Uttarakhand High Court

Sh. Shyam Sundar Kataria ... ... vs Sh. Sumit Grover And Another on 28 January, 2022

Reserved Judgment

HIGH COURT OF UTTARAKHAND
AT NAINITAL
Writ Petition (M/S) No. 2275 of 2021

Sh. Shyam Sundar Kataria ... Petitioner/tenant

Vs.

Sh. Sumit Grover and Another ... Respondents/landlords

Advocates : Mr. V.K. Kohli, Senior Advocate, assisted by Mr. Kanti Ram, Advocate, for the petitioner.
Mr. Ramji Srivastava, Advocate, for the respondents.

Reserved on : 06.01.2022
Delivered on : 28.01.2022

Hon'ble Sharad Kumar Sharma, J.

This is a tenant's writ petition, where the tenant/petitioner has put a challenge to the concurrent judgements, as rendered on 18th December 2019, by the Court of Additional Civil Judge (Senior Division)/ Prescribed Authority in P.A. Case No. 14 of 2018, Sumit Grover and another Vs. Shyam Sunder Kataria, by virtue of which, the Release Application, preferred by the respondent/landlord under Section 21(1)(a) of Act No. 13 of 1972, for release of the tenement (shop in dispute), lying in the property bearing Municipal No. 8/2 (64/57), Kaulagadh Road, Dehradun, had been directed to be vacated and a vacant and peaceful possession has been directed to be handed over to the landlord respondent.

2. Aggrieved against the said judgement, the petitioner/tenant had preferred a Rent Control Appeal under Section 22 of the Act No. 13 of 1972, which was remembered as Rent Control Appeal No. 5 of 2020, Shyam Sunder Kataria Vs. Sumit Grover and another, which too had been dismissed by the learned Appellate Court i.e. the Court of 4th Additional District Judge, Dehradun, by one of the impugned judgements dated 28th October, 2021, which had been put to challenge, in the present writ petition in its exercising powers under Article 227 of the Constitution of India, while exercising its supervisory jurisdiction, over the judgements passed by the subordinate Courts.

3. Brief facts of the case are, that the property in question as described hereinabove is a shop of 10 x 15 feet, which has been occupied by the petitioner/tenant, for the last over 28 years and was carrying a rent of Rs. 450/- per month. From the property in question, the petitioner contends that he had been carrying out a business under the name and style of 'Neelkanth Gems & Jewellers', for the last aforesaid 28 years and it's the tenancy, the ownership of which had later on devolved upon the respondent/landlord after having purchased the same from its previous landlord/owner of the property Mr Deewan Chandra Suleja. Prior to the initiation of the proceedings under Section 21(1)(a) of the Act No. 13 of 1972, the landlord respondent is said to have issued notices under proviso to Section 21(1)(a) of the Act on 10th September 2017, as a consequence thereto, a request was made by giving a prior six months notice, to the petitioner/tenant to vacate the tenement in question, because the same was required by the applicant No. 1, for the purposes of meeting his

need of opening of his office /chamber of lawyers, on the ground that since after completing his B. Com and L.L.B, the Applicant No. 1, has been registered with the Bar Council of Uttarakhand, and he intends to open his chamber from where he wants to carry out his practice in the taxation field of law and it was pleaded exclusively for the said purpose, that the shop in question was purchased by the applicants along with the other portion of the building in question in order to meet up the bonafide need of the respondent /landlord for opening his lawyer's chamber and for practicing his profession from the said place.

4. The applicant, in the Release Application, has contended that looking to the location of the shop and the nature of business, in which the said shop is to be utilised by the landlord/ respondent, after its release, it would most appropriately serve the purpose of the professional need, as had been expressed by the landlord /respondent in the release application, because according to the landlord /respondent there is no other suitable /alternative place available to him, under his ownership from where he could conduct his practice as a lawyer.

5. In the Release Application, thus filed on 14th May 2018, the respondents /landlords had pleaded, that they had purchased the property in question from its predecessor landlord on 22nd November 2012; along with other adjoining shops and a building behind it, which has got its exclusive commercial utility. It was also alleged that since the father of the respondent /landlord had also purchased the portion of the property bearing No. 8/2 (64/57), which was the municipal number of the disputed tenement in question; apart from it, the remaining portion of the property, which was purchased by the respondent /landlord, it was contended that since he deals with goods, relating to the gymnasium and beauty parlour and sale of goods and spares in relation to the gymnasium articles, he wants to utilise the remaining part of the property for the aforesaid business by one of the landlords, who was also the applicant to the release application.

6. Another ground, which was taken by the landlord /respondent that since despite consistent demand and request being made from the petitioner /tenant, as he has defaulted in the remittance of the rent ever since 22nd November 2012, his tenancy would be deemed to have been terminated in pursuance to the notice dated 10th September 2017, which was served upon the petitioner/ tenant on 13th September 2017 and who rather in reply to the notice, had also submitted his response on 26th September 2017, alleging that the need of the respondent /landlord, as expressed in the release application dated 14th May 2018 was not bonafide, because just behind the tenement in question, there were other vacant space which according to the petitioner/tenant, was also under the ownership of the landlord /respondent, which is being admittedly utilised by the other occupants for their respective commercial activities, which according to the petitioner could be suitably utilised by the landlord /respondent for his alleged need of starting his practice as a lawyer.

7. The respondent /landlord, in the Release Application, particularly in para 13, had specifically raised a pleading that after the service of notice under the proviso to Section 21 on 13th September 2017, the petitioner /tenant had never looked for any alternative shop and looking to the economic condition and viability of the petitioner/tenant, he has got sufficient resources available with him and on the basis of which he could easily purchase or look for another shop or take it on rent. But, since in the absence of there being any pleadings raised to the contrary in the written statement of

having made any bonafide efforts to look for an alternative accommodation and as there was no evidence to the contrary on the records of the Courts below to have been led by the tenant /petitioner, the presumption would be that the need of the landlord /respondent is more bonafide as compared to the tenant/petitioner and in an event, if the release application was allowed, and the tenant /petitioner would be having lesser comparative hardship, as that of the landlord /respondent, in an event if the release was denied.

8. The respondent/landlord further in his pleading and evidence, had submitted that in an event if the release is considered favourably in his favour by the learned Prescribed Authority, he expresses his willingness to compensate the petitioner /tenant by paying two years rent as per the provision contained under Section 21 of the Act of 1972 itself.

9. In response to the Release Application, the petitioner/tenant had filed a written statement being paper No. 17 (ka) on 18th January 2019 and particularly, as per the pleadings raised in the release application, in fact, the tenant /petitioner had admitted the existence of relationship of landlord and tenant, had also admitted that the tenement in question is carrying a rent of Rs. 450/- per month, the tenant/ petitioner further admitted that over the tenement in question, since the same being an old structure, the tenancy of which has been continued for last over 28 years, the provisions of Act No. 13 of 1972, are applicable. But, however, in the written statement thus filed being paper No. 17 (ka), the tenant /petitioner had attempted to deny the plea, which had been raised by the respondent/landlord in the release application, pertaining to the default committed in remittance of the rent since 22nd November 2012, and rather in the evidence, which was adduced before the Court below by filing the affidavit in support of the evidence to the summary proceedings which were being held under Section 21(1)(a), the pleading was raised by the petitioner without any evidence on record to the contrary, that the tenant/petitioner has remitted the rent in the Court, as it has been pleaded in Paper No. 25 (ka) dated 10th July 2019.

10. In support of it, tenant/petitioner had come up with the case that the landlord's need is not bonafide for the reason being, that the landlords respondents herein, in fact, they had been the property dealers, though this plea was made without leading any evidence by the tenant/petitioner, who had been dealing with the real estate and as such their sole purpose, was to get the tenement vacated and to let out it on a higher rent for their profitable gain, which was a fact which was vehemently denied by the landlord /respondent and rather in the release application itself by specifically making an averment and by giving an undertaking to the effect that on the release of the tenement, they are not going to let out the tenement in question to any other person, but rather would be exclusively utilising it to meet up his professional need. There was nothing on record as such to disbelieve the said statement made by the landlord/respondent in the affidavit.

11. The tenant/petitioner without any evidence to the contrary had attempted to deny the pleading raised by the landlord /respondent that he is a qualified law graduate and registered with the Bar Council of Uttarakhand and further attempted to deny the bonafide need of opening up the chamber and also further attempted to deny, that apart from tenement in question the landlord has got no other suitable space for doing business of his profession. The tenant/petitioner submitted that the plea taken by the landlord /respondent, in the release application, that they are not doing any

business from the tenement in question is per se false and they submitted that looking to the length of the tenancy i.e. for last 28 years, they have been consistently doing their businesses under the name and style of 'Neelkanth Gems & Jewellers', and with the passage of time they have gathered a sufficient goodwill and in an event, if the tenement in question is released, the petitioner /tenant, in the written statement submitted that they would suffer extreme hardship because the entire family of the landlord/respondent is dependent upon the income, which is accruing from the tenement in question, from which they are doing their business.

12. In the written statement, it was also pleaded by the tenant/petitioner that he was in the receipt of the notice which was sent under the proviso to Section 21(1)(a) by the landlord/respondent on 10th September 2017, which was effectively replied by the petitioner /tenant by submitting the reply to the said effect on 26th September 2017, giving the correct facts but though this Court is of the view that if the reply itself is taken into consideration, there happens to be a massive contradiction in the reply and particularly in relation to the reply which has been extended in para 10, if it is read in correlation to the pleadings which had taken in the written statement with regard to the receipt of notices thus, in fact, there was no uniformity in the pleadings taken in defence by the tenant/petitioner. Particularly, the two documents filed by him i.e. written statement and reply to notices

13. If the written statement is taken into consideration in its entirety, and particularly at the stage where the tenant /petitioner had given his reply to the pleadings raised by the landlord /respondent in para 13 of the release application, in fact, there had not been any specific denial which was made by the petitioner/tenant by placing on record about the attempts made by him to look for an alternative accommodation after the receipt of notice, or even after filing of the release application, and rather a very evasive reply was given by the tenant /petitioner, that it is absolutely per se false that the petitioner had not made any efforts to look for any other alternative accommodation. In fact, as far as this field of Section 21(1)(a), is concerned, it is settled law that on the filing of the release application or upon the service of notice under the proviso, in fact, it's a tenant's responsibility to place on record by bringing material evidence as to the sincere steps which he has bonafide taken by him to look for an alternative accommodation and the effective efforts made by him by pursuing the proceedings under Section 16 of the Act of 1972 and having since failed to establish the same to the contrary, the plea taken in para 13, would be deemed to be a vague reply.

14. Although, the provisions of the rent laws fall to be within the ambit of list 2 of Schedule 7 of the Constitution of India, as contained in its Entry 18, but, invariably, all the state laws relating to the rent control or governing the interse relationship of landlord and tenant are based upon the wider principles of the reasonableness of the need, which has been expressed by the landlord /respondent in the release application in order to justify the vacation of the tenement to meet his personal requirement of the accommodation, which is under the tenancy and in relation thereto, a reference may be had to a judgment as reported in AIR 1973 Bombay 46, Kishinchand Murjimal and others Vs. Bai Kalavati and others. Though, the said matter was arising out of the Bombay Rent Hotel and Lodging Houses Rates Control Act, 1947, but, principally, in its para 15, it had dealt with as to upto what extent the reasonableness of requirement of the landlord has to be normally appreciated by the Courts on consideration of an evidence, which has been placed on record and upto what extent the

same could be interfered by the writ Courts in exercise of its powers under Article 227 of the Constitution of India. On a composite reading, the observations made in paras 9, 15, 16 and 17 of the said judgment becomes relevant, which deals with the aforesaid proposition pertaining to the reasonableness of the accommodation and the demand of the landlord and the tenant, which has to be comparatively studied depending upon the respective hardship, which is likely to be caused if the release application is allowed. The Bombay High Court, in the said judgment had observed that the interference in a concurrent findings pertaining to the question of balance of hardship of primarily the question of the reasonableness of requirement of the landlord has had to be interfered extremely in a very rare circumstances where there is a non application of mind to the circumstances of the case which is not prevalent in the present writ petition as it has been argued by the learned counsel for the petitioner/tenant. Para 9, 15, 16 & 17 of the said judgment are extracted hereunder:-

> "9. So far as the other contentions raised by Mr.Abhyankar are concerned the Appellate Bench had a discretion to consider all the relevant circumstances and a duty to consider the reasons and findings of the trial Court. It believed the efforts made by Hansraj. It had also power to believe or disbelieve the defence that son-in-law of Hansraj lived with the family of Hansraj and believed the defence. It referred to the hardship to the public and to the trustees and found that the hardship to defendants is greater if they are evicted. These findings are based on appreciation of evidence and normally they cannot be challenged in this Court in a petition under Art, 227 of the Constitution of India.
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> 15. It is well settled that an Appeal Court will be ordinarily slow to interfere with the decision of the trial Judge on questions like the balance of hardship, for this is primarily a question of fact.

To succeed, the appellant must how that the trial Judge misdirected himself on a question of law or that he based his judgment on some finding of fact on which there was no evidence. If in drawing up the statutory balance sheet of hardship under Section 13(2), there is some evidence of hardship on each side the decision of the trial Judge must be normally final. The appellate Court can interfere in certain circumstance, for instance, if there is no evidence of hardship on one side or if the trial Judge has held to be relevant some matter which in law is not relevant such as the absence of a view of a neighbouring hill, river, tree or something pleasant of that kind.

16. Turning now to the judgment of the Appellate Bench, I find that it has reversed the finding of the trial Court, in a manner which would render Section 13(1)(g) nugatory, so far as Greater Bombay is concerned. After merely summarising the contentions of Hansraj in his evidence, the Appellate Bench went on to observe.

> ".....According to Mr.Khambatta, the requirements of Hansraj can be satisfactorily met by a flat of 1200 sq.ft. The learned trial Judge has observed that the family of Hansraj can be suitably accommodated in a flat of 1000 sq.ft. In our opinion there is no warrant for this observation. As pointed out by the learned trial Judge, the area of the premises in the occupation of Hansraj is 4730 sq.ft. Hansraj has been

> living in these premises with his family for a number of years. In considering what is suitable alternative accommodation for a tenant, the mode of living he is used to is a material factor.....In our view, therefore, the whole family of Hansraj must be taken into account in deciding the question of hardship. The learned trial Judge has remarked in his judgment that on his inspection of the premises, he found that the entire premises were not really needed by Hansraj. In our opinion, the learned trial Judge was wrong in allowing his judgment to be influenced by the impression which was made on him when he saw the premises. There is nothing to show whether that impression was correct or not. The question must be decided on the evidence on record. It can be argued that the alternative accommodation for Hansraj need not be of the same size as the premises in question viz. 4730 sq.ft. Even so, we do not think that an area of 1000 sq.ft. or 1200 sq.ft. can be considered suitable for Hansraj and his family who have been accustomed to live in larger premises for a long period.....In our view he was not expected to make efforts in this behalf in every part of the city. It cannot be urged that he must take up his residence wherever he could get it within his means. It also cannot be urged that he should secure a flat on lease even by paying premium for it. Another factor which must be taken notice of is the extreme difficulty of securing accommodation in the city. In these circumstances, we are satisfied that Hansraj could not obtain suitable alternative accommodation in spite of efforts made in that behalf."
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> This conclusion of the Appellate Bench, in my judgment, is a total distortion of the requirement of Section 13(2). The section does not require "suitable accommodation" to be available to the tenant. It requires "reasonable accommodation" to be available to the tenant.
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> 17. What is reasonable will depend on the circumstances of each case. Reasonable cannot mean equally convenient or luxurious, though it may not necessarily exclude ideas of convenience and comfort. The expression used in Section 13(2) is "hardship" and not "inconvenience" or "unsuitability." The Appellate Bench has assumed that Section 13(2) refers to "suitability." The said assumption is, in my opinion, patently illegal. The Appellate Bench has further ignored the detailed, relevant and cogent reasons given by the trail Court (including that was observed at personal inspection of the said premises) for holding that greater hardship would be caused to the trustees by refusing to pass a decree. It ought to have properly considered the fair and reasonable offer made by the trustees to Hansraj. On these grounds alone the finding recorded by the Appellate Bench must be set aside. The Appellate Bench misdirected itself on law, illegally ignored the reasons given by the trial Judge and erroneously reversed the correct findings of the trials Court under Section 13(2).

15. The reasonableness of demand was primarily also one of the aspects, which was considered by the Allahabad High Court in a judgment reported in 1984 (1) ARC 378, Dr. Munni Lal Vs. IVth Addl. District Judge, Etah and others, wherein while making reference to an earlier judgment, as reported in 1982 (1) ARC 24, Sanwal Das Banka Vs. 3rd Addl. District Judge, Faizabad and others, the

coordinate Bench of the Court had observed as to what parameter has to be taken into consideration for the purposes of determining the comparative hardship and that would depend upon the attempt made by the tenant to secure any other accommodation for himself and if he opts for to contest the release application on merits in the absence of there being any finding to the contrary recorded in an evidence before the Court below. The inference drawn would be adverse against the tenant.

16. In an absence of an attempt to look for an alternative accommodation, the Court has observed that this aspect of the tenant's attitude after several years of contest of release application, irrespective of the fact as it was involved in that case too that the tenancy was of 28 years, but yet based on the ratio of Bishan Chand Vs. 4th Additional District Judge, reported in 1982 (1) Alld. Rent Cases 440, the Court in its paras 3 & 4 had dealt with that even though after filing of an application, if the documents on record established that the tenant has not looked for alternative accommodation to get one allotted or otherwise he has failed to make any attempt in that regard, the inference of comparative hardship would be drawn contrary to the need expressed by the tenant. Para 3 & 4 of the said judgment i.e. Dr. Munni Lal (supra) are extracted hereunder:-

> "3. On the question of comparative hardship it was urged by counsel for the petitioner that since the Additional District Judge has recorded a finding that hardship would be caused to both the parties on the application for release being allowed or dismissed as the case may be, the application for release should have been dismissed. Reliance in support of this submission has been placed by counsel for the petitioner on a decision of the Supreme Court in Bishan Chand v. 4th Additional District Judge (MANU/SC/0464/1980 : 1982 (1) Alld. Rent Cases 440) where it was held that if the finding was that hardship to both the landlord and the tenant would be the same, an order of ejectment in favour of the landlord could not be made "in the absence of any additional circumstances indicating that preference could be shown to the landlord". The actual finding which the Additional District Judge has recorded on this question reads:-
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> "Each of the cases has got to be seen at its merits in the present case need of the landlady is bona fide and she will suffer a great hardship if the shop is not released for her use. The tenant has also earned goodwill and is doing his practice at the shop. If he is uprooted the will also suffer considerable hardship and will have to find some other place for his practice."

On the facts of the instant case I am of opinion that it is a case where there is additional circumstance indicating that preference could be shown to the landlord. The Additional District Judge in his order passed on 15th February 1979, which was quashed by this court in the earlier writ petition no. 4913 of 1979 had recorded a finding that the petitioner- tenant did not have any alternative shop and that the house which is said to belong to him was not fit for medical practice. Even though this finding was affirmed by this court yet the order of the Additional District Judge was quashed and he was directed to decide the appeal afresh. This circumstance alone was, therefore, not considered to be sufficient for dismissing the application for release. It was inter-alia pointed out before this court at the time of the hearing of the earlier writ petition that Dinesh

Kumar, one of the sons of respondent no. 3, was at present manufacturing cartons for sweets but he had absolutely no shop whatsoever for doing that business. It was held that the question as to whether Dinesh Kumar did already have some place for doing that business or not was not an important one and if he did not have a suitable and sufficient accommodation for carrying on the business of manufacturing cartons the application for the landlady could not be dismissed only on the ground that Dinesh Kumar was already engaged in that business. After remand the finding recorded by the Additional District Judge is that Dinesh Kumar does not have any accommodation for carrying on the said business. At this place it may also be pointed out that the other son of the landlady, Pramod Kumar, has been found to have got himself employed as a Munim. This certainly indicates that the financial status of respondent no. 3 Smt. Kamla Devi is not very good. On the other hand the petitioner has been carrying on the profession of medical practice in the shop in question for the last about 28 years and on his own case he is having a good practice therein. Under almost similar circumstances in the case of Bega Begum v. Abdul Azad Khan (MANU/SC/0313/1978 : AIR 1979) SC

272) it was held:-

"Being the owners of the house they cannot be denied eviction and be compelled to live below the poverty line merely to enable the respondents to carry on their flourishing hotel business at the cost of the appellants. This shows the great prejudice that will be caused to the plaintiff if their suit is dismissed."

In my opinion this constitutes the additional circumstance indicating that preference in the instant case rightly been shown to the landlord-respondent no. 3.

4. There is another circumstances which is of significance. Even, though the application for release was filed about seven years back nothing has been brought to my notice indicating that the petitioner made any effort, during this period to secure any shop by getting one allotted in his favour or, otherwise and he failed in his attempt. That while considering the question of comparative hardship this also a relevant circumstances admits of no doubt in view of the decision of this Court in Sanwal Das Banka v. Additional, District Judge, (1982 (U.P.) RCC 252); (1982 (1) Alld. Rent Cases, 24 (L. B.).

17. In a matter arising out of rent laws of the State of Jammu and Kashmir, the Hon'ble Apex Court, in a judgment reported in AIR 1979 SC 272, Mst. Bega Begum and others Vs. Abdul Ahad Khan (dead) by L.R.'s and others, in fact, yet again had an occasion to consider as to how the different connotation pertaining to the "reasonableness requirement" and the "need", of the tenant or the landlord has to be taken into consideration. The need should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction of his his own accommodation which he wants to release for his personal requirement and the relevant observations have been made in para 13 of the said judgment which is extracted hereunder:-

> "13. Moreover section 11(h) of the Act uses the words 'reasonable requirement' which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term 'need' or 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for one landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other State in the country. This Court has considered the import of the word requirement and pointed out that it merely connotes that there should be an element of need."

18. Not even that, while deciding the issue of hardship in that case too, it has been observed that landlord has once he establishes that he has a genuine requirement to possess the accommodation necessary for his personal requirement being the owner of the house, he cannot be denied and can be compelled to live below the poverty line merely to enable the respondent to carry out his business at the cost of the landlord's own interest of occupying and utilising his premises for his own requirement. The Hon'ble Apex Court, in the aforesaid judgment has observed that while deciding extent of hardship that may be caused to one party or the other, in case a decree for eviction is passed or refused, each party has to establish its relative advantage and disadvantages and the entire onus to establish the same cannot be shifted or thrown upon the plaintiff landlord to prove the lesser disadvantages will be suffered by the tenant i.e. what has been observed in para 20 of the said judgment, which is extracted hereunder:-

> "20. Let us now probe into the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused. It seems to us that in deciding this aspect of the matter each party has to prove its relative advantages or disadvantages and the entire Onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable. This matter was considered by this Court in an unreported decision in the case of M/s Central Tobacco Co. v. Chandra Prakash(l) where this Court observed as follows:-
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> "We do not find ourselves able to accept the broad pro- position that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under s. 21 sub-s. (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act.

Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the court to determine wether the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal. The whole object of

the Act is to provide for the control of rents and evictions, for the leasing of buildings etc. and s. 21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant.. The onus of proof of this is certainly on the landlord. We see no Sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenants making it obligatory on him to show that greater hardship would be caused to him by passing the decree than be refusing to pass it. In our opinion both sides must adduce all relevant evidence before the court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after shifting such evidence that the court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it".

This case was followed in Phiroze Ramanji Desai v. Chandrakant N. Patel & Ors (supra). In the case of Kelley v. Goodwin(2) Lynskey, J. Observed as follows:-

"The next matter one has to consider is whether there was evidence on which the county court judge could come to the conclusion that there would be greater hardship in making the order than not making the order. He has taken into account, in relation to that question, first, the position of the landlord, and, secondly, the position of the tenant. He has taken into account the financial means of the tenant. It is argued before us that he was wrong in doing that. In my view, he was quite entitled, in considering hardship, to have regard to the financial means of the tenant in considering whether he could obtain other accommodation because, by reason of his means, he was in a position, not merely to rent, but to buy a house. It seems to me also that, on this question of hardship, the judge was entitled to take into account the fact that the tenant had taken no real steps to try and find other accommodation or no real steps to buy a house".

To the same effect is the decision in the case of K. Parasuramaiah v. Pokuri Lakshmamma(1) where a Division Bench of the High Court narrated the mode and circumstances in which the comparative advantages and disadvantages of the landlord and the tenant could be weighed. In this connection, the Court observed as follows:- "Thus the hardship of the tenant was first to be found out in case eviction is to be directed. That hardship then has to be placed against the relative advantages which the land lord would stand to gain if an order of eviction is passed ..... What is however required is a careful consideration of all the relevant factors in weighing the relative hardship which is likely to be caused to the tenant with the likely ad vantage of the landlord on the basis of the available material on record... '... The proviso however should not be read as if it confers a practical immunity on the tenant from being evicted. That would destroy the very purpose of Sec. 10(3)(c). Likewise the requirement of the land lord in accordance with that provision alone cannot be given absolute value, because that would mean to underestimate the value of the proviso to that section. Keeping in view therefore the purpose of the provision and the necessity of balancing the various factors each individual case has to be decided in the light of the facts and circumstances of that case".

19. The said judgment through in its para 26 had observed that it is the defendant who was to prove of having made bonafide attempt to look for other accommodation and has failed to get any accommodation anywhere in the city, where he could conveniently establish his business alternatively in any another accommodation and in the absence of there being any satisfactory

evidence to prove that even in other business localities, the defendant had failed to look for an alternative accommodation, and had rather insistent or getting an accommodation which is similar in nature situated in the same locality, it would be treated as to that it is in an event of the allowing of the release application, it would be a lesser magnitude of hardship, which the tenant would suffer in an event of release of an accommodation.

20. An identical view has been expressed by the Allahabad High Court in yet another judgment as reported in 1992 (2) ARC 404, Faiz Mohammad Vs. District Judge, Jhansi and others, particularly, the observations which has been made pertaining to criteria of scrutinisation of comparative hardship and its scope of interference under Articles 226 and 227 of the Constitution of India, has been laid down in para 3 of the said judgment, which is extracted hereunder:-

> "3. Learned counsel next contended that the finding of the prescribed Authority as well as of the District Judge on the point of comparative hardship is erroneous. I have examined the judgment of both the courts below and in my opinion they have rightly held that the landlord will suffer greater hardship in the event of refusal of the release application. It may be noticed that though the release application was filed on 18-2-1985 and is pending for about seven years, the petitioner-tenant did not make any effort whatsoever to get an alternative accommodation. It is well settled that conduct of the tenant in not making effort for an alternative accommodation for himself is a relevant consideration for deciding the question of comparative hardship. The findings on the questions of bona fide need and comparative hardship are based upon evidence and being findings of facts cannot be interfered with in a writ petition under Article 226 of the Constitution."

21. Not even that, the plea taken by the landlord /respondent in the release application, in para 16, pertaining to the default committed in the remittance of the rent at the first available instance of filing of written statement on 18th January 2019, the petitioner/tenant had yet again extended a very evasive reply pertaining to the attempts or efforts made for the remittance of the arrears of rent of two years, which has been defaulted to be remitted by them since 22nd November 2012.

22. If the additional plea which had been taken by the tenant /petitioner in the written statement, if that is taken into consideration, few additional facts, which has been pleaded, which though may not be having a much credible bearings on the release application itself, is to the effect that they have pleaded that the erstwhile landlord Diwan Chandra Saluja, from whom the respondent/landlord had purchased the property in question at the time when the tenancy was created, they had extended the earnest money of Rs. 32,500/-, which still lies with the respondent /landlord and since having not disbursed the same, the tenancy cannot be terminated by virtue of the proviso to Section 21(1)(a) of the Act. This plea cannot be considered at this stage of the writ petition, until and unless the tenant/petitioner, had produced him before the Court below, to establish his theory of earnest money and its effect on the proceedings.

23. On the other hand, he also submitted that he made several efforts to remit the rent (which is a contradictory pleadings again), though without any evidence on record and when there was denial,

then he had remitted the rent under Section 30 proceedings, which too was a fact not established in the proceedings before the Court below, by placing any evidence on record, particularly when they are judicial proceedings under the Act, which was never attempted to be established by the tenant/petitioner.

24. In para, 23 of the written statement which was incorporated later by the petitioner /tenant by way of an amendment, in fact, he had tried to bring on record by adding therein para 23 (kha) contending thereof that just in the rear portion of the building of the tenement in question adjoining to the property of Dr. Luthra, in between it there was a 12 feet wide passage, which according to the tenant/petitioner, is an access to the rear part of the property belonging to the landlord /respondent, which could be utilised by them for the commercial activities of opening of an advocate chamber. Besides this, in para 26, it was contended by the tenant /petitioner that the respondent/landlord has got two other adjoining shops of the same size, which are available and are vacant, which according to them could be utilised by the landlord for his professional requirement of opening of the advocate chambers.

25. The amended plea in the written statement or in the written statement itself or in the affidavits which were filed by the tenant /petitioner being paper No. 20 (ka) on 2nd May 2019 or paper No. 25 (ka), filed on 10th July 2019, in fact, there was not even a single piece of evidence, which has been led or even pleaded in the affidavits filed in support of his case by way of an evidence, that the petitioner /tenant had ever looked for an alternative accommodation and hence the consistent stand taken by the landlord /respondent that the failure on part of the tenant /petitioner to establish by credible evidence on record to look for an alternative accommodation, an inference is to be drawn to the contrary that there persisted greater hardship on part of the landlord /respondent as compared to that of the petitioner /tenant.

26. Based on the aforesaid backdrop and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Dehradun, appropriately allowed the release application by the judgement dated 18th December 2019.

27. Almost based upon an identical set of facts and pleadings which were raised in the written statement, as well as, the documents which were filed by the petitioner /tenant i.e. paper No. 20 (ka) and 25 (ka) on 2nd May 2019 and 10th May 2019 respectively, an identical plea was raised by them in the Memorandum of Appeal, which was preferred under Section 22 of the Act No. 13 of 1972. But, surprisingly, in the Memorandum of Appeal too, it lacked any specific pleading raised by the tenant/petitioner/appellant, about the petitioner's efforts made to look for an alternative accommodation and consequently, the Rent Control Appeal thus registered as Case No. 5 of 2020, too was dismissed by the learned Appellate Court vide its judgement dated 28th May 2021.

28. In the writ petition, when the matter was taken up, the learned counsel for the petitioner /tenant being conscious of the fact, that the findings which had been recorded by both the Courts below are concurrent in nature and that too particularly, which are held in the proceedings under Section 21 (1)(a) of the UP Act No. 13 of 1972, which are summary in nature, and being conscious of the aforesaid fact, has put a challenge to the concurrent judgements of the Courts below on the ground

alleged to be of perversity. It was contended by the tenant /petitioner, that the property thus purchased by the landlord /respondent on 22nd November 2012, there were overall three shops and out of it, allegedly two shops were vacant and one of the shop, was being occupied by the tenant /petitioner, which is the tenement in dispute though once again there is no evidence to the contrary in this regard, adduced by the petitioner, to establish the fact of occupying other shop by the landlord/respondent.

29. The learned counsel for the petitioner /tenant, contended that the judgements suffered from perversity, because availability of the vacant two other adjoining shops was not a fact which was considered by the learned Prescribed Authority and hence, that in itself would vitiate the impugned judgements, calling for an interference under Article 227 of the Constitution of India.

30. He further submitted, that since the respondent /landlord had not come up with clean hands, before the Court below, particularly, he made reference to para 6 of the release application, pertaining to the description of the property in the sale deed and the extend of property which was allegedly purchased by him, hence the plea taken of non availability of any other shop cannot be relied with and hence in the written statement, particularly as per the pleadings raised in paragraphs 26 and 27, the petitioner /tenant attempted to deny the aspect of comparative hardship of the landlord/respondents due to the alleged suitability of two vacant shops allegedly available with the respondents /landlords.

31. On the other hand, while responding to the said plea taken up by the petitioner /tenant, pertaining to the assailing impugned concurrent judgements on the ground of perversity, on the pretext that both the Courts below had erred at law, by not considering the plea which was pertaining to the availability of the two vacant shops, as pleaded by the tenant /petitioner in the written statement. This fact, it has been denied by the learned counsel for the respondent /landlord, on the ground that if the findings, which has been recorded by both the Courts below and particularly he has drawn the attention of this Court to the findings, which had been recorded by the learned Appellate Court, in para 11 of the judgement, the fact of the alleged plea of availability of two shops and its aspect suitability as per the need of the landlord/respondent, profession was considered by the learned Appellate Court and a specific findings has been recorded in relation thereto with regard to, as to whether at all the other two available shops could, at all be able to satisfy the requirements of the professional need of landlord /respondent, as it has been pleaded in the release application.

32. Apart from it, the learned counsel for the respondent /landlord, had also referred to the observations which were made by the learned Appellate Court in para 14 of the judgement, while scrutinizing the evidence which were led by way of paper No. 22 (ka) and another application i.e. paper No. 24 (ka), where the appellant has raised and considered the plea, that the landlord has got other two shops, which are lying in the south of the tenement in question, the learned Appellate Court has considered the said plea, raised by petitioner /tenant by way of paper No. 22 (ka) and 24 (ka).

33. The learned Appellate Court, while referring to the principles laid down by the judgement of the Hon'ble Apex Court, as reported in 2007 (4) SCC 465, Rishi Kumar Govil Vs. Maqsoodan and others, relevant paragraphs 18 and 19 of which are extracted hereunder:-

> "18. The parameters relating to Rule 16 of the Rules have been dealt with by this Court in Sushila v. IInd Addl. District Judge, Banda and Ors. AIR2003SC780 . In the said judgment it was inter-alia noted as follows;
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> 10. A bare perusal of Rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972 makes it clear that the Rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bona fide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (a) of Sub-rule (2) provides, greater the period of tenancy less the justification for allowing the application; whereas according to Clause (b) in case the tenant has a suitable accommodation available to him to shift his business, greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under Clause
>
> (a) of Sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under Clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind Sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very long period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.
>
> 11. In the case in hand we find that even though the period of tenancy of the respondent is no doubt long but availability of another shop to him where he can very well shift his business as found by the Prescribed Authority, neutralises the factor of length of tenancy in the accommodation in dispute. We further find that the landlady has no other shop where she can establish her son who is married and unemployed. There is nothing on the record to indicate that the business of father of Prem Prakash is so huge or that it is a very flourishing business so as to attract application of Clause (c) of Rule 16(2). As observed earlier it is clear that length of period of tenancy as provided under Clause (a) of Sub-rule 2 of Rule 16 of the Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstance of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us.

19. In Ragavendra Kumar v. Firm Prem Machinery and Co. [2000]1SCR77 it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Shrivastava [2001]1SCR923 it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi (Smt.) v. T.V. Krishnan (1996)5SCC353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed. However, considering the period for which the premises in question are in the occupation of the appellant time is granted till 31st December, 2007 to vacate the premises subject to filing of an undertaking before the Prescribed Authority within a period of 2 weeks to deliver the vacant possession on or before the stipulated date. There will be no order as to costs."

34. It had dealt with regard to the plea of evidence relating to the conclusion to be drawn for the bonafide need of the landlord, it was observed, that even for a moment, if it is taken, that the landlord has got other available vacant shops, though not proved by evidence on records in the instant case, but still it has been consistently held, that it's the landlord who is the best judge to assess his need and suitability, as to which part of the tenement sought to be released, would best serve the bonafide requirement of the landlord and nature of work in which the landlord wants to put to use, and hence merely because of the fact though not established in the instant case, the alleged theory of availability of other shops, which are said to be in vacant state cannot itself be taken as a ground to dilute or mitigate the bonafide requirement of the landlord, which has yet again had been recorded on the basis of the principles laid down by the Hon'ble Apex Court, as reported in AIR 2000 SC 534, Ragavendra Kumar Vs. Firm Prem Machinary and Co., wherein too it has been reiterated that it is exclusively the choice of the landlord to choose the place for his business which would be more suitable to him and in that regard he has got a complete freedom in the matter and it has been observed, that the need of the landlord is to be seen from the date of the application and hence the tenant cannot in an advisory capacity enjoy a privilege to take a defence, that the need of the landlord is not bonafide merely because of the fact that there was other available shops, as it has been pleaded in the instant case, though it was not a fact which was ever attempted to be established by any evidence. Para 10 of the said judgment is extracted hereunder:-

> "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 courts 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: Prativa Devi (Smt.) v. T.V. Krishnan, 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."

35. The learned counsel for the respondent /landlord submitted that since there had been a concurrent findings recorded pertaining to the bonafide need of the landlord; to establish his professional chamber of advocate, once the finding of bonafide need is based upon an appreciation of evidence on record in view of the judgements of the Hon'ble Apex Court, the High Courts in the exercise in its supervisory powers under Article 227 of the Constitution of India, while exercising its supervisory jurisdiction cannot sit as a Court of Appeal, to re-appreciate the evidence led by the parties and particularly when in the instant case there happens to be no apparent contradiction in the findings which had been recorded pertaining to the bonafide need of the landlord and hence based on the aforesaid principles, as it has been laid down in the judgement reported in 2004 (3) SCC 684, Ram Dass Vs. Davinder, relevant paragraphs 6 and 7 are extracted hereunder:-

> "6. Be that as it may, having gone through the lengthy discussion of evidence, documentary and oral, as contained in the judgment of the trial Court, with the assistance of the learned senior counsel for the appellant, we are satisfied that no fault can be found with the manner in which the evidence has been dealt with and marshalled by the Controller. The appellate authority has made an independent evaluation of the evidence and confirmed the findings of the Controller. The High Court has, while exercising its revisional jurisdiction, entered into re-appreciation of evidence not open to the High Court; more so, keeping in view the manner in which the exercise has been undertaken by the High Court. To say the least, we find that there is to some extent misreading of the evidence by the High Court. We may give just two illustrations. While criticizing the testimony of postman the High Court goes on to observe that the postman claims to have visited the suit premises even on Sundays when the post office remains closed and the postman is not on duty. We have carefully read the statement of the postman. He has nowhere claimed having been on duty and visited the shop on Sundays. The endorsements made on the registered letters returned unserved have been carefully examined by us with the assistance of the learned counsel for the parties and keeping the calendar of the year 1991 before us. We find none of the endorsements made by the postman relates to a date which was a Sunday or holiday. Similarly, the High Court holds that one of the summons was actually delivered by the process server to the respondent-tenant

> although the process server has deposed that the respondent was not available at the premises. How these two self-

contradictory things could have taken place -- asks the learned Judge posing question to himself. If only the deposition of the process server would have been carefully read it would have been revealed that what the process server was deposing was that the respondent was not available at the suit premises to accept the service of summons which premises were locked but he was available at a little distance away from the suit shop and at the flour mill premises of the respondent's father and there the service was effected. Thus the High Court has proceeded to reverse, on erroneous assumptions, the findings of facts concurrently arrived at by the two authorities below and such exercise by the High Court as also the conclusions drawn therefrom, we find difficult to countenance inasmuch as they are vitiated. We are clearly of the opinion that the High Court has exceeded its jurisdiction in reversing the well considered findings of fact arrived at by the two courts below.

7. The terms "possession" and "occupy" are in common parlance used interchangeably. However, in law, possession over a property may amount to holding it as an owner but to occupy is to keep possession of by being present in. The Rent Control Legislations are outcome of paucity of accommodations. Most of the Rent Control Legislations, in force in difference states, expect the tenant to occupy the tenancy premises. If he himself ceases to occupy and parts with possession in favour of someone else, it provides a ground for eviction. Similarly, some legislations provide it as a ground of eviction if the tenant has just ceased to occupy the tenancy premises though he may have continued to retain possession thereof. The scheme of the Haryana Act is also to insist on the tenant remaining in occupation of the premises. Consistently with what has been mutually agreed upon the tenant is expected to make useful use of the property and subject the tenancy premises to any permissible and useful activity by actually being there. To the landlord's plea of, the tenant having ceased to occupy the premises it is no answer that the tenant has a right to possess the tenancy premises and he has continued in juridical possession thereof. The Act protects the tenants from eviction and enacts specifically the grounds on the availability whereof the tenant may be directed to be evicted. It is for the landlord to make out a ground for eviction. The burden of proof lies on him. However, the onus keeps shifting. Once the landlord has bean able to show that the tenancy premises were not being used for the purpose for which they were let out and the tenant has discontinued such activities in the tenancy premises as would have required the tenant's actually being in the premises, the ground for eviction is made out. The availability of a reasonable cause for ceasing to occupy the premises would obviously be within the knowledge and, at times, within the exclusive knowledge of tenant. Once the premises have been shown by evidence to be not in occupation of the tenant, the pleading of the landlord that such non-user is without reasonable cause has the effect of putting the tenant on notice to plead and prove the availability of reasonable cause for ceasing to occupy the tenancy premises."

36. It has been laid down that the supervisory jurisdiction of the High Court is not in parlance or equivalent to the Appellate jurisdiction, and thus the concurrent findings on the bonafide need as recorded by both the Courts below cannot be ventured into by the High Court as it has been laid down in yet another judgement of the Hon'ble Apex Court, as reported in 2004 (3) SCC 682, Ranjeet Singh Vs. Ravi Prakash, para 4 of the said judgment is extracted hereunder:-

> "4. Feeling aggrieved by the judgment of the Appellate Court, the respondent preferred a writ petition in the/High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by a learned Single Judge of the High Court. The High Court has set aside the judgment of the Appellate Court and restored that of the Trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the Appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the Appellate Court. In Surya Dev Rai v. Ram Chander Rai and Ors. AIR2003SC3044, this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or Authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai (Supra) that the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal. The High Court has itself recorded in its judgment that - "considering the evidence on the record carefully" it was inclined not to sustain the judgment of the Appellate Court. On its own showing, the High Court has acted like an Appellate Court which was not permissible for it to do under Article 226 or Article 227 of the Constitution."

37. Reverting back to the plea which had been taken by the respondent /landlord, that if the pleadings in the written statement, the documents led by the tenant/petitioner, by way of an evidence in support of his case, i.e. the affidavit filed in support thereto are taken into consideration, in fact, there was not even a single word of evidence and pleading, that the petitioner after the receipt of the notice for release of the tenement in question on 13th September 2019, or for that matter even thereafter, had ever looked for an alternative accommodation and hence in view of the judgements, as laid down by the Allahabad High Court, reported in 1992 (2) ARC 404, Faiz Mohammad Vs. District Judge, Jhansi and others (Supra), the inference would be that in an event if the tenement is released, the tenant is directed to vacate the tenement, it would not be causing any extreme hardship and hence in an event, evidence led to the contrary, the inference drawn by the Court below cannot be ventured into and since it has already been observed and as also considered by this Court too, that even an availability of a shop may not be construed, as to mitigate the need of the landlord for the logic, which has already been dealt with above, the principles, which has been sought to be attracted by the learned counsel for the petitioner /tenant in support of his contention, is not sustainable as landlord/respondent, would be the best judge of his need, and which part of the property or the tenement would serve the best for his professional need of Advocates Chamber.

38. Another aspect, where the petitioner/tenant, for the first time had attempted to argue the matter from the perspective of Rule 16(2) of the Rules, that in fact, the said plea has not been considered by the Courts, considering the age of tenancy, in fact, it has been the case of the tenant that no effective business has been operated by the tenant from the tenement in question and hence the impact of Rule 16 (2), will not have much bearing and in relation thereto, the reference which has been made by the learned counsel for the petitioner /tenant in the light of the judgement of the Hon'ble Apex Court, as reported in AIR 1982 SC 1230, Bishan Chand Vs. The Vth Addl. Distt. Judge, Bullandshahr (U.P.) and another, as decided on 22nd September 1980, pertaining to the implications of Rule 16 (2) of the Rules. Para 2 is extracted as under:-

> "2. On hearing counsel on either side we are satisfied that in. the circumstances of the case the matter requires to be remanded. In the ejectment suit by the landlord the Vth Addl. District Judge, Bullandshahr, who disposed of the appeal, has unfortunately recorded a finding on the question of comparative hardship in a peculiar way. He held that hardship to both the landlord and the tenant would be the same. If that be the finding, in the absence of any additional circumstance indicating that preference could be shown to the landlord the ejectment order in his favour could not be made. Apart from this, it does appear that Rule 16(2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 has not been considered at all by the appellate court. Such an order has been confirmed by the High Court. We, therefore, set aside the High Court's order and send the case back to the District Judge for disposal of the appeal in accordance with law with a direction to consider the question of comparative hardship in the light of the aforesaid Rule 16(2) While considering this question it will be open to the appellate court to take into consideration the facts relating to the earlier agreement, the offer of the appellant before us to give back his own shop to the respondent and the equities arising in the case. Opportunity is given to the parties to lead additional evidence in the form of affidavits before the appellate Court. The matter is accordingly remanded. There will be no order as to costs of the appeal."

This judgment would not have much relevance, because this case the aspect of comparative hardship was decided by the appellate Court in favour of landlord and tenant both. It was in those circumstances that impact of Rule 16(2) was required to be considered.

39. In that case, the effect of Rule 16(2) was being considered by the Hon'ble Apex Court in the light of the observations, which were made by the learned Appellate Court, in relation to the given set of facts, which were under consideration in that case before the Hon'ble Apex Court, under the facts and circumstances of the case prevailing therein. Hence, no straight jacketed formula based on the aforesaid principles can be adopted and particularly when the petitioner, himself being the tenant has not been able to discharge his burden of proof to show or to establish beyond doubt about his bonafide need and the comparative hardship.

40. In reference thereto, and upon the consideration of the principles which had been laid down by the Hon'ble Apex Court in a judgement reported in 2010 (1) SCC 503, Uday Shankar Upadhyay and

others Vs. Naveen Maheshwari, is yet again which has to be taken into consideration in the light of the principles which had been laid down in para 7 & 8 of the said judgement, where the need of the landlord for settling himself in an independent business, has been comparatively scrutinized with regard to the attempt of the petitioner to look for an alternative accommodation and thereafter it was held that in para 7 of the said judgement that the need of the landlord would be deemed to be a bonafide. Para 8 has to be read for reasons given in para 7 of the judgment also. Para 7 & 8 are extracted hereunder:-

> "7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of plaintiff No. 1 are getting salary of Rs. 1500/- from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.
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> 8. For the reasons given above, the judgments of the High Court and the first appellate court are set aside and that of the trial court is restored. The appeal stands allowed. No costs. 14. However, the respondent is granted one year's time to vacate the shop in dispute on furnishing the usual undertaking within six weeks from the date of this order. The respondent shall, however, continue to pay the rent during this period."

41. If the said controversy is looked into from the prospective of yet another judgement reported in 2012 (2) SCC 155, Mohd. Ayub and Another Vs. Mukesh Chand, wherein in paragraphs 14 to 19 of the said judgement, in fact, the Hon'ble Apex Court has dealt with that the need of the landlord may not be required to be established by way of evidence that is a dire necessity, a bonafide requirement itself is enough based on the pleadings and establishment of evidence on record as it has been recorded in the instant case to establish a business of opening an Advocate's Chamber, for himself from the tenement in question after the same being released, would suffice the necessity to allow the release application.

42. In fact, if para 10 to 15, 18 and 19 of the said judgement is taken into consideration, which are extracted hereunder, it is once again reiterated almost akin principle, that the landlord cannot be dictated or directed by the tenant in any manner whatsoever as to in what manner he could profitability engaged himself, as it has been attempted to be done by the petitioner /tenant, by advising that the landlord has some other portions of the building, which are alleged to be lying in the rear part, which could be utilised by the landlord /respondent to meet his bonafide requirement.

"10. Section 21(1)(a) of the U.P. Act provides for eviction of a tenant on the ground of bona fide requirement of the landlord. The fourth proviso thereof states that the Prescribed Authority shall take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

11. Rule 16 (2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (for short, 'the said Rules') states which facts the Prescribed Authority has to consider while dealing with an application for release under Clause (a) of Sub-section (1) of Section 21 of the U.P. Act. Rule 16 (2) refers to building let out for purpose of any business and the facts which have to be taken into consideration are: (a) length of tenancy of the tenant; (b) availability of suitable accommodation for tenant; (c) whether the landlords existing business is more flourishing than that which is proposed to be set up by him in the leased premises and (d) need of self-employment of a son or married or unmarried or widowed or divorced or judicially separated daughter or daughter or a male lineal descendant of the landlord who has completed his or her technical education and who is not employed in government service.

12. In Ganga Devi this Court held that comparative hardship indisputably is a relevant factor for determining the question as to whether the requirement of the landlord is bona fide or not within the meaning of the provisions of the U.P. Act and the said Rules and it is essentially a question of fact. This Court observed that Rule 16 provides for some factors which are required to be taken into consideration. This Court clarified that the court would not determine the question only on the basis of sympathy or sentiment. This Court referred to its judgment in Bhagwan Das v. Jiley Kumar : (1991) supp. (2) SCC 300 where it is observed that the outweighing circumstance in favour of the landlord was that two of her sons after completing their education were unemployed and wanted to carry on business for self-employment. This Court further observed that there was an additional circumstance that the tenant had not brought on record any material to indicate that at any time during the pendency of this long drawn out litigation he had made any attempt to seek an alternative accommodation and was unable to get it.

13. This Court also referred to its judgment in Rishi Kumar Govil v. Maqsoodan: (2007) 4 SCC 465 where it has particularly taken note of the fact that the landlady had no other shop where she can establish her son who is married and unemployed and there was nothing on record to indicate that the business of the father was huge or flourishing. This Court clarified that the length of the period of tenancy as provided under clause (a) of Sub-rule (2) of Rule 16 of the said Rules is only one of the factors to be taken into account in context with other facts and circumstances of the case and cannot be a sole criterion or deciding factor to order or not the eviction. This Court held that in the circumstances of the case the balance tilted in favour of the unemployed son of the landlady whose need is certainly bona fide. After quoting the above judgment in Ganga Devi this Court gave six

months time to the landlady to handover the premises to the landlord in the interest of justice.

14. In our opinion, Ganga Devi applies on all fours to the present case. The first Appellant carries on his business from three small stalls of a shop of the Cantonment Council whose rent keeps on increasing. There is nothing on record to suggest that the Appellants' present business is more flourishing than the business which they propose to start in the leased premises. All the three sons of the Appellants are educated but unemployed. They want to start business in the premises in occupation of the Respondent. One of them is married and has three children. The other three are of a marriageable age. In all there are thirteen members in the Appellants' family and they are living in three rooms and one verandah with great difficulty. As against that the Respondent's family consists of four persons and there are four rooms in his possession. It is observed by the courts below that the Appellants own other premises. However, details of those premises are not on record. The High Court has rightly noted that this bald assertion is based on conjectures.

15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the Appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non-vegetarian food. It is for the landlord to decide which business he wants to do. The Court cannot advise him. Similarly, length of tenancy of the Respondent in the circumstances of the case ought not to have weighed with the courts below.

18. In the ultimate analysis, we are of the view that the perverse findings of the courts below on the aspect of comparative hardship must be set aside. The High Court has rightly found the need of the Appellants to be bona fide. It has however, fallen into an error in directing the Respondent to handover only one room to the Appellants. In our opinion, the hardship Appellants would suffer by not occupying their own premises would be far grater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.

19. In the view that we have taken, the appeal succeeds. The impugned order is set aside to the extent it permits the Respondent to retain possession of three rooms out of four rooms in his occupation. The Respondent is directed to handover possession of all the rooms in his occupation to the Appellants. He is granted six months time to vacate the premises in question on the condition that he files usual undertaking before the Registry of this Court within eight weeks from today."

43. For the reasons aforesaid and particularly, when the learned counsel for the petitioner/tenant, has limited his arguments and has only harped upon to press with regard to the perversity in the two judgements of having not considered, the plea taken pertaining to the availability of other shops, in

fact, this the findings recorded by both the Courts below is contrary to the arguments and evidence extended by the petitioner/tenant, as both the Courts below had dealt with the aspect of availability of the vacant shops for the nature of need expressed, and its suitability, which would be one of the aspects, which is to be appropriately and best considered and determined by the landlord himself. Hence, for the reasons aforesaid, this Court is of the view that; one, the landlord is the best judge of his requirement; two, the tenant cannot sit in an advisory capacity to suggest the landlord as to which part of the land/building, could best serve the need of the landlord; and third, particularly when there is no evidence by way of pleading or documents on record to show that the tenant has looked for an alternative accommodation after the service of notice, the findings, which have been recorded by both the Courts below, would be concurrent in nature, which doesn't call for any interference under Article 227 of the Constitution of India.

44. Hence, the writ petition lacks merit and the same is accordingly, dismissed. The petitioner/tenant is granted two months' time, from the date of receipt of the certified copy of this judgment, to handover the vacant and peaceful possession of the tenement shop to the landlord/respondent.

(Sharad Kumar Sharma, J.) 28.01.2022 Mahinder/