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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/96/2024

GOPAL KRISHNA BARUAH AND ANR
S/O- LATE MOHAN KRISHNA BARUAH, R/O- WARD NO. IX, HCB ROAD,
SIVASAGAR, P.S. AND DIST. SIVASAGAR, ASSAM, PIN- 785640.

2: BIPUL KUMAR BARUAH
S/O- LATE DURGESHWAR SARMAH BARUAH
R/O- NEAR DCB COLLEGE
K.K. BARUAH ROAD
TORAJAN
P.O. AND P.S. JORHAT
ASSAM
PIN- 785001

VERSUS

RITA SAIKIA AND 2 ORS
LEGAL HEIRS OF DECEASED KHIRUD CHANDRA SAIKIA, R/O-
MOTHISIGA SOUKAJAN GAON, P.S. NAZIRA, DIST. SIVASAGAR, ASSAM,
PRESENT RESIDENT AT WARD NO. IX, HCB ROAD, SIVASAGAR, PIN-
785685.

2:PARTHA PRATIM SAIKIA
LEGAL HEIRS OF DECEASED KHIRUD CHANDRA SAIKIA
R/O- MOTHISIGA SOUKAJAN GAON
P.S. NAZIRA
DIST. SIVASAGAR
ASSAM
PRESENT RESIDENT AT WARD NO. IX
HCB ROAD
SIVASAGAR
PIN- 785685.

3:SMT. RIMJIM SAIKIA
LEGAL HEIRS OF DECEASED KHIRUD CHANDRA SAIKIA

R/O- MOTHISIGA SOUKAJAN GAON
P.S. NAZIRA
DIST. SIVASAGAR
ASSAM
PRESENT RESIDENT AT WARD NO. IX
HCB ROAD
SIVASAGAR
PIN- 785685

Advocate for the petitioners : Mr. B.J. Ghosh

Advocate for the respondents : None appears

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : **18.02.2026**

Whether the pronouncement is of the
operative part of the judgment? : N/A

Whether the full judgment has been
pronounced? : Yes

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (ORAL)

Heard Mr. B.J. Ghosh, learned counsel for the petitioners. None appears for the respondents on call, in spite of due service of notice upon them, for which vide order dated 30.01.2026, it has been decided to proceed with this matter against the respondents ex-parte. Accordingly, Mr. Ghosh, learned counsel for the petitioners is heard.

2. This revision petition, under Section 115 of the CPC, is directed against

the judgment dated 29.06.2024, and the decree dated 11.07.2024, passed by the learned Civil Judge (Senior Division), Sivasagar, in Title Appeal No. 13/2023.

3. It is to be noted here that vide impugned judgment, dated 29.06.2024, and decree dated 11.07.2024, the learned Civil Judge (Senior Division), Sivasagar ('appellate Court', for short) had reversed the judgment dated 14.07.2023 and decree dated 19.07.2023, passed by the learned Munsiff No. 1, Sivasagar ('trial Court', for short), in Title Suit No. 26/2016. It is also to be noted here that vide judgment dated 14.07.2023 and decree dated 19.07.2023, the learned trial Court had decreed the suit of the plaintiffs/petitioners.

4. The background facts, leading to filing of the present petition, are briefly stated as under:

“The petitioners as plaintiffs instituted a title suit, being Title Suit No. 26/2016, against the original defendant, Late Khirud Ch. Saikia, for a decree of eviction from the suit property on the ground of defaulter as well as bona fide requirement and recovery of arrear rent. The case of the petitioners/plaintiffs was that the original defendant, as a tenant of plaintiff No. 1, took and occupied one part of the suit house, which was later on arranged to two rooms for furniture and iron fabrication shops, as a monthly tenant, situated at Ward No. 9 of Sivasagar Town, on a monthly rent of Rs. 600/- only. The other part was let out to one Keshab Keot. The defendant had been running a furniture shop initially by taking the house on rent of Rs. 400/- per month from the elder brother of the plaintiff No. 1, namely, Late Sarat Baruah and after the death of Sarat Baruah, the defendant continued the tenancy with the plaintiff No. 1 and the tenancy continued with the defendant till November, 2004. The defendant became a defaulter and did not pay rent for the month of November, 2004 and

was still continuing to be a defaulter. Later on, the defendant paid rent in the Court for the month of December, 2004 and January 2005 in N.J Case No. 58/2005, on 23.02.2005, without tendering monthly rent to the plaintiff No. 1 and thereafter, did not pay any rent at all. The defendant was asked to vacate the tenanted premises orally several times, and that the plaintiff No. 1 is economically weak and had been suffering from prolong illness, but somehow he filed a suit for eviction of the other tenant, namely, Keshab Keot being T.S. No 14/2004, which was decreed in the plaintiff's favour.

The defendant was supposed to be evicted during that period, but the defendant agreed to vacate whenever asked for the purpose of constructing a RCC building, which was to be undertaken after eviction of Keshab Keot, but later on, he did not keep his word. The plaintiff No. 2 had been managing the affairs of the tenancy of the rented houses of the plaintiff No. 1. The plaintiff No. 1 also executed a power of attorney authorizing the plaintiff No. 2 long back to manage all affairs of tenancy and to take all steps in the suit and to give evidence and to sign all papers.

After retirement of the plaintiff No. 1, the income of the family had reduced to a great extent and as the children were studying, therefore, he could not manage to file suit for eviction. The plaintiff No. 1 decided to agree to the proposal to sell the suit premises to the defendant to avoid the financial hardships. But, the defendant played a trick and tried to obtain signature on an agreement for sale without paying the advance and specifying the quantum/area of land as promised. The attorney, namely, Bipul Baruah i.e. plaintiff No. 2, after eviction of Keshab Keot, had

constructed a commercial building in the other part of the suit house. The tenanted premise is situated in prime commercial location of Sivasagar Town and the plaintiff needed the house for his own use and occupation to start business on their own. The son of the plaintiff No. 1 is unemployed since long and it is high time to settle his son in his life and the plaintiff No. 1, being the father decided to engage his son in business, for which the tenanted premises was required and the plaintiff No. 1 had bona fide requirement of the tenanted premises. The defendant did not vacate the suit premises in spite of earlier assurance and the construction had been disturbed, and he was also not doing any business in the suit premises, and thereafter, they had instituted the title suit for eviction of the defendant.

The defendant filed written statement denying the statements and averments made in the plaint. After filing of the written statement, the defendant Khirud Ch. Saikia suffered demise and on his death, his legal heirs Smti. Rita Saikia, Sri Partha Pratim Saikia and Smti. Rimjim Saikia had been impleaded in his place.

It had been stated in the written statement that the defendant admitted himself to be a tenant in respect of the tenanted premises, which he has been occupying since the year 1987, for conducting his business of a fabrication unit and he denied having defaulted in making payment of rents in respect of the tenanted premises. He had been paying rent since January, 2004 till the date of filing of written statement and that the son of the plaintiff No. 1 is doing job and his claims in the plaint are contradictory, i.e. on one hand, it is required for business purpose of the plaintiff No. 1's son and on the other hand, they are intending to lease out

the premises to the prospective lessees after converting the same space to a big commercial building, and therefore, it was contended to dismiss the same.

Upon the pleadings of the parties, the learned trial Court had framed as many as six issues, which read as under:

1. Whether there is any cause of action for the suit?
2. Whether the defendant has defaulted in making payment of rents to the plaintiff in respect of the tenanted premises?
3. Whether the tenanted premise is bonafidely required by the plaintiff for his own use and occupation?
4. Whether the plaintiff is entitled to a decree for eviction of the defendant from the tenanted premise?
5. Whether the plaintiff is entitled to decree for arrear of rent from the defendant?
6. To what other relief/s the parties are entitled to?

Thereafter, the learned trial Court, after examining two witnesses as P.W. and two witnesses as D.W., decided the issue Nos. 1, 2, 3, 4, 5 and 6 in favour of the plaintiffs, and accordingly, decreed the suit.

Being aggrieved, the defendants had preferred Title Appeal No. 13/2023, before the learned appellate Court, and after hearing both the parties, the learned appellate Court had reversed the judgment dated 14.07.2023 and decree dated 19.07.2023, passed by the learned trial Court."

5. Being aggrieved, the petitioners/plaintiffs have approached this Court by filing the present revision petition on the following grounds:

- a) That, the impugned judgement dated 29.06.2024 and decree dated 11.07.2024, passed by the learned appellate Court suffers from material impropriety, perversity and illegality. The learned appellate Court had incorrectly construed the provision of Section 5 of the Assam Urban Areas Rent Control Act, 1972 in reversing the finding of the learned trial Court while coming to the conclusion that the respondent/defendant is not defaulter in as much as it is an admitted fact that the respondent/defendant is a tenant under the plaintiff/petitioner No.1 and that there is no pleading and evidence on the part of the defendant that before he started depositing the rent since November, 2004, in the Court, he offered the rent to the plaintiff first and on refusal, he deposited the rent in the Court. Rather the D.W.1 admitted that he did not contract with the plaintiff and he has deposited the rent in the name of Mondeep Baruah without contacting the plaintiff.
- b) That, it is the burden of the respondent/defendant to prove that he has tendered rent to the plaintiff within the time of its fallen due and on refusal deposited the rent in the court and in the instant case, he failed to discharge such burden which is mandated under Section 5 (4) of the Assam Urban Areas Rent Control Act, 1972 and the respondent/defendant was a defaulter which was rightly held by the learned trial Court, but, the learned appellate Court had reversed the findings ignoring the mandate of Section 5(4) of the Act and admitted facts.

- c) That, the learned appellate Court, while coming to finding that the respondent/defendant is not a defaulter and thereby reversing the finding of the learned trial Court, laid emphasis on Exhibit-Kha, Special Power of Attorney dated 10.11.2007, executed by the plaintiff/petitioner No.1 in favour of plaintiff/petitioner No.2 to act on his behalf, including receive back money/rent if any deposited irregularly by respondent/defendant and on that basis held that, the plaintiff/petitioner No.1 has made the awareness of deposit of rent by the defendant/respondent and there is no pleading that plaintiff No.2 has complied with such direction and made effort to collect rent deposited in court by the defendant and thereby shifting the burden of proof on the petitioners/plaintiffs to prove that the respondent/defendant is not a defaulter which is contrary to Section 5(4) of the Act.
- d) That, the assertion of default is to be adjudged from the action of the tenant and is not dependable on the landlord's exercise of right to withdraw. The learned appellate Court completely misconstrued the law and evidence in this regard.
- e) That, while coming to the findings that the respondent/defendant is not a defaulter by the learned appellate Court and thereby, reversing the finding of the learned trial Court, the learned appellate Court had based its findings predominantly relying on Exhibit-Kha, the power of attorney which was executed by the plaintiff No.1 in favour of plaintiff/petitioner No.2 and the same could not be construed in favour of the respondent/defendant to discharge him from the burden as envisaged under Section 5(4) of the Assam Urban Areas Rent Control

Act, 1972.

- f) That, while reversing the finding of the learned trial Court with regard to the issue of "defaulter", the learned appellate Court failed to consider that the respondent/defendant had exhibited only 15 (fifteen) Treasury Challans i.e. Exhibits I(i) to I(xv) to prove that he deposited the lawful rent in the court regularly, but the said challans did not establish and proved that the defendant/respondent has deposited the lawful rent in the Court since November, 2004 till date regularly within the due date as per law and therefore, the respondent/defendants failed to prove that he has been depositing lawful rent in the Court regularly, since November, 2004, and thus, a defaulter.
- g) That, the tenancy being the monthly tenancy, the rent is due and payable at the end of every month, according to English calendar months and thus the respondent/defendant was obliged to deposit the lawful rent within the fortnight of its becoming due, incompliance with the provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 and even a default for the single month and also payment of lawful rent in Court beyond the prescribed time limit given under Section 5(4) of the Act, is no payment in the eye of law and such vital facts has been ignored by the learned appellate Court.
- h) That, from Exhibit Nos. I(i) to I(xv), it is proved that there was no regular payment of rent since November, 2004 and further, the rent for certain months was deposited beyond the time limit prescribed under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 and thus, there was no payment in the eye of law and the learned First appellate Court overlooked such vital evidences and erroneously held

that the respondent/defendant is not a defaulter.

- i) That, from Exhibits I(i) to I(xv), it is proved that rent for October, 2005 was deposited on 21/11/2005, rent for December, 2006 was deposited on 22/01/2007 rent for December, 2005 was deposited on 18/01/2006, rent for March, 2009 was deposited on 08/05/2009, rent for December, 2010 was deposited on 18/01/2011, rent for June, 2008 was deposited on 17/07/2008, rent for December, 2009 was deposited on 21/01/2010, rent for May, June, July and August, 2014 was deposited on 16/09/2014, rent for August, 2012 was deposited on 28/09/2012, which was beyond the time limit prescribed under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972, and thus, there was no payment in the eye of law and the learned appellate Court overlooked such material evidences and law holding the field and erroneously held that the respondent/defendant is not a defaulter.
- j) That, the findings of the learned appellate Court, with regard to the alleged authenticity and genuineness of Exhibit - Kha is beyond pleading and the findings recorded dehors the pleading, and thus, not sustainable in law and cannot be the basis for reversing the judgement dated 14/07/2023, and decree dated 19/07/2023, passed by the learned trial Court, in Title Suit No.26/2016.
- k) That, the learned appellate Court had wrongly construed preponderance of probabilities against the plaintiff/petitioner dehors the pleadings and evidence on record and shifted the burden of proof of default on the plaintiffs/petitioners on the basis of Exhibit-Kha and the finding is perverse and against well settled provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972.

- l) That, the learned appellate Court had failed to appreciate the settled law that once a defaulter is always a defaulter and the default on the part of tenant in depositing rent strictly in accordance with provision of Section 5(4) even for a single month and beyond the statutory time limit, would render a tenant a defaulter and in the instant case, the evidence on record amply prove that the respondent/defendant did not comply with the provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 and thus, the finding of the learned appellate Court that the respondent/defendant is not a defaulter is wholly unsustainable in law.
- m) That, while reversing the finding of the learned trial Court and coming to the finding that plaintiffs/petitioners could not prove bona fide requirement the learned appellate Court had wholly misconstrued the evidence on record in coming to the said findings. Rather, the evidence would suggest that the suit premises is required for the purpose of bona fide use and occupation of the plaintiff/petitioner to start a business by the unemployed son of the plaintiff/petitioner No.1.
- n) That, the learned appellate Court had reversed the finding of the learned trial Court on bona fide requirement simply on the ground that the plaintiff did not disclose the detail of business to be started; no educational qualification disclosed, no unemployment certificate produced; non-engagement in business in the already constructed RCC building, plaintiffs/petitioners are going to lease the proposed RCC building; plaintiff decided to sale land to defendant/respondent and NOC obtained on 17/11/2011, building permission obtained Exhibits F and G was not disapproved, affidavit sworn by the plaintiff/petitioner

No.2 is not an affidavit and Rule 30 of the Civil Court Rules and order of this Court, which cannot be a ground for coming to the conclusion that the suit premises is not bona fide required by the plaintiffs/petitioners.

- o) That, the learned appellate Court had failed to appreciate the evidence in right perspective that, sale of land in favour of defendant did not take place at all, the tenanted premise is required for own use and occupation to start business and to complete the construction of RCC building.
- p) That, it is a settled law that the landlord is the best judge of his residential/business purpose and has a complete freedom in the matter and the learned appellate Court, completely ignored the said settled position of law and wrongly held that the bona fide requirement is not proved contrary to the evidence on record.
- q) That, while reversing the finding of learned trial Court in issue No.(v) that plaintiffs/petitioners are entitled to arrear rent and reversing the said finding, the learned appellate Court had misconstrued the evidence on record and relevant law on the ground inter-alia that plaintiffs did not specify the exact date or month for which rent is due; plaintiff No.2 did not act upon the Special Power of Attorney, date of cause of action for obtaining decree for recovery of arrear rent is three years in oblivious of the evidence of the defendant/respondent that he has been depositing the rent in Court since 2004 and the instant suit is filed on 31/03/2016, the decree for arrear rent from 31/03/2013 is maintainable.

- r) That, the learned appellate Court had travelled beyond the pleading to came to a finding that affidavit of the P.W.2 is not an affidavit which is not sustainable in law.
- s) That, the findings of the learned appellate Court is based on surmises, congestions, inconsistent and perverse and is not sustainable in law.

6. Mr. Ghosh, learned counsel for the petitioners submits that though several grounds have been taken in this revision petition, the petitioners have assailed the impugned judgment and decree, so passed by the learned appellate Court, mainly on two counts. Firstly, Mr. Ghosh has pointed out that the learned appellate Court, under the wrong impression of bona fide requirement, has reversed the finding of the learned trial Court, in respect of Issue No. 3, and it is the categorical stand of the petitioners that the said premises is required for business purpose to establish the son of petitioner No. 1. Secondly, he submits the learned appellate Court had erroneously arrived at the finding that the respondents herein are not defaulter. Referring to Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 ('Act of 1972', for short), Mr. Ghosh submits that the respondents herein had failed to offer the rent to the petitioners, before the same being deposited in the Court, and for the month of November, 2004, no payment was made. Mr. Ghosh also submits that though the respondents had deposited rent for some of the months in the Court, that too, beyond the stipulated period of 15 days of the succeeding month, and to that effect, one specific plea has been taken in ground No. (a) of this petition, and under the aforementioned facts and circumstances, Mr. Ghosh has contended to allow the petition by setting aside the impugned judgment and decree, passed by the learned appellate Court.

6.1. In support of his submission, Mr. Ghosh has referred to the following

decisions:

- (i) **Shivaji Balaram Haibatti vs. Avinash Maruthi Pawar**, reported in (2018) 11 SCC 652.
- (ii) **Abdul Noor vs. Saukat Mazid @ Babul Mazid**, reported in 2021 SCC OnLine Gau 2723.
- (iii) **Rupa Hazarika vs. Mahendra Kaur and Anr.**, reported in 2022 SCC OnLine Gau 2255.
- (iv) **Nilpadma Bowal and Ors. Vs. Adil Ara Khanam and Ors.**, reported in 2018 3 GauLR 644.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record, and also perused the impugned judgment and decree, passed by the learned appellate Court, and also the judgment and decree, passed by the learned trial Court, and also gone through the decisions referred by Mr. Ghosh, learned counsel for the petitioners, and the relevant provisions of law.

8. It is to be noted here that Section 5(4) of the Act of 1972, reads as under:

“(4) Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord, and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter under

clause (e) of the proviso to sub-section (1) of this section.”

8.1. A careful perusal of the aforementioned provision indicates that before the rent being deposited in the Court, the tenant has to tender the same to the landlord, and when the landlord refuses to accept the same tendered by the tenant, the tenant has to deposit the same in the Court, within a fortnight of its becoming due.

9. In the case in hand, the petitioners have taken a categorical stand that the respondents herein had not paid the rent for the month of November, 2004, to the petitioners herein and he started depositing the same in the Court w.e.f. the month of December. It also appears from Exhibits-I(i) to I(xvi), that the rent for November, 2004 was deposited on 14.12.2004; rent for October, 2005 deposited on 21.11.2005; rent for December, 2005 deposited on 18.01.2006; rent for December, 2006 deposited on 22.01.2007; rent for March, April, 2009 was deposited on 08.05.2009; rent for June, 2008 was deposited on 17.07.2008; rent for December, 2009 was deposited on 21.01.2010; rent for August, 2012 was deposited on 28.09.2012; rent for December, 2010 was deposited on 18.01.2011; rent for October, 2015 was deposited on 17.10.2015; rent for May, June, July, August, 2014 was deposited on 16.09.2014; rent for February, 2017 was deposited on 07.03.2017; rent for March, 2018 was deposited on 06.04.2018; rent for April, 2018 was deposited on 09.05.2018; rent for October, 2015 was deposited on 17.10.2015; rent for January, 2018 was deposited on 12.02.2018; which was beyond the time limit prescribed under Section 5(4) of the Act of 1972. And thus, it is apparent that the time limit, prescribed under Section 5(4) of the Act, has been violated while depositing the rent by the respondents in the Court, and since the respondents have deposited

the rent beyond the prescribed time limit under Section 5(4) of the Act of 1972, the same cannot be treated as payment in the eye of law. But, the learned appellate Court had overlooked such material evidence and the law holding the field.

10. Thus, this Court finds sufficient force in the submission of Mr. Ghosh, learned counsel for the petitioners and the decisions referred by him, also strengthen his submission.

11. The above being the factual and legal position, this Court is of the view that the finding, in respect of issue No. 3, so recorded by the learned appellate Court, appears to be illegal and arbitrary and the same requires interference of this Court. On the other hand, the finding of the learned trial Court, on this issue, is found to be justified in view of the evidence brought on record and the documents exhibited during trial, and accordingly, the findings, so recorded by the learned trial Court in respect of the issues, is restored.

12. Moving forward to the issue No. 2, it appears that it is the evidence of the petitioners that there is bona fide requirement of the tenanted premises for construction of a house for business purpose to settle his son. It is well settled that bona fide requirement is always the prerogative of the landlord and it is his prerogative to decide for what purpose he requires his premises. Reference in this context can be made to the decision of Hon'ble Supreme Court in the case of **Sait Nagjee Purushottam and Company Limited vs. Vimalabai Prabhulal and Others**, reported in (2005) 8 SCC 252, wherein in para No. 4, it has been held as under:

“4. xxxxxxxx xxxxxxx xxxxxxx

..... It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the trial Court held in favour of the appellant tenant. But the appellate Court as well as the High Court after scrutinising the evidence on record, reversed the finding of the trial Court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides.”

12.1. Thereafter, in para No.5, it has been held as under:-

“5. XXXXXXX XXXXXX XXXX

..... It is common experience that landlord-tenant disputes in our country take a long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not bona fide. It is alleged that one of the sons of the landlords has settled in the USA. That does not detract from the fact that the other sons of the landlords want to expand their business at Calicut. Indian economy is going global and it is not unlikely that prodigal sons can return back to the motherland. He can always come back and start his business at Calicut. On this ground we cannot deny the eviction to the landlords.”

13. In the case of *Ajit Singh and Anr. Vs. Jit Ram and Anr.*, reported in (2008) 9 SCC 696, relying upon its earlier decision in *Joginder Pal vs. Naval Kihore Behal*, reported in (2002) 5 SCC 397, Hon'ble Supreme Court has interpreted the phrase "for his own use" with reference to landlord held as under:-

"19. From the aforesaid decision of this Court (in *Joginder Pal case* [(2002) 5 SCC 397]), it is therefore clear that this Court has laid down authoritatively that a non-residential premises, if required by a son for user by him would cover the requirement of the words used in the section i.e. "for his own use" in reference to a landlord. Therefore, if "his own use" has been interpreted by this Court in the abovesaid manner, then the requirements as laid down in Sections 13(3)(a)(ii)(b) and (c) of the Act have to be interpreted in the same manner to hold that (a) the son of the landlord has to plead in the eviction petition; (b) that he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land as the case may be; and (c) he has not vacated such a building or rented land without sufficient cause after the commencement of the Rent Act, in the urban area concerned.

20. In the present case, it was pleaded and proved that the said shop was required for the use of the son and, therefore, the pleadings of the son in regard to the aforesaid requirement, being mandatory, were satisfied, otherwise it would make the requirement laid down under the said provisions nugatory in view of the interpretation given by this Court in the aforesaid decision (in *Joginder Pal* [(2002) 5 SCC 397]), with which we are in full agreement.

21. Applying the principles as laid down by the aforesaid decision, namely, *Joginder Pal* [(2002) 5 SCC 397] which also

deals with commercial premises, as in the present case, we are of the view that a plain reading of Sections 13(3)(a)(ii)(a) to (c) in conjunction with Sections 13(3)(a)(iv)(a) and (b) of the Rent Act, would make it amply clear that when the said shop is being got vacated on the ground of user for the son of the landlord, then in the eviction petition, the son (Appellant 1) must plead that he was not occupying any other building and that he had not vacated such a building without sufficient cause. It is well settled that while interpreting a provision of a statute, the same has to be interpreted taking into consideration the other provisions of the same statute.”

14. It is also well settled in the case of *Pratap Rai Tanwani vs. Uttam Chand*, reported in (2004) 8 SCC 490, that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events, intervening due to protracted litigation won't be relevant. It was held that the crucial date is the date of petition. The normal rule is that the rights and obligations of the parties are to be determined on the date of the petition and that subsequent events can be taken into consideration for moulding the reliefs, provided such events had a material impact on those rights and obligations. It was further observed that it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. Therefore, the courts have to take a very pragmatic approach of the matter. It is common experience in our country that especially landlord-tenant litigation prolongs for a long period. It is true that neither can the person who has started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed unless the subsequent event materially changed the ground of relief.

15. Thus, having considered the submission of Mr. Ghosh, learned counsel for the petitioners in this regard, and also examining the facts and circumstances on the record and applying the ratio laid down in the aforementioned decisions to the facts of the present case, this Court is of the view that the finding, so recorded by the learned appellate Court, is illegal and arbitrary and on such count, it requires interference of this Court.

16. Mr. Ghosh has also pointed out that the learned appellate Court while reversing the judgment and decree, passed by the learned trial Court, has travelled beyond the pleadings. By referring to the decision of Hon'ble Supreme Court in the case of **Shivaji Balaram Haibatti** (supra), Mr. Ghosh submits that it is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues, which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue dehors the pleadings is without jurisdiction.

17. Thus, the finding, so recorded by the learned appellate Court in respect of the issue Nos. 2 and 3, and also in respect of other issues, is illegal and arbitrary and not born out of the pleadings of the parties. Under such circumstances, this Court is inclined to allow this petition by setting aside the impugned judgment dated 29.06.2024 and decree dated 11.07.2024, passed by the learned appellate Court, in Title Appeal No. 13/2023.

18. Consequently, the judgment dated 14.07.2023 and decree dated 19.07.2023, passed by the learned trial Court, in Title Suit No. 26/2016, stands restored.

19. In terms of above, this revision petition stands disposed of. Interim order passed earlier, if any, stands vacated.

20. Registry shall send back the records of learned appellate Court as well as the learned trial Court, along with a copy of this judgment and order.

JUDGE

Comparing Assistant