

Sarala Shetty Vs. Ramakrishnayya

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Court : Karnataka

Decided On : Apr-16-1991

Reported in : ILR1991KAR3630; 1992(1)KarLJ89

Judge : Ramachandriah, J.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1)

Appeal No. : C.R.P. No. 297 of 1991

Appellant : Sarala Shetty

Respondent : Ramakrishnayya

Advocate for Def. : Udaya Holla, Adv.

Advocate for Pet/Ap. : B.V. Acharya, Sr. Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Ramachandriah, J.

1. This is a tenants' Revision Petition filed under Sub-section (1) of Section 50 of the Karnataka Rent Control Act, 1961 (for short 'the Act') against the order of eviction dated 19-7-1990 passed against them by the Chief Judge, Court of Small

Causes, Bangalore City (for short 'the trial Court') in H.R.C. No. 87/87 both under Clauses (f) and (h) of the proviso to Sub-section (1) of Section 21 of the Act giving one year's time to them to vacate and deliver vacant possession of the petition schedule non-residential premises to the respondent-landlord.

2. This Revision Petition is disposed of on merits at the stage of admission itself as agreed by Sri B.V. Acharya, learned Senior Counsel for the petitioners - tenants and Sri Udaya Holla, learned Counsel for the respondent-landlord.

3. Respondent is admittedly the owner and landlord of the non-residential premises bearing No. 164/D consisting of a ground floor and first floor in which there are 12 rooms situate in II Cross, Nagappa Street, Sheshadripuram, Bangalore City (for short 'the premises'). It was taken on lease by late Sri V.R. Shetty from the respondent-landlord on 15-11-1974 for the purpose of running a restaurant in the ground floor and using the first floor for lodging purposes, agreeing to pay split-up rent of Rs. 550/- per month for the ground floor and Rs. 950/- per month for the first floor, in all Rs. 1,500/- per month subject to 10% increase in the rent at the end of every 5 years subject to a maximum of Rs. 2,000/- per month. Ex.P-9 is said to be the stamp paper lease deed dated 15-11-1974 executed by late Sri V.R. Shetty in favour of the landlord. Sri V.R. Shetty had paid a good-will of Rs. 25,000/- to the landlord and also purchased the furniture fitted in the first floor for Rs. 15,000/- under a separate document at the time of taking the premises leased to him. Sri V.R. Shetty was paying the split-up rent at the above rates and obtaining separate rent receipts from the landlord. Rent was also increased to Rs. 1,660/- with effect from December, 1979 after the expiry of the initial lease period of five years. Sri V.R. Shetty died on 18-6-1982. Thereafter, his widow Smt. Sarala Shetty (first petitioner herein) was running the hotel with the assistance of Annayappa and Narayana Rao who are stated to be the Managers according to the petitioners-tenants and sub-lessees according to the respondent-landlord. Petitioners 3 to 5 are the three daughters and one son of late Sri V.R. Shetty and the first respondent and they were stated to be minors at the time of Sri V.R. Shetty's death in 1982 but they have since attained majority as per their description in the cause-title of the petition.

4. Landlord filed an eviction petition against the tenants on 20-1-1987 under Clauses (a), (f) and (h) of the proviso to Sub-section (1) of Section 21 of the Act after issuing two notices to the first petitioner as per Ex.P-1 dated 12-4-1986 followed by another notice dated Ex.P-3 dated 11-5-1986 calling upon her to vacate the premises as he was in bonafide and reasonable requirement of the premises for his own use and occupation, namely, to enable his three sons of whom the second son is physically handicapped being a victim of Polio disease and the third son, who is an un-employed under-graduate, in order to run hotel business in the premises and augment the financial resources of his family consisting of himself, his wife, three sons and five daughters all of whom were unmarried. He also alleged in the eviction petition that the tenants were in arrears of rent and on that ground also they were liable to be evicted.

5. Petitioners-tenants resisted the eviction petition by first petitioner filing a detailed and lengthy objection statement in which it was contended that a single eviction petition filed by the landlord in respect of the premises which consisted of two independent tenaments ground floor and the first floor for which rents were being paid separately was not maintainable; that they were not in arrears of rent; that there was no sub-letting of the premises by them as alleged; that the landlord was not in bonafide and reasonable requirement of the premises for the use and occupation of his sons as alleged and such a plea was set up as a ruse to evict them from the premises and they would be subjected to greater hardship if an order of eviction was passed against them whereas, the landlord would not be subjected to any such hardship if an order of eviction was not passed in his favour.

6. Both parties adduced oral and documentary evidence in proof of their respective contentions. At the trial, the landlord examined himself as P.W.1 and his first son Y.R. Narayan, second son Suresh and 3rd son Ramesh were examined as P.Ws.5, 6 and 7 respectively in addition to 3 other independent and official witnesses of Visveswaraiah Co-operative Bank, Bangalore, Labour Department and Commercial Tax Department who were examined as P.Ws.2 to 4. Documentary evidence was also adduced by the landlord. On the side of the tenants, V.R. Shetty's, brother B.R. Shetty was examined as R.W.1 and two other official witnesses of the Commercial Tax Department and Visveswaraiah Co-

operative Bank were examined as R.Ws.2 and 3. Some documentary evidence was also adduced on the side of the tenants.

7. On a consideration of the said evidence, the learned trial Judge in the course of his Judgment dated 19-7-1990 held that the eviction petition as filed was maintainable; that there was no wilful default in payment of rents by the respondents and that the landlord had substantiated the allegations of subletting in favour of Annappayya only but not in favour of Narayana Rao and had also substantiated his claim that he was in bonafide and reasonable requirement of the premises for his use and occupation and partial eviction of the tenants from the premises was not possible. He further held on the point of comparative hardship that the landlord would be subjected to greater hardship if an order of eviction is not passed in his favour and, consequently, allowed the eviction petition in respect of the entire premises with one year's time from 19-7-1990 to the tenants to vacate the premises.

8. Feeling aggrieved by the said order of eviction, tenants have filed this Revision Petition.

9. The points that arise for determination in the light of the elaborate arguments submitted by Sri B.V. Acharya, learned Senior Counsel for the tenants and Sri Udaya Holla, learned Counsel for the landlord are as under:

(1) Whether the view taken by the trial Court that a single eviction petition filed by the landlord in respect of the ground floor as well as the first floor was maintainable is illegal?

(2) Whether the finding of the trial Court that the tenants had sub-let the premises calls for interference as it borders on perversity?

(3) Whether the finding of the trial Court that the landlord had established that he was in bonafide and reasonable requirement of the premises for his use and occupation is not sustainable?

(4) Whether the finding of the trial Court that the landlord would be subjected to greater hardship than the tenants if an order of eviction is not passed in his favour

is vitiated by non-consideration of all relevant and material facts?

(5) To what reliefs are the parties entitled?

POINT No. (1)

10. Sri B.V. Acharya argued that one single eviction petition was not maintainable as the premises had been leased to late Sri V.R. Shetty by fixing separate rent of Rs. 550/- for the ground floor and Rs. 950/- for the first floor and rents were being paid as such by late Sri V.R. Shetty during his lifetime and subsequently by the present tenants also and the landlord was issuing separate receipts for having received rents for the first floor and the ground floor at the said rates and, therefore, the ground floor and the first floor were independent tenements in respect of which the landlord had to file two separate eviction petitions. Sri Udaya Holla countered the said argument of Sri B.V. Acharya by contending that Sri V.R. Shetty himself had filed one single suit against the landlord in respect of the premises and the finding recorded in that suit is also to the effect that the ground floor and the first floor formed one single tenement and explanation is also offered during evidence that the rents were being separately received for taxation purposes and, therefore, the finding recorded by the trial Court that a single eviction petition was maintainable does not call for interference in this Revision Petition filed under Section 50(1) of the Act. By way of reply, Sri B.V. Acharya, submitted that the explanation that rents for the ground floor and the first floor were fixed separately and were received as such for taxation purposes is untenable and earlier finding recorded in the suit on the question of the entire premises forming one tenement is not binding on the tenants.

11. In my opinion, there is no merit in the attack made by Sri B.V. Acharya on the finding recorded by the trial Court on the point of maintainability of the eviction petition in the face of the copy of the lease deed Ex.P-9 tendered in evidence during the examination of the landlord (P.W.1). It purports to be a copy of lease deed executed by Sri V.R. Shetty in favour of the landlord on 15-11-1974 on 9 stamp papers of the value of 40 p. each bearing Nos. 744 to 752 purchased in the name of Sri V.R. Shetty from a stamp vendor called K. Lakshminarayana Rao, Basavanagudi, Bangalore on 11-11-1974. In this connection, reference may also

be made to the sale deed -Ex.R-5 dated 15-11-1974 admittedly executed by the landlord in favour of V.R. Shetty in respect of furniture fixed in the first floor. Ex.R-5 is typed on 9 stamp papers of 40 p. each bearing Sl.Nos. 735 to 743 purchased from the same vendor K. Lakshminarayana Rao in the name of Y. Ramakrishnayya (landlord) on 11-11-1974. Purported signatures put at the bottom of the typed portion of each of the 9 sheets of Ex.P-9 favourably compare with the admitted signatures of V.R. Shetty found on Ex.P-6 (xerox copy of the written statement filed by Sri V.R. Shetty in O.S.No. 1019/1979 on the file of the Additional Civil Judge, Bangalore City) and also Ex.R-5. Courts are empowered under Section 73 of the Evidence Act to compare the signatures found on admitted and disputed documents in order to determine the genuineness or otherwise of the disputed signatures. Ex.P-9 is tendered in evidence by the landlord after taking notice as per Ex.P-8 to the first petitioner on 10-2-1987 to produce the original of Ex,P-9 as no reply was received to Ex.P-8. Schedule of Ex.P-9 refers to the entire premises consisting of the ground floor and the first floor. The circumstance that no reference is made to Ex.P-9 in the suit or in the two notices - Exs.P-1 and P-3 or in the eviction petition as pointed out by Sri B.V. Acharya is not a sufficient ground to discard Ex.P-9. P.W.1 has offered explanation for the late production Of Ex.P-9 and has further denied the suggestion that the signatures found on it are not those of Sri V.R. Shetty. R.W.1 who is none other than the brother of Sri V.R. Shetty, had no moral courage to say that are not the signatures of Sri V.R. Shetty. Further, Sri V.R. Shetty's wife has kept herself out of the witness box on the ground that she was not keeping good health besides being mentally upset since 1 1/2 months as spoken to by R.W.1 in paragraph8 of his evidence. The said explanation is unacceptable as she has filed objection statement and also affidavits in the trial Court. No medical certificate is produced in proof of her alleged physical and mental infirmity. If that statement of R.W.1 is true, it is reasonable to ask as to who is managing the hotel and maintaining the family. Therefore, adverse inference will have to be drawn against the tenants for the non-examination of Smt. Sarata Shetty as rightly contended by Sri Udaya Holla, learned Counsel for the landlord, on the strength of the Decisions in IRUDAYAM AMMAL AND ORS. v. SALAYATH MARY, : AIR1973 Mad421 in which it is laid down that adverse inference must be drawn if a party fails to examine important

witness and in GOPAL KRISHNAJI KETKAR v. MOHAMMED HAJI LATIF AND ORS., : [1968]3SCR862 in which it is held that the Court ought to draw an adverse inference against a party who fails to produce best evidence in his possession which would throw light on the issue in controversy. In my opinion, first petitioner was the best person to say whether or not the signatures found on Ex.P-9 were the signatures of her husband Sri V.R. Shetty. Therefore, it is reasonable to hold that she has kept herself out of the witness box deliberately and, therefore, an adverse inference will have to be drawn against the tenants. Consequently, I hold that the finding recorded by the trial Court that the eviction petition was maintainable does not call for interference.

POINT No. (3)

12. In my opinion, it would be appropriate to consider the ground of eviction sought under Clause (h) of Section 21(1) of the Act before adverting to the finding recorded by the trial Court on the question of sub-letting.

13. Landlord has set out in great detail the particulars of his claim that he was in bonafide and reasonable requirement of the premises for his own use and occupation in paragraphs 4 to 7 of the Eviction Petition. It is contended that the landlord is an aged person having three sons and five daughters all of whom are yet to be got married and he was in advanced age; that his first son though employed in the P & T Department intends to resign his job and assist him in running a restaurant and lodging section in the premises in order to improve his income and prospects in life; that his second son was a disabled person as he was afflicted with polio disease and he has to be provided with sufficiently a big shop for carrying on business in provisions with the assistance of his third son who was a B.Com under-graduate and also unemployed as he was running the business in a small premises and that premises was not sufficient for doing the business. He also alleged that he and his sons were residing together in the same house as members of a joint family and it is the earnest desire of all his sons that he should carry on the hotel business in the premises in order to improve their prospects in life and to meet the increasing demands of his large family.

14. What is the degree of proof that is expected of a landlord when he seeks for an order of eviction of a tenant on the ground of bonafide and reasonable requirement of the premises under Clause (h) of Section 21(1) of the Act has been considered by a Division Bench of this Court in the leading case of T.N. SHANKAR RAO AND BROTHERS v. S.A. WAJID, 1971 (2) Mys.L.J. 29. The relevant observations made at page 36 of the said Decision read as under:

'Section 21(1) of the Act confers an immunity on the tenant against eviction from the demised premises, but the said immunity is subject to the proviso to Section 21(1) of the Act. If a landlord brings his case under any one of the clauses under the proviso to Section 21(1) of the Act, he would be able to get a tenant evicted notwithstanding the general immunity against eviction recognised by Sub-section (1) of Section 21 of the Act. The burden of showing that the case of the landlord falls under any one of those clauses, is no doubt on him and that burden he can discharge by placing before the Court necessary material to come to the conclusion that he has made out his right to get the tenant evicted under any one of the clauses referred to above. The very fact that the landlord is required to place sufficient material before the Court to decide the question whether he is entitled to seek the eviction of a tenant under any one of the clauses set out under the proviso to Section 21(1) of the Act implies that the Court which is hearing the petition has to be satisfied that the material so placed is sufficient in the eye of law, to order the eviction of a tenant. In all the decisions of this Court referred to above, we find that the Court has come to the conclusion that the landlord required the premises reasonably and bona fide for his own use and occupation only after examining the material placed before the Court. In none of these cases, eviction has been ordered merely because the landlord expressed his desire to occupy his own house. It is no doubt true that in some cases the fact that the desire of the landlord is an honest one but not an oblique one has been taken as one of the factors in deciding whether the requirement of the landlord is reasonable and bona fide but not as the sole ground....'

It is further observed by the Division Bench that the claim of the landlord that he was in bonafide and reasonable requirement of the premises has to be decided after an objective assessment of the evidence in each case provided the landlord

had not sought the eviction of his tenant on the ostensible ground of bonafide and reasonable requirement of his premises for his own use and occupation but with the oblique motive of letting out the premises for a higher rent after obtaining possession of the premises on that ground.

15. In the instant case, tenants have not at all alleged either in their reply notice - Ex.P-2 or in their lengthy objection statement that the landlord had sought their eviction with the oblique motive of leasing out the premises to somebody else for a higher rent. As a matter of fact, all that is stated in the objection statement of the first respondent is that the petitioner became avaricious for more rent and became jealous of late V.R. Shetty inspite of the fact that late V.R. Shetty was ready and willing to increase the monthly rents by 10% as agreed by December 1979 and the petitioner demanded exorbitant increase of rent during the middle of 1979 for which late V.R. Shetty was not willing and it is on account of this strained relationship, the petitioner got issued a legal notice to late V.R. Shetty during October, 1979 and then filed O.S.No. 1019/1979 on 26-11-1979 for ejectment and that suit was re-numbered as O.S.No. 5085/1980 after formation of City Civil Courts and it was eventually dismissed after contest on 2-1-1986. That apart, there is not even a whisper in the objection statement that the landlord had sought their eviction with the oblique object of letting out the premises to somebody else for a higher rent. Such a suggestion is not made either to P.W.1 or to his three sons (P.Ws.5, 6 and 7) when they were in the witness box.

16. Petitioner was doing hotel and lodging business in the premises prior to November 1974 is admitted in paragraph-6 of the objection statement by alleging that the truth of the matter is that the petitioner was carrying on hotel and lodging business in the schedule property for some time prior to November 1974 and had sustained huge loss in that business and he had let out the premises to late Sri V.R. Shetty as he was not able to continue the said business inasmuch as his sons had no liking to engage and involve themselves in the business and therefore, the petitioner was looking for suitable persons who could take the hotel as a going concern as per his terms and accordingly late Sri V.R. Shetty negotiated for the purchase of hotel business and purchased the same on 15-11-1974 for Rs. 40,000/- comprising of good-will of Rs. 25,000/- and cost of furniture

of Rs. 15,000/-.

17. It is in the above background that the claim of the landlord under Clause (h) of Section 21(1) of the Act will have to be determined. Petitioner as P.W.1 has stated on oath that he was running the hotel and lodging business in the premises from 1965 to 1974 in the name and style of 'Rasik Ranjan' and he was keen to re-start his old business in the premises with the assistance of his sons in order to provide them avocation and also improve his financial prospects for maintaining his big family and also to get his three sons and five daughters married. The said statement made by the landlord on oath is not rendered uncreditworthy in cross-examination. His evidence that he would be able to re-start hotel business with a sum of Rs. 32,000/- he had in fixed deposit and Rs. 11,972/- in his S.B. Account as evidenced by Exs.P-10 and P-11 and he would also mortgage his building and raise a loan from the Bank for additional sum required for the business stands amply substantiated by the suggestion made to him in cross-examination that he had sufficient funds and he was not in any financial difficulties. The said suggestion is obviously made to discredit the evidence of the landlord that he wanted to restart his old business in hotel and lodging in the premises in order to improve his financial prospects for maintaining his big family and also for getting his unmarried three sons and five daughters married in the near future.

18. It would be convenient to refer at this stage itself to the argument of Sri B.V. Acharya that it is not stated in any of the two notices - Exs.P-1 and P-3 that the premises was required for enabling the first son of the petitioner also to do hotel business in the premises and added that it is too much to expect that the first son who is employed in the P & T Department would resign in order to assist his father to do hotel business in the premises. On this point, my attention was drawn by Sri Udaya Holla to a Decision of this Court in RAGHAVENDRA v. MARATHA CO-OP. CREDIT BANK LTD., 1977(1) KLJ 382 in which his Lordship Jagannath Shetty, J (as his Lordship then was and now the Hon'ble Judge of the Supreme Court) has held that 'the landlord cannot be non-suited merely on the ground that the reason for determining the tenancy has not been stated in the notice to quit, or the reasons given thereunder are different from the one pleaded and proved before the Court and at best such discrepancy if any, may be a factor to judge the bona

fides of the landlord, and cannot operate as an estoppel against him.' It, therefore, follows that there is no merit in the argument of Sri B.V. Acharya.

19. Sri Udaya Holla also placed reliance on another Decision of this Court in T. MOHAMMED SAIFULLA v. S.S. GANAPATHY RAO, 1977(1) KLJ Short Notes of Cases, Item No. 145 @ page 133 in which the facts are that three shops fetching rents of Rs. 50-50 and 31-25 fell to the share of the landlord at a partition and he applied for possession of the shop fetching the rent of Rs. 31-25 to run his own shop in electrical goods, with a view to earning sufficient means to meet the expenses of his family, which consisted of himself, his wife and two children. It is held that 'it is no doubt true that the burden is on a landlord to establish that he reasonably and bona fide requires the premises for his personal occupation. But, it is not correct to say that in order to discharge this burden, the landlord must produce some positive material inasmuch as the landlord is entitled to rely on circumstances which if held sufficient by a Court, to convince the Court that he reasonably and bona fide requires the premises for personal occupation.' It is also held in the said Decision that evidence to show that the landlord possessed sufficient funds to start a shop in electrical goods, that he had taken any steps in securing the necessary licence to run such a shop and that he was competent to run such a business was wholly irrelevant while considering the bona fides of the claim of the landlord. It is held on the facts of that case that the claim of the landlord was bona fide.

20. P.W.5 Y.R. Narayan is the first son of the landlord. He has sworn on 28-9-1988 that he was working in P & T Department as a technician and he wants to resign his job after getting possession of the building as he has experience in hotel business inasmuch as before the premises was let out, he and his father were running hotel in the premises and the income that they are getting was not sufficient for the maintenance of the family consisting of his parents, himself and his two brothers and one sister, all of whom were living together in the same house. The said evidence of P.W.5 is not discredited in the least in cross-examination. P.W.6 Suresh is the second son of the landlord. His evidence is that he is attending to the business in Provision stores in the I Main Road, Sheshadripuram in a shop premises which is part of the petition schedule building.

He has also deposed that he had polio attack on his left leg and both provision business as well as hotel business can be carried on simultaneously as the premises in which he is doing business in the provisions since 7 to 8 years with a capital of Rs. 10,000/- to Rs. 15,000/- are in the same building. He has also stated that his younger brother would be in the shop during his absence almost every day. P.W.7 Ramesh is the third son of the landlord. He has also sworn that he completed B.Com course in 1972 and he is unemployed since then and he was telling his father since 1982 to start hotel business. His further evidence is that his elder brother was carrying on hotel business along with his father from 1961 to 1974 and he was assisting P.W.6 in the business in provisions whenever he goes out. Even the said evidence of P.W.7 is not rendered uncreditworthy in cross-examination.

21. R.W.1 B.R. Shetty has stated in his evidence that the shop which the landlord has subsequently secured by filing an eviction petition against his another tenant Chandrasekhar measures about 8' x 3'. Therefore, the argument of Sri B.V. Acharya that even the unemployed third son of the petitioner can do business in that shop cannot be accepted as a sound argument having regard to the dimensions of that shop. Sri B.V. Acharya also submitted that the landlord has subsequently secured possession of the first floor of the building in which he is residing in the ground floor. But, it is in evidence that the said first floor is not fit for doing business and the landlord is in requirement of the said first floor for being used as residential portion as the ground floor of the same building in which he is residing is insufficient to accommodate all the members of his family.

22. While considering the meaning of the words 'reasonable requirement' occurring in a similar provision in Section 11 (1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, the Supreme Court has observed in MST. BEGA BEGUM AND ORS. v. ABDUL AHAD KHAN (DEAD) BY LRS AND ORS., 1979(1)SC Cases 273 in paragraph-13 at page 279 as under:

'13. Moreover, Section 11(h) of the Act uses the words 'reasonable requirement' which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless

be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the Country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need.'

It is further held in the said Decision that if the landlord proves that he was in requirement of the house for starting a hotel business, eviction order will have to be granted in his favour as his requirement of the house was both genuine and reasonable and even imperative, because, the scanty income of the plaintiffs was not sufficient to maintain themselves or to afford them a decent or comfortable living. The said observations apply with equal force to the claim of the landlord in the instant case. Viewed from any angle, therefore, the finding recorded by the trial Court that the landlord is in bonafide and reasonable requirement of the premises for his own use and occupation cannot be termed as vitiated either on facts or in law in order to call for interference in this Revision Petition.

POINT No. (2)

23. On the ground of sub-letting, it is alleged in the Petition that the premises has been let out by the tenants in favour of one Annappayya on a rent of Rs. 4,500/- per month about one year back without the consent and concurrence of the landlord and, therefore, the tenants are liable to be evicted on the ground of sub-letting also. Sri B.V. Acharya argued that the said Annappayya was working as Manager in the hotel run by Sri V.R. Shetty till he was removed in 1987 and Narayana Rao was the Manager of the hotel from 1987 and added that Annappayya had even filed a suit against the tenants for bare perpetual injunction in respect of the premises on 20-1-1987 whereas the eviction petition is filed on 8-1-1987 and, therefore, it can be easily visualised that Annappayya's suit was

engineered by the landlord and the exparte order of temporary injunction obtained by him on 23-1-1987 became infructuous as his suit was eventually dismissed as not pressed on 3-3-1987 as could be seen from Ex.P-25. He, therefore, commented that the observations made by the trial Court that adverse inference will have to be drawn against the tenants for the non-examination of Annappayya as a witness on their side to prove that he was only the Manager of the hotel borders on perversity. In my opinion, the said argument does not stand the test of scrutiny inasmuch as no allegation is made in the written statement filed in Annappayya's suit that it was filed at the instance of the landlord and-on the other hand, it is alleged that Annappayya had filed the suit in collusion with one Radhakrishna. It is suggested to R.W.1 in cross-examination (paragraph-17) that Annappayya and Narayana Rao were running the hotel having taken the same on sub-lease and they were working as Managers. He has no doubt denied that suggestion and has further stated that he has document to show that Narayana Rao was the Manager. But, no such document is forthcoming. On the other hand, the landlord has proved by the evidence of P.Ws.2 to 4 that both Annappayya and Narayana Rao were independently managing the hotel by describing themselves as the proprietors of the hotel 'Durga Prasad' situate at 169, I Main Road, Sheshadripuram, Bangalore-20, Ex.P-12 is the xerox copy of the account held by Annappayya in Sri Visveswaraiah Co-operative Bank Ltd., as the owner of hotel 'Durga Prasad'. Ex.P-13 is the xerox copy of the account extract of Annappayya opened in Sri Visveswaraiah Co-operative Bank, Bangalore-20 in the name of hotel 'Durga Prasad'. Ex.P-14 are a series of copies of cheques issued by Annappayya on his account in Visveswaraiah Co-operative Bank right from 2-5-1983 describing himself as the proprietor of hotel 'Durga Prasad'. Ex.P-15 is the xerox copy of the letter addressed on the letter-head of hotel 'Durga Prasad' to the Manager of Visveswaraiah Co-operative Bank on 14-3-1987 by Annappayya for the proprietor of hotel 'Durga Prasad'. Similarly, Ex.P-16 is also xerox copy of the letter addressed by Narayana Rao to Visveswaraiah Co-operative Bank describing himself as the proprietor of hotel 'Durga Prasad'. Exs.P-18 to P-22 are copies of the cheques issued by M. Narayana Rao on the account of hotel 'Durga Prasad' in Visveswaraiah Co-operative Bank to various persons. Ex.P-23 is the xerox copy of Form No. 'A' given by M. Narayana Rao on 15-9-1987 under the Karnataka Shops

and Commercial Establishments Act, 1967 describing himself as the employer of hotel 'Durga Prasad'. Ex.P-24 is another copy of letter dated 5-7-1988 addressed by M. Narayana Rao to the Senior Labour Inspector wherein he has stated that he had started the restaurant and by mistake he had given his name as the owner of the hotel and it may be corrected that Sarala V. Shetty was the owner of the hotel. This letter has obviously come into existence subsequent to the filing of eviction petition by the landlord in order to overcome the effect of the other letters in which Narayana Rao had described himself as proprietor of the restaurant. The cumulative effect of all these documents as pointed out by Sri Udaya Holla is that Annappayya and later M. Narayana Rao were in the exclusive possession and management of the hotel run in the premises by describing themselves as proprietors of the same and not as Managers of V.R. Shetty and after his death of his wife Smt. Sarala V. Shetty as contended by Sri B.V. Acharya. The trial Court has no doubt held that the landlord had failed to prove that Narayana Rao was sub-lessee of the premises but that finding was attacked by Sri Udaya Holla by contending that he came do so by virtue of the provisions of Order 41 Rule 22 CPC as the present Revision Petition filed by the tenants .under Section 50(1) of the Act is virtually in the nature of an appeal as only a revision is provided against the orders passed by the Courts of Small Causes in Bangalore in eviction cases and the landlord could not file any revision against the finding of the trial Court that M. Narayana Rao was not shown to be a sub-lessee as the ultimate order of eviction was in his favour. In this connection, learned Counsel on both sides brought to the notice of this Court a Decision of this Court in NARAYANA GANGASA BHURE v. RAMACHANDRA AMBASA KALBURGI, 1977(2) KLJ 202 in which the scope of a revision filed under Section 50 of the Act against the appellate order in an eviction case is considered and it is held that having regard to the scheme of the Act and the power conferred upon the High Court under Section 50, the jurisdiction to go into the question of legality or correctness of the decision includes the power to re-appreciate the evidence, and, therefore, the High Court can interfere if the findings of the appellate Court are shown to be erroneous, if that is the legal position in respect of a revision filed against the appellate order, the scope of a revision filed under Section 50(1) of the Act directly against the order of eviction Court as in the instant case is much wider as rightly

contended by Sri Udaya Holla. Sri Udaya Holla also placed reliance on a decision of the Himachal Pradesh High Court in HEM RAJ v. BASTA SINGH AND ANR. in which the nature and extent of proof that is required in order to prove sub-letting has been considered with reference to the provisions of Section 13 of East Punjab Urban Rent Restriction Act, 1949. It is observed in the said Decision that while considering the nature of initial onus thrown on the landlord to prove sub-letting, the Courts must not overlook the fact that it is by no means an easy task since direct evidence of subletting is seldom available as sublease is a creation of an agreement between the tenant and the sub-tenant and the landlord for obvious reasons would be a complete stranger to such an agreement which is kept as guarded secret and no trace of evidence reflecting the same would be allowed to leak out thereby exposing both of them to the risk of being evicted at the hands of the landlord, and, therefore, no prudent tenant is expected' either to enter into an agreement or receive rent from his sub-tenant or pass receipt of such rent in the presence of others and the landlord placed in such a situation can only prove the attending circumstances which should raise inference of such subletting or assignment. It is further observed that the landlord would be deemed to have discharged the initial burden placed upon him if he succeeds in showing that the tenant had parted with and handed over exclusive possession and control of the demised premises to the alleged sub-tenant and it is thereafter for the tenant to prove and explain the circumstances leading to such transfer of possession. So tested, I am of the opinion that the landlord in the instant case has by placing the above referred material discharged his initial onus of showing that Annappayya and M. Narayana Rao were the sub-lessees of the premises. The best person who could have dislodged the said allegation was the first petitioner Smt. Sarala V. Shetty, by stepping into the witness box and stating on oath that Annappayya and Narayana Rao were looking after the hotel business as Managers and not as sublessees. It is already noticed that she has kept herself out of the witness box for no acceptable reason. Therefore, an adverse inference will have to be drawn against her for not examining herself as a witness in the case. For all these reasons, I hold on point No. (2) that the finding recorded by the trial Court on the point of sub-letting cannot be termed as either perverse or unreasonable.

POINT No. (4)

24. Sri B.V. Acharya argued that the first petitioner being a lady and other petitioners being her unmarried daughters and young son would be exposed to greater hardship if the impugned order of eviction is allowed to stand whereas the landlord would not be subjected to any such hardship if the eviction order is set aside. In my opinion, there is no merit in this contention also in view of my above finding on the point of reasonable and bona fide requirement of the premises by the landlord. It is in the evidence of R.W.1 that several other buildings in which hotel business could be run had become vacant in the same road and near about the premises subsequent to the filing of the eviction petition in question and no attempt was made to secure any one of those buildings for shifting the hotel business. The Supreme Court has held in the above referred case of Mst. Bega Begum and others that non-availability of similar accommodation in the same locality for the same purpose is not a disadvantage against an eviction. It is just now noticed that the tenants have not chosen to secure possession of any of the ready buildings available in the same locality and which were convenient for the purpose of running a hotel as admitted by R.W.1. That being so, the view taken by the trial Court on the question of comparative hardship in favour of the landlord cannot also be termed as unreasonable or a finding recorded without considering all the relevant materials. Consequent upon my findings on Points (1) to (4), I hold that this Revision Petition is liable to be dismissed.

25. The next question to be considered is whether the petitioners-tenants are entitled to any further time to vacate the premises. Under the impugned eviction order, they are given time till 19-7-1991 to vacate the premises. However, taking into consideration the circumstance that it may not be possible for the tenants to secure alternate accommodation within the next three months, I consider it just and necessary in the ends of justice to grant them time till the end of September 1991 to vacate the premises.

26. In the result, for the foregoing reasons, the Revision Petition is dismissed with costs. However, the time given to the petitioners-tenants by the trial Court to vacate the premises till 19-7-1991 is extended till 30-9-1991.