

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

SECOND APPEAL No. 271 of 2014

BETWEEN:-

**GOVIND S/O LATE JAGANNATH
AGRAWAL, AGED ABOUT 63 YEARS,
OCCUPATION: BUSINESS 22/1, MURAI
MOHALLA (MADHYA PRADESH)**

.....APPELLANT

**(BY SHRI V. K. JAIN – SENIOR ADVOCATE WITH SHRI VAIBHAV JAIN -
ADVOCATE)**

AND

**PANKAJ KUMAR S/O LATE
GOVARDHANDAS AGRAWAL, AGED
ABOUT 59 YEARS, OCCUPATION: SERVICE
39, AKSHAYDEEP COLONY, A.B. ROAD
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI RADHESHYAM YADAV – ADVOCATE)

.....

Reserved on : 20.07.2023

Pronounced on : 20.10.2023

.....

*This appeal coming on for orders/judgements this day, the court
passed the following:*

JUDGEMENT

Heard finally.

2] This second appeal has been filed under Section 100 of CPC

against the judgement and decree dated 28.04.2014, passed by the 16th Additional District Judge, Indore in Civil Regular Appeal No.10/2013, by which the judgement and decree dated 29.08.2012 passed by Civil Judge, Class – II, Indore in COS No.41-A/2011 for eviction under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short ‘the Act of 1961’) has been affirmed.

3] The appeal was admitted by this Court on **09.04.2015** on the following substantial questions of law:-

“(a) Whether the learned Courts below have erred in law in passing the decree for eviction under Section 12(1)(f) of the M.P. Accommodation Control Act. Although the respondent has sufficient accommodation available with him?

(b) Whether the tenancy for the appellant was terminated by respondent as per requirements of law and, hence, decree for eviction is contrary to provisions of law?”

INTERLOCUTORY APPLICATIONS.

4] Since there are as many as *seven* Interlocutory Applications filed by the Appellant/defendant, either to bring additional documents on record or to amend the written statement, it is necessary to decide the same before proceeding with the matter on merits. These applications are being decided as hereunder :-

4.1] **I.A. No.6816 of 2019,-** which is an application filed under Order 41 Rule 27 of CPC by the appellant on 11.09.2019, seeking to place on record the documents, include the agreement dated 25.09.2001 which was entered into between the respondent landlord and his brothers on one side and M/s. Siddhikripa Construction Company on the other side, which is in respect of development of their property at 22/1 Sanyogitaganj, Murai Mohalla, Indore on

which the disputed shop is situated. It is submitted by the counsel for the appellant that the only intention of the plaintiff is to vacate the premises so that a building can be constructed on the same, and the reasons assigned in the eviction suit are only an excuse to evict the defendant from the said premises, and does not fall under Section 12(1)(f) of the Act of 1961.

4.2] I.A. No.6817 of 2019 along with the aforesaid application I.A. No.6816 of 2019, this I.A. No.6817 of 2019 for amendment in the written statement has also been filed on 11.09.2019, to the effect that the plaintiff wants to construct a commercial building on the plot, which was executed between the applicant and his family members with the builder, which shows that the plaintiff did not require the shop to commence his business.

4.3] The aforesaid applications have been opposed by the respondent/plaintiff by filing separate replies, rebutting the averments made in the aforesaid applications. It is stated that on account of the dispute between brothers of the plaintiff, the map was not even sanctioned, and the document has died its own death. It is also submitted that all the brothers have already obtained their shares and are in possession of their respective shares and thus, no case for interference is made out, at this stage.

4.4] On perusal of the documents filed on record, it is found that so far as the agreement filed by the appellant is concerned, it appears to have been signed by the applicant and his brothers on one hand and one M/s. Siddhikripa Construction Company on the other. However, as the plaintiff's case is that this document was not acted upon and has died its own death due to lapse of time. In the

considered opinion of this court, the defendant cannot rely upon the such document and no benefit can be said to have accrued to the defendant on account of the said document, which appears to have been signed in the year 2001, as a landlord is always entitled to consider the various options available to him or her in respect of the rented premises and such other options shall have no bearing on the eviction suit unless materialized. In view of the same, **both the applications**, being devoid of merits, appear to have been filed only with a view to further protract the matter before this Court, are hereby **rejected with cost of Rs.20,000/-**.

5] **I.A. No.1764 of 2020** -Appellant has filed yet another application under Order 41 Rule 27 read with Section 151 of CPC on 29.02.2020.

5.1] This application has again been filed to bring additional documents on record stating that during pendency of this appeal, on the basis of the judgement passed by 11th Additional District Judge, an eviction decree has been passed against M/s. Rajaram Chhabildas & Co., a tenant of the respondent, and the First Appeal No.354 of 2015 filed against the said decree by the tenant M/s. Rajaram Chhabildas & Co., has also been rejected by this Court, and pursuant thereto an execution case was filed by the respondent/plaintiff and the possession warrant was executed and the actual possession of the shop has been delivered to the plaintiff on 02.08.2019. It is also stated in this application that since, it was a subsequent event, the aforesaid document was not available on record, hence, could not be filed earlier. Thus, it is submitted that the aforesaid document be taken on record. It is stated that the on

account of the said decree, the respondent/plaintiff is already having a vacant shop available to him, thus, his need does not survive any more.

5.2] The respondent/plaintiff has opposed the prayer, and a reply has also been filed.

5.3] On due consideration of submissions and on perusal of the documents filed on record, it is found that the aforesaid document is not relevant for the purposes of deciding this appeal as it is already stated by the plaintiff in his plaint itself that he had filed eviction suits against three tenants. On perusal of the plaint, it is found that in para 1 of the plaint itself the plaintiff has clearly pleaded that he has three shops, which have been rented out to M/s. Kishan Chand Narsumal, M/s. Agrawal Sales Corporation which is the present appellant, and the third one is M/s. Rajaram Chhabildas. It is also stated that against all the three tenants, the plaintiff has filed the suits for eviction as he requires all the three shops. In such circumstances, it cannot be said that merely because a decree of eviction has been passed in favour of the respondent/plaintiff for one of such shops, it would entail any benefit to the present appellant/tenant as the plaintiff has clearly come out with a case that he requires all the three shops to commence his business.

5.4] In view of the same, the application being devoid of merits, is hereby dismissed with a cost of **Rs.10,000/-** as it is apparent that the appellant has tried to drag the matter for as long as the CPC permits him, and he is clearly misusing the said procedure.

6] **I.A. No.11442 of 2014** -also heard on this I.A., which is yet another application filed on 15.12.2014 under Order 41 Rule 27

read with Section 151 of CPC to bring additional documents on record.

6.1] In the aforesaid application, it is stated by the appellant that the respondent had come out with a case that he does not own and possess any alternative accommodation and although it is mentioned that two Apartments No.301/309 and 201/210 at Bansi Palaza, measuring 581 square feet and 1100 square feet are jointly owned by the respondent with some other person, but it is stated that these two apartments are residential and due to non-availability of the space, he is using the same for non-residential purposes. It is also stated in this application that the respondent did not file any document to show that the said two apartments are of residential use. However, the aforesaid documentary information has been obtained by the appellant subsequently during the pendency of this appeal, which could not be obtained by him, despite due diligence. Thus, it is submitted that the aforesaid document demonstrating that the property is commercial, be taken on record.

6.2] A reply to the aforesaid application has also been filed by the respondent/landlord, opposing the same and it is stated that the plaintiff had disclosed all the facts in his plaint. So far as Flat No.301/309 Bansi Palaza is concerned, it belongs to Shri Umesh Kumar Khetaan. Its copy of sale deed is also placed on record, whereas Flat No.201/210 is concerned, in its sale deed it is clearly mentioned in para 9 of the same that no machinery shall be installed in the said flat and on this condition only, the said flat has been

purchased by the plaintiff from Umesh Kumar Khetaan. It is also stated that Flat No.201/210 is for commercial purposes, however, Flat No.301/310 is for residential purposes only and the plaintiff is using the aforesaid Flat for commercial purposes only in the name and style of Ankit Advertising. Copies of Municipal Corporation receipts have also been placed on record in which it is stated that the property is residential. However, when the property was used for commercial purposes, in the receipts of the Municipal Corporation, it was mentioned as the commercial use. Thus, it is submitted that the application be dismissed.

6.3] On due consideration of submissions, perusal of the documents filed on record, this Court does not find any substance in the application as all these documents, which the appellant has procured were already available in public domain and could have been filed earlier. However, merely saying that after exercise of due diligence, the same could not be obtained, is of no avail. Even otherwise also, the reply filed by the respondent/landlord appears more plausible, accordingly, the application **I.A. No.11442/2014** being devoid of merits, is hereby dismissed with a **cost of Rs.10,000/-**.

7] So far as the application **I.A. No.354 of 2016** filed on 12.01.2016 by the respondent/plaintiff under Section 13 (6) of the Act of 1961 is concerned, in which it is stated that the appellant has not paid the rent, it is found that the appellant/defendant has already paid the rent as per the list enclosed. However, it appears that the respondent/plaintiff has not withdrawn the same from the concerned

department. Thus, no case for interference is made out. Accordingly, the application is rejected.

8] Also Heard on **I.A. No.5316 of 2019**, which is an application filed by the appellant on 22.07.2019, under Order 41 Rule 27 of read with Section 151 of CPC to bring a map on record. It is submitted that the plaintiff had already applied for the construction of the building at Murari Mohalla for which, a map was also sanctioned, which clearly reveals that the suit premises for required by the plaintiff only for construction of the building only.

8.1] The application is opposed by the respondent/landlord by filing a reply. Counsel for the respondent has submitted that the map was valid for three years only w.e.f. 09.03.2003, and the construction could not be carried out not only due to lapse of time, but also on account of a dispute between the family members of the respondent/plaintiff.

8.2] On due consideration, there appears no substance in the application as mere planning of the use of the property in a particular manner which has not materialized, would not disentitle the landlord to evict a tenant on any ground available to him under the Act of 1961. Thus, the application being devoid of merits and filed with an intention of protracting the disposal of Appeal is hereby dismissed with a cost of **Rs.10,000/-**.

9] Also heard on **I.A. No.5318/2019**, which an application filed on 22.07.2019 under Order 6 Rule 17 read with Section 151 of CPC seeking amendment in the written statement.

9.1] It is stated that the only intention of the plaintiff is to vacate

the premises so that a building can be constructed on the same and the reasons assigned in the eviction suit are only an excuse to evict the defendant from the said premises and does not fall under Section 12(1)(f) of the Act of 1961. It is also submitted that the plaintiff wants to construct a commercial building on the plot, which was executed between the applicant and his family members with the builder, which shows that the plaintiff did not require the shop to commence his business.

9.2] The aforesaid application has been opposed by the respondent/plaintiff by filing a reply, rebutting the averments made in the aforesaid application and it is also stated that on account of the dispute between brothers of the plaintiff, the map could not be acted upon, and the documents in itself has died its own death. It is also submitted that all the brothers have already obtained their shares and are in possession of their respective shares, and thus, no case for interference is made out, at this stage.

9.3] On perusal of the documents filed on record, it is found that the application appears to have been filed only to further prolong the matter. In such circumstances, this Court finds force with the submissions as advanced by the counsel for the respondent/landlord and is of the considered opinion that the application being devoid of merits, is hereby dismissed with a cost of **Rs.10,000/-**.

10] On deciding the aforesaid applications, this court finds it rather disturbing to note that this is how landlord- tenant disputes are kept pending in the Courts for years together i.e., by filing such frivolous applications in the appeals, which only burdens the Court already reeling under immense work pressure.

FACTS OF THE CASE.

11] Now coming back to the real controversy between the parties, in brief, the facts of the case are that the respondent/plaintiff Pankaj Kumar Agrawal filed a suit for eviction under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short 'the Act of 1961') against the appellant/defendant Govind S/o Late Shri Jagannath Agrawal on the ground that he has a ancestral house situated at House No.22/1, Dewas Kothi, Murai Mohalla, Sanyogitaganj, Chhawani, Indore in which a shop measuring 12x20 feet was given to the defendant on rent @ Rs.250/- per month with tenancy starting from the first day of every month. The case of the plaintiff is that the aforesaid house was received by plaintiff in a family partition in which there are *three tenants*, namely, M/s. Kishan Chand Narsumal, defendant Agrawal Sales Corporation and Rajaram Chhabildas, out of which, the shop of M/s. Kishan Chand Narsumal is always closed, regarding which a suit for eviction has already been filed by the plaintiff, which is still pending, and against Rajaram Chhabildas also an eviction suit has been filed which is pending, and the plaintiff, on account of his *bona fide* requirement to commence his business also issued a notice dated 23.12.2010, directing the defendant to vacate the premises by 31.01.2011, however, as the suit premises was not vacated by the defendant, and instead a false reply was sent by the defendant on dated 24.01.2011 through his counsel along with four months' rent of Rs.1,000/- through a cheque. Hence, the eviction suit has been filed.

12] Plaintiff's further case is that he is presently engaged in the business of advertising, and working through Banshi Plaza, M.G. Road, Indore from two flats i.e. Flat No.301, which is around 1200 square feet along with other flat belong to Rajesh Sharma and since both these flats are residential, hence, only offices are being run from the said flats, and apart from the aforesaid flats, the plaintiff has only the disputed property having three shops. It is also stated that the plaintiff requires all the three shops to commence his business of printing as only after obtaining the vacant premises, the plaintiff can purchase Printing Machines and start his business. It was also stated that for this purpose, plaintiff has no other shop available and whenever he has asked the defendant to vacate the premises, defendant has also accepted that he would vacate the premises, however, it was not vacated.

13] In his written statement, the defendant has denied the averments of the plaintiff and it was also stated that so far as the shop of Narsumal is concerned, it is already in possession of the plaintiff, who has kept it under lock. Defendant has also denied that the plaintiff is the owner of the shop and also that the notice is not binding on him. It was also stated that the plaintiff is running his business through two flats of Banshi Plaza. It was also stated in the special pleading of the written statement that defendant obtained the said shop on rent from Arun Kumar Umesh Kumar and Brothers, and thereafter, at the instructions of Arun Kumar Umesh Kumar, he has started giving rent to the plaintiff and right from the beginning, plaintiff's brother Arun Kumar or his employee used to obtain cheque from the defendant and used to give receipt of the same and

the plaintiff only wants to increase the rent to which when the defendant denied, the present suit has been filed for eviction. It is also stated that the plaintiff and his brothers want to construct a building on the land of the shops and for this purpose they have already sanctioned a map from the Municipal Corporation and there are many shops available to the plaintiff in the same premises which are adjacent to the road.

14] The learned Judge of the trial Court, after recording the evidence, has decreed the suit for eviction and in an appeal, the first Appellate Court has affirmed the aforesaid judgement and decree passed by the trial Court. Hence, this appeal, which has been admitted on the aforesaid substantial questions of law.

SUBMISSIONS FOR THE APPELLANT.

15] Shri V. K. Jain, learned Senior counsel for the appellant has submitted that the plaintiff has miserably failed to prove his case for *bona fide* requirement as it has not been proved that the plaintiff was engaged in the business of advertising or that he wanted to purchase the Printing Machines for their installation in the disputed shops. It is also submitted that the plaintiff has not come to the Court with clean hands as it has come on record in para 42 of the cross-examination of the plaintiff that he also owns a shop behind the shop of the plaintiff. Counsel has also submitted the notice of eviction was also not issued in accordance with law and thus, the impugned judgement and decree are liable to be set aside.

16] Shri V. K. Jain, Senior counsel for the appellant has emphasized that mere non-disclosure of the availability of a shop, even if unsuitable to the plaintiff's need, is sufficient to hold that

the plaintiff did not come with clean hands and thus, had suitable shop available to him.

17] In support of his submissions, Shri V. K. Jain, Senior counsel has relied upon certain decisions in the cases of **Banarsi Devi Jain Vs. M.P. Transportation Company and another** reported as **2008 (2) MPLJ 155**; **Asgarali S/o. Sadiquali and another Vs. Mohandas S/o. Goverdhandas** reported as **2008 (1) MPLJ 561**; **M.P. Dwivedi Vs. M.P. Vidhan Sabha Secretariate, Bhopal** reported as **2008 (1) MPLJ 164**; **Vikas Kumar Vs. Radhamal Sindhi** reported as **1998 (1) JLJ 149**; **Tikamchand Vs. Prakash Chandra** reported as **1991 JLJ 642**.

SUBMISSIONS FOR THE RESPONDENT.

18] On the other hand, Shri R.S. Yadav, learned counsel for the respondent has opposed the prayer and it is submitted that both the Courts have rightly recorded the concurrent findings of facts about the *bona fide* requirement of the plaintiff, and also that the shop which the plaintiff has admitted to be in his possession was not suitable for his purpose, which is also reflected from the judgement and decree of the trial Court itself in which it has been observed that the aforesaid shop was also offered by the plaintiff to the defendant, however, the defendant refused to accept the offer on the ground that this offer ought to have been given on earlier occasion before filing of the suit. Thus, it is submitted that when the defendant himself did not find the aforesaid shop suitable, he cannot be allowed to raise a contention that the shop was suitable for the purposes of the plaintiff.

19] Counsel for the respondent has also submitted that the

suitability of the accommodation, whether commercial or residential cannot be ignored, and if the accommodation is not suitable, its benefit cannot be given to the tenant, merely because it was not averred by the plaintiff in the plaint that although he has an accommodation, but the same is not suitable.

20] It is also submitted that the tenancy has been terminated after due notice to the tenant hence no substantial question of law is involved in the case and the appeal is liable to be dismissed.

21] In support of his submissions, Shri Radheshyam Yadav, learned counsel for the respondent has relied upon various decisions in the cases of **Namamal Vs. Prakashchand Jain** reported as **2009 (1) MPLJ 313**; **Prativa Devi (Smt) V. T.V. Krishnan** reported as **(1996) 5 SCC 353**; **Meenal Eknath Kshirsagar (Mrs.) Vs. Traders & Agencies and another** reported as **(1996) 5 SCC 344**; **Smt. Sujata Sarkar Vs. Anil Kumar Duttani** reported as **AIR 2009 (NOC) 1590 (M.P.)**; **Uday Shankar Upadhyay & Ors. Vs. Naveen Maheshwari** reported as **2010 (II) MPJR (SC) 161**; **Anil Bajaj & Anr. Vs. Vinod Ahuja** passed in **Civil Appeal No.5513 of 2014 dated 08.05.2014**; **Abid-Ul-Islam Vs. Inder Sain DUA** passed in **Civil Appeal No.9444 of 2016 dated 07.04.2022**; **Naresh Yadav Vs. Budh Parkash Tayal** passed in **C.R. No.1462 of 2013 dated 23.12.2022**; and **Shri Sukhbir Singh Vs. Dr. I.P. Singh** passed in **RC Revision No.261/2010 dated 04.09.2012**.

FINDINGS AND CONCLUSION.

22] Heard counsel for the parties and perused the record.

23] From the record, this Court finds that the plaintiff has filed the civil suit for eviction clearly stating that he owns three shops at

Murai Mohalla, which have been given to three different tenants and against all the three tenants, he has already filed the suit for eviction out of which regarding one shop rented to M/s. Rajaram Chhabildas, he has already obtained the possession after his suit for eviction was allowed. It is also found that so far as availability of alternative accommodation to the plaintiff is concerned, the plaintiff has averred that presently he is engaged in the advertising business, which is being run by him through Bansi Palaza, M.G. Road, Indore from Flat Nos.301 and 201. Plaintiff has stated that to start his business of Printing, he would require the ground floor shops, which have been given on rent by him and to vacate all three of them, he has already filed the civil suits. Thus, it cannot be said that the plaintiff does not require the premises to start his Printing business. It is also apparent that that the business of Printing is also closely related to the business of advertising.

24] So far as first substantial question of law regarding the availability of the alternative accommodation is concerned, plaintiff has clearly stated that he is presently working from two flats at Bansi Palaza and has no other alternative accommodation to start his Printing business. It is also found that although in his cross-examination, he has admitted that he is also running a business in name and style of Rudraksh Printers in basement, in part – A of 22/1 Sanyogitaganj, Indore. In para 12 of his cross-examination, plaintiff has admitted that he is not the sole owner of 22/1 Sanyogitaganj, Indore, but he is the owner of part C of the said property, which has been partitioned amongst his brothers. It is also found that the plaintiff has filed a map of the building in which the

plaintiff is shown as the owner of part – C. It is also found that in para 24 of his cross-examination plaintiff Pw/1 has also stated that there is no printing machine installed in the basement of the building, and also that for screen printing the machines are not required. In para 42 of his cross examination, plaintiff has admitted that he is in possession of a shop behind the tenanted shop, but surprisingly, the counsel for the defendant could not dare to ask him if the said shop is suitable for his purposes.

25] So far as the decision relied upon by senior counsel for the appellant in the case of **Raj Kumar Jain Vs. Smt. Usha Mukhariya reported as 2009 (1) MPLJ 343** is concerned, in the aforesaid decision this Court has relied upon its finding on the decision rendered by the Supreme Court in the case of **Hasmat Rai and another Vs. Raghunath Prasad** reported as **AIR 1981 SC 1711 = 1981 MPLJ (SC) 610**. In the aforesaid decision of **Hasmat Rai**, the Supreme Court has held as under:-

“6. Section 12(1)(f) under which eviction of the tenant is sought by the landlord reads as under:

“That the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.”

In order to be able to seek eviction of a tenant under Section 12(1)(f) the landlord has not only to establish that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business but he must further show that the landlord has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned.

XXXXXXXXXXXXXX

15. The landlord wants to start his business as Chemists and Druggists. On his own admission he has in his possession a shop admeasuring 18 feet × 90 feet plus 7 feet × 68 feet forming part of the same building; the remaining small portion of 7 feet × 22 feet is occupied by the tenant. The landlord has not stated that so much space with 18 feet frontage is not reasonably suitable for starting his business as Chemists and Druggists. In that view of the matter the plaintiff's suit for eviction on the ground mentioned in Section 12(1)(f) must fail and this is being done by not disturbing any finding of fact but relying upon the admission of the plaintiff himself.

16. There is an error apparent on the face of the record inasmuch as when the High Court was faced with a dilemma whether the landlord required the whole of the building including demised premises now in possession of the appellant tenant for starting his business of Chemists and Druggists and when the High Court had before it an indisputable fact that the Respondent landlord has obtained vacant possession of a major portion of the building which was in possession of Goraldas Parmanand, was it necessary for him to have any additional accommodation? The High Court got over this dilemma by observing and by affirming the finding of the subordinate courts that the remaining portion of the premises would be used by the landlord for his residence and even though the portion utilised for the purpose of running the business would be smaller compared to the one to be utilized for the residence it would still not be violative of sub-section (7) of Section 12 because such a composite user would not radically change the purpose for which the accommodation was let. This finding is contrary to record and pleadings. Minutely scanning the plaint presented by the landlord there is not the slightest suggestion that he needs any accommodation for his residence. He has not even stated whether at present he is residing in some place of his own though he claimed to be residing in the same town. He does not say whether he is under any obligation to surrender that premises. Section 12(1)(e) specifically provides for a landlord obtaining possession of a building let for residential purposes if he bona fide requires the same for his own use and occupation. But there is an additional condition he must fulfil namely he must further show that he has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. Utter silence of the landlord on this point would be a compelling circumstance for the court not to go in search for some imaginary requirement of the landlord of accommodation for his residence. In the context of these facts the trial court and the first appellate court committed a manifest error apparent

on the record by upholding the plaintiff case by awarding possession also on the ground neither pleaded nor suggested. The landlord must have been quite aware that he cannot obtain possession of any accommodation for his residence. Therefore, the finding of the High Court and the courts subordinate to it that the Respondent landlord requires possession of the whole of the building including the one occupied by the tenant for starting his business as Chemists and Druggists as also for his residence is vitiated beyond repair. Once impermissible approach to the facts of the case on hand is avoided although facts found by the courts are accepted as sacrosanct yet in view of the incontrovertible position that emerges from the evidence itself that the landlord has acquired major portion of the building in which he can start his business as Chemists and Druggists he is not entitled to an inch of an extra space under Section 12(1)(f) of the Act.

(Emphasis supplied)

26] A perusal of the aforesaid finding recorded by the Supreme Court clearly reveals that what is the requirement of law is that apart from the *bona fide* requirements of the accommodation let to the tenant for non-residential purposes, It is also required for the landlord to show that he has *no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned* and in the present case the respondent-landlord has clearly averred that he has three shops adjacent to each other, which he requires for his business purposes and in such circumstances, non-mentioning of the shop which according to the plaintiff-landlord was not suitable and was not to his purpose, would not make any difference. In such facts and circumstances, the aforesaid decision as relied upon by the senior counsel for the appellant would not be applicable, and is distinguishable.

27] The Supreme Court, in the case of *Meenal Eknath Kshirsagar (supra)*, has held as under:-

“18. In view of the rival submissions, what we have to consider is

whether the appellate bench and the High Court applied the correct test while determining the question whether the appellant requires the suit premises bona fide and reasonably for her occupation. The fact that the appellant is the owner of the suit premises and that she does not own any other premises in the city of Bombay is not in dispute. She does not possess, even as a tenant, any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband is a tenant but if for any reason her husband had parted with possession of such premises and the same were occupied by her husband's brother, it cannot be said that the said premises were available to her and by not referring to those facts she had come to the Court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the 'Olympus' flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint. It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.

Xxxxxxxx

20. As regards the 'Olympus' flat the evidence discloses, and it is not in dispute, that Eknath left that flat in October 1972 and since then only Sridhar and his family members have been staying in that flat. It is a two bedroom flat having an area of 1100 sq. ft. Sridhar has a wife and two children and the family of appellant also consists of four persons.

In the suit for eviction filed by the landlady of that flat a partial decree has been passed and Eknath has been ordered to hand over half the portion of that flat. Both Eknath and landlady have challenged the said partial decree and their respective appeals are pending before the Appellate Court. In this context the courts had to consider whether it can be said that the appellant and Eknath are having suitable alternative accommodation and, therefore, the appellant's claim that she requires the suit premises for her occupation is not reasonable and bona fide. The Appellate Bench and the High Court considered the possibility of Eknath going back to that flat and occupying it along with Sridhar and also the possibility that in case the landlady's appeal is dismissed and Eknath's appeal is allowed the flat in its entirety, will become available to Eknath and on that basis held that the appellant's claim that she requires the suit premises reasonably and bona fide is not true. As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate. Him to continue to occupy such premises. Though Eknath continues to be the tenant of the 'Olympus' flat, as a matter of fact, it is being occupied exclusively by Sridhar and his family since October 1972. For this reason and also for the reason that because of the partial decree passed against him Eknath is now entitled to occupy the area of 550 sq. ft. only, it is difficult to appreciate how the Appellate Bench and the High Court could record a finding that the 'Olympus' flat is readily available to the appellant's husband and that the said accommodation will be quite sufficient and suitable for the appellant and her family.

21. In view of the facts and circumstances of the case we are of the view that the appellant has proved her case of bona fide requirement and, therefore, the Small Causes Court was right in passing the decree in her favour. The Appellate Bench committed a grave error in

reversing the same and the High Court also committed an error in confirming the judgment and order passed by the Appellate Bench. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and also by the Appellate Bench and restore the judgment and decree passed by the Small Causes Court. The respondents shall pay the cost of this appeal to the appellant.”

(Emphasis supplied)

28] In such circumstances, it cannot be said that there was any suppression on the part of the plaintiff that he had no other reasonably suitable non-residential accommodation available to him to start his printing business, and thus the contention of shri Jain, that nondisclosure of the availability of an accommodation, whether suitable or unsuitable is fatal to the case of the plaintiff, is without any basis and is hereby rejected, as this Court is of the considered opinion that the courts can always see the suitability of an accommodation of the landlord, not disclosed earlier by him/her, and even brought to its notice by the tenant only. The decisions cited by shri Jain on behalf of the appellant are distinguishable and are of no avail to the appellant. Thus, the substantial question of law No.1 is answered in favour of respondent/plaintiff and against the appellant/defendant.

29] So far as second substantial questions of law, which relates to termination of tenancy as per law is concerned, the plaintiff had clearly stated that he had issued a letter to the defendant on 23.12.2010 for eviction, and as the appellant has not vacated the premises, the eviction suit has been filed. In his written statement, the defendant has stated that the notice was issued on false grounds and the defendant was not bound by it, however it is admitted that

along with the reply, a cheque for rent was also sent. It is also found that no specific issue has been made in this regard as the appellant/defendant has also not even raised this ground in the special pleading of its written statement that the tenancy was not terminated in accordance with law, and there is also no cross examination of the plaintiff in this regard. Thus, the aforesaid substantial question of law does not arise, and is also answered in favour of the respondent and against the appellant that the notice of eviction was proper.

CONCLUSIONS.

30] Resultantly, the appeal being devoid of merits, is hereby **dismissed.**

31] The aforesaid total cost of **Rs.60,000/-** shall deposited by the appellant in the account of President and Secretary H.C. Employees Union H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of two weeks from today and obtain a receipt. The acknowledgement be filed before the Registry failing which, the Registrar is directed to list this matter before the Court after a period of one week so that appropriate action can be initiated to recover the amount from the appellant, in accordance with law.

(Subodh Abhyankar)
Judge