

Sunita Rani Vs. Ramesh Chander

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Court : Punjab and Haryana

Decided On : Feb-22-2008

Reported in : (2008)152PLR143

Judge : Permod Kohli, J.

Appellant : Sunita Rani

Respondent : Ramesh Chander

Disposition : Petition allowed

Judgement :

Permod Kohli, J.

1. Invoking revisional jurisdiction of this Court under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), landlady has filed this Revision challenging the findings recorded by the Rent Controller, Faridkot and the Appellate Authority dismissing the eviction petition. It is necessary to briefly refer to the facts on record.

2. The petitioner-landlady (hereinafter referred to as 'the landlady') filed Eviction Petition under Section 13 of the Act against Respondents No. 1 and 2 are the tenants in the shop and gallery situated in Moti Bhur Bazar, Kotkapura bearing Municipal No. B-VI/97. The premises was purchased by the landlady and her

husband's brother Sunil Kumar respondent No. 3 in the Eviction Petition from S.S. Jain Sabha. Respondents No. 1 and 2 were tenants under Jain Sabha and after the purchase of property by the landlady and Sunil Kumar, they have attorned them as landlord.

3. The landlady filed the Eviction Petition seeking eviction of the tenants from the demised premises (a shop and gallery) on the ground of personal bonafide need for the use and occupation of her husband, namely, Sandeep Kumar, an Advocate by profession. It is alleged in the Eviction Petition that the husband of the petitioner is an Income Tax Practitioner and is running his Office in a Chaubara in Old Grain Market paying Rs. 500/- as monthly rent to the landlord, namely, Amar Singh. The Chaubara is not suitable for his practice same being in dilapidated condition and not fit for human habitation. It is also alleged that the landlord is pressing her husband to vacate the same. Accordingly, she claimed possession of the suit shop and gallery which is said to be in the main bazaar and is suitable for the practice of her husband. It is also mentioned that the family of the landlady comprising of herself, her husband and mother-in-law Kailashwanti is residing at the Chaubara above the shop and it will be convenient for her husband to shift to the shop occupied by the tenants.

4. The tenants contested the Eviction Petition stating that the husband of landlady has very little practice. His office is located on the first floor over the shop in question for the last 2 to 3 years. It is also stated that the husband of the landlady is already running her practice in a Chaubara in the Old Grain Market. The shop is in a congested bazar where there is a lot of traffic and nuisance. Shop is not suitable for the practice of landlady's husband. It has also been stated that the petitioner is drawing handsome salary. Her husband is not dependent upon her. Petitioner and her husband have built a palatial residential house at Partap Nagar, Kotkapura valuing more than Rs. 40.00 Lacs. The allegations in the Eviction Petition that the old Chaubara in the Old Grain Market is not suitable for practice and is in dilapidated condition, have also been denied. Apart from this, the tenants pleaded that the Eviction Petition has been filed to harass them and is a device to evict them from the shop for the purposes of sale. They also alleged that the landlady has initiated number of proceedings against tenants to force eviction. It is

mentioned that earlier Mrs. Kailashwanti, mother-in-law of the landlady had filed a suit for redemption of the shop in question, claiming that the tenants were inducted by the mortgagee Gurbajan Singh. The suit was dismissed and the appeals before the District Judge and the High Court also failed. Thereafter, respondent No. 1 Sunil Kumar, the other co-owner of the premises wanted to block the access to the gallery through the stair case and the suit for injunction was filed by the tenants and injunction has been upheld upto the High Court. The suit was decreed on 9.5.1992. It is also alleged that the landlady and Sunil Kumar damaged the roof of the shop in question for which a complaint under Section 427 of the IPC is pending against them. On the basis of the pleadings of the parties, the Rent Controller framed following issues:

1. Whether the applicant requires the disputed shop for practice of her husband as alleged? OPP
2. Whether the site plan is incorrect? OPR
3. Relief.
5. The landlady produced as many as 8 witnesses, including herself and her husband whereas respondents/tenants also examined as many as witnesses, including tenants themselves. Before the Rent Controller, the respondents/tenants raised a plea that profession of an Advocate is not a business or a commercial activity and thus eviction from the non-residential premises is not permissible. The Rent Controller, however, while relying upon the judgment of the Apex Court reported as Mohan Lal v. R. Kondiah : [1979]3SCR12 and the judgments of this Court in the case of Dharam Vir v. Dr. Vinod Mahajan and Ors. 1985(2) R.C.R. (Rent) 105 (P&H) and Kalapur Traders v. Supramavia Mudaliar 1979(2) R.C.R. (Rent) 129 (Madras) held that the non-residential premises can be got vacated for personal necessity of a person in legal profession as an Advocate. The Rent Controller also came to the conclusion that the landlady has shifted to her new house at Partap Nagar, Kotkapura where one of the telephones has also been shifted and the family is residing in the new house. Rent Controller also observed that after shifting of the family two floors above shop have become available with the landlady and her husband can conveniently shift his office over the shop in the

first and the second floors. This finding has been returned on the ground that the landlady has not led any evidence to prove that the first and second floors above the shop are not suitable for the office purposes or there is some obstacle for her husband to shift there. However, the Rent Controller accepted and acknowledged the claim of the petitioner that the premises in question is required for personal bona fide necessity of her husband. It is pertinent to notice relevant observations of the Rent Controller contained in paragraph 26 of the impugned judgment which are quoted here-under:

If the petitioner had not shifted to the house at Partap Nagar, this Court would not have hesitated to pass ejectment order against the respondents as on the file personal bona fide necessity of the premises in dispute by petitioner for her husband is proved.

6. After returning these findings, the Rent Controller proceeded to consider the plea of the landlady for eviction. The Rent Controller came to the conclusion that landlady has not explained as to why the premises on the first and the second floor above the shops are not suitable for the office of the petitioner's husband which has become available after shifting their residence to Partap Nagar and consequently dismissed the petition while deciding issue No. 1. However, issue No. 2 was decided in favour of the petitioner landlady on the ground that no counter site plan has been produced by the tenants.

7. On being denied eviction by the Rent Controller, the petitioner/landlady filed Rent Appeal No. RT01/1999 before the Appellate Authority, Faridkot. The Appellate Authority also dismissed the appeal vide the impugned judgment and order dated 28.8.2004. The Appellate Authority, though concurred with the conclusions of the Rent Controller and dismissed the appeal, but its findings varied on material questions and facts. Even though the Rent Controller had accepted the plea of the landlady that the present premises i.e. Chaubara at old Grain Market where the husband of the landlady was a tenant is unsuitable due to scarcity of space and its dilapidated condition and also the demand of the landlord for vacation of Chaubara, but the Appellate Authority returned a contrary finding: It may be relevant to notice the opinion of the Appellate Authority in this regard. The

Appellate Authority has referred to site plans Ex.A-1 and A-2 which relate to Chaubara under tenancy of Sandeep Kumar, Advocate and the demised premises, respectively. It has been observed by the Appellate Authority that the length and width of the Chaubara under his tenancy is 23' x 15' whereas the measurements of the demised shop is 15'9" x 36'6" after exclusion of the store and the space being almost equal, the ground of landlady of paucity of space at the Chaubara has not been accepted. The Appellate Authority further observed that the landlady has failed to prove that the Chaubara under tenancy of Sandeep Kumar is in dilapidated condition and that there is any threat of eviction to her husband from his landlord/To arrive at his finding, it has been reasoned that the landlord has not given any notice for eviction nor any eviction proceedings initiated against Sandeep Kumar. It has also been observed that no expert witness has been examined to prove that the building under tenancy of Sandeep Kumar is in dilapidated condition. The appellate authority also accepted the plea of the respondents/tenants that the landlady has shifted alongwith family to the new house at Partap Nagar, Kotkapura which fact is borne out from the evidence of RW5-Roop Singh from the telephone department, RW6, Mohinder Singh Postman and the photographs produced by the tenants Ex.R1 to Ex.R8. The Appellate Authority also disbelieved the documents Ex.A5 to A8 which are the separate ration card and gas connection of mother-in-law of the landlady, namely, Kailashwanti, who is said to be still residing at the first and the second floors of the shop, even after shifting of other members of family to the new house. The Appellate Authority accordingly held that the premises at first and second floor of the shop is available with the landlady and there is no justification to evict the tenant as the husband of the landlady can shift his practice to the available premises above the shop.

8. These findings of the Appellate Authority have been seriously contested before me. I have heard Mr. Sarin and Mr. Sibal, learned Counsel appearing for the parties.

9. Mr. Sarin, learned Sr. Counsel appearing on behalf of the petitioner has argued at the outset that the lower courts have applied a wrong test on misconstruction of the word 'bonafide requirement', the impugned order is vitiated by an error of law,

and can be corrected in revisional proceedings under Section 15(5) of the Act. According to him, in such situation, it ceases to be a mere finding of fact. Such erroneous finding vitiates the entire judgment. He has raised following questions for consideration of this Court:

(i) Landlord/landlady is the best judge of his/her needs.

(ii) The Rent Controller cannot sit in judgment over the requirement of landlord for the demised premises.

(iii) The requirement of the landlady is for non-residential building and the availability of residential building, if any, cannot be a ground for denying the eviction.

(iv) The landlady has not vacated any non-residential premises nor she is in possession of such premises.

(v) The husband of the landlady is paying higher rent than is being received from the tenant.

(vi) He cannot be compelled to carry on the practice in the tenanted premises when he/she has his/her own premises.

10. He has also challenged the findings/observations of the courts below on following points:

(a) Regarding the measurements of the demised premises.

(b) Under the East Punjab Urban Rent Restriction Act, it is not necessary that the person for whose benefit the premises is required, must be dependent upon the landlord/landlady.

(c) The provisions of the Act also do not require consideration for comparative hardships while determining the question of eviction of the tenant.

(d) The personal necessity is to be seen as on the date of filing of the suit.

11. From the pleadings of the parties and evidence, following admitted facts emerge:

(a) The petitioner is the landlady and owner of the premises under tenancy of respondents No. 1 and 2.

(b) Respondents have admitted the relationship of landlord and tenant between the parties and the monthly rental of Rs. 200/-.

(c) Husband of the petitioner is an advocate (income tax practitioner) by profession.

(d) Husband of the petitioner is presently a tenant of Amar Singh in the Chaubara situated at Old Grain Market and is paying Rs. 500/- as monthly rent.

(e) Petitioner and/or her husband are not in possession of any non-residential building nor they vacated any non-residential building in the past.

(f) Respondents/tenants have no other non-residential premises in their possession.

12. Before embarking on an enquiry into the validity of the impugned judgments, it is necessary to understand the scope of revisional power of this Court. Section 15(5) of the East Punjab Urban Rent Restriction Act confers revisional jurisdiction upon this Court which reads as under:

15 Vesting of appellate authority on officers by the State Government..

5. The High Court may, at any time on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation there to as it may deem fit.

13. From the bare reading of the aforesaid provision, it appears that the revisional powers of this Court are not restricted to examination only of the errors of law or violation of a statutory provisions nor does it envisage the requirement of any

substantial or even a question of law for invoking revisional jurisdiction under Section 15(5) of the Act. The Revisional jurisdiction is so vast and wide so as to take within its compass the entire gamut of controversy involved in the Us be it factually or legally. It has cloathed this Court with wider power to satisfy itself regarding the legality and propriety of the orders passed. BY the lower authorities and also confers judicial discretion to rectify such errors of fact and law as may be deemed appropriate.

The ambit and scope of the revisional 'jurisdiction under similar provisions came up for consideration before Hon'ble Supreme Court in the case of Shiv Sarup Gupta v. Dr. Mahesh, Chand Gupta : [1999]3SCR1260 wherein the Hon'ble Supreme Court has observed as under:

10. Section 25-B of Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted into the body of the main Act by Act No. 18 of 1976 with effect from 1.12.1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bonafide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this Section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit. The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having, exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to subsection

(8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an-interference under proviso to Sub-section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law....

14. In another case, the Supreme Court held that if it is found that the Court has not applied the statutory provisions of the evidence on record in its proper perspective, the findings are vitiated. What has been observed by the Apex Court in the case of Deena Nath v. Pooran Lal : [2001]3SCR925 is noticed here-in-under:

15. ...If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide; requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case, the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under Section 100 of the Code of Civil Procedure.

15. It is vehemently contended that the need of the landlord for a non- residential premises has to be judged from his view point and should be accepted, if the need-otherwise seems to be genuine and bona fide. Neither the tenant nor the Rent Controller can sit over the judgment of the landlord for his/her need. In the case of Sarla Ahuja v. United India Insurance Company Limited : AIR 1999 SC100 , the Hon'ble Supreme Court has observed as under:

14. The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must

be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to Rent controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

16. In the case of *Ragavendra Kumar v. Firm Prem Machinery and Co.* : [2000]1SCR77 , the Hon'ble Supreme Court has observed as under:

10. The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the court below and we do not find any such admission. It is true that the plaintiff landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. 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: *(Smt.) v. T.V. Krishan* : (1996)5SCC353). 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.

The other contention of Mr. Sarin, learned Sr. Counsel appearing for the landlady is that the husband of landlady is admittedly in a rented premises and is paying higher rent than is being received from the tenant and landlady should be permitted to occupy her/his own premises which is otherwise more suitable to him and financially viable. The existing premises in possession of the husband of the landlady is inadequate and there is threat of eviction apart from the fact that the tenanted premises with him is not in good condition. The fact that the husband of

the landlady is having rented premises for his Chamber has even been admitted by the courts below and there is categorical finding by the courts below that need of the landlady for her husband is genuine. It has also come on record that the husband of the landlady is occupying only one room and needs more accommodation on account of his growing income tax consultancy with the passage of time. In the case of Davis v. Sebastian : AIR 1999 SC3223 , the Hon'ble Supreme Court has observed as under:

8. ...'Personal use' is also an expression of wide amplitude. There is nothing in the sub-section which restricts the import of that expression. The said requirement of Sub-section (8) will be complied with on the satisfaction of the Controller about bona fide need of the additional accommodation for personal use of the landlord. To what use the additional accommodation should be put, is the choice of the landlord. In the case of a non-residential building whether a new business should be set up in the additional accommodation or whether it should be used for expansion of the existing business, is left entirely to the option of the landlord. This, being the intendment of the legislature, the Court cannot impose any restriction with regard to the use of the additional accommodation from which the eviction of the tenant is sought.

17. In the case of Dhannalal v. Kalawatibai and Ors. : [2002]SUPP1SCR19 , the Hon'ble Supreme Court has observed as under:

27. ...A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises. It has come in evidence that the landlords, have secured possession of some premises in Ahilyapura locality situated at a short distance from the suit premises but the Ahilyapura accommodation is again a tenanted accommodation and hence irrelevant for defeating the claim of the landlords. To be an alternative accommodation relevant within the meaning of Section 12(1)(f) or Section 23-A(b), it must be 'of his own', that is, the one 'owned' by, the landlord. Another alternative accommodation pointed out by the tenant is the one situated on the first floor of the building. It has come in the evidence that the second floor of the building is

used for residence of the landlords while the first floor is used partly as a godown and partly for stitching clothes, which are sold as ready-made garments in the shop of respondent No. 3. To amount to an alternative non-residential accommodation, so as to defeat the requirement of the landlord for the suit premises, it should be a reasonably suitable non-residential accommodation. It should be suitable in all respects as the suit accommodation is....

18. It has been debated on behalf of respondents that profession of an Advocate is not a business and thus, the demised shop and the ground floor may not be appropriate for him to conduct his profession of consultancy as an Income Tax Practitioner.

19. With a view to appreciate this argument, it may be useful to examine the Scheme of the Act and definition of some of the terms used in the Act.

The East Punjab Urban Rent Restriction Act has separately defined the residential and non-residential accommodation and also certain kind of landlords for whose benefit certain provisions have been incorporated in the Act. Section 2 defines certain of expressions used in the Act which are as follow:

2. Definitions:

In this Act, unless there is anything repugnant in the subject or context:

(a) 'building' means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;

xx xx xx xx xx

(c) 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person from time to

time deriving title under a landlord;

(d) 'non-residential building' main building being used solely for the purpose of business or trade

Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert 'non-residential building' to a 'residential building';

XX XX XX XX XX

(g) 'residential building' means any building which is not a non- residential' building;

(h) 'scheduled building' means a residential building which is being used by a person engaged in one or more of the professions specified in the (Schedule 1) to this Act, partly for his business and partly for his residence;

Scheduled buildings are defined under Schedule 1 to the Act which reads as under:

1. Lawyers.
2. Architects.
3. Dentists.
4. Engineers.
5. Veterinary Surgeons.
6. Medical Practitioners, including practitioners of indigenous systems of medicine.

20. The definition of building used under the Act means any building or part of building for any purpose whereas non-residential building has been defined as the property solely used for purposes of business or trade and residential building means any such premises which is a non-residential building meaning thereby the same is not to be used for any business or trade. Scheduled building defined under the Act in Clause (h) of Section 2 of the Act is a building which may be

partly used for residential purposes and partly for one or more professions specified in the Schedule I to the Act and lawyer's profession is one of such profession.

21. Whether the lawyer's 'profession' falls within the expression 'business' came to be considered by the Apex Court in the case of S. Mohan Lal v. R. Kondiah (supra) : [1979]3SCR12 wherein it has been held as under:

3. The expression 'business' has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in 'business', trade or profession'. It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various dictionaries except to say that everyone of them notices a large number of meanings of the word. In a broad sense it is taken to mean 'every thing that occupies the time, attention and labour of men for the purpose of livelihood or profit'. In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used.... In our view the expression 'business' occurring in Section 10(3) (a)'(Hi) is used in a wide sense so as to include the practice of the profession of an Advocate.

22. From the definitions of different kind of buildings provided under the Act and the ratio of the judgment of the Apex Court in S. Mohan Lal's case (supra), it can be conveniently inferred that an Advocate has the privilege of using non-residential building as well part of residential building (scheduled building) for his profession. The moot question that falls for consideration is that can an Advocate or any other person belonging to professions specified in Schedule-I i.e. Doctors, Architects, Engineers etc. use the residential building exclusively for their profession without having their residence in a part of the building.

23. The Act has created three categories of buildings- (i) Non-residential, (ii) Residential and (iii) scheduled building. From the definitions in Section 2 of the Act, it becomes apparent that non-residential building be used exclusively for business or commercial activity and residential building only for living purpose. However, the Scheduled building can be used for twin purpose of residence and

professional/activities in respect of professions specified and enlisted in Schedule I of the Act. Intention of Legislature is evident from the conjoint reading of Section 2(h) and Schedule I of the Act.

Therefore, the answer to the above question lies in the Scheme of the Act itself. From the above statutory provisions, it can be safely concluded that a residential building cannot be exclusively used for purposes of any of the professions specified in Schedule I of the Act which includes profession of 'Lawyer'. It has to be combined user for residence and profession to bring it within the meaning Scheduled Building defined in Clause (h) of Section 2 of the Act. Otherwise, it would become a non-residential building, because of the nature of its user i.e. exclusively for financial gains. It cannot be disputed that the professional activities like Lawyers, Architects, Engineers, Doctors are all for financial gains and do fall within the scope of business as observed by the Apex Court in S. Mohan Lal's case (supra).

24. It is in this context that the propriety, legality and sustainability of findings of courts below is required to be considered.

25. Courts below while accepting the bonafide requirements of the landlady for her husband, a legal Practitioner, have denied the eviction on the ground that she/he has alternative accommodation at first and second floors over the shop in dispute. It is admitted case of the parties that these two floors were being used by the landlady, her husband, mother-in-law and husband's brother for residential purposes, though the residence has now been shifted to another place in a newly constructed house. The landlady has attempted to establish that this accommodation is still being used as a residence by her mother-in-law whereas the tenant has tried to persuade and in fact has successfully persuaded the courts below that the two floors are lying vacant. Whether this accommodation ought to be considered as an alternative accommodation to enable the husband of the petitioner to shift his legal practice and should be considered as suitable and permissible is required to be seen in the context of the provisions of the Act as also the need of the landlord. As noticed above, the profession of the Advocate can be conveniently considered as a business being the source of livelihood.

However, his desire to occupy a non- residential premises for such a business/profession has to be looked into under the given circumstances.

26. The petitioner/landlady has placed on record site plan of the Office Chamber of her husband where he is presently working in a tenanted premises and also the plan of the disputed shop and the floors above it. Site plan Ex.A-1 is the plan of the existing premises in occupation of the landlady's husband. The size of the room is 15'x 23'. The site plan Ex.A2 is of the demised shop and the store attached thereto. Its measurement has been given as 15'09' x 47'09' and definitely the premises sought to be obtained bigger than the existing premises in possession of the landlady's husband. The site plan of the two floors above the shops shows that two rooms are divided by a compound which is open to sky. It may be suitable for residential purposes, but the location of the rooms seems to be such that it may not be convenient for a professional chamber. The lower appellate court, while discussing the accommodation in possession of the landlady's husband and the disputed shop has observed that there is not much of difference. This finding has been returned without even quoting the total area and ignoring the measurement on record. Area of the existing chamber of the landlady's husband is 345 sq.ft. Whereas the area of shop including store, but excluding gallery which has an additional area, almost of the shop and store, but part of it is open to sky is approximately 712 sq. ft. i.e. double the existing accommodation. There is also no comment by the courts below regarding the suitability of the accommodation at first and second floor of the premises over the shop which is said to be available with the landlady. Though it has come in tenant's evidence that there is a board fixed by the husband of the petitioner on the stairs leading to the first floor. However, there is absolutely no evidence that the husband of the landlady has shifted his office at the first/second floor, or he is conducting his legal practice from the said premises nor there is any such finding by any of the courts below. The evidence from both the sides has established that the first and second floor were being used by the family of the landlady for residential purposes and it has never been used for non-residential purposes. However, keeping in view the nature of profession of landlady's husband and the definition of schedule building read with Schedule 1, such a premises can definitely be used both for residence as also for the profession of a lawyer. The question is one of suitability. There is also no

evidence or even finding by the courts below regarding the suitability of the premises for the landlady's husband and the court has simply observed that the aforesaid premises is available with the landlady where her husband can shift his practice. This finding is not based upon any material/evidence regarding the suitability of the premises. In the case of Prem Narayan Barchhiha v. Hakimuddin Saifi : AIR 1999 SC2450 , the Hon'ble Supreme Court has observed as under:

14. It is futile to contend that accommodation is a neutral word taking in its fold both residential as well as non-residential purposes, the landlord ought to disclose the residential accommodation in his possession and show that it is not reasonably suitable for nonresidential purposes when he is seeking eviction of the tenant from accommodation let for non-residential purposes. The Court cannot burden the landlord with additional conditions of disclosing particulars of residential accommodation in his possession and proving that it is not reasonably suitable for non-residential purposes. Non suiting him on such grounds will mean non suiting him on extraneous grounds....

It is in this context that Mr. Sarin, learned Sr. Counsel for the petitioner has argued that landlady's statement regarding the need should not have been ignored by the courts below and should have been given due weightage and relevance once the need is proved.

27. In the case of Raman Mathotra v. Jagdish Raj Mehta and Ors. 1992(2) R.L.R. (Rent) 24, the Hon'ble Supreme Court has observed as under:

12 There is no denying the proposition that eviction on the ground of personal necessity can be ordered in case the need of the landlord is found to be genuine by the court. Mere wish of the landlord cannot be made the basis to evict a tenant whose rights are otherwise fairly safeguarded by the statutory provisions. Landlord's desire for possession must pass the test of 'requirement' or 'need' before the same can be gratified. For this, the Court is to take into consideration the relevant various circumstances before evaluating as to whether the need is a genuine one or solely set up with a view to evict a tenant. In the instant case, there is the sworn testimony of the landlord that he intends to permanently settle at Nabha which is his native place and where his other near relations are

permanently residing. The landlord is the best judge in the circumstances. He, in fact, is to decide as to whether he would prefer to settle at Nabha or remain at Delhi or any other-place. Various judicial pronouncements of this Court have held that it is the landlord alone to choose where to settle....

Independently, the question of suitability, the premises above shops cannot be used by the husband of landlady for his legal profession. It is admitted fact that these two floors were earlier being used as residence and is thus not a non-residential premises. It is also not in dispute now that family of landlady has shifted residence to a new house at Partap Nagar. This premises can be used by the husband of the petitioner for legal profession along with residence. It is tenants' own case that residence has been shifted to another locality. Asking the landlady to use these floors is to ask her to change the user of the premises from residential to non-residential. I am of the considered view that the Court cannot and should not compel the landlord to change the user of the premises just to accommodate the tenant.

28. Mr. Sarin, learned Sr. Counsel for the petitioner has further laid emphasis that the landlady's husband is paying rent double than the rent being received from the tenant and the condition of the building occupied by the landlady's husband is also dilapidated and thus, the shifting from tenanted premises to own premises, itself should be considered as a valid reason and genuine need of the landlady. Reference is made to the case of *Jetha Nand v. Ram Chander and Anr.* (1966)68 P.L.R. 377 wherein this Court has held as under:

5. ...One would expect in the normal course that a displaced person who purchases a house for as much as Rs. 24,000.00 does so with the object of occupying it for the residence of himself and members of his family. He certainly does not pay such a considerable sum in order to realise the nominal rent which the tenants have been paying as allottees under the Custodian which ordinarily is a grossly inadequate return on the capital invested. Thus when a landlord says that he does want to occupy the house himself, there should be no difficulty in the Court's believing him unless cogent reasons exist for doubting his bonafides in this respect. The fact that landlord feels compelled, in order to meet the requirements

of the court to invent some unconvincing reasons to support his natural desire to occupy his own house, ought not in my opinion to be held against him. Indeed, in my opinion the only test of the genuineness of his intention of living in his own house after ousting his tenant is to see whether in fact he does occupy the house, and the law has provided a safeguard to tenants in this respect in that if the landlord who has obtained possession of his house after obtaining ejectment of a tenant does not occupy it within a certain period, the tenant can move the Court to be put back into possession....

In the case of Bhagwati Parshad v. Parshad Chand (1987-1)91 P.L.R. 336, the landlord purchased a house for consideration which was occupied by the tenant on payment of Rs. 50.00 per month as rent. The landlord himself was occupying the rented premises on payment of Rs. 150/- per month as rent and he wanted to shift to his own house. It has been held that the requirement of the landlord is genuine.

29. Mr. Sibal, learned Sr. Counsel appearing for the respondent/tenant has opposed the revision and supported the judgments of the courts below. His contention is that alternative accommodation is available with the landlady above the shops. While referring to the evidence of the tenant, he has mentioned that the husband of the landlady has placed a board at the staircase leading to the first and second floor where he can conveniently carry on his legal profession. He has also referred to the findings of the courts below that the landlady has constructed a new house at Partap Nagar Kotkapura and has also placed his Board on the said house which is near to the Income Tax Office. It is further contended that the husband of the landlady is not dependent upon his wife and hence eviction of the tenant cannot be secured by the landlady for the alleged need of her husband. It is also argued that the comparative need of the tenant who has no other alternative premises is much more than the landlady who has alternate accommodation and is rich person. His further argument is that the need of the landlady is to be seen as on the date of the passing of the decree. To support his line of argument, he has referred to the evidence on record that the premises at first and second floor has become available to the family of landlady during the pendency of the suit as the family has shifted to their new house at Partap Nagar, Kotkapura.

30. There is a concurrent finding recorded by the courts below that the family of the landlady has shifted to their new house at Partap Nagar Kotkapura. The finding has also not been disputed by the learned Sr. Counsel for the petitioner. However, it has been argued that the mother-in-law of the landlady, namely, Kailashwanti is still continuing to reside at the first and second floor of the premises. With a view to support this contention, reference is made to the ration card, gas connection and also one telephone connection which is still continuing at the first and second floor. However, both the courts below have disbelieved this. This being a concurrent finding of fact cannot be interfered.

31. Mr. Sibal has placed reliance upon the judgments of the Supreme Court noticed hereafter. In the case of *Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada* : [2003]1SCR329 , the Hon'ble Supreme Court has observed as under:

7. A perusal of the scheme of the Act, so far as the ground of reasonable and bona fide requirement by the landlord for occupation of residential or non-residential premises is concerned, shows that Clause (g) of Sub-section (1) of Section 13 contemplates a decree for eviction being passed on proof of availability of the ground according to law. In spite of a ground for eviction Under Section 13(1)(g) having been made out, the court deny the relief of eviction if the issue as to comparative hardship is answered against the landlord and in favour of the tenant. Thus in a way Section 13(2) acts, as a proviso to Section 13(1)(g); the former having an overriding effect on the latter. The burden of proving availability of ground for eviction under Section 13(1)(g) lies on the landlord; the burden of proving greater hardship so as to deprive the landlord of his established right to seek eviction lies on the tenant.

32. In the case of *Adil Jamshed Frenchman (D) by Lrs v. Sardar Dastur Schools Trust and Ors.* : AIR 2005 SC996 , the Hon'ble Supreme Court has observed as under

8. The decree of the trial court is based on the, landlord's bona fide requirement of the accommodation. In appeal, the question before the Court for adjudication is whether the trial court was justified in passing the decree in favour of the landlords

on the ground of bona fide need and the tenants obviously are within their rights to show that the need of the landlords is not genuine. The evidence produced in that direction would be relevant for the purpose of adjudicating the question of need of landlords. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* : [1999]3SCR1260 , this Court has. held that a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge off acts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. In *Deena Nath v. Pooran Lal* : [2001]3SCR925 , this Court reiterated that bonafide requirement is in present and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.

The question of comparative hardship must be the requirement of rent law whereunder eviction of tenant is sought. The Scheme of the Act and the provisions contained under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 do not require the consideration of this aspect. The ground of eviction for personal necessity is provided under Section 13(3)(a)(i) of the East Punjab Urban Rent Restriction Act, 1949 which reads as under:

13(3)(a). A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession:

(i) in the case of a residential building if:

(a) he requires it for his own occupation;

(b) he is not occupying another residential building in the urban area concerned;
and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.

33. From the language of this Section, three conditions are essential (1) need for occupation; (2) the landlord is not occupying any other residential building in the urban area concerned; (3) landlord has not vacated such building without sufficient cause.

Therefore, the requirement of law is that the landlord should (1) require the premises in occupation of tenant; (2) he is not in possession of a similar alternative premises and (3) he should not have vacated such premises, without any sufficient cause. Once these three ingredients are established, the landlord is entitled to a decree for possession by way of eviction of the tenant irrespective of the fact that the tenant may have to suffer hardship and may be more than the landlord.

34. In every case of eviction, inconvenience and hardship is caused to the tenant and this in itself cannot be a ground for denying the possession to the landlord, once his/her need for the tenanted premises is found to be genuine. The question of comparative hardship must emanate from the legislative intent under the Scheme of the Rent Legislation and cannot be applied in every case irrespective of the requirement of law. In the present case, the petitioner has satisfied the ingredients of Section 13(a)(i) of the Act and no other consideration or ground can be applied. Any other consideration would be extraneous and would amount to re-legislation of Section 13 of the Act or adding to the provisions of the Act. It may subvert the legislative intent.

35. Above referred judgments relied upon by Mr. Sibal are bar ;d upon the Scheme of Bombay Rents, Hotel and Lodging House Rates Control Act and cannot be imported into the Scheme of East Punjab Urban Rent Restriction Act, 1949.

36. Learned Sr. Counsel for the respondent/tenant has also relied on the judgment of this Court in the case of Shri Kishan Dass v. Ujagar Singh 2002(2) R.C.R. (Rent) 674. This judgment is of no help to the respondent. This judgment has been rendered in a different context. In the said case, this Court declined the claim of the petitioner landlord on account of the fact that the landlord has already an office on the same road on which he has his business premises. As noticed earlier, in the present case, the husband of the landlady is running his practice in a rented accommodation which is also in a dilapidated condition, and that too by paying higher rent than the rent being paid by the respondent/tenant for the demised premises.

37. Further reliance is placed by Mr. Sibal on the judgment of the Madhya Pradesh High Court in the case of Sheikh Akbar v. Sameer Kumar Pal 2002(1) R.C.R. (Rent) 283. The said case is also not applicable to the facts and circumstances of the present one. In the said case, the Madhya Pradesh High Court was considering the provisions of M.P. Accommodation Control Act, 1961 and it has been observed as under:

12. In the present case, the building in the name of the plaintiffs father Laxminarayan Pal (P.W.3) is vacant and that is suitable in all respects for carrying on the business of sweets and running restaurant. That is just adjacent to the suit accommodation. That is bigger in size. It is, no doubt, an old construction, but for the suit accommodation also the plaintiffs plea is that they would rebuild it and then carry on business in that building. They can do same in the building of which they are co-owners and in which they have acquired rights being the members of the Joint Hindu family. It is an admitted fact that the plaintiffs are living with their father and they are at present carrying on business with him in the name of 'Anand Bhandar'. Therefore, it would be too technical a ground to say that building of 'Madras Hotel' belongs to Laxminarayan Pal (P.W.3) and it is not available to the

plaintiffs for running their business. Such an artificial distinction cannot be permitted to be carried out between the father and two sons who are living jointly. If they do so that strikes, at their bona fides. The Supreme Court has observed in *Shiv Sarup Gupta v. Mahesh Chand Gupta* : [1999]3SCR1260 that the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. Similarly, in *Ram Narain Arora v. Asha Rani, See* : AIR 1998 SC3012 , it has been observed that the requirement of the landlord is intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide.

It has been debated on behalf of the learned Sr. Counsel for the petitioner that the need of the landlady is to be seen as on the date of the filing of the eviction petition, and if any subsequent event occurs the same is not to be taken note of by the Rent Controller. However, to the contrary, Mr. Sibal has forcefully argued that the genuineness of the need is to be seen as on the date of the passing of the decree and even the subsequent change has to be taken note of not only till the passing of the decree by the court of first instance, but even by the appellate court. In this context both the counsel have referred to various judgments.

38. In the case of *Gaya Prasad v. Pradeep Shrivastava* : [2001]1SCR923 , the Hon'ble Supreme Court has observed as under:

10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists

13. ...In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded

by the petitioning party should have been completely eclipsed by such subsequent events.

39. In the case of Champa Lal v. Shaik Najmuddin @ Gulsheer Pasha : AIR 2002 SC2076 , the Hon'ble Supreme Court has observed as under:

17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts.

In the case of Kamleshwar Prasad v. Pradumanju Aggarwal (dead) by L.Rs. : [1997]3SCR508 , the landlord had sought the eviction of the tenant for carrying on his own business and during the pendency of the ejectment application the landlord died and thus the Hon'ble Supreme Court has held as under:

3. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son. In this view of the matter, we find no force in the contention of Mr. Manoj Swarup, learned Counsel appearing for the appellant and we do not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution....

40. After going through the law laid down by the Hon'ble Supreme Court of India, I am of the opinion that there is no dispute with regard to the contentions of both the parties as it is settled proposition of law that the crucial date for deciding as to the bona fides of the requirement the landlord is the date of his application for eviction. However, there is no bar which prevents the Court to take into consideration the subsequent events while deciding the claim of the parties in case. Subsequent events must be of such nature and of such a dimension that the need propounded by the landlord should be completely eclipsed by such subsequent event. In the present case, the subsequent event is vacation of floors above the shop in dispute

on shifting of family of landlady to new residence. Both the courts below have non-suited the petitioner/landlady and refused eviction on the ground that during the pendency of the eviction proceedings, two vacant floors have become available with the landlady and the same can be utilized for shifting the office by her husband. However, availability of alternate accommodation alone is not sufficient to deny eviction, unless the court is of the opinion that the alternate accommodation can be utilized for purpose for which eviction is sought. The question is one of suitability of accommodation and not mere availability of accommodation. In view of the concurrent findings recorded by the courts below, the landlady is possessed of accommodation at the first and second floors which is admittedly a residential accommodation. I have already expressed my opinion while considering the Scheme of the Act that the landlady cannot be compelled to convert a residential accommodation into a non-residential and vice versa. The premises also cannot fall in the category of scheduled building i.e. where the dual user is permissible i.e. residence-cum-business, the family having shifted their residence to a newly constructed house. The requirement of Section 13(a) of the Act is that the landlord should not have vacated premises of the same nature in order to seek eviction of the tenant from the demised premises. The object is that if the possession of the non-residential premises is asked for from the tenant, the landlord should not have vacated a non-residential premises or he should not be in possession of non-residential premises and in the event possession of residential premises is sought through eviction, he/she should not have vacated a residential premises and no other residential premises should be available with him/her. In the instant case, the need projected is for non-residential premises and no non-residential premises has been vacated by the landlady and/or her husband nor any non-residential premises is available with them. Availability of residential premises cannot be a ground for denying eviction from a non-residential premises. This is besides the question of suitability for which I have already made my comment that none of the courts have considered the question of suitability of the premises for the profession of the Advocate. Therefore, the subsequent event is not sufficient to over shadow the need of the landlady, even if it is taken note of.

41. As regards, Mr. Sibal's contention that husband is not dependent upon the landlady, the argument is not worthy of acceptance. The relationship of husband

and wife is such that there is natural dependence upon each other. Under Hindu mythology, a wife is called 'Ardhangani' which means half of the body. This clearly establishes the kind of relationship a husband and wife have. To say that any of the spouse must establish dependence upon other is a contention which goes against the rule of nature. Mutual dependence between husband and wife is not required to be established. The mutual dependence between spouses on all counts, religious, social, financial etc. has to be inferred, unless contrary is proved. The argument is totally unacceptable.

42. In the backdrop of discussion on various issues involved in this Revision, I am convinced that the lower courts have applied wrong test. Irrelevant considerations have been given precedence. Under the given circumstances, the findings by the courts below cease to be mere findings of fact and constitute error of law on account of misapplication of the provisions of the Act as also the expression 'personal bona fide need'. The findings are unsustainable in law and call for judicial intervention in exercise of revisional jurisdiction of this Court under Section 15(5) of the Act. The petitioner/landlady has established bona fide requirement for the demised premises for personal use and occupation of her husband.

43. In view of the above, I allow this Revision and quash the impugned judgments dated 23.10.1999 passed by the Rent Controller, Faridkot and dated 28.8.2004 passed by the Appellate Authority, Faridkot. The Eviction Petition filed by petitioner accordingly succeeds and the tenants/respondents are directed to vacate the demised premises within a period of three months. In the facts and circumstances, parties to bear their own costs.