

Swaraj Kumar Vs. Arvind Kumar and anr.

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Court : Allahabad

Decided On : Sep-19-2008

Reported in : 2008(4)AWC3922

Judge : V.K. Shukla, J.

Appellant : Swaraj Kumar

Respondent : Arvind Kumar and anr.

Advocate for Pet/Ap. : Sri. A.K. Gupta

Disposition : Petition dismissed

Judgement :

V.K. Shukla, J.

1. Tenant Swaraj Kumar has approached this Court questioning the validity of the decision dated 19.9.2005, passed in Rent Control Appeal No. 19 of 2004, Arvind Kumar v. Swaraj Kumar passed by the Special Judge (E.C. Act)/Additional District Judge, Moradabad allowing release application, preferred on behalf of the landlord under Section 21 (1)(a) of U.P. Act No. 13 of 1972.

2. Petitioner has been tenant of non-residential accommodation on monthly rent of Rs. 700 per month situated at opposite H.S.B. Inter College, Moradabad wherein he has been doing his extensive business of brass manufacturing. Arvind

Kumar landlord filed application under Section 21(1)(a) of U.P. Act No. 13 of 1972 on 20.10.2003 for release of premises in question in occupation of the tenant for settling his two sons claiming them to be unemployed. Said release application was contested by the petitioner by filing his written statement on 7.1.2004 and therein plea was taken that petitioner was running his business since 1973 and landlord is not at all in need of accommodation and need set up by the landlord is totally farce and sham. Plea was taken that original landlord is Devi Saran and he has got various properties at his disposal and apart from the same Arvind Kumar is having big factory in the name and style 'Classic Collection', wherein his two sons are also engaged with large number of servant. Affidavit was filed by Arvind Kumar on 20.1.2004 taking stand that his sons are adult and unemployed and are to be involved in the business for which the disputed accommodation is required. Said affidavit was countered by the petitioner by filing affidavit on 1.3.2004. Two sons for whose benefit release application has been moved, also filed affidavit on 17.4.2004 reiterating the same that they want to do their business separately and they have no accommodation and the disputed accommodation is suited for their business. Apart from this petitioner contended that various affidavits have been filed by the parties to substantiate their respective claim. The prescribed authority on 26.7.2004 rejected the release application filed by the landlord. Prescribed authority mentioned that as landlord has not disclosed as to what business his sons will carry out and as to what was the extent of accommodation required by them in this background need is not bona fide and genuine and rejected the application. Against the Judgment passed by the prescribed authority dated 26.7.2004, the landlord preferred Rent Control Appeal No. 19 of 2004 under Section 22 of U.P. Act No. 13 of 1972 and said appeal was allowed on 31.3.2005, by mentioning that need of landlord was bona fide and genuine and he would suffer greater hardship. Against the said judgment passed by the appellate authority, Civil Misc. Writ Petition No. 41729 of 2005, Sri Swaraj Kumar v. Arvind Kumar had been filed before this Court, said writ petition was allowed by this Court on 27.5.2005.

3. Before this Court arguments are advanced on behalf of the petitioner that in view of the provision of Section 21(1)(a) of the Act, it was incumbent on the part of the prescribed authority as well as appellate authority before, directing release of

the accommodation in dispute to consider as to whether the release of the part of the accommodation will serve the purpose of the landlord and tenant both and if it would have come to the conclusion that the release of part of the accommodation will serve the purpose, it should direct for release of part of the accommodation not of entire. Other issues were also raised, but since the point of part release of the accommodation was accepted by this Court, the other points were not discussed and matter was remanded back by this Court by mentioning that considering the fact and argument and judgment of Hon'ble Apex Court as well as Hon'ble High Court writ petition deserves to be allowed. Order dated 31.3.2005, passed by the appellate authority is quashed and matter was remanded back to appellate authority to consider the application of part release and decide the same in the light of the observations made In this Judgment in accordance with law. As matter was treated to be old, the appellate authority was directed to decide the question involved within three months from the date of presentation of certified copy of this judgment before him.

4. After the said remand order had been passed on 2.7.2005, application was moved mentioning therein that for proper adjudication of the matter affidavit is being filed, which is necessary to be taken on record, as additional evidence. Affidavit which was filed therein it was mentioned that landlord bona fidely needed premises in question and he needs premises in question for Export Business and he had also annexed map to show the extent of accommodation for the said Export Business. On 27.7.2005, petitioner filed objection to the said application mentioning therein that additional evidence cannot be taken on record and same should be decided on the basis of the material, which was already in existence. Affidavit was also filed to the similar effect by the petitioner on 27.7.2005. Another application was filed by the petitioner on 10.8.2005, raising objection in respect of the additional evidence to be taken on record. Petitioner has contended that thereafter, rejoinder-affidavit was filed on 12.8.2005 and case was fixed for hearing on 18.8.2005 and then same was adjourned on 24.8.2005 and then on 30.8.2005. On 30.8.2005, Counsel for the both the sides were present, who were heard and then 8.9.2005 was fixed for dictation of judgment, and then on 8.9.2005 judgment could not be dictated, same was adjourned to 15.9.2005 and on 8.9.2005 written arguments were supplied with case laws and thereafter, judgment

has been delivered on 19.9.2005. At this juncture present writ petition has been filed assailing the validity of decision taken.

5. Counter-affidavit has been filed and therein it has been stated that initially Devi Saran Ji was the landlord of the property and present landlord is grandson and there had been a family partition. Suit was filed being Suit No. 72 of 1991 wherein decree was passed on 4.3.1981 and thus present property came in the share of the landlord and since then petitioner is paying rent to the landlord to Rs. 700 per month. It was also mentioned that landlord is carrying on his business in tenanted portion of the property in the name and style Classic Collection. Properties described at serial Nos. 1 to 7 of the property, are not at all properties, of the landlord and landlord has no concern with the same and are not accessible to the landlord at all. Precise mention was made that landlord is not at all in possession of any factory as mentioned in para under reply which has been let out to Lohla Brass. Specific denial was made that 1/3 share of the property in the possession of Kamal J.S. Ahluwalia is not in possession and same is under litigation. It has been stated that matter has been considered and rightful finding of fact had been returned and qua application dated 11.8.2005 it has been contended that said application have been moved for dilatory tactics.

6. Rejoinder-affidavit has been filed disputing the averments mentioned in the counter-affidavit and reiterating the averments mentioned in the writ petition and stress has been laid that partial eviction was feasible.

7. Supplementary-affidavit has also been filed mentioning therein that tenant-petitioner is having own properties with description. Qua the said affidavit, counter-affidavit has been filed taking stand that plot measuring 495 sq. meters situated at Vijay Nagar, Moradabad belongs to the father of the petitioner, and father of the petitioner during his life time has given said parcel of land to his daughter Neelam and petitioner has no concern. In respect of second property at Lajpat Nagar, Moradabad, it has been contended that petitioner is in occupation, which was purchased by his wife and it is purely residential area and his residential house.

8. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing/disposal with the consent of the parties.

9. Sri A.K. Gupta, learned Counsel for the petitioner contended with vehemence that in the present case appellate court has totally misdirected itself on following scores: (i) while deciding the question of bona fide need and comparative hardship; (ii) while deciding the question of partial release; (iii) taking additional evidence on record by ignoring the mandate of this Court; and (iv) appellate authority has not at all acted fairly while deciding the appeal and as such orders passed is unsustainable and writ petition deserves to be allowed.

10. Sri Kshitij Shailendra, advocate on the other hand countered the said submission by contending that question of bona fide need and comparative hardship has been rightly dealt with on the basis of the evidence available on record and partial release was not feasible in the present case and same has been duly adverted to, and unnecessarily motive has been sought to be imputed to the appellate court.

11. After respective arguments have been advanced, first question to be considered is as to whether appellate court has misdirected itself on the question of bona fide need and comparative hardship on the basis of material, which was available on record. This fact is undisputed to the parties that petitioner has been carrying on his business of brass manufacturing from premises in question since 1973 and currently paying Rs. 700 per month as rent. Landlord has come out with the case by moving release application for getting premises in question vacated for settling his two sons. The release application mentioned that landlord's both sons, namely Arpit and Arjit are major and both are unemployed and to settle them is the moral responsibility of the landlord, as such premises in question is bona fide needed and landlord has financial capacity to settle and as such said premises in question being genuine requirement be released. Release application was opposed by the petitioner by taking specific stand that need set up is totally in genuine, sham and farce. Prescribed authority proceeded to consider the question of bona fide need and comparative hardship and came to the conclusion that as it was not disclosed in the landlord's application as to for what business purpose said premises in question was required, as such need set up by the landlord is not at all bona fide, nor genuine, and on comparative hardship as on bona fide front adverse opinion had been given, as such no opinion was required. Appeal was

filed against the same and same was allowed and thereafter civil misc. writ petition was filed against the same wherein as partial release matter was not considered, as such matter was remanded back. For establishing bona fide need was it mandatory on the part of the landlord to disclose the precise nature of business for which he was intending to get establishment in question released for settling his unemployed sons.

12. Hon'ble Apex Court in the case of Raj Kumar Khaitan and Ors. v. Bibi Zubatda Khatun and Anr. : AIR 1995 SC576 , answered this question in unequivocal term by mentioning 'it was not necessary for the appellant-landlord to indicate precise nature of business which they intended to start in the premises. Even if nature of business would have been indicated no body could bind the landlord's to start the same business in the premises after it was vacated.'

13. Hon'ble Apex Court in the case of Ragavendra Kumar v. Firm Prem Machinery & Co. : [2000]1SCR77 , has held as follows:

It is settled position of law that the landlord is best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter. See Prativa Devi (Smt.) v. T.V. Krishnan. (1996) 5 SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

14. Hon'ble Apex Court in the case of T. Shiv Subramaniam v. Kashi Nath and Ors. : AIR 1999 SC3190 . has taken the view that mere desire of the landlord to live separately from his father, cannot be attributed to his need in the premises occupied by the tenant, rather requirement of law is that the landlord must set up his need for the premises in his petition and establish such a need is bona fide. The need must change in good faith. Relevant para 4 is being extracted below:

4. From the aforesaid decisions it is clear that mere desire of the landlord to live separately from his father cannot be attributed to his need for the premises occupied by the tenant. It is often seen that a desire often takes its origin from what one likes and dislikes and necessarily it is not depended upon his need. But we cannot lose sight of the fact that sometimes the desire may be outcome of

one's need. So when a landlord desires a premises, the requirement of law is that the landlord must set out his need for the premises in his petition and establish that such a need is bona fide. The need must be bona fide, genuine, honest and conceived in good faith. In the present case what we find is that, it was not pleaded by the landlord in his petition that he for certain compelling reasons desires to live separately from his father and for that reason he required the premises. We also do not find any evidence on record to show that the landlord required the premises and his need was bona fide. The only material on record for eviction of the tenants before the rent control authority was mere desire of the landlords to live separately from his father. Such a desire is not substitute of the need for the premises which a landlord is required to plead and establish. Thus, we are of the view that the landlord's desire to live separately was not a valid ground for eviction of the tenants from the premises. We, therefore, find no substance in the submission of learned Counsel for the appellants.

15. Hon'ble Apex Court in the case of *Joginder Pal v. Naval Kishore Behal* : [2002]3SCR1078 , in respect of bona fide need of the landlord has construed the expression for 'his own use' to be assigned wider, liberal and practical meaning. Under U.P. Act No. XIII of 1972 bona fide requirement is for self or any member of family. Said expression has not to be narrowly construed. Relevant paras 30 and 32 are being extracted below:

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention to the Legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The Legislature intending to protect the tenant also intends to lift the protection when it is the requirement of

landlord to put the accommodation to such use as he intends, away from leasing it out.

32. Our conclusions are crystallised as under:

(i) the words 'for his own use' as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression- landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence-economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and (ii) whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii).

16. Hon'ble Apex Court in the case of Akhileshwar Kumar and Ors. v. Mustqqim and Ors. : [2002]SUPP5SCR57 , took the view that simply because educated unemployed son was provisionally assisting his father does not mean that he should not start own independent business. Relevant paras 3, 4 and 5 are being extracted below:

3. In our opinion, the approach adopted by the High Court cannot be countenanced and has occasioned a failure of Justice. Overwhelming evidence is available to show that the plaintiff No. 1 is sitting idle, without any adequate commercial activity available to him so as to gainfully employ him. The plaintiff No. 1 and his father both have deposed to this fact. Simply because the plaintiff No. 1 is provisionally assisting his father in their family business, it does not mean that he should never start his own independent business. What the High Court has overlooked is the evidence to the effect, relied on by the trial court too, that the husband of plaintiff No. 4, i.e., son-in-law of Ram Chandra Sao, was assisting the latter in his business and there was little left' to be done by the three sons.

4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and utilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation

which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is a educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1 another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them.

5. We find it difficult to sustain the observation of the High Court that the requirement pleaded by the plaintiffs falls short of felt need and is merely a desire. The judgment of the trial court is a detailed and exhaustive judgment which has taken into consideration each and every available piece of evidence and relevant circumstances, assessed with objectivity, consistently with the relevant principles of law and hence the finding is one which could not have been upset by High Court in exercise of its revisional Jurisdiction. Moreover, as we have pointed out, the manner in which the High Court has proceeded to form an opinion at variance with the findings of the trial court is wholly unsustainable.

Hon'ble Apex Court in the case of Smt. Sushila v. IInd Additional District Judge, Banda and Ors. 2003 (1) ARC 256, has taken the view that need for settling married and major son is bona fide need, and he cannot be compelled to join his father and do work. Relevant paragraphs 5, 10 and 11 of the said judgment are being extracted below:

5. We find that Prem Prakash is a young man who is unemployed. He is married and has children. There is every justification for him or for his mother to settle him in life independently. He cannot be compelled to join his father in his Goldsmith and money-lending work in his small shop. In our opinion, he is entitled to start business of his own choice and independently. The appellate court took a view, as indicated above, which is palpably wrong and wholly unacceptable.

10. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the prescribed authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Prakash is so huge or that it is a very flourishing business so as to attract application of Clause (c) of Rule 16(2). As observed earlier it is clear that length of period of tenancy as provided under Clause (a) of Sub-rule (2) of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us.

11. It may be mentioned that we are not taking into account of Clause (d) of Sub-rule (2) of Rule 16 of the Rules; where yet another factor is to be borne in mind, in favour of releasing the shop, if the person has some technical education to his credit but not employed in any Government service and wants to engage in self-employment. The petitioner had shown that her son Prem Prakash had undergone a training course in household electrical wiring and had obtained a certificate from Industrial Training Institute, Banda. He did not get any Government Job and wanted to be self-employed by starting a shop of electrical goods and utensils. The prescribed authority considered this factor but we find that the appellate court expressed doubt on the fact that the certificate related to Prem Prakash being lead by the fact that his residence was shown as village Lukhtara, undisputedly that village also falls in the district of Banda. It was also observed by the appellate court that it could not be shown as to what Government job Prem Prakash could get by virtue of the certificate he had obtained from Industrial Training Institute, Banda. The whole approach to the point was misdirected. Be that as it may, we make it clear that even by excluding the factor of Prem Prakash being technically educated, otherwise as well as find that the need and requirement of the landlady

is bona fide even after considering the same in the light of Rule 16 of the Rules and in the background of comparative hardship which we find would be more to the landlady, in the event of disallowing the application for eviction.

17. Hon'ble Apex Court in the case of Yadvendra Arya and Anr. v. Mukesh Kumar Verma 2008 (1) ARC 256 : 2007 (7) AWC 6981 (SC), has taken the view that it is landlord who is the best Judge of his requirement. He has complete freedom in the matter and the landlord has got every right to file release application for settling his unemployed son in independent business, and the son cannot be accommodated with the father in his business.

18. On the parameters set out, landlord for settlement of his son was fully entitled to move, release application. Landlord was not at all obliged to disclose the exact nature of business for which it was required rather he was obliged to substantiate that it was bona fide and genuinely required for occupation by member of his family and, the purpose qua the same, i.e. for residence or profession trade or calling and nothing beyond it. Request of landlord complied with the parameter set out under Section 21(1)(a) of U.P. Act No. XIII of 1972. Prescribed authority totally misdirected itself on this score. This fact has not at all been disputed that sons are unemployed, and it has also come on record that sons are assisting their father. Appellate court in the present case has found that both sons were unemployed, they are assisting their father, and once unemployed sons are to be settled independently it cannot be termed as mere desire, then in this background appellate court is not at all in error in recording the finding that premises in question is bona fide and genuinely required by the sons of the landlord for settling themselves. Question of bona fide need is question of fact and here in the present case finding of fact which have been arrived, is neither perverse nor unreasonable, warranting interference by this Court.

19. Much emphasis has also been led on the fact that question of comparative hardship; has not at all been dealt with in its correct perspective. In the present case question of comparative hardship has been dealt with by the appellate authority and categorical finding of fact based on appreciation of evidence has been recorded that no attempt or endeavour has been made to search alternative

accommodation for all these years and categorical finding of fact has also been returned that financial status of tenant and his family is extraordinarily good, and tenant is capable of taking suitable alternative place.

20. In *Mst. Bega Begum and Ors. v. Abdul Ahad Khan (D.) by LRs. and Ors.* : [1979]2SCR1 , Hon'ble Apex Court had occasion to deal in detail with the comparative hardship's aspect as follows :

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 one 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 State 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.

In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the Legislature when Section 11(1)(h) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs for eviction.

Thus, on careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweighs the eviction from that point of view.

21. Judgment quoted above has been followed by Hon'ble Apex Court in the case of *Badrinarayan Chunnilal Bhutda v. Govind Ram Munada* : [2003]1SCR329 , and apart from the same in paragraph 13 mentioned as follows:

13. In *Piper v. Harvey* (1979) 1 AC 273, the issue as to comparative hardship arose for the consideration of the court of appeal under the Rent Act, 1957. Lord Denning opined: (All ER p. 457-E-F)

When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and burden is on him to prove) the case of greater hardship.

Hodson, L.J. opined: (All ER p. 458)

The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or, indeed, to raise the question of his relative financial incompetence as compared with the landlord.

22. Hon'ble Apex Court in recent judgment of *Ganga Devi v. District Judge, Nainital* 2008 (7) ADJ 501 : 2008 (3) AWC 3124 (SC). where tenant has not made any effort to search accommodation, has not accorded any relief to the tenant.

Paragraphs 15, 16 and 19 of the said Judgment are being extracted below:

15. There is also nothing on record to show that for the last so many years the appellant had made any effort to find out a tenanted premises for herself so that she can continue with her business. No such material at least has been brought on record. Any subsequent event as regards thereto has neither been pleaded nor proved.

The provisions of the statutory rules must be interpreted so as to give effect to the object and purport of the Act. It cannot be applied in a vacuum, as the statute requires comparison of the hardship of both the tenant as also the landlord. It is, therefore, not a case where Rule 16 has any application.

16. The Court would not determine a question only on the basis of sympathy or sentiment. *Stricto sensu* equity as such may not have any role to play.

19. In the facts and circumstances of this case, we are of the opinion, that six months' time should be granted to the 1st respondent to vacate the premises, which should serve the ends of justice. It is directed accordingly. Subject to the aforementioned directions, this appeal is dismissed. In the facts and circumstances of this case, there shall be no order as to cost.

23. In the present case, appellate authority has clearly and categorically found that tenant-petitioner has not made any attempt to find out alternative accommodation, he is capable financially to take up another accommodation and landlord is carrying on his business in a tenanted accommodation with no other place to settle his sons. On careful comparison and assessment of the relative advantage or disadvantage of the landlord and the tenant, in the facts of the case scale is certainly tilting in favour of the landlord as such no interference is being made with the finding of comparative hardship returned in the present case.

24. Much emphasis in the present case has been made on the fact that additional evidence has been taken into account while considering the question of partial release, whereas in the present case appellate court was not at all authorized to do so and as such appellate court has totally misdirected itself in taking into account additional evidence while deciding the question of partial release, as such on this limited score, order passed by appellate authority is unsustainable. In the

present case, it would be relevant to mention that for the first time before this Court when Writ Petition No. 41729 of 2005 was taken up issue of partial release was raised and this Court came to the rescue of the tenant and allowed the writ petition on 27.5.2007 by making categorical mention that matter is remanded back to the appellate court to consider the question of part release in the light of observation made in the judgment, and in accordance with law. This Court precisely asked the appellate authority to consider the question of part release, and even time frame was set up to decide said question of part release, in accordance with law. Additional evidence can be admitted at appellate stage qua the same there is no dispute, and broadly principle as enunciated in Clause (aa) of Order XLI, Rule 27(i) of C.P.C. can be taken aid of i.e., notwithstanding exercise of due diligence, such evidence was not within his knowledge or could not after due diligence be produced by him when order appealed against was passed. Appellate authority requires such material for pronouncement of judgment or for any substantial justice. Here in the case in hand, once at no point of time in the past, at any stage, plea of partial release has been raised and only before this Court, for the first time such plea was raised and this Court had precisely asked appellate authority to decide such question, then material on said score was certainly required. Strict law of pleadings do not apply to proceedings under Section 21 of U.P. Act XIII of 1972, and in terms of Section 34 evidence is received on affidavits. Once new plea was to be considered by appellate court, material qua the same, had necessarily to be supplied to the appellate authority for doing justice as directed by this Court. The nature of facts sought to be brought on record are, that sons intend to carry on export business, and they required entire premises for show room, copy of map was attached. As earlier landlord was not obliged to disclose and give full details, landlord in his wisdom has not disclosed said facts, but on subsequent occasion, on the asking for by this Court, said question of partial release was to be considered, then certainly nature of facts disentitling tenant of partial relief was to be brought on record, and said facts in this background cannot be reasonably brought on record at earlier stage and landlord cannot be taxed with the negligence of non-exercise of due diligence. Apart from this said material was just and essential to pronounce judgment on the issue, asked for by this Court. Parameters provided for under Order XLI, Rule 27(1) of

C.P.C. are totally fulfilled in the case, and the objections sought to be raised by tenant is clearly unsustainable on this score.

25. Provisions of U.P. Act No. XIII of 1972, do not bar partial eviction being ordered, in the facts of case. Hon'ble Apex Court in the case of Badrinarayan Chunnil Lal Bhutda v. Govindram Ram Goptal Munndada : [2003]1SCR329 , considered the question of partial eviction.

Relevant paragraph No. 10 is being filed quoted below:

10. The provisions of the Act do not bar a partial eviction being ordered-rather contemplate a partial eviction specifically-which would of course depend on answer to the question-whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of comparative hardships? If the Court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the Court may order partial eviction so that the requirement of the landlord is satisfied and the tenant is also not deprived of his running business activity. Inasmuch as Section 13(2) entails the consequence of the landlord being denied decree of eviction, wholly or partly, in spite of his having proved reasonable and bona fide requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds under Section 13(2) of the Act is on the tenant. It is expected of the parties to raise necessary pleadings, and the Court to frame an issue based on the pleadings s& as to enable parties to adduce evidence and bring on record such relevant material as would enable the Court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.

26. As matter was remanded by this Court and matter for partial release was to be considered by appellate authority, for said purpose certainly parties were obliged to bring on record material to the effect as to whether partial release was feasible or not, and for the said purpose nature of business and extent of space required

for said business was required, to be disclosed and this was actually done by landlord and tenant had brought nothing on record to rebut the same.

27. Appellate authority in the present case considered the accommodation which was required for Export House and then recorded its finding that part release was not feasible, after taking into account the topography of house, total area of the house, total built up area of the house. In this background finding of fact recorded qua partial release is not being interfered with.

28. Once more plea has been asserted in the present case that Additional District and Sessions Judge has not carried himself in accordance with law, and behind back of petitioner written submission has been accepted. In the present case, written submissions has been accepted behind the back of the petitioner has been contended by petitioner whereas other party has disputed the same, but same makes no difference as entire judgment clearly reflects that decision has been taken on merit on the basis of the evidence adduced and no prejudice whatsoever has been shown. Order passed by the appellate court is strictly in accordance with law. Once finding of fact had been returned on the question of bona fide need and comparative hardship and that part release is not feasible, then there is no error in order passed.

29. The officer concerned has been impleaded in personal capacity. The order passed by officer concerned, in the facts of the case is totally just and proper. There was no necessity to implead him in personal capacity.

30. As petitioners are carrying their business since 1976, as such in the fact of the case, six months time is allowed to the tenant to vacate the premises in question subject to the condition that within period of one month from today tenant shall furnish undertaking before prescribed authority concerned, for handing over peaceful vacant possession to the landlord, failing which landlord can proceed to execute the order and interim protection accorded will be of no consequence.

31. With these observations, writ petition is dismissed.