 of the Kerala Rent Control Act, and the meaning of the expression 'propriety' by relying upon *Rukmini Amma* of three Judge Bench expression of 1993 supra of same provision under consideration that revisional Court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the lower appellate authority. The Constitution Bench also referred another two Judge bench expression of the Apex Court in *T.Siva Subrahmanyam V. Kasinath Pujari*²⁰ under Section 25 of the Tamilnadu Rent Control Act, holding that the High Court is not an appellate Court to re-appraise or re-assess the

¹⁶ (1999)1 SCC 439

¹⁷ 1969 UJ 432 SC

¹⁸ (1991)1 SCC 343

¹⁹ (1999)5 SCC 645

²⁰ (1999)7 SCC 275

evidence for coming to a different finding contra to the findings of the Courts below, but where a finding arrived by the Courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the Courts below. The Constitution Bench also referred another two Judge bench of the Apex Court in *Ramdoss V. K.Thangavelu*²¹ under Section 25 of Tamilnadu Rent Control Act, which relied upon *Dr.D.Sankara Narayan* supra of 1995 referring the same provisions saying not being an appellate Court power, it is impermissible to re-assess the evidence in a revision petition and also referred another two Judge bench expression later of the Apex Court in *Shaw Wallace and Co. Ltd. V. Govindas Purushothamdas*²² which relied *M.S.Jaheed* supra of 1999 of the High Court is entitled to satisfy itself as to regularity of the proceeding of the correctness, legality or propriety of any decision or order passed therein and if, on examination, it appears to the High Court that any such decision or order should be modified or annulled, reversed or remitted for re-consideration, it may pass such order according to law and also referred another two Judge bench expression of the Apex Court in *V.M.Mohan V. Prabha Rajan Dwarka*²³ referring to Section 20 of the Kerala Rent Control Act in saying concurrent finding of fact recorded by original authority as well as appellate authority, no interference by the High Court in revision be called for to re-appreciate the evidence to come to a different conclusion therefrom. It also referred another two Judge Bench expression of

²¹ (2000)2 SCC 135

²² AIR 2001 SC 1387

²³ (2006)9 SCC 606

the Apex Court in *Olympic Industries V. Mulla Hussainy Bhai Mulla Akberally*²⁴ by referring to Section 25 of Tamilnadu Rent Control Act, that High Court could interfere with concurrent findings of the Tribunals in the revisional jurisdiction only if their findings are perverse or arbitrary or irregular or improper.

12(A). It is there from the Constitution Bench observed that both appellate and revisional jurisdiction are creatures of Statutes and the power of appellate Court is co-extensive with that of the trial Court for re-hearing on facts and law. Whereas, in revisional jurisdiction though is a part of appellate jurisdiction, but ordinarily, it cannot be equated with that, as revision is not continuation of suit or of original proceeding. It can only interfere within the permissible parameters provided in the Statute. It would, however, depend on the language employed by the Statute conferring the appellate and revisional jurisdiction.

12(B). Coming to the scope and ambit of the terms used, legality is lawfulness as strict adherence to law, propriety means appropriateness to the circumstances or conditions in conformity with requirements, rules or principles and so far as justness, accuracy, rightness or correctness concerned, accuracy of which correctness and propriety convey the same meaning of something which is legal and proper. Coming to regularity, it relates to the procedure being followed in accordance with principles of natural Justice and fair play.

²⁴ (2009)15 SCC 528

12©. It was further observed therefrom by the Constitution Bench that none of the three Statutes(Kerala, Tamilnadu and Pubjab Acts) confer on revisional authority, the power as wide as that of appellate authority, despite such power being wider than that provided in Section 115 C.P.C, for not an appeal in disguise for re-hearing of the issues raised in the original proceedings and we are in full agreement with the view expressed in *M/s.Sri Rajya Lakshmi Dyeing Works* supra and *Dattonpan* supra of the revision power is not as narrow as under Section 115 C.P.C, it is not wide enough to make the High Court a second Court of first appeal. In so far as the three Judge bench expression in *Ram Dass* concerned, it rightly observes that the revisional power is subject to well known limitations inherent in revisional jurisdiction. The controversy centers round the observation in *Ram Dass* of that jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of findings of fact also and by so observing enabled the High Court to interfere with the finding of fact by re-appreciating the evidence, said observation in *Ram Dass* is in saying High Court has wider jurisdiction obviously means, power of revision vested in it in the Statute is wider than power under Section 115 C.P.C and it is not confined to the jurisdictional error alone. Further, examination of finding of fact by the High Court is limited to satisfy itself that the decision according to law. This is expressly stated in *Ram Dass*. *Ram Dass* supra which is not laid down as a proposition of law that revisional power of High Court under Rent Act, is wide as that of appellate authority or is

co-extensive with that of appellate authority or the concluded finding of fact recorded by original or appellate authority can be interfered by High Court by re-appreciating evidence merely because it does not in agreement with said finding of fact. *Ram Dass* does not cross the limits of Court as explained in *Dattonpan* supra. *Rayachand Jain* supra that followed *Ram Dass* also does not lay down that High Court may reverse finding of fact merely because on re-appreciation of the evidence, it has a different view on the finding of fact to understand the observations in *Rayachand* supra in the context we explained of *Ram Dass* supra. In *Shiv Sarup Gupta V. Dr. Mahesh Chand Gupta*²⁵, it was held the revisional jurisdiction is under the touchstone of whether the order made is according to law and for that limited purpose may enter into re-appraisal of evidence, to find out whether the authorities below ignored the evidence or proceeded on a wrong premise of law or derived such conclusion from the established facts or lack of reasons or objectivity, which renders the finding not according to law. *Shiva Swarup* supra also thereby not laid down that High Court can re-hear on facts or re-appreciate the evidence to come to a conclusion different from that of the trial Court or the appellate Court because it has a different view on appreciation of evidence, so to understood in the context to the explained *Ram Dass*. The observations in *Ram Narain Arora* supra of the High Court could examine the facts available, must be understood in order to find out the finding of facts are based on firm legal basis

²⁵ (1999)6 SCC 222

and are not given on a wrong premise of law. It also lays down that pure finding of facts are not for interference in revisional jurisdiction. The statement in *M/s.Jaheed* supra of the High Court is rather entitled to re-appreciate the evidence with a view to find out whether the order is legal and correct, must be understood that revisional power cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. *Shaw Wallace & Co.* supra relied upon in *M/s.Jaheed* supra, does not lay down that the High Court can re-appreciate the evidence to come to a conclusion different from the Court or authority below as the appellate Court. *Rukmini Amma* supra (three Judge bench of 1990) holds, and in our view, rightly that the revisional power under the Rent Control Act does not enable the Court to act as a first or second Court of appeal. They approved the view of this Court in *Rukmini Amma* supra. The observation in *Dr.D.Sankara Narayanan* of the revisional Court cannot reverse the finding of the first appellate Court upon a re-assessment of evidence is in line with *Rukmini Amma* and we approved the same. Similarly, the view in *Ubaiba* which followed the *Rukmini Amma* that revisional Court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate Court is the correct view and gets our nod. In *T.ShivaSubrahmanyam* supra, it was held that of High Court does not enjoy appellate power to re-appreciate or re-assess the evidence for coming to a different finding contrary to the finding recorded by the Courts below is the correct view and they approve

the same. The observation in *Ram Dass* supra of High Court, in its revisional jurisdiction cannot act an appellate authority and impermissible to re-assess the evidence is in accordance with *Rukmini Amma* and *Dr.D.Sankara Narayanan*. It is an observation that High Court can interfere with incorrect finding of fact must be understood in the context where such finding is perverse, based on no evidence or misleading of the evidence or such finding has been arrived at by ignoring or overlooking the material evidence or such finding is so grossly erroneous that if allowed to stand, will occasion in miscarriage of Justice. In *Ram Dass* supra it is not held that High Court may interfere with finding of fact because on re-appreciation of the evidence its view as different from that of the appellate authority. The decision in *V.M.Mohan* supra is gone in line with *Rukmini Amma*.

12(D). It is there from the Constitution Bench held in the last paras of the expression as follows:

“we hold, as we must, that none of the above Rent Control Acts entitle the High Court to interfere with the findings of fact recorded by the First Appellate Court/ First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/ Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/ Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/ Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence

or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

We thus, approved *Rukmini Amma* as noted by us and the decision in *Ram Dass* must be read as explained above”.

13. Thus, this Court while sitting in revision against the impugned orders of the lower appellate Court’s revisional findings on the two counts of willful default and bonafide requirement, arrived by the Rent Controller, is to decide whether the impugned appellate Court’s order is according to law or not, for not a second Court of first appeal, to re-appreciate entire facts, but for to the relevancy only to satisfy itself as to the regularity, correctness, legality or propriety of the impugned decision which is not for giving a different finding on facts by re-appreciation or re-assessment of the evidence but to find out whether if perverse or has been arrived without consideration of the material evidence or

such finding is based on no evidence or outcome of mis-reading of the evidence or the conclusion is grossly erroneous, and if allowed to stand would result in gross mis-carriage of Justice, so as to correct from same if found not according to law in exercise of the revisional jurisdiction and then to set aside the impugned order to that extent of found not legal.

14. From this, now coming to the wording of Section 22 of the Act, 1960, it reads as follows:

“Section 22- Revision: (1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order in reference thereto as it thinks fit.

(2) The costs of and incidental to all proceedings, before the High Court under sub-section (1) shall be in its discretion.”

15. This section uses the words for the purpose of satisfying itself by the revision Court as to the legality, regularity or propriety of such order or proceeding, and may pass such order in reference there to as it thinks fit.

16. The wording used particularly of the Tamil Nadu, Kerala, Karnataka, Mysore, Delhi, Punjab, East Punjab Acts, and the wording referred supra of the AP Act, 1960, from what is laid down by the Constitution Bench in referring to the expressions interpreting the same of the three terms 'legality, regularity or of propriety of such order or proceeding'. This Court by referring to

the revisional jurisdiction under Section 22 of the Act, 1960 in this regard in its earlier expression in *Thumuguntla Enterprises Vs. Majeti Venkata Ramakoti Mutyalu*²⁶ relying on the expression of the Constitution Bench supra of *Hindustan Petroleum Corporation Limited* supra held that the power of revision under this provision and even under Article 227 of the Constitution of India, is limited to decide whether the impugned order is according to law or not but not as a second Court of first appeal. It is from the expression of this Court in *Mohd.Ibrahim V. Mohd.Ajam*²⁷ that once the revision under the Rent Control Act is before the High Court, it makes no difference whether the revision is presented under Article 227 of the Constitution of India or under Section 22 of the Act, for decision.

17. Thus, from the above limited scope of revision, now coming to the legality or correctness of the impugned order of the appellate Tribunal, so far as its finding of no willful default in reversing the finding of the Rent Controller of there is willful default as unsustainable from the facts referred supra which no way requires repetition, since not an issue and made final, no way requires even raised to interfere, but for only on the finding as to there is a bonafide requirement or not within the meaning of Section 10(3)(a)(iii) of the Act.

18. For understanding the provision and its scope, it requires to refer the propositions with reference to the provisions of which:

²⁶ 2016(2) ALD 763

²⁷ 2005(5) ALT 206

19(i). Section 10 of the Act, reads as follows:-

“Section 10- Eviction of tenants: (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Sections 12 and 13:

Provided that where the tenant, denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against application, is satisfied -

(i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for what the rent is payable, or

(ii) that the tenant has, in the Andhra Area, after the 23rd October, 1945, and in the Telangana area after the commencement of the Hyderabad Houses Rent Control Order of 1353-Fasli, without the written consent of the landlord

(a) transferred his right under the lease or sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so, or

(b) used the building for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts of waste as are likely to impair materially the value or utility of the building, or

(iv) that the tenant has been guilty of such acts and conduct which are a nuisance to the occupiers of other portions in the same building or buildings in the neighbourhood, or

(v) that the tenant has secured alternative building or ceased to occupy the building for a continuous period of four months without reasonable cause, or

(vi) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application :

Provided that in any case falling under clause (i), if, the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding any thing in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.

(3) (a) A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building

(i) in case it is a residential building -

(a) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation;

(b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use and he is not occupying any such building in the city, town or village concerned which is his

own or to the possession of which he is entitled whether under this Act or otherwise.

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise

(a) for the purpose of a business which he is carrying on, on the date of the application, or

(b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence :

Provided that a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered;

Provided further that where a landlord has obtained possession of a building under this clause he shall not be entitled to apply again under this clause -

(i) in case he has obtained possession of a residential building, for possession of another residential building of his own;

(ii) in case he has obtained possession of a non-residential building, for possession of another non-residential building of his own.

(b) Where the landlord of a building, whether residential or non-residential, is a religious, charitable, educational or other public institution, it may, if the building is required for the purposes of the institution, apply to the Controller, subject to the provisions of clause (a) for an order directing the tenant to put the institution in possession of the building;

(c) a landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for the purpose of a business which he is carrying on, as the case may be;

(d) Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period;

(e) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, makes an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that, in the case of an application under (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to landlord;

Provided further that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate.

4). No order for eviction shall be passed under sub-section 3-

(i) against any tenant who is engaged in any employment or class of employment notified by the Government as an essential service for the purposes of this sub-section unless the landlord is himself engaged in any employment or class of employment which has been so notified; or

(ii) in respect of any building which has been left for use as an educational institution and is actually being used as such, provided that the institution has been recognised by the Government or any authority empowered by them in this behalf, so long as such recognition continues.

5(a). Where a landlord who has obtained possession of a building in pursuance of an order under sub-section (3) does not himself occupy it and for the purpose specified in the order within one month of the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored possession of the building

and the Controller shall make an order accordingly notwithstanding anything in Section 3.

(b) Where a tenant who is entitled to apply for possession under clause (a) fails to do so within month from the date on which the right to make the application accrued to him, the Government or the authorised officer shall have power, if the building is required for any of the purposes, or for occupation by any of the officer specified in sub-section (3) of that section, to give intimation to the landlord that the building is so required, and thereupon the provisions of sub-sections (6) and (8) of Section 3 shall apply to the building :

Provided that this clause shall not apply to a residential building the monthly rent of which does not exceed twenty five rupees or to a non-residential building the monthly rent of which does not exceed fifty rupees.

(6) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexatious, the Controller may direct that compensation, not exceeding fifty rupees be paid by such landlord or the tenant.

(7) When an application under sub-section (2) or sub-section (3) for evicting a tenant has been rejected by the Controller, the tenancy shall, subject to the provisions of this Act be deemed to continue on the same terms and conditions as before and shall not be terminable by the landlord except on one or more of the grounds mentioned in sub-section (2) or sub-section (3).

(8) Notwithstanding anything in this section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant."

20. The legal position is very clear from what discussed supra to mere availability of alternative accommodation either at the time of eviction petition or during its pendency no way fatal and whether it is convenient or not including from size, location

suitability relevant factors as per the three Judge Bench expression Jagadeesh Parshad supra, apart from subsequent events also can be taken into consideration of moulding relief in granting to the entitlement as on the date of the petition for eviction sought and even in the absence of plea which is required to be made. Mere absence of plea no way fatal when there is evidence let in and participated in trial with knowledge of the scope involved as held in several of the expressions referred supra.

21. From the above, no doubt in the eviction petition from what are the facts pleaded referred supra, no way since requires repetition, but for to say there is no specific pleading that the landlady is not having any other non-residential building or among the other non-residential buildings she is entitled to possession/ occupation she is not in occupation of any of the same in the city, town (of the twin cities of Hyderabad and Secunderabad) concerned for the so called setting up of the business of her younger sons Vallabh and Vittal among her three sons including the eldest by name Santhosh who is already doing business in Brass and other metal business.

22. The specific non-disclosure is different from suppression of a fact to non-suit there from at the threshold without going into merits though it is one of the contentions in the course of submission by the learned counsel for the revision petitioner/ tenant that on that count itself the Rent Control Application is liable to be dismissed equally of the appellate Court finding even

Rent Controller held no bonafide requirement, for the appellate Court in giving a reversal finding of there is a bonafide requirement.

23. It is needless to say from what is described of the petition schedule supra disclosed by the landlord including from her pleading on the clarify of this aspect of what is let out is one of the three shops of the ground floor viz., shop bearing No.381 out of the shop Nos.380 to 382 and the entire cellar area underneath the three shops for the metal business and its storage godown purpose of the stock of the tenant. That itself is when very clear from the petition schedule and the plan appended to it already exhibited as Ex.P-10 and also from the very petition para No.1 in its describing about the three shops of which the schedule premises is the main shop which consists entire cellar area also for godown purpose, what is not mentioned further at best is that as on the date of filing of the eviction petition, what is required to be stated of the other two shops are in the occupation of the tenants or any of the two shops are lying vacant and in her actual occupation and further of she did not own and possess any other premises or if at all own, not actually in her occupation or at best further of no way sufficient and convenient for the business proposed and as to how.

24. In this regard what the respondent contested in his counter in the last paras is that there is another mulgi which fell vacant was let out to the tenant on higher rent at Begum Bazar. In fact, in the counter he did not mention the mulgi particulars. No

doubt, there is no any rejoinder to it filed by the landlady if at all by explaining atleast at that stage. The evidence of P.W-1 from such pleadings i.e., Sri Vallabh one of the three sons-cum-G.P.A Holder of the petitioner is particularly at para No.7 that, himself and his brother Vittal (the two younger sons of the petitioner) want to start their own metal business in the petition schedule premises, which is centrally located in the commercial area where brass metal business are carrying out by various businessmen and the schedule premises is suitable for the brass metal business and the same requires for him and another brother bonafide for starting their business therein. He deposed that on this ground also apart from willful default and denial of title, the tenant is liable to be evicted. Ex.P-2 legal notice of the landlady dated 16.11.2005 clearly speaks of the premises is required to the starting of new business in Brass by her two younger sons Vallabh (P.W-1) and Vittal. P.W-1's evidence-in-chief did not, no doubt, explain despite the counter contest though with a stray sentence in the last paras of the counter of the respondent-tenant of another mulgi which fell vacant was let out to a tenant on higher rent at Feelkhana of Begumbazar. Feelkhana is the place where three mulgies including the petition schedule property is lying. Now, from this, coming to the cross-examination of P.W-1 by the respondent in this regard which was on 10.02.2009 particularly at page No.2, what he deposed is that the premises door No.15-8-382 was demolished and reconstructed in the year 1989-90 and by then he was aged about 18 years and his father is the family manager

and carrying on business in the shop with name Lodhram Upadhayay at door No.15-8-72 of Begum Bazar/ Feelkhana, Hyderabad and he is one of the three sons and five daughters of his parents and their family all are residing in the first and second floors over the petition schedule property and his father purchased the property in the name of his mother. The cellar, three shops on the ground, first and second floors were constructed in the year 1990 after obtaining municipal permission by his father in the year 1989 and since the year 1991, the property is assessing to municipal tax and prior to the re-construction there was old tenant occupied and after got vacated, the construction was done while old one was in a dilapidated condition. Out of the three mulgies, one shop is let out to the respondent/tenant and the other shop that was given on ownership basis to his uncle and the other shop that was let out to Badarilal (shop No.380) who vacated. That mulgi in the occupation of Badarilal is vacant, which is however smaller in size as compared to the other two mulgies on the ground floor of which he got personal knowledge. It is brought on record as it is true, the respondent was having a shop in the same locality on rent and after vacating said premises only he occupied the petition property which was let out to him for carrying vessels business. The shop including cellar was let out to him.

25. P.W-1's chief-examination was dated 3/4.03.2008. His cross-examinations were dated 04.08.2008 and 16.07.2009. The factum of tenant of shop No.380 by name Badarilal vacated about 8 or 12 months prior to that was deposed on 16.07.2009. Thereby

there could be no occasion to speak the same in the chief-examination affidavit dated 04.03.2008 much less to mention in the petition or by rejoinder to petition as it was subsequent thereto. It was not even suggested of he vacated even prior to filing of the chief-affidavit dated 04.03.2008 or prior to filing of the eviction petition. He did not even seek to clarify as to what he mentions in his counter of other shop at Begumbazar/ Feelkhana was let out to tenant was vacated and re-let out. It clearly shows from the cross-examination of P.W-1 by the respondent that he elicited and brought on record therefrom of the premises that was vacated by Badarilal bearing shop No.380 is smaller in size when compared to the petition schedule premises, apart from the petition schedule premises not only contains the shop No.381 which is therefrom bigger in size to shop No.380, but also the entire cellar area in use for godown purposes connecting with shop No.381 which is the demised premises sought for eviction.

26. It is further establishing from the pleadings and evidence that the P.W-1 and his two brothers including their father are from business family. It further establishes that P.W-1 and his another brother Vittal are with no avocation and almost idle and it is his father besides running a pan shop and also maintaining with the assistance of his elder brother, the business with the name Ladhuram and sons Metal business. The counter of respondent also shows the same in substantiating that P.W.1's elder brother Santhosh was purchasing from the respondent-tenant material for sale in their Ladhuram and sons business. It is also brought on

record that the P.W-1 Vallabh and his other brother Vittal are besides with no avocation, P.W-1 was sitting in the shop of his brother-in-law who was doing waste paper business. It is also the pleading in the petition and also right from Ex.P-2 legal notice that they got experience for doing business and it is for the two brothers the schedule premises is required to start metal business in Brass metal etc. P.W-2 is not a stranger and was collecting rents from the respondent is crystal clear including from above cross-examination of P.W-1 by the respondent-tenant. From this, coming to further Cross-examination of P.W-1, he categorically deposed that he is an un-employee since 15 years and his brother Vittal and himself are unemployees and they require the premises and informed the respondent tenant in the year 2005 of the requirement of them of the petition schedule premises for their business use. The respondent is a tenant for the past 15 years and he also personally meet the respondent and told him about the requirement of the petition schedule premises though he cannot give the month and date of his said demand personally.

27. It is one of the contentions in the counter of respondent-tenant of the rent from Rs.3,200/-p.m. demanded to enhance at Rs.10,000/-p.m. and for his refusal, the notice under Ex.P-2 was given setting up personal requirement of the two younger sons of the petitioner which is neither genuine nor bonafide requirement but for with oblique motive. For that, P.W-1 in his chief-examination particularly at para Nos.10 and 11 deposed of said version of respondent of there is no bonafide requirement is not

correct. He also deposed that whenever there was enhancement, it was voluntarily made by the respondent in enhancing the rent to Rs.3,200/- p.m. In pursuing cross-examination of P.W.1 by the respondent also, there is nothing that could be elicited to substantiate his said contention of no bonafide requirement. In the further cross-examination of P.W-1 what is further brought in is the Ladhuram and sons business being carried by his father at Feelkhana in shop No.15-8-72 is near the petition schedule shop as shop No.5 is since 50 years and it is there since his grant-father's time whose name is Ladhuram and said business fallen to the share of his father and his father is doing the business as his own for the past 25 years and his other brother Santhosh is sitting along with his father and he is not doing any business nor sitting in the shop of his father, but for sitting with his brother-in-law who was carrying waste paper business for the last 4 or 5 years and to start the new business proposed, he could not secure any vacant shop and thereby he was sitting earlier with his brother-in-law by attending his business and at other times he was wandering with no avocation but for doing any seasonal business at road side including by date of filing of this eviction petition. He denied the suggestion of Ladhuram and sons business is of his father and he and his two brothers are attending it and he is not an unemployee but for doing that business.

28. Coming again to shop No.380 vacated by Badarilal, in the cross-examination of P.W-1 in last paras, he deposed that said business with name Vinayaka Material Merchant got vacated by

them and it was vacated about eight months or one year back. He deposed that said tenant vacated the premises voluntarily as he suffered losses in his business and said mulgi is in their possession. There is a pan shop near the petition schedule premises which is a small dabba running by his father which is on the footpath and denied the suggestion of his other brothers are running that pan dabba along with other family business. He deposed that there is no negotiation in respect of vacant shop (shop No.380) vacated by Badarilal of Vinayaka Material Merchant to let out. The witness adds that his brother's son is sitting in the shop and denied the suggestion of Vinayaka Material Merchant is their family business and first floor of the premises is being used as godown for the mulgi. There is no such plea. It is even developed in the cross-examination of P.W.1, it could not be substantiated by any further evidence. There is no any suggestion even of what P.W-1 in the cross-examination deposed from what the respondent elicited of said shop No.380 is equal in size or equally useful to start new business despite he cause elicited the answer in the cross-examination which he could not get over without denial as a fact brought on record for part of appreciation of the evidence by Court of said shop No.380 is smaller in size, when compared to the shop covered by the schedule premises of shop No.381 and not suitable for the starting of their new Metal business, for no godown facility to shop No.380, but for to the shop No.381. It is further not in dispute of the factum right from pleading not disputed in counter including by any cross-examination suggestion to P.W-1 of shop

No.381 is part of the schedule property, which include entire cellar area and in use as a godown to shop No.381 only out of shop Nos. 380 to 382. It is clear there from of shop No.380 not only small in size but also with no godown facility, but for to shop No.381 from entire cellar in use as godown attached to it, where the tenant is running Metal business and where the petitioner wants her two younger sons to start the Metal business in using the shop No.381 with the cellar as godown. It is also brought on record of other shop No.382 is on sharing of ownership basis right from construction given and they got no right to possession. It is also brought on record from what is suggested to P.W-1 and denied by him of the first floor of the premises is only in residential use along with its second floor and never in use of any part as a godown, muchless any portion for shop No.380.

29. Thus, the non-disclosure in the pleading or non-mention in the chief-examination affidavit of the shop No.380 is smaller in size and with no godown facility and not convenient but for the subject premises shop No.381 with cellar in use as godown, to evict the tenant for personal occupation to start the new business of two out of the three sons of petitioner. As the tenant when himself knowingly brought in the cross-examination and undisputedly what is mentioned in the chief-examination and undisputed description of the petition schedule and contents of Ex.P-10 plan describing with clarity more of the petition schedule therein, it cannot be contended of no detached or separate plea of Shop No.380 is not suitable in asking eviction of Shop No.381 with entire cellar in use

as godown for that no evidence can be looked into, for the same became academic as per the settled law.

30. Coming to P.W-2, whose evidentiary value from the admission of he was collecting rents and passing receipts thereby not a stranger by name Jagadish Parshad Joshi deposed of he is employee under the petitioner and her husband and was looking after the collection of rents also from the petition schedule property for which the monthly rent of Rs.3,200/-, leave about the evidence as to the irregular in payment of rents and defaults not germane to the revision lis, what he deposed at para No.5, page No.2 of the chief-examination dated 16.09.2009 of petitioner requested the respondent-tenant to vacate the premises as required for business of her sons Vallabh and Vittal/ Vishal and the respondent having agreed to vacate failed to vacate despite legal notice, serves as a corroborative piece of evidence. In the cross-examination of P.W.2, he deposed that the respondent occupying out of the three mulgies in the ground floor as one among the two tenants of two shops and the other mulgi in the occupation of other tenant Badarilal since date of construction till last year when he vacated: From said cross-examination dated 01.10.2009 is to say at best vacated in September, 2008 or so. P.W-1's chief-examination is long prior to it since 3/ 4.03.2008 as referred supra. He further deposed that the respondent is also tenant since the date of construction of the shops and he was collecting rents from him and he is doing Brass business and petitioner, her husband and her sons are residing together and there was a partition between

them two years back and he does not know to whose share the ground floor shops fallen and nature of partition but for they are living separately so to say and he does not know what business Santhosh (one of the sons) is doing. P.W.2 denied the suggestion of the chief-affidavit of him was prepared without his knowledge but the instructions of P.W-1 and the suit schedule premises is not required bonafide to the petitioner and being son-in-law of petitioner he is deposing falsehood. He deposed no doubt that one Vittal (one of the three sons of the petitioner) is carrying on business in the shop vacated by Badarilal. Even taken the same, when P.W-1 is with no avocation and the suit schedule premises is required for starting new business, no doubt in saying for P.W-1 and other brother Vittal also, even subsequent to the filing of the eviction petition as a subsequent event shop No.380 is fallen vacant, it cannot be said the purpose of the requirement of the schedule premises for the business of the sons of the petitioner seized and the eviction proceedings are infructuous as the evidence on record discussed supra clearly speaks that shop No.380 is very smaller in size when compared to 381 and for 380 there is no cellar and godown but for attached to the schedule premises as part of the same viz., shop No.381 and entire cellar consists of the schedule premises sought for eviction. Coming to the evidence of respondent as R.W-1 he himself deposed in the chief-examination para No.2 of the schedule premises for which he is tenant consists of mulgi bearing No.381 and the cellar as forming part of the lease premises, where he is carrying on Steel and Brass business.

31. In the chief-examination, R.W-1 stated that petitioner is owner of entire cellar P.W-1's three shops of ground floor and two more upper floors of entire building with door Nos.15-8-379 to 382 at Feelkhana and the petition schedule property is part of ground floor three shops and what Badarilal vacated is shop No.380 where petitioner's sons are carrying on business in the name of Vinayaka Metal Merchant and first floor premises is also in possession of petitioner's sons family in commercial use and adjoining premises also in occupation of petitioner's family apart from that the petitioner's family got shop No.15-8-72 at Feelkhana with name Ladhuram Upadhyaya Stainless Steel, Copper and Brass that was purchased by petitioner's husband under registered sale deed dated 22.10.2002 (Ex.R-24) and the petitioner does not require the schedule premises to her sons business. In the cross-examination, he deposed on 27.10.2010, on further recall by denying the suggestions of petition schedule property requires for personal occupation of the sons of the petitioner and it is a bonafide requirement and he is liable to be evicted. The R.W-1 in his chief examination did not dispute by showing any way of said shop No.380 is smaller in size when compared to shop No.381 and not even stated for shop No.380, there is any other godown facility muchless at first floor and the petition averments when very clear of first and second floor are for residential purposes and the ground floor is with three shops and cellar is attached to shop No.381 which is the Metal shop among the three shops 380 to 382 and the same is petition schedule property that not in dispute and

there is nothing to say other than shop No.380 there is any other shop available for occupation for the personal business purpose of the landlady's son which is claimed as bonafide requirement. Once such is the case and the claim is bonafide and genuine including from the evidence on record since proved for nothing to rebut including from availability of the small shop No.380 that no way ceases the bonafide requirement sought for in the eviction petition since subsisting from the facts supra and the reversal finding of the lower appellate Tribunal of the Rent Controller of what the Rent Controller finds no bonafide requirement is no way sustainable in saying there is a genuine bonafide requirement that could be proved and same is subsisting from re-appreciation in deciding correctness of the said conclusion of the lower appellate Court and for this Court while sitting in revision there is nothing to interfere.

32. Accordingly and in the result, the revision is dismissed. Time for vacating the premises is fixed of eight months by directing the tenant-revision petitioner to secure any alternative accommodation and vacate the premises at any cost by the end of July, 2017. Failing which the landlord can evict the tenant by execution of the lower appellate Court's decretal order. There is no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.01.2017.
Vvr.