

Niruben Vs. Kiritkumar Ramanlal Rava and ors.

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Court : Gujarat

Decided On : Jan-25-1991

Reported in : AIR1992Guj22; (1991)1GLR390

Judge : K.G. Shah, J.

Acts : Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sections 13(1), 13(2), 29 and 29(2); [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 22(1)

Appeal No. : C.R.A. No. 1087 of 1982 and C.A. No. 2411 of 1990

Appellant : Niruben

Respondent : Kiritkumar Ramanlal Rava and ors.

Advocate for Def. : P.K. Jani, Adv. for; D.D. Vyas, Adv.

Advocate for Pet/Ap. : S.B. Vakil, Adv.

Judgement :

ORDER

1. This Revision Application under S. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('the Rent Act' for short) is directed against the judgment and decree dated April 28, 1982, passed by the Appellate Bench of Small Causes Court at Ahmedabad in Civil Appeal No. II of 1980, by

which the said Appellate Bench dismissed that appeal which was directed against the decree dated November 14, 1979, passed by the learned Judge of the Small Causes Court in H.R.P. Suit No. 2265 of 1973, whereby the revision petitioners were ordered to hand over vacant possession of the suit premises to the respondents on or before May 14, 1980. The learned trial Judge by his judgment and decree had also directed the revision petitioners to pay to the respondents, a certain sum by way of arrears of rent, etc., but with that part of the decree, I am not concerned in this revision petition. Similarly, the learned trial Judge had also made orders regarding mesne profits, but that order is also not the subject matter of this revision application. It is the main order of the learned Judge directing the revision petitioners to hand over the vacant possession of the premises to the respondents which in turn has been confirmed by the Appellate Bench of the Small Causes Court which is the subject matter of the revision petition.

2. The facts of the case may briefly be stated as follows:

Ramanlal Trikamlal Raval was the owner of the property being Bungalow No. 10 situated on Survey No. 21/6 in Pushpakunj Society, Maninagar, Ahmedabad. The first floor of that bungalow was given Municipal Census No. 31/3. Ramanlal had leased out the first floor of that bungalow bearing Municipal Census No. 31/3 to Jyotindrabhai Ramniklal Yagnik. The rent per month, at the time, the suit came to be filed was Rs. 55/-. It appears that earlier the rent was less than Rs. 55/- per month. Ramanlal, his five sons and his wife filed H.R.P. Suit No. 2265 of 1973 against Jyotindrabhai, on April 23, 1973 for a decree for possession of the first floor of that bungalow bearing Auni Census No. 31/ 3 together with arrears of rent, mesne profit and costs. In the suit, the claim for possession was based on three grounds: (1) that Jyotindrabhai - the tenant was in arrears of rent for a period of more than six months, and that even after receipt of the notice demanding arrears of rent, Jyotindrabhai did not pay up the arrears of rent within the statutory period - a ground covered by S. 12 of the Rent Act; (2) that the plaintiffs of the suit reasonably and bona fide require the suit premises for their personal occupation - a ground covered by S. 13(1)(g) of the Rent Act; and (3) that Jyotindrabhai, the tenant had, after the coming into possession of the Rent Act, built and/or acquired vacant possession of a suitable residence - a ground covered by S. 13(1)(1) of the

Rent Act.

3. Jyotindrabhai, by his written statement, disputed the claim of the plaintiffs on all the counts. It appears that during the pendency of the suit Ramanlal Trikambhai Raval, who was plaintiff. No. 1 died. His five sons and his widow thereafter prosecuted the suit. It further appears that sometime after the death of Ramanlal, and during the pendency of the suit, Jyotindrabhai, the sole defendant in the suit died. The present two Revision Petitioners, being the widow and the son of Jyotindrabhai were therefore, brought on record.

4. At the end of the trial, the learned trial Judge negatived, the case of the plaintiffs for possession of the suit premises based on the ground of arrears of rent. However, the learned trial Judge found in favour of the plaintiffs on the remaining two grounds, which were advanced in the plaint, for seeking a decree for possession of the suit premises. In other words, the learned trial Judge found that the plaintiffs have proved that they require the suit reasonably and bona fide for their personal occupation. Having found in favour of the plaintiffs on the ground of reasonable and bona fide requirement of the premises by the plaintiffs for their personal occupation, the learned trial Judge also found that on the question of greater hardship also the balance was in favour of the plaintiffs. Thus, firstly the trial Court directed the claim for possession based on the ground covered by S. 13(1)(g) of the Rent Act. The trial Court also found in favour of the plaintiffs on the question bearing upon the provision, of S. 13(1)(1) of the Rent Act. He found that Jyotindrabhai had, purchased a vest property at Amraivadi, wherein there were certain residential structures, and thereafter he had himself developed that property and had put up further more residential structures in that property and in fact Jyotindrabhai occasionally occupied that property for his residence. Therefore, that property at Amraivadi suitable residence acquired and / or built by Jyotindrabhai after the coming into operation of the Rent Act. Therefore, the plaintiffs were entitled to a decree on the ground mentioned in S. 13(1)(1) of the Rent Act.

5. The Revision Petitioners challenged the trial Court's decree by preferring an appeal to the Appellate each of the Court of Small Causes. The Appellate Bench

confirmed the finding of the trial Court on the ground based on S. 13(1)(g) of the Rent Act, read with S. 13(2) thereof. While considering the case of comparative hardships under S. 13(2) of the Rent Act, the Appellate Bench also found that the Amraivadi property had all the facilities including bus facility, school and the residential rooms in possession of the tenants equipped with electricity, water, etc. and if the tenants shifted to that property, they would not suffer any hardship. The Appellate Bench observed 'thus the defendants are in possession of reasonable alternative accommodation in their above rooms of Baga Firdosh Estate' It may be mentioned that this Baga Firdosh Estate is the same as Amraivadi property which is also known as 'Bulbul Sheth's Wadi' for it is in evidence that Jyotindrabhai was known as Bulbul Sheth. Thus, even the Appellate Bench found that Amraivadi property of Bageirdosh Estate or Bulbul Sheth's Wadi as reasonable accommodation which was in the possession of the tenants which they can occupy without experiencing any hardship. Still however, on the question bearing on S. 13(1)(1) of the Rent Act, the Appellate Bench opined that the considerations which should weigh while deciding the point bearing on S. 13(2) of the Rent Act would be the same as the considerations which would weigh with the Court while deciding the question about suitable residence under S. 13(1)(1) of the Rent Act, and in the opinion of the Appellate Bench, though there were four rooms at Bulbul Sheth's Wadi in the possession of the tenants, those rooms did not have all the facilities which were available in the suit premises and those premises were far away from the suit premises. Therefore, in the opinion of the Appellate Bench, the premises at Bulbul Sheth's Wadi were not suitable to all the needs of the defendants. In this view of the matter taken by it, the Appellate Bench found against the plaintiffs on the point bearing on S. 13(1)(1) of the Rent Act. However, as said above, on the ground of S. 13(1)(g) read with S. 13(2) of the Rent Act, even the Appellate Bench concurred with the view taken by the trial Court and ultimately the Appellate Bench dismissed the appeal filed by the Revision Petitioners.

6. In this judgment, for the sake of convenience, I will refer to the parties by their original position as they occupy in the plaint.

7. The two courts below have concurrently found that the suit premises are reasonably and bona fide required by the plaintiffs for their personal occupation,

That is clearly a finding of fact and while hearing the revision application under sub-sec. (2) of S. 29 of the Rent Act, this Court will not easily interfere with that finding of fact, unless it is found that the decision of the courts below is not according to law. The scope of the inquiry before this Court while hearing this revision application would be, in that sense restricted to finding out if any error of law has been committed by the courts below while finding that the premises are reasonably and bona fide required by the plaintiffs for their personal occupation.

8. I have considered the matter from this angle, and I find that the courts below have not committed any error of law while recording the finding that the premises are reasonably and bona fide required by the plaintiffs for their personal occupation.

9. I will briefly indicate my reasons for this view that I have taken.

10. It is now well settled that the word 'reasonably' as used in Clause (g) of sub-section (1) of S. 13 of the Rent Act means, that which is rational that which is just and that which is not excessive. In order that the requirement of the landlord is considered to be reasonable, it must have relation to the actual need of the landlord and that need must relate to the standard of requirement of a reasonable man placed under the circumstances occurring in the case on hand. The size of the family of the landlord, his social status, his style of living are some of the relevant factors that the Court has to consider while answering the question that the requirement of the suit premises put up as a ground by the landlord for evicting the tenant could be said to be reasonable requirement.

The word 'bona fides' as used in Clause (g) of sub-section (1) of S. 13 of the Rent Act means, genuinely and in good faith, and it conveys the idea of absence of intent to deceive. When we talk of 'bona fide requirement' we understand that the requirement posed by the landlord must not be to cloak or fraud invented for some ulterior purpose. If the landlord tries to seek the eviction of his tenant by putting up as false pretext the ground that he needs the premises for his bona fide requirement, he cannot succeed in an action for eviction under S. 13(1)(g) of the Rent Act. Similarly, if the landlord brings an action for some oblique motive or in bringing the action, the landlord is motivated by fanciful and whimsical reasons,

then also the Court would say that his requirement is not a bona fide requirement.

11. The evidence on record shows that Bungalow No. 10 in Pushpakunj Society has a ground floor and a first floor. On the first floor, there are five rooms, two bath rooms and a terrace, and that first floor is the subject matter of the suit. Formerly on the ground floor of the premises, there were three tenants :

(i) Ambalal Purshottamdas,

(ii) Ishwarbhai Amin, and

(iii) Champaban Jivanlal.

There is also evidence on record to show that each of these three tenants on the ground floor had with him/her two rooms and a kitchen. There is further evidence to show that the two rooms and a kitchen which were formerly occupied by Ambalal Purshottamdas have come to the possession of the plaintiffs as Ambalal died, and thereafter his widow Vidyagauri also died. 'It may be mentioned that it was during the pendency of the present suit that these two rooms and a kitchen originally occupied by Ambafal, came to the possession of the plaintiffs. The evidence shows that a first Ambalal died and thereafter his widow Vidyagauri died in 1978, and thereafter the plaintiffs got the possession of the two rooms and a kitchen on the ground floor.

There is further evidence to show that out of the two rooms and a kitchen occupied by Champaben Jivanlal, under a consent decree in a suit filed by the plaintiffs against the said Champaben, the plaintiffs got possession of one room on October 2, 1976, i.e. during the pendency of the suit. Thus, though on the date of the suit, the plaintiffs were in possession of no part of the Bungalow No. 10 at Pushpakunj Society, during, the pendency of the suit, they came to acquire possession of three rooms and a kitchen.

12. There is clear evidence to show that formerly Ramanlal Trikamlal Raval, and his family members, i.e. all the original plaintiffs were residing as a Joint Hindu Family, in a house situated at Jamalpur, Tajpur Tad-ni-Sheri. There is further evidence to show that Jamalpur area was a communally sensitive area and quite a

large number of Hindus left that area and started residing elsewhere. The plaintiffs have led evidence to show that quite a number of Hindus sold away their properties in Jamalpur area in panic on account of communal riots which were so frequently taking place in that area. Under those circumstances, as the evidence shows, Ramanlal also sold away his residential house situated at Jamalpur Tajpur, Tad-ni-Sherion December 15, 1975 and within a period of three days, i.e. on December 18, 1975, he purchased another residential - house at Khadia Amrutlal's Pole. There is also evidence to show that Jamalpur house was admeasuring 127 Sq. Yds. while the house purchased by Ramanlal at Amrutlal's Pole admeasures only 65 Sq. Yds. It may be mentioned that the evidence shows that in 1969, there were large scale riots in the City of Ahmedabad and since then, Hindus felt it unsafe to reside in Jamalpur area. As said above, quite a large number of Hindus went away from that area selling away their properties and it would be reasonable to hold that even Ramanlal the deceased Plaintiff No. 1 was contemplating to move to some other area, but his entire bungalow at Pushpakunj Society was occupied by tenants. He therefore, filed the present suit against the defendants. But realising that it would be difficult for him to get any part of the bungalow at Pushpakunj Society within a short time, he was left with no other alternative but to sell away the Jamalpur property and to acquire, albeit, comparatively a small property for his residence at Amrutlal's Pole at Khadia, That would be clear from the fact that he filed the suit on April 23, 1973 and he sold away the Jamalpur property on December 15, 1975 and within three days from that sale, on December 18, 1975, he purchased the property at Khadia, and he shifted his residence from Jamalpur to Khadia property.

There is also evidence to show that the Khadia property consists of two rooms, a kitchen, a pooja room, a bath room, an osri and a chowk on the ground floor; three rooms and a passage on the first floor; and, a room and terrace on the second floor. The evidence shows that after the plaintiffs got possession of the three rooms and a kitchen on the ground floor of the Pushpakunj Society Bungalow (from Ambalal and from Champaben), Kiritkumar, plaintiff No. 2 with his wife and two children occupied those three rooms and a kitchen on the ground floor of Pushpakunj Society bungalow, and he resides therein, and the other members of the family of the plaintiffs continued to occupy the Khadia property. The

undisputed evidence is that the family of the original defendant Jyotindrabhai constituted of Jyotindrabhai, his wife Niruben, his son Atul, Atul's wife and a child. As against that, the extent of the family of the plaintiffs at the time the trial proceeded was as follows:

(i) Kiritkumar- Plaintiff No. 2, aged 37, his wife and two daughters aged 12 years and 8 years respectively-

(ii) Janakkumar- Plaintiff No. 3, aged 34 years, his wife and two daughters aged 7 years and 3 years respectively;

(iii) Maheshkumar- Plaintiff No. 4, aged 31 years, his wife and a son aged about 2-3 years;

(iv) Vinodkumar- Plaintiff No. 5, aged 28 years, and his wife Mrudula;

(v) Dilipkumar- Plaintiff No. 6, who at the time the evidence in the suit was recorded was unmarried. But as the later evidence shows, has since married and his children;

(iv) Vidyaben- Plaintiff No. 7, the widow of Ramanlal.

Thus, at the time the trial was proceeding before the trial Court, there were about 15 members in the family of the plaintiffs. Atulkumar-defendant No. 2, in para 15 of his deposition has admitted that there are 15 to 116 members in the family of Kiritkumar and his brothers, including their mother. He has stated that in his own family there are only 4 members including his son, who was then studying in Kindergarten. Thus at the time the trial was proceeding, in the family of the defendant there were only four members, viz. Niruben - the mother, Atulkumar, the wife of Atulkumar and a son attending Kindergarten. On the other hand, the family of the plaintiffs consisted of 15 to 16 members. Atulkumar has admitted in his deposition that formerly Ramanlal was staying with his ,whole family in the house of Tajpur Tad-ni-Sheri till that house was sold away. He has further admitted that then Ramanlal came to stay with his family at Amrutlal's Pole as that property was purchased.

13. Then we have evidence to show that Vidyaben plaintiff No. 7 is about 73 years of age. Kiritkumar plaintiff No. 2, about 37 years of age is a double graduate, B.A., LL.B. He is serving as Law Officer in Drugs Department, and his basic salary was, as per the evidence, Rs. 1,049 / -. Janakkumar-Plaintiff No. 3 aged 34 years is B.A., B.Ed., and is serving as teacher in School, and is drawing the salary of Rs. 500/- per month. Maheshkumar-Plaintiff No .4 aged 31 years, holds the Diploma in Mechanical Engineering, and was serving as a Mechanical Instructor, and his basic salary as per the evidence was Rs. 700/- month. Vinodkumar-Plaintiff No. 5 aged about 28 years, as the evidence shows was serving in Yuvak Vikas Trust at the monthly basic salary of Rs. 400/-, and his wife Mrudula, who is B.A., B.Ed., is serving as a teacher. Dilipkumar plaintiff No. 6 'was unmarried and at the time, the evidence before the trial Court was recorded, he was unemployed. There is evidence to show that for a while Maheshkumar-plaintiff No. 4 - was transferred to Veraval, but thereafter he was again re-transferred to Ahmedabad.

This then is the broad picture of the extent and status of the family of the plaintiffs. Ramanlal, the father died during the pendency of the suit. The five sons of Rarnanlal are all fairly educated. The wives of some of these five brothers are also fairly qualified and Mrudula - the wife of Vinodkumar is serving as a teacher in a school.

14. It is not the case of the defendants that it was with any ulterior motive that the plaintiffs have filed the suit for possession. No ulterior motive was even suggested by the defendants at the trial. The case of the defendants is that the plaintiffs can conveniently accommodate themselves and their family members in the two premises - (1) at Khadia Amrutlal's Pole, and (2) the three rooms and a kitchen on the ground floor of the Pushpakunj Society bungalow, which they come to possess during the pendency of the suit and therefore, according to the defendants, the plaintiffs' requirement is not reasonable.

15. Atulkumar, defendant No. 2 has clearly admitted that the plaintiffs reside as members of a joint Hindu family. It is undisputed that they reside as a single unit. It was because of the situation created on account of the frequent communal riots that they were required to move away from Jamalpur property, where they were

staying as the members of the same family. As the possession of the suit property was not going to be acquired that soon though the present suit was filed, they were required to purchase a house at Khadia. But, as the evidence shows in the Khadia house also, with the expansion of the family, it was difficult for them to accommodate. Therefore, whatever accommodation came their way, they managed to reside therein. Some members resided at Khadia, and Kiritkumar and his family started residing in the three rooms and a Kitchen of the Pushpakunj Society bungalow, the possession of which the plaintiffs got during the pendency of the suit. There is evidence to show that Pushpakunj Society is at Kankaria, Maninagar and the distance between the Khadia property of the plaintiffs and Kankaria can be covered within 20 to 25 minutes - a distance we may take to be roughly 2 Kms. The members of the joint Hindu family, when they entertain an idea to reside jointly under one roof and mess jointly, it cannot be said that they do not have any bona fide in that idea. The usual feature of a joint family is to reside together, and, even with the disruptive trends, when the members of a particular joint Hindu family desire to reside jointly under one roof and dine at a common kitchen, their desire, in absence of any other evidence, must be taken to be a bona fide desire (not tainted with any ulterior motive).

16. It would be obvious that with the passage of time, the extent of the family of the plaintiffs would go on increasing. I have hereinabove pointed out, the extent of the family of the plaintiffs as it existed at the time the trial was proceeding before the trial Court. However, the judgment of the Appellate Court shows that the family of the plaintiffs has increased. At the time, the appeal was heard before the Appellate Bench of the Small Causes Court, it appears there were about 18 members in the family of the plaintiffs. The Appellate Court has indicated the extent of the family of the plaintiffs in Para II of its judgment and no exception was taken before me by Mr. S. S. Vakil, the learned Advocate for the defendants to what the Appellate Court has said in that paragraph about the extent of the family of the plaintiffs. The judgment of the Appellate Court also shows that Maheshkumar-plaintiff No. 4 who was, for a while transferred to Veraval was, again retransferred to Ramp and then the Deggam and that he was residing at Ahmedabad. The Appellate Court has considered the trial Court's views that the plaintiffs would need at least 10 rooms for accommodating their family members.

In paragraph 13 of its judgment, the Appellate Court has worked out the requirement of the plaintiffs and in paragraph 17, the Appellate Court has held:

'Looking to the personal requirement of the plaintiffs, they would need six independent bed rooms, one kitchen, one store room, one drawing room, one pooja room and a dining room. The plaintiffs are at present in possession of three rooms and a kitchen on the ground floor of the suit bungalow and if they get possession of the first floor of the suit bungalow from the defendants, they would get possession of five rooms, bath room and terrace. If we examine the plan of the suit bungalow, Exh. 104, we find separate entrances given to these rooms, namely' three rooms on the ground floor and four rooms on the first floor and the, plaintiffs can have six independent bed-rooms, besides kitchen, drawing room, etc. and they can reside as one unit, if they get possession of the suit bungalow from the defendants.'

I am in perfect agreement with what the learned Judges of the Bench of the Small Cause Court have said in the last lines of paragraph 17 of their judgment which I have excerpted hereinabove.

17. The Appellate Court has shown in its judgment that looking to the extent and the status of the family of the plaintiffs, they are not in a position to accommodate themselves conveniently even in two units, one comprising of Kiritkumar occupying three rooms and a kitchen on the ground floor of the Pushpakunj Society bungalow and the other members of the family occupying the Khadia property. Though Khadia property has more number of rooms, they are not such as could accommodate five couples, a mother and children who, by now are grown up. Therefore, the Appellate Court has reasoned, and in my opinion quite rightly, that when the plaintiffs demand the possession of the suit premises, their demand is not only bona fide, but the same is reasonable, for the plaintiffs being the members of the same family would obviously like to reside as one unit. That they reside as one unit is admitted by Atulkumar. Under these circumstances, I think the judgment of the Appellate Court cannot be said to suffer from any error of law when the Appellate Court has found that the plaintiffs reasonably and bona fide require the suit premises for their personal occupation.

18. Then comes the question of comparative hardship. Both the Courts below have found that if the decree for possession is refused, the plaintiffs would be put to greater hardship. Both the Courts have equally found that if the decree for possession is granted, the defendants are not going to suffer any hardship. Thus, on this point also, there is a concurrent finding of fact recorded by the two Courts below.

19. Sub-section (2) of S. 13 of the Rent Act reads as follows:

'No decree for eviction shall be passed on the ground specified in Clause (g) of sub-section (1) if the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it.'

Thus, sub-section (2) of S. 13 of the Rent Act requires the Court to strike a balance between the hardships, if at all, which the parties would suffer, one way or the other, and while considering the question from the stand point of sub-section (2) of S. 13 of the Rent Act, the Court has to take into account the fact about other reasonable accommodation being available for the landlord and the tenant. In the instant case, right from the beginning even before Atulkumar-defendant No. 2 entered the witness-box, plaintiffs have clearly and categoric ally offered to give to the defendants, sufficient accommodation in their Khadia Amrutlal's Pole property, at the same rent of It's. 55/- per month. Atulkumar in his deposition has stated that he wants one drawing room, two rooms, a kitchen and a store room. He has then admitted that if he is offered five rooms accommodation in a well and decent premises in Khadia locality by the Landlord, he would be prepared to go there. However, he has stated that he has not made inquiry about any such premises anywhere. There is clear evidence led by the plaintiffs to show that the Khadia property is prominently situated, it is situated in a decent locality and as admitted by Atulkumar, if a five rooms accommodation is made available to him in Khadia locality, he would be prepared to go there. Even before Atulkumar entered the witness-box, the plaintiffs had, by written offer contained in Exhs. 93 and 138 stated that they were prepared to give one of the floors, and one more room in any

other floor of the choice of the defendants in the Amrutlal's pole property to the defendants at the same rent. This offer was, however, declined by the defendants without giving any sufficient reasons. As said above, the evidence clearly shows that the Khadia property, i.e. Amrutlal's Pole property is prominently situated in a decent locality. All the facilities are available there. On the first floor thereof there are three rooms and a passage. On the ground floor, there are two rooms and a kitchen, a Pooja room, a bath room, a passage, a chowk, etc. On the second floor, there is one room and terrace. Out of this, the plaintiffs unequivocally offered to the defendants any one floor, and one room of their choice on any other floor. The defendants could have very well opted for shifting to the first floor of the Khadia property and could have taken one more room either on the ground floor or on the second floor, and that would have certainly answered their requirement even as per the stand taken by Atulkumar from the witness-box. Furthermore, at the time the appeal was heard before the Appellate Court, the plaintiffs enhanced their offer and stated that the entire Khadia property except one room on the ground floor, and the terrace, they were prepared to give to the defendants at the same rent. Even this offer was not acceptable to the defendants. Now, this revised offer made by the plaintiffs to the defendants at the time the appeal was heard before the Appellate Court, if accepted by the defendants, would have given them much more accommodation than what is in their possession in the suit premises. If this revised offer had been accepted by the defendants, they could have got one room, a kitchen, a pooja room, a bath room, an sri, chowk and passage with W.C. on the ground floor, three rooms and passage on the first floor and one room oh the second floor. This offer made by the plaintiffs to the defendants to give to the defendants at the same rent, more than sufficient accommodation in the Khadia property, if accepted by the defendants (and for not accepting the same, they have not given any cogent reason) would provide the defendants with more than reasonable alternative accommodation at the same rent. Even at the cost of repetition, I would say that the evidence clearly shows that the Khadia property is situated almost on the main road prominently with all the necessary amenities for one to live a middle class life. It appears that before the Appellate Court, an attempt Was made to argue that if this offer made by the plaintiffs to the defendants was accepted by the defendants, they would have to occupy the first

floor premises, and looking to the old age of Niruben-defendant No. 1, she would find it difficult to climb the stairs. That argument has been rightly rejected by the Appellate Bench by saying that even now, the defendants occupy the first floor premises, and therefore, climbing of stairs would be a feature common to both the premises, namely, the suit premises as well as the Khadia property. It has also been pointed out by the Appellate Court that whereas in the suit property, there is no accommodation available to the tenants on the ground floor, at the Khadia property, the defendants would get at least one room on the ground floor, and I may add that if Niruben is a woman with religious bend of mind, she would also have a Pooja room on the ground floor, in addition to the other facilities and amenities that are apparent from the evidence on record. Here was, therefore, no justification to the defendants to have refused the offer made by the plaintiffs to give them alternative accommodation in Khadia.

I may mention here that even before me, when this revision application was heard before me, Mr. Jani, the learned Advocate for the respondents, stated in clear terms that his clients would be ready to give to the defendants, the entire Khadia property except one room on the ground floor and the terrace on the second floor at the same rent. It was therefore not as if the offer that was made by the plaintiffs to the defendants, for the alternative accommodation for the defendants, was a ruse or a make-believe. The offer was made even before Atulkumar entered the witnessbox. The offer was made in writings, and the offer has repeated, even at the time this revision application was heard. Now, to take the stock, if the decree as prayed by the plaintiffs is refused, they would have to continue to reside in a family which would be split up. Kiritkumar would have to continue residing in the three rooms and a kitchen on the ground floor of the Pushpakunj Society Bungalow while the other members of the family would have to continue residing in the Khadia property, and even in doing so, as rightly pointed out by the two Courts below, as there are five couples, the mother and grown up children, all the couples would not be able to get independent bed rooms. On the other hand, if the decree as prayed is passed, as pointed out by the Appellate Court, the plaintiffs would have with them 8 rooms, a kitchen and some other facilities in one and the same bungalow itself and all the five brothers would be in a position to get at least one bed room each, and for the mother and the children, reasonable

accommodation could be provided under the same roof. If the decree it passed as prayed by the plaintiffs, the defendants have the reasonable alternative accommodation available to them as offered to them by the plaintiffs. But unfortunately, the defendants have, without any valid reason, refused to accept that offer. Such unjust refusal of an reasonable offer made by the plaintiff-, cannot be countenanced, and even with such refusal on the part of the defendants, it has got to be said that the defendants are in a position to get reasonable alternative accommodation as offered to them by the plaintiffs. If the defendants accept the offer made to them by the plaintiffs, I am sure, after having gone through the judgment, and having scanned the evidence, that they would not have any hardship. Therefore, if the decree as prayed by the plaintiffs is not passed, they would suffer continuous hardship. Their joint Hindu family would have to remain split at two places removed by about 2 Kms. from each other and even then some of the brothers who are married, would not be in a position to have at least a separate bed-room for them; not to talk of the children who, by now, must have grown up.

20. I will hereinafter, take up Civil Application No. 2411 of 1990 filed by the revision petitioners in this Court. But at the present juncture, I may say that in the affidavit-in-reply filed by the plaintiffs to that Civil Application, it is stated that now the extent of the plaintiffs family has gone to 20 persons, So, of what was a family consisting of 15 persons at the trial, expanded to 18 persons when the appeal was beard, and now it is a family of 20 Persons. If such a family, being a joint Hindu family wants to reside as one unit and war's more accommodation than is presently available to them., their requirement has got to be said, both bona fide and reasonable. As shown above, the plaintiffs have a clear case for getting the decree for possession of the suit premises for the requirement of the suit premises is both reasonable and bona. fide, and the defendants' refusal to accept the offer for alternative accommodation made to them by the plaintiffs to give them the property at Khadia, is unreasonable.

21. There is yet another angle -from which the matter could be viewed in so far as sub-section (2) of S. 13 of the Rent Act is concerned. The two Courts below have concurrently found that a very vast property had been purchased by decreed

Jyotindrabhai, at Amravadi. There is evidence to show that Jyotindrabhai was known at Bulbul Sheth. Since the time Jyotindrabhai purchased that property, it came to be known as 'Bulbul Sheth's Wadi'. That property was purchased by deceased Jyotindrabhai under the sale deed Exh. 100 dated April 2, 1960, i.e. after the coming into operation of the Rent Act. When Jyotindrabhai purchased that property there were four rooms standing thereon. Necessary N.A. per-missions for that property had been obtained by Jyotindrabhai. That property admeasures about six acres. The N.A. permission has been granted in respect of 29,645 Sq. Yds. in that property. There is also evidence to show that on a part of that property, one Mr. K. G. Bhatta has started a school. There is further evidence to show that though this property which is known as 'Bulbul Sheth's Wadi' is outside the Municipal limits, it is a fully developed area, there are number of housing residential societies all around this Bulbul Sheth's Wadi. Electricity, water supply etc. are available at Bulbul Sheth's Wadi. Deceased Jyotindrabhai, during his lifetime, had applied for a telephone connection at Bulbul Sheth's Wadi and there is evidence to show that only sometime after his death, pending the suit, telephone connection has been granted, and Tel. No. 887258 is working at that Wadi. There is further evidence to show that Jyotindrabhai resided at that Wadi, and even for the purpose of obtaining the telephone connection, and in certain applications made by him to the revenue authorities, he gave his residential address as the address of Bulbul Sheth's Wadi. Certain photographs have been produced on the record going to show that Jyotindrabhai resided in a cluster of rooms in Bulbul Sheth's Wadi. The evidence clearly shows that all the facilities which the modern life needs, are available in the vicinity of Bulbul Sheth's Wadi, and as a matter of fact, when Jyotindrabhai is proved to have resided in a cluster of rooms in Bulbul Sheth's Wadi on occasions, it has got to be said that reasonable alternative accommodation is available to the defendants without any difficulty or without any hardships. Both the Courts below have considered this Bulbul Sheth's Wadi premises as an alternative reasonable premises available to the defendants while considering the question from the stand-point of S. 13(2) of the Rent Act. The finding of the Courts below on that point is also not tainted with any illegality or unreasonableness.

22. The above discussion would show that the view of the Courts below, while passing the decree for possession on the ground of reasonably and bona fide personal requirement of the suit premises by the plaintiffs cannot be faulted.

23. Mr. Vakil, the learned Advocate for the defendants, however, tried to contend that subsequent to the passing of the decree by the Appellate Court, some events have happened, which this Court should take into account. It is on this line that the defendants-revision petitioners have moved Civil Application No. 2411 of 1990. In paragraph 3 of that civil application, this is what the defendants have stated :

'In May, 1986 the plaintiffs have constructed a room admeasuring 12' x 13' in the compound of the said bungalow No. 10. The plaintiff Maheshkumar Raval has been transferred out of Ahmedabad under his employment with the Gujarat Electricity Board, that he and his family consisting of his wife and two children resided at Viramgam. In May, 1987 the first respondent who is serving in the Drug Control Administration Department of the Government of Gujarat, was allotted as residential quarter being Block No. 690/ 3 on the first floor in Sector 8 at Gandhinagar. The said quarter has two bed-rooms, a drawing room and kitchen. The first respondent has since been residing at Gandhinagar. The tenant Champaben Jivanlal Shah on the ground floor of the suit bungalow, who had surrendered one room of her tenanted premises, has now vacated other two rooms and bath room and the respondents have got possession thereof on or about 27-10-1987. On 11-2-1988, the daughter of the first respondent got married. These are relevant facts which have happened during the pendency of the present revision application and have considerable bearing on the subjectmatter of the case.'

The plaintiffs have resisted this civil applition and have filed the affidavit-in-reply.

24. This Civil Application No. 2411 of 1990 was opposed by the plaintiffs firstly by contending that in the revision petition like this, no facts about subsequent events could be taken into account. It was alternatively contended by the plaintiffs that the facts about subsequent events which need further investigation can never be taken into account while hearing revision application like the present one, and some of the allegations made in paragraph 3 of the civil application have been

denied by the plaintiffs in their affidavit-in-reply.

25. Mr. P. K. Jani, the learned Advocate for the plaintiffs heavily relied upon the decision of the Division Bench of this Court in *Mangalsing Naransing Sikh v. Nanibai w/o. Laxmanbhai Kuberbhai Sioni* (1974) 15 Guj LR 698. I may incidentally mention here that Mr. S. B. Vakil who argued the present revision application before me for the defendants, argued the case before the Division Bench in the decision just now referred to. After a resume of a number of authorities, accepting Mr. Vakil's submission, this Court in that decision held that (at p. 703 (of Guj LR)):

'This Court in exercise of its power under S. 29(2) of the Rent Act will not record any evidence for investigation on new facts or will not take into account any change of circumstances or subsequent events, which might take place after the disposal of the appeal by the Appellate Court, except the admitted facts. '

In that case, the powers of the revisional Court were examined in contradiction to the powers of the Appellate Court, and it was held that whereas in appeal, it would be open to the Court to take into account the subsequent events, and if need be to order investigation of relevant facts appearing on the subsequent events, in a revision application under S. 29(2) of the Rent Act, it would be only open to this Court to correct or rectify the errors of law committed by the lower Court, and it would not be possible for this Court to take the view that the Court can investigate into new facts when it disposes of a revision petition under S. 29(2) of the Rent Act.

26. Mr. Vakil, however, tried to get out of this situation emerging from the decision in the case of *Mangalsing* (supra) by submitting that subsequent to the rendering of the Division Bench decision in the case of *Mangalsing* by this Court, the Supreme Court has taken a contrary view on the point, in the decision in the case of *Pasupuleti Venkateswarlu v. The Motor & General Traders*, AIR 1975 SC 1409. I have gone through that judgment of the Supreme Court in *Pasupuleti* case and I find that the submission of Mr. Vakil is not well founded. The Division Bench of this Court in *Mangalsing's* case has clearly; laid down in the last lines of paragraph 56 and elsewhere that this Court, while hearing revision application under S. 29(2) of

the Rent Act can only correct or rectify the errors of law committed by the lower Court, and it would not be possible for this Court to investigate into new facts, when it disposes of a revision application under S. 29(2) of the Rent Act. In Mangalsing's case, however, it was clearly said that while this Court will not be in a position to investigate into new facts about subsequent events, it can take into account facts which are admitted, and which pertain to subsequent events. Thus, in Mangalsing's case, the law laid down is that while hearing a revision application under S. 29(2) of the Rent Act, this Court would have no powers either itself to investigate or to order, by the lower Court the investigation about new facts, pertaining to subsequent events, if such facts are disputed. It would be permissible for this Court to take into account facts which are admitted and which pertain to subsequent events.

Now as I read the judgment of the Supreme Court in Pasupuleti's case (supra), it is clear to me that there the facts about subsequent events were admitted facts. Those facts were not disputed and it was because those facts about subsequent events were not in dispute that the Supreme Court held that those facts could be and should be taken into account while deciding the matter even at the revisional stage. That the fact about subsequent events in Pasupuleti's case were admitted is clear if we refer to the last lines of the second paragraph of the report. This is what their Lordships have in that connection, said in that case:

'While hearing protracted arguments it came to the ken of the Court that certain material events of fatal import to the maintainability of the eviction proceedings had come to pass and so it decided to mould the relief in the light of these admitted happenings'.

It was in connection with such admitted happenings that the Supreme Court in Pasupuleti's case said as follows (at, page 1410):

'If the fact arising after the lis has come to Court and has a fundamental imp 'act on the right to relief or the manner of moulding it is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render inapt the decretal remedy.'

However, the principle of law laid down by the Supreme Court in Pasupuleti's case, it appears to me, has been laid down in connection with the happenings and facts over which there was no dispute, and which did not need investigation in factual aspects or further evidence being recorded on factual aspects. Therefore, this Pasupuleti's case makes no change in the law laid down by this Court in Mangalsing's case to which I have made a reference hereinabove. Even with Pasupuleti's case, the position of law as enunciated by this Court in Mangalsing's case, that while hearing a revision application under S. 29(2) of the Rent Act, this Court will not investigate into new facts, remains a sound proposition of law.

27. The decision in the case of Amarjit Singh v. Smt. Khatoonquara in AIR 1987 SC 74 1, relied upon by Mr. Vakil simply follows the law laid down in Pasupuleti's case (supra), and goes no further, and that is why in Amarjit Singh's case, their Lordships of the Supreme Court, in the last lines of paragraph I of the report, said that the changes either in fact or in law must be taken cognizance of by the Courts, but that must be done in a cautious manner. Thus even the last mentioned judgment of the Supreme Court in the case I of Amadit Singh does not help the submission of Mr. Vakil before me in support of Civil Application No. 2411 of 1990 that this Court should either itself investigate into the facts of the subsequent events or direct the trial Court to do that exercise. The Division Bench judgment of this Court in the case of Mangalsing (supra) is binding in me and I am in respectful agreement with the law laid down therein. The proposition of law laid down therein is not in any way affected by the Supreme Court judgment relied upon by Mr. Vakil. It has, therefore, to be held that while hearing a revision application under S. 29(2) of the Rent Act, this Court, at the most can take cognizance of the admitted facts as regards subsequent events and it cannot permit any investigation about disputed facts regarding subsequent events, being undertaken. It is in this light of the legal position that C.A. No. 2411 of 1990 is required to be decided.

28. I have hereinabove excerpted the relevant part contained in para 3 of the civil application. There, firstly it is contended that in May, 1986 the plaintiffs have constructed a room measuring 12' x 13' in the compound of the said Bungalow No. 10 (Pushpakunj Society). That averment has been specifically denied by the plaintiffs in their affidavit in reply, and that averment being denied the same shall

have to be kept out of consideration for deciding this civil application.

Nextly it is contended in para 3 of the civil application that plaintiff-Maheshkumar has been transferred out of Ahmedabad and that he and his family members stay at Viramgam. This statement has also been controverted in the affidavit-in-reply, and it is specifically stated in the Teply affidavit that Maheshkumar's family is residing in Ahmedabad, and at no point of time, his family has shifted either to Viramgam or to any other place. The proposition of fact contained in para 3 -of the civil application on this point being disputed by the plaintiffs cannot be gone into while hearing the revision application. Similarly, the third proposition of fact which is made in para 3 of the civil application about Kiritkumar having been allotted a residential quarter at Gandhinagar is also a disputed proposition of fact. The fact contained in that paragraph as regards that point has been denied in the affidavit-in-reply, and it is clearly stated in the affidavit-in-reply that Kiritkumar-respondent No. 1 is not in possession of the block at Gandhinagar as averred in the civil application. It is stated in the affidavit-in-reply that Kiritkumar is residing with his family in Bungalow No. 10 in Maninagar and it is further averred in the affidavit-in-reply that Kiritkumar has sought voluntary retirement from Government service, Therefore, the third proposition of fact about Kiritkumar having been allotted a residential quarter at Gandhinagar being a disputed proposition about alleged subsequent event, shall have to be kept out of consideration. The fourth proposition contained in paragraph 3 of the civil application is that since the passing of the decree by the Appellate Bench, tenant Champaben has surrendered to the plaintiffs even the one room on the ground floor of the Pushpakunj Society property, which had remained in her possession. Of course, that proposition has not been disputed before me in the affidavitin-reply. As that fact has not been disputed by the plaintiffs, the same shall have to be taken into consideration. Similarly as the last proposition in paragraph 3 of the civil application, it has been contended that on February 11, 1988, the daughter of Kiritkumar has married. That proposition is also not disputed. Therefore, that may also be taken into consideration.

The net result would be that while deciding this civil revision application, I have to take into consideration a further fact which has come into existence, subsequent to

the passing of the decree by the Appellate Bench, and that fact is that Champaben, a tenant of the plaintiffs, who was at the time of passing of the decree by the Appellate Court was occupying one room on the ground floor of the Pushpakunj Society property has vacated that room and the plaintiffs have come into possession of that room. The second fact is that the daughter of Kiritkumar has since married. Now taking the second fact first, as indicated hereinabove, in the affidavit-in-reply, it is stated that the extent of the family of the plaintiffs has now come to 20. If we exclude the daughter of Kiritkumar who has since married from the family members of the plaintiffs, we would come at the figure of 19. Even with 19 members in the family of the plaintiffs, the requirement for accommodation for a comfortable living would be such more than what the plaintiffs are presently having with them, even if we were to take into account the fact that the plaintiffs are now in possession of four rooms (not three rooms) on the ground floor of Pushpakunj Society property, and they are in possession of the property at Khadia. One additional room of Which the plaintiffs have got possession from Champaben would not make any difference to the case of the plaintiffs that they required reasonably and bona fide the suit premises for their personal occupation. The requirement is much more than what they are presently having, even if we are to take into consideration that they have come into possession of one more room from Champaben. Therefore, these two admitted facts about subsequent events; viz. (1) that the plaintiffs have got possession of one more room from Champaben; and (2) that the daughter of Kiritkumar has married are taken into account, the plaintiff's case for possession of the suit premises on the ground that they bona fide and reasonably require the suit premises for their personal occupation, in no way gets weakened. Civil Application NO. 2411 of 1,990, therefore, does not serve any purpose in favour of the defendants (revision petitioners).

29. Mr. Vakil for the defendants argued that in any view of the matter, the trial Court should have considered the question of passing a decree for partial possession in terms of the second paragraph of sub-section (2) of S. 13 of the Act. I am afraid, this submission cannot be entertained firstly for the reason that it was never canvassed before any of the two Courts below, and secondly because it was not even canvassed in the memo of the revision petition. Even otherwise, on the facts and circumstances of the case, I do not see any reason for saying that

there is any scope for considering the case from the stand point of the second paragraph of sub-section (2) of S. 13 of the Rent Act. The juxtaposition of the rooms on the first floor of Bungalow No. 10, in Pushpakunj Society is such that there would never arise any question of passing a decree for possession in respect of a part of the premises. In that view of the matter, the submission of Mr. Vakil based on the second paragraph of sub-section (2) of S. 13 of the Rent Act has to be kept out of consideration.

30. As said above, the learned trial Judge has held in favour of the plaintiffs on the question bearing on Clause (1) of sub-section (1) of S. 13 of the Rent Act. That Clause (1) enumerates one of the grounds on which a landlord will be entitled to the possession of the premises, on the Court being satisfied about the ground contained therein, and the ground is that 'the tenant after the coming into operation of the Act has built, acquired vacant possession of or been allotted a suitable residence, ' Thus, if after the coming into operation of the Rent Act, the tenant has either built or acquired vacant possession of or has been allotted a suitable residence, that fact would furnish a ground, on which the landlord could ask the Court to pass a decree for evicting the tenant. It is the case of the plaintiffs that in 1960, i.e. after the coming into operation of the Rent Act, the deceased defendant Jyotindrabhai purchased a vast property on which were standing rooms which could be used as residential were accommodation, and thereafter he himself built a cluster of more rooms thereon and thus, the plaintiffs' case for evicting the defendants is also covered by Clause (1) of sub section (1) of S. 13 of the Rent Act. As said above, the trial Court has found in favour of the plaintiffs on this point. As shown above while considering the question based on the standpoint of sub-section (2) of S. 13 of the Rent Act, I have indicated that Jyotindrabhai purchased a vast property, which subsequently came to be known as 'Bulbul Sheth's Wadi'. When he purchased that property, there were four rooms standing thereon. Thereafter, he built quite a large number of rooms thereon. In a portion of the property, a school building has been put up by one Mr. K. G. Bhatt, deriving title from deceased Jyotindrabhai. 'Bulbul Sheth's Wadi' is situated in a fully developed area though it is outside the Municipal limits. Water, electricity and other provisions and amenities are available at Bulbul Sheth's Wadi. During his lifetime, Jyotindrabhai applied for a telephone connection and sometime after his death the

telephone was installed at that Wadi. That telephone is working. There is evidence to show that during his lifetime Jyotindrabhai many a time resided at Bulbul Sheth's Wadi. To show that fact, not only there is the oral evidence, but some photographs have been produced on the record. There is evidence to show that Jyotindrabhai, for obtaining the telephone connection and while making applications to the Revenue Department, gave the address of Bulbul Sheth's Wadi as his residential address. Thus, it cannot be disputed that the residential accommodation at Bulbul Sheth's Wadi is a suitable accommodation where the defendants could reside. That accommodation, the defendants have come by, after the coming into force of the Rent Act. The learned trial Judge was, therefore, fully justified in upholding the plaintiffs' case for possession based on Clause (1) of sub-section (1) of S. 13 of the Rent Act. However, the Appellate Bench has negated that case on almost no reasons or to put it most mildly, on flimsy reasons. All throughout the Appellate Bench has also agreed with the trial Court, and has found in favour of the plaintiffs on the question of possession of the property. However, queerly enough, the Appellate Bench in the last lines of Para 36 of its judgment said almost as an 'ipse dixit' as follows:

'In our opinion, though these four rooms are in possession of the defendants, they have not all the facilities which they have in the suit premises and are far away from the present premises. Therefore, they are not suitable to all the needs of the defendants.'

31. It cannot be disputed that the plaintiffs, as the respondents in the revision petition, who have on the question of possession of the property fully succeeded in the Courts below, can support that decree, not only on the grounds which have been found by the appellate Court in their favour, but they can also support it on the grounds which have been decided against them in the appeal preferred by the tenant, and can canvass before this Court that the findings of the Court below on these points held against them are illegal. The plaintiffs-respondents can invoke the provisions of O. XLI, R. 22(1) of the Code of Civil Procedure in their support. If any authority on the point is needed, one is to be found in the case of *Badri Prasad Agarwal v. The Premeer Garage*, 1980 (1) Rent Control Journal, 395. In that decision, it has been held (at page 400):

'Where the landlord has filed a suit for' eviction on one or the other of the grounds mentioned in the Rent Act, and has obtained a decree for eviction, he is free to support that decree on any other ground decided against him in an appeal preferred by the tenant from the decree of eviction passed by the lower, Court. This view is fully supportable by the provisions contained in the first, part of O. XLI, Rule 22 of the Code of Civil Procedure. '

Thus, it is clear that the plaintiffs as the respondents in this revision petition can support the Appellate Court's decree not only on the ground of personal and bona fide requirement, but they can also canvass that the Appellate Court was wrong in holding against them on the question bearing on the provision of Clause (1) of sub-section (1) of S. 13 of the Rent Act. I have carefully gone through the judgment of the Appellate Court and I am constrained to say that the approach of the Appellate Court on the question bearing on the provision of S. 13(1)(1) of the Rent Act is absolutely illegal. The Appellate Bench has clearly found, as was done by the trial Court, that the defendants are in possession of an estate known as 'Bulbul Sheth's Wadi'. That property is quite suitable for the defendants for their occupation. As a matter of fact, deceased defendant-Jotindrabhai occupied it, and resided there, and gave the address of that property as his residential address. The Appellate Court, while considering the question from the stand point of sub-section (2) of S. 13 of the Rent Act in para. 38 of its judgment has clearly found that the cluster of rooms at Bulbul Sheth's Wadi which is in possession of the defendants have all the facilities of electricity, water, etc. and that the defendants would not suffer any hardships if they are asked to shift to those premises, looking to all the circumstances, viz. the size of the family of the defendants, the employment of defendant No. 2, and the facilities available in those rooms, including the area of the rooms, the situation and locality. Thus, in no uncertain terms, in paragraph 38 of its judgment, the Appellate Bench, while considering the question bearing on sub-section (2) of S. 13 of the Rent Act, found that the property at Bulbul Sheth's Wadi is a reasonable accommodation available to the defendants for their residence and yet, in respect of that very accommodation, while considering the case from the stand point of Clause (1) of sub-section (1) of S. 13 of the Rent Act, the Appellate Bench, without giving any reason said that those rooms at Bulbul Sheth's Wadi have not all the facilities, which are available

to the defendants in the suit premises, and that the Bulbul Sheth's Wadi property is far away from the suit premises. The two sets of reasonings -one appearing in the last lines of paragraph 36, and the other appearing in the last lines of paragraph 38 of the judgment of the Appellate Court are irreconcilable. If I may say so, they are contradictory in terms. In paragraph 36 of the judgment, the Appellate Bench has taken into consideration all the relevant facts including the facilities available at Bulbul Sheth's Wadi, and the employment of defendant No. 2 and that would include the distance, and has found that Bulbul Sheth's Wadi is a reasonable, alternative accommodation where the defendants can shift. I fail to see how in face of this reasoning advanced by the Appellate Bench, in paragraph 36 of its judgment, it could at all be said that there are not all the facilities at Bulbul Sheth's Wadi, which are available to the defendants in the suit premises, and that Bulbul Sheth's Wadi is far away from the suit premises, and that, therefore, Bulbul Sheth's Wadi is not suitable to all the needs of the defendants.

32. When Clause (1) of sub-section (1) of S. 13 of the Rent Act speaks of suitable residence, it does not speak of each and every minor need of the tenant. If, on an overall view, the residential premises built or acquired by or allotted to the tenant since the coming into operation of the Rent Act can be said to be a suitable residential accommodation. I think the requirement of Clause (1) of sub-section (1) of S. 13 of the Rent Act is met, and a minor difference here or there between the two accommodations; (1) the suit premises and (2) the premises in respect of which Clause (1) of sub-section (1) of S. 13 of the Rent Act is invoked, would be of no consequence. In this view of the matter, even while hearing this Civil Revision Application, I find that the Appellate Court has committed a gross error in law in taking a view contrary to the one taken by the trial Court on the question bearing on Clause (1) of sub-section (1) of S. 13 of the Rent Act. That part of the finding of the Appellate Bench is required to be set aside, and the finding of the trial Court on that question is required to be restored. The same is accordingly restored.

33. The result of the foregoing discussion is that the decree directing the eviction of the defendants from the suit premises is unassailable. The Civil Revision Application is, therefore, dismissed with costs. Rule is discharged. Interim relief of stay is vacated. However, the defendants are given time up to 31-3-1991 to

vacate.

Civil Application No. 2411 of 1990 stands disposed of in light of the above judgment.

34. Order accordingly.

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