

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJAY KUMAR MUKHERJEE

**S.A. 522 of 2009
with
CAN 3 of 2015 (Old CAN 10316 of 2015)
CAN 6 of 2018 (Old CAN 1217 of 2018)**

**Sri Ajay Sharma
Vs.
Dwijendra Nath Dhar, Since deceased, rep. by Mrs. Chitralekha Pyne &
Ors.**

For the Appellant : Mr. Siddheswar Chandra
Mr. Sandip Dutta

For the Respondent : Mr. Krishna Das Poddar

Heard on : 17.07.2023

Judgment on : 10.08.2023

Ajay Kumar Mukherjee, J.

1. This second appeal is against the decree of eviction on the ground of violation of clauses (m) (o) (p) of section 108 of Transfer of Property Act 1882 and also on the ground of reasonable requirement. Originally Dwijendra Nath Dhar being the owner in respect of the premises no. 281/1/1A, B.B. Gangully street Kolkata-12, figuring himself as plaintiff instituted Ejectment Suit No. 838 of 1985 which was subsequently renumbered as 1062/2000 against predecessor in interest of the present appellant and proforma respondents, in respect of one room in the ground Floor of the said premises which is described in the schedule to the plaint, at a monthly

rental of Rs. 30/- payable accordingly to English Calendar month. Said suit was originally filed on the ground of default in payment of rent, also for raising unauthorized construction and for reasonable requirement. It is alleged in the plaint that the defendant is a defaulter in payment of rent from the month of February 1980. The defendant/tenant has also constructed a brick built room with mezzanine floor thereon along with RCC stair case attached with it, enclosing the portion of the common Varanda in front of suit room. Furthermore the suit premises is reasonably required by the plaintiff and his family members. Initially plaintiff's family was comprising of plaintiff his wife and four daughters, who were subsequently got married. During the course of trial, plaintiff's wife died and subsequently the sole plaintiff Dijendra Nath Dhar also died and his four married daughters have been substituted in the Appeal. Accordingly the plaintiff's family now comprises of 4 married daughters.

2. Mr Chandra learned counsel appearing on behalf of the appellant argued that it is admitted fact that after passing the impugned decree by the First Appellate Court in Title Appeal no. 94/2005 on 31.05.2007, the aforesaid original plaintiff Dijendra Nath Dhar, during his lifetime purchased a three storied building being premises no. 91 Serpentine lane Kolkata -14, having three vacant rooms and bath and privy on each floor of the said building totaling nine vacant rooms and three bath and privy in the said premises. In such view of the matter the appellant filed an application under order XLI rule 27 of the Code of Civil Procedure annexing photocopy of the certified purchase deed of the premises before this Court, being CAN 3/2015 for recording subsequent events.

3. In respect of violation of clauses (m)(o)(p) of section 108 of the Transfer of Property Act, Mr. Chandra contended that during the course of trial an Advocate Commissioner was appointed for holding local inspection commission in respect of the defendant's occupation in the suit premises and also plaintiffs occupied portion and said commissioner has submitted his report which has been marked as exhibit 5. He further contended that both side adduced evidence and after considering all aspects, Trial court dismissed the suit by the judgment dated 4th August 2005. The Trial court specifically observed that the defendant/appellant is not liable to be evicted for contravention of clauses (m) (o) (p) of section 108 of Transfer of Property Act, since the construction was made by the defendant outside the tenancy.

4. Appellant further contended that Plaintiff also in paragraph 1 of the plaint categorically mentioned that the defendant is a tenant in respect of only one room in the ground floor. In paragraph 5 of the plaint it has been mentioned by the plaintiff that the defendant/tenant constructed a pucca brick built room with mezzanine floor thereon and RCC staircase attached with it encroaching the portion of common Varanda, in front of the suit room. Accordingly plaintiff/respondent by making such averment in the plaint admitted that the said construction was made by the defendant/tenant/ appellant herein, outside the tenancy and the said Mezzanine floor was made above the said constructed room and not above the suit room. So argument advanced by the Advocate for the respondent herein that the construction of the Mezzanine floor is over the suit room is totally baseless and devoid of any truth, since from the schedule of the

plaint also it appears that on the eastern side of the suit room, there is clear mention of partly unauthorized constructed room by the defendant.

5. In this context learned counsel appearing on behalf of the appellant referred the commissioner's report which was marked as exhibit 5 and sketch map drawn by the Advocate Commissioner and contended that learned commissioner has pointed out that the construction was made by the tenant outside the tenanted portion. In support of his contention Mr. Chandra referred a judgment passed by the Division Bench of this court in **Rameswar Roy Vs. Baiahendra Kinkar Patra, AIR 1998 cal 292** and contended, where it is found that the construction was made outside the tenanted portion, the tenant is not liable to be evicted under any of the clauses of (m) (o) (p) of section of 108 of the Transfer of Property Act. He further contended that the Judgement of Hon'ble Single Bench of this court in **Anup Kumar Roy & others Vs. Chandra Nath Bhar, 2011 (1) WBLR (Cal) 535**, which has been relied upon by the respondent herein, is not applicable in the present case, as in the said case, the tenant constructed some portion by demolishing the portion of the tenanted property and as such the court held that the tenant was liable to be evicted for violation of clause (m) (o) (p) of section 108 of the Transfer of Property Act. In fact learned First Appellate Court passed the decree on the ground of violation of clauses (m) (o) (p) of section 108 of the T.P. Act by the tenant, without considering the commissioner's report, sketch map, pleading in the plaint but the court below only relied upon the cross examination of DW-2, wherein he has stated that the construction was made in the tenanted portion but the court below did not consider that at the same time DW-2 in

cross examination has also stated that the suit premises is in respect of one room only. Learned First appellate court failed to appreciate that the well settled principle of law is that evidence should be construed as a whole and not in a piecemeal manner. Moreover onus lies upon the plaintiff to prove his own case and the plaintiff is not entitled to get decree on the basis of defendant's stray statement, specially when the burden of proof is upon the plaintiff to prove that the tenant has made any unauthorized construction in his tenanted portion

6. So far as the ground of reasonable requirement is concerned, Mr. Chandra submits that respondents/plaintiffs have already acquired a premises being premises no. 91. B.B. Gangully Street, Kolkata-14 comprising of nine vacant rooms and three bath and privy. Further more the respondent/plaintiff also got possession of a room by way of execution of decree from a tenant apart from a room which the plaintiff obtained possession and which the plaintiff admitted in examination in chief on recall on 10.07.2002. Accordingly it is admitted that the present respondents are in possession of two rooms in the suit building apart from newly purchased house at 91 serpentine lane Kolkata-14. In support of his application filed under order XLI rule 27 (1) (aa) of Civil Procedure Code, appellants contended that the appellate court may allow such document produced or witness to be examined. At the time of filing the instant appeal by the appellant/tenant, it was not within the knowledge of the appellant about such purchase of the new building. Since by the aforesaid purchase, the requirement of the respondent plaintiff has been sufficiently fulfilled so their requirement is no longer *bonafide*. Relying upon paragraph 8 of the

judgment in **Govind vs. Dr. Jeet Singh, AIR 1988 SC 365**, Appellants contended that all the subsequent events must be considered to say whether there was any *bonafide* need of the land lord to evict the tenant from the premises in question

7. Appellant further contended that it is well settled principle that under section 100 of Code of Civil procedure, the High Court shall formulate the substantial questions of law and cannot interfere with the findings of the Trial Court, until and unless such findings are perverse. In this context the appellant relied upon the judgments reported in **Nazir Mohammad Vs. J Kamala and others** reported in **(2020) 19 SCC 57** (paragraph 33.4), and in **Illoth Valappil ambunhi Vs. Kunnambu Karanavan** reported in **(2020) 18 SCC 317** (paragraph 9, 11-14). In fact learned First Appellate court is totally wrong in drawing the conclusion that the construction was made within the tenanted portion. The commissioner's report and the sketch map drawn by the commissioners clearly shows that the construction was made in the Varanda in front of the suit room which is used as kitchen and Mezzanine Floor was constructed above the kitchen and as such the plaintiff/respondent is not entitled to get decree on the ground of unauthorized construction and as such finding of the court below is totally perverse. Learned counsel further submits that at the time of admission of the second appeal, this court was pleased to grant stay of execution proceeding subject to payment of occupational charges of Rs.10,000/-to be paid by the appellant/tenant and the liberty was granted to the respondent/decreed holder to withdraw the amount of last paid occupational charges/rent i.e. Rs.30/- per month and as such the appellant/tenant

submits that in case of allowing the present Second Appeal, the appellant may be permitted to withdraw balance amount i.e. (Rs.10,000-30) i.e. 9970/- per month which was paid by the appellant before the executing court

8. Mr. Poddar, Learned counsel appearing on behalf of the respondent/landlord submits that the tenant/appellant admitted in cross examination about the construction without leave of the land lord, a Mezzanine floor on the tenanted room, more precisely by covering entire room under the tenancy. Tenancy is for residential purpose and as there is bath and privy and kitchen, which is evident from the commissioner's report. It was not mentioned anywhere to demonstrate that those are outside the purview of the tenancy as claimed by the Appellant. The stair case is in front of the room of tenancy which is leading to the Mezzanine Floor and as such the tenant has raised additional construction within tenanted portion and he is liable to be evicted and the finding of First Appellate court is in accordance with the law. In this context Appellant relied upon the Division Bench Judgement of this court but said judgment is not applicable in the present context as in the said judgment there was a lease of 99 years which is not similar to the present case. Whether there is any construction and whether it is destructive for the existing structure in order to attract the said provisions is a question of fact. He further contended that the formulation of the first substantial question by the Division Bench does not satisfy the test of substantial question of law as per section 100 of the Code of Civil Procedure. Moreover the word used in first formulated question "admittedly construction is beyond the tenancy" has

not been proved or shown by the appellant in the Judgement. With regard to second formulated question by the Division Bench, what makes it clear is that at the time of formulation of the question, the Division Bench was not sure if the said question is answerable by the respondent and not very much confident whether any such investigation on the requirement issue of land lord /respondent can be raised in the second appeal. It is trite law that in second appeal, High Court will not be permitted to re-appreciate the evidence as lastly done by the First Appellate court, which is the last court of fact. In fact no appreciation of question of fact arrived at by the First Appellate court can be questioned in the Second Appeal, unless it involves perversity. The findings of the first appellate court in respect of additional/unauthorized construction is based on evidence of DW-1 and DW-2 in cross-examination. The appellant has failed to show where plaintiff admitted, that the construction by the tenant was outside the tenancy. The appellant has also failed to show any perversity in the impugned judgment passed by the court below. On the contrary the judgment and decree of the First Appellate Court is well reasoned and based on facts as admitted in the cross examination by the DW-1 and DW-2 before the Trial Court. Though any one ground as pleaded in the plaint by the landlord is sufficient to have a decree for eviction but in the present case the decree passed by the First Appellate court was of two grounds. In fact when additional pucca construction has been admitted by the tenant/appellant and when it has been made without obtaining any permission, decree on the ground of unauthorized construction is inevitable. In this context Mr. Poddar further contended that subsequent event of the said eviction decree should not

come in order to ascertain any mistake of the court below which gives rise to a substantial question of law. If it is permitted then the spirit of section 100 of the code and the legislative intent will be frustrated. The issue which is not covered by the decree passed by First Appellate Court cannot be added or supplemented as an issue in Second Appeal. In this context Mr. Poddar raised a question, if after the said judgment the plaintiffs house other than the tenanted portion is found collapsed or suffered notice under section 412 A of the Kolkata Municipal Corporation Act for demolition, whether said incident is required to be incorporated by way of order XLI rule 27 as additional evidence and thereby assailed the First Appellate Court judgment. The answer must be in negative. Mr. Poddar concluded there will be no end to this, if it is allowed in that way.

9. Respondent plaintiff has also prayed for withdrawal of the occupational charges deposited by the Appellant as condition precedent to enjoy the stay of execution proceeding, to be decided at the time of hearing of the appeal. Respondent relied on

a) AIR 1993 Cal 144 (Full Bench) [Ratanlal Bansilal and others Vs. Kishorilal Goenka and others]

b) (2019) 7 SCC 641 [Gurham Singh (Dead) legal Representatives and others Vs. Lehna Singh (Dead) by legal Representatives]

c) (2004) 13 SCC 750 [Mukund Balkrishna Kulkarni Vs. Kulkarni Powder Metallurgical Industries and another]

d) (2019) 19 SCC 415 [Mehboob-Ur-Rehman (Dead) legal Representatives Vs. Ahsanul Ghani]

e) (2019) 5SCC 477 [Ranjit Kumar Karmakar vs. Hari Shankar Das]

f) (2022) 10 SCC 399 [Farooqi Begum (Dead) by legal representative Vs. State of U.P.]

g) (2022) 2 SCC 238 [State of Haryana Vs. Harnam Singh (Dead) through legal representative and others]

h) (2020) 19 SCC 57 [Nazir Mohamed Vs. J. Kamala and others]

i) (2019) 17 SCC 71 [Randhir Kaur Vs. Prithvi Pal Singh and others]

j) 2023 Scc Online SC 812 [Ravi Khandelwal Vs. Taluka Stores]

10. I have heard learned counsel on behalf of both the parties at length. During admission of the second appeal the following substantial questions were framed by the Division Bench.

(i) Whether the learned First Appellate Court was justified in passing a decree for eviction on the ground of violation of the provision contained in clause (m)(o)(p) of section 108 of Transfer of Property Act by the defendant in the case where admittedly no construction was made by the defendants/tenants within the tenancy.

(ii) Whether the decree for eviction passed by the learned First Appellate Court on the ground of reasonable requirement is required to be reconsidered by this Court in the light of the

subsequent events regarding acquisition of another three storied building in the near vicinity by the plaintiff during the pendency of the appeal as disclosed by the defendant in their application in taking note of the subsequent events being CAN 10316/2015.

DECISION

11. Substantial Question No. (i) at the outset it must be made clear that settled law under section 100 of the code is that even in a judgment of reversal, the finding of facts arrived at by the First Appellate Court cannot be interfered with easily in second Appeal but the High Court in Second Appeal can definitely scrutinize the findings of the First Appellate Court as to whether, court below has misdirected itself in appreciating evidence. Accordingly let me appraise whether First Appellate Court i.e. Court below had drawn logical conclusions from the circumstances of the case. In the plaint of Ejectment Suit being 1062 of 2000, the schedule has been described as follows:

SCHEDULE

All that one room in the ground floor at premises no. 281/1/1A, B.B. Gangully street police station Bowbazar in the town of Kolkata within the jurisdiction of this court being butted and bounded

On the North: By room in occupation of plaintiff.

On the East: by partly unauthorized constructed room by the defendant.

On the South: by passage open to sky.

On the West: by passage open to sky.

12. The eviction notice sent by the plaintiff for institution of aforesaid suit also discloses the tenancy of the defendant and relevant portion of which states “under instruction from and on behalf of my client Dijendra Nath Dhar of 122 B.B. Ganugly street Kolkata-12, I do hereby give you notice to quit vacate and make over vacant and peaceful possession unto my aforesaid client of one room in the ground floor at premises no. 281/1/1A, B.B. Gangully street Kolkata-12 which you hold as a monthly tenant under my aforesaid client, your land lord, at a monthly rental of Rs.30/- according to English calendar month, on the expiry of the last day of July, 1980 when your aforesaid tenancy shall stand determined.”

13. Plaintiff in his complain lodged before City Architect dated 28th May 1980, which is marked as exhibit 4 has stated “on 26th May, 1980 when I went to inspect the house I found that he has constructed a pucca room with a floor inside and stair case enclosing a portion of common verandah in front of his room without my knowledge and permission”.

14. Plaintiff Dijendra Nath Dhar as PW-1 stated in the first line of his examination in chief “I am the plaintiff. Defendant was my tenant in respect of one room in the ground floor of premises no. 281/1/1A, B.B. Gangully Street Kolkata -12 at a rental of Rs.30/- as per English calendar month”. In the cross examination said PW-1 stated “the defendant raised unauthorized construction in the year of 1980 and 1985. I do not know if any action was taken by the municipal authority against the construction. Complaint was lodged before municipal corporation.” Though plaintiff has stated that the alleged unauthorized construction was made in between of 1980 and 1985 but the challans filed by the defendant shows that even after 1985, he

deposited rent in respect of one room. Accordingly the question before courts below was whether the unauthorized construction, even if made by the defendant/tenant without taking leave from landlord, is within his tenanted portion or outside his tenancy.

15. On the basis of the plaintiffs prayer, a local inspection commission was held in respect of the suit property. Learned commissioner in his report has clearly stated that in front of the defendants room, there is another covered pucca portion measuring 6ft. 2 inch. X 7ft. 10 inch. with the height of 6ft. In the said covered portion, he found cooking utensils gas oven and other cooking arrangement and defendant submitted before the commissioner that said portion is used as kitchen. Learned commissioner further reported that above the said kitchen there is a pucca Mezzanine floor measuring 6ft. 10 inch. from south to north and 6ft. 2 inch. from east to west and height of the said Mezzanine floor is 5 ft. 3 inch. The aforesaid room has one door measuring 4ft./2ft. 3inch. and one window measuring 4ft. 2 inch. having height of 3ft. In the aforesaid room there is one wall measuring 4ft X 1ft and there is one stair case for the entrance to the said Mezzanine floor 4ft X 7 inches and having height of about 8ft and is made with bricks and cements and the defendants submitted before learned commissioner that said room is used as store room.

16. In such view of the matter neither from the plaintiffs pleading nor from his evidence or from report of the commissioner it can be suggested that alleged unauthorized construction is within the defendant's tenanted room/portion. Even in the plaint plaintiff described the schedule by stating that in the eastern portion, a partly unauthorized constructed room by the

defendant which existed at the time of filing of the suit. Plaintiff/respondents heavily relied upon a stray statement made by DW-2 in his cross-examination where he stated there “pucca Mezzanine Floor in our tenanted portion” but said DW-2 has clearly stated in other part of the cross examination that tenancy was in respect of one room only. Accordingly if the evidence of DW-2 is read as a whole there is hardly any scope to say that the said DW-2 wanted to mean that the pucca Mezzanine floor is within defendants tenancy. Moreover the settled principle of law is that plaintiff in order to succeed will have to prove his case and his case must not succeed on the basis of any stray statement made by the defendant. The trial court in this context rightly relied upon the judgment of this court reported in **Rameswar Roy Vs. Baidhendra Kinkar Patra, AIR 1998 cal 292** wherein it was clearly held that the plea that the tenant was causing annoyance to landlord by closing Varanda and using it as kitchen and where disputed Varanda is not included within the tenancy, clause (m)(o)(p) of section 108 of Transfer of Property Act. is not applicable and tenant is not liable to be evicted on that ground. Plaintiff admitted in paragraph 1 of the plaint that the tenant’s tenancy is in respect of only one room in the ground floor and in paragraph 5 of plaint he mentioned that the defendant/tenant constructed a pucca brick built room with Mezzanine floor thereon and RCC stare case attached with it encroaching the portion with the common Varanda in front of the room in the suit. Accordingly plaintiff virtually admitted that construction was made outside the tenancy and Mezzanine floor as it appears from the commissioner’s report also was made above the said constructed portion used as kitchen and not within the said tenanted

room. The commissioners report is marked as exhibit 5 in the present case and the sketch map drawn by the advocate commissioner also revealed that the construction was made by the tenant outside the tenanted room.

17. The court below decreed the suit for violation of clauses (m)(o)(p) of section 108 of Transfer of Property Act only on the basis of stray statements made by defendants witnesses in cross-examination without appreciating their evidences as a whole and ignoring the commission's report as well as statements made by plaintiff in plaint, ejectment notice as well as in evidence. There is no dispute in the proposition of law that the First Appellate Court is final court of fact but if that court has patently gone wrong in casting the burden of proof and has misread the evidence and has also not considered, the basic requirement to prove the case of unauthorized construction, it cannot be said that High Court as a second Appellate Court is not competent to re-appreciate the same to correct the mistake committed by court below. In fact in this case judgment of court below has vitiated by non-consideration of relevant evidence and also by making erroneous approach to the matter and as such the order impugned calls for interference. The finding of court below in decreeing the suit on the ground of section 6(f) of the Act of 1997 suffers from perversity *interalia* on the grounds:-

- (i) Court below ignored statements about defendant's tenancy in plaint, ejectment notice, evidence and other documents and disbelieved commissioner's report for no reason.

- (ii) The conclusion of fact by the court below is inconsistent with the materials in record and is based on distorted view of evidence and on extraneous considerations.
- (iii) Finding of court below is also perverse in the sense that no normal person could have arrived at the finding from the attending facts and circumstances of the case that alleged unauthorized construction has been made within the tenanted portion.

18. In view of aforesaid discussion I have no other option but to say that the court below i.e. the First Appellate Court was not justified in setting aside the Trial Court's observation that the plaintiff/landlord failed to prove that the defendant/tenant has made any unauthorized permanent construction within the tenanted portion, so that it may attract either of the provisions of (m) or (o) or (p) of section 108 of the Transfer of Property Act. Defendant if made any construction unauthorizedly outside the tenancy then it is a matter which is to be dealt with by the plaintiff and concerned Corporation and even if the defendant is in possession of such unauthorized construction then appropriate remedy is to file suit for eviction against trespasser from unauthorized construction but the present suit which has arisen from notice under the West Bengal Premises Tenancy Act 1956 for eviction of tenant from specific tenanted portion, will not help the plaintiff to get remedy against the defendant in respect of that unauthorized portion. Accordingly that part of impugned judgment passed by First Appellate Court is hereby set aside and the order of Trial Court is affirmed.

19. Substantial question no.(ii):-

Learned First Appellate court while taking the issue as to whether the suit premises is reasonably requirement for plaintiffs' use and occupation or not has further set aside Trial court's observation and came to a finding that admittedly plaintiff/appellant is living at premises no. 122 B.B. Gangully Street Kolkata -12 and that property has been allotted to the elder brother and there is no doubt that the plaintiff appellant is living there as licensee under his elder brother and his elder brother filed a suit for eviction against licensee. The court below further held that there is actually no challenge about family composition of the plaintiff/respondents and also about the living of the plaintiff/respondent at the house of his elder brother and as plaintiffs are under the threat of eviction from the side of plaintiffs' elder brother, so plaintiffs requirements is *bonafide*. Accordingly court below concluded that the plaintiff/appellant has got no other accommodation inspite of allotment of his share by probated will. He is living at the house of his elder brother as licensee, so he is entitled to get decree of eviction on the ground of reasonable requirement.

20. However, during pendency of this second appeal the defendant/appellant filed connected application being CAN No. 10316/2015 and with the said application Appellant annexed a copy of purchase deed. The appellant contended that after filing the second appeal against the impugned judgment and decree passed by the learned First Appellate Court, the Appellant came to know that the decree holder/opposite party no. 1/plaintiff by a registered deed of conveyance dated 26th March 2008 purchased premises no. 91 Serpentine Lane, Kolkata-14 under Muchipara

P.S. against a valuable consideration from Subhra Bhattacharya and others. He further submitted that from the first schedule as well as the plan attached to the said deed of conveyance the decree holder obtained more or less eleven vacant rooms having covered area of about 2064 square feet. Said building having three floors are more than sufficient accommodation of the decree holder to meet his requirements as well as his family members. He further contended that since aforesaid purchase took place after passing of the decree by the First Appellate court so the aforesaid facts and events are to be considered by the Court. The appellant in this appeal also filed the application under order XLI rule 27 of the Code. It has also been stated that the plaintiff/respondent admitted that he got possession of one room by way of execution of decree from a tenant as mentioned in the said application apart from the room which the plaintiff obtained possession as mentioned in the judgment of the Trial court and which the plaintiff also admitted in examination on recall on 10.07.2022. Learned counsel for the appellant submits that at the time of the filing of instant appeal by the Appellant/tenant it was not within the knowledge of the Appellant/defendant/tenant about such purchase by the land lord plaintiff.

21. Learned counsel appearing on behalf of the Respondents/land lord /plaintiff submits that this court cannot enter into the details of evidence which the defendant sought for by filing connected application. In fact First Appellate Court was the last court to consider the point of law as well as point of fact and this Court in Second Appeal is only to deal with the question of law. He further contended that it is trite law that in second appeal High Court will not be permitted to re appreciate the evidence as

lastly done by the First Appellate Court, which is the last court of fact. No decision on question of fact arrived at by the First Appellate Court can be questioned in Second appeal by the High Court unless it involves perversity and finding of which is de hors of any evidence. Accordingly Mr. Poddar submits no re-appreciation of evidence is permitted in second appeal.

22. The issue as to whether subsequent purchase of building in the near vicinity after passing decree on the ground of reasonable requirement by First Appellate Court, plaintiff/Respondents' requirement still exists or not is essentially a question of fact. Determination of such question does not involve pure question of law only, in the event of such subsequent purchase of building by plaintiffs. Finding of First Appellate Court in the judgment impugned was based on a situation when plaintiffs had not acquired the said purchased building. Therefore the conclusion of First Appellate Court that respondents requirement in respect of tenanted premises is *bonafide* needs to be revisited in the light of aforesaid purchase by plaintiff. In ***Govind Vs. Dr. Jeet Singh*** reported in **AIR 1988 SC 365** in paragraph 8, the Supreme Court categorically held that all the subsequent events must be taken into consideration to ascertain whether there is any *bonafide* need of the land lord to evict the tenant from the premises in question. It was further held that the need of land lord must be *bonafide* and reasonable in order to evict the tenant.

23. Accordingly I find that it is fit case where the appeal is to be remanded to the First Appellate Court to consider the plaintiffs case of reasonable requirements in the light of his subsequent purchase in respect of the premises at 91 Serpentine Lane, Kolkata by a registered deed dated 26th

March, 2008 and if necessary after taking additional evidence and also after giving opportunity to the parties to go for local inspection commission in respect of said purchased premises. The First Appellate Court will dispose of the issue as to whether plaintiffs requirements in connection with the suit premises is *bonafide* or not and whether the suit premises is reasonable required for plaintiffs own use and occupation or not within a period of six months from the date of communication of this order. On such disposal the court below i.e. the First Appellate Court shall also decide whether the plaintiff will be entitled to withdraw the entire amount deposited by the defendant before the court by way the occupational charges or plaintiff will be entitled to withdraw only the amount of rent. However, the defendant shall go on depositing occupational charges month by month as directed by this Court till disposal of the Appeal which is remanded to the Court below for decision with a limited purpose.

24. S.A. 522 of 2009 along with all connected applications are accordingly disposed of. The execution proceeding shall be stayed till disposal of Appeal as above on condition of payment of occupation charges by the Appellant herein as directed by this court.

25. There will be no order as to costs. Lower court record be returned at once before the court concerned.

26. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)