IN THE HIGH COURT OF JHARKHAND, RANCHI

Second Appeal No.79 of 2017

Namita Bose, W/o late Madan Bose, R/o Bapi Studio, Rly. Cinema Road, Purana Bazar, P.S. Bank More, P.O. and District Dhanbad

...Appellant/Defendant

-- Versus --

Satyanarain Prasad Chourasia Son of late Raghu Ram Barai, Resident of New Market, Purana Bazar, PS Bank More, PO and District Dhanbad

....Respondent/Plaintiff

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant(s)	:-	Mr. P.K. Bhattacharya, Advocate
		Mr. Aditya Kumar Jha, Advocate
For the Respondent	:-	Mr. Sudarshan Srivastava, Advocate
		Mr. Manoj Kumar, Advocate
		Mr. Ashok Kumar, Advocate
		Mr. Pratyush, Advocate

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*15/**28.02.2025*** This Second Appeal has been assigned by Hon'ble The Chief Justice to this Bench and that is how, this Second Appeal has been listed before this Bench.

2. Heard Mr. P.K. Bhattacharya, the learned counsel appearing on behalf of the appellant as well as Mr. Sudarshan Srivastava, the learned counsel appearing on behalf of the respondent.

3. This Second Appeal has been preferred being dissatisfied with the judgment and the decree dated 27.01.2017 and 04.02.2017 respectively passed in Civil Title Appeal No.43 of 2016 passed by learned Principal District Judge,

Dhanbad whereby he has been pleased to dismiss the appeal and affirm the judgment of the learned trial court in Eviction Suit No.01 of 2012 and affirmed the judgment of the learned trial court and the decree dated 18.05.2016 and 28.05.2016 respectively.

4. The case of the plaintiff/ appellant is that grand-father of the plaintiff, namely, Bhatu Ram Barai acquired the land bearing plot no. 4305, 4306, 4307 & 4308 in Mouza Dhanbad, Mouza No. 51 corresponding to Nagar Nigan Holding No. 45/46 more-fully described in schedule 'A' of the plaint leaving behind his only son, namely, Raghu Ram, who inherited the aforesaid property and came in possession of schedule 'A' property. Raghu Ram subsequently died leaving behind two sons, namely, Rajendra Prasad Chourasia, Shatyanarain Prasad Chourasia, who inherited the schedule 'A' property and continued to realize rent from the tenant, who was inducted by landlord as tenant. Subsequently, partition took place between the parties. As per the partition deed dated 08.09.1999 schedule 'A' property fell in the share of the present plaintiff Satyanarain Prasad and defendant, namely, Namita Bose who was tenant in the said premises, started paying rent @ Rs. 1,000/- per month to the plaintiff. The plaintiff Shatyanarain Prasad Chourasia after partition shifted into tenanted premises belonging to Smt. Savita Devi for monthly rent of Rs. 3,900/-. Now, the plaintiff has two grown up sons Anant Kumar and Rahul Kumar. Anant Kumar is a married and practicing lawyer at Dhanbad and other son Rahul Kumar has also attained adulthood and is to be married. The plaintiff requires schedule-"A" premises for the use of his son, who will reside in the said property and also to open lawyer's chamber. Partial eviction of the tenanted premises will not fulfill the bonafide need of the plaintiff and his child. Accordingly, the suit has been filed on the ground of personal necessity under section 11 (1)(C) read with section 14 of the Jharkhand Building (Lease, Rent &

Eviction) Control Act,2000. The cause of action for the present suit arose on 6.01.2012 when notice was sent for eviction the suit premises.

5. The case of the defendant/ respondent is that the defendant appeared and filed written statement stating therein that suit was not maintainable in its present form. The plaintiff has no cause of action for the present suit. The suit was barred by law of limitation, waiver, acquiescence and non-joinder of the parties. The relationship of landlord and tenant has not been denied. It has been pleaded that plaintiff has other premises more suitable for his requirement that the present premises. The defendant is an old ailing lady and anyhow managing the business of Bapi Studio with her son and brother in-law from the tenanted premises. She will lose her livelihood if she is asked to evict. It has been admitted that legal notice was sent on different grounds.

6. This Second Appeal has been admitted by the Co-ordinate Bench of this Court by order dated 03.04.2017 and the following substantial question of law have been framed:

> (i) Whether the judgment passed by the Learned First Appellate Court is sustainable in the eye of law if passed without considering the evidence of exhibits Ext 13 and without giving finding thereupon on the question of partial eviction in terms of the proviso to section 11(i)(c) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000?
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> (ii) Whether the impugned judgment is not bad in law if passed in absence of findings on the exhibits Ext-12 (the Joint Property of Tenant) and Ext-13 (Spot Inquiry Report of the Pleader Commissioner) related to the question of partial eviction in terms of to section 11 (1)(C) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000?

(iii) Whether the impugned judgment is sustainable in the eye of law if passed without forming of its own "points for determination" is envisaged under Rule 30(a) of the Order 41 by the First Appellate Court?

(iv) Whether the impugned judgment is justified in the eye of law if escaped on the findings of Exhibits Ext. 12 & 13 by both the courts of Trial court and the First Appellate Court, if the same related to the question of partial Eviction in terms of proviso to the Section 11 (1)(c) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000?

7. In course of the argument, it was pointed out that by the learned counsel for the respondent that Second Appeal itself is not maintainable in view of the fact that the appellant is tenant of sole-respondent and the judgment of the first court is delivered under section 11(1)(c) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000 and as such the remedy was there under section 14 of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000. In view of above and considering that the maintainability of the Second Appeal itself has been raised. By order dated 30.01.2025 further substantial question of law is framed as under:

(a) Whether the suit was eventually decreed by the impugned judgment dated 18.05.2016, passed in Title Eviction Suit No. 01 of 2012 and confirmed by the judgment dated 27.01.2017, passed in Civil Title Appeal No. 43 of 2016 and instead of challenging the judgment and decree by filing revision under Section 14(8) of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000, the defendant-appellant preferred Title Appeal before the learned District Judge, Dhanbad being Civil Title Appeal No. 43 of 2016 and the said appeal was eventually dismissed on 27.01.2017 and thereafter the second appeal has been filed, which was admitted on 03.11.2017 and in view of the provisions made under Section 14(8) of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000, the second

appeal itself is maintainable or not?

8. The Court called upon the parties to first address the law point framed by this Court by the order dated 30.01.2025.

9. Mr. Bhattacharya, the learned counsel appearing on behalf of the appellant submits that so far the maintainability of the Second Appeal is concerned, that is, maintainable as by the earlier order on the substantial question of law the Second Appeal has already been admitted. He submits that all the law points are required to be answered by this Court and in view of that, on piecemeal basis and only on the point of maintainability this Second Appeal cannot be decided. He relied in the case of ***Shailendra Kumar Singh v. Kamla Singh*****,** reported in **1992 SCC OnLine Pat 100** and relied on paragraph no.10 of the said judgment which is quoted below:

> *10. Now it has to be considered as to what will happen in a case where the suit was required to be tried in accordance with the special procedure, but the same has net been followed, whether bar put by sub-section (8) would apply or not. Sub-section (8) says that "no appeal or second appeal shall lie against an order for recovery of possession of any premises made in accordance with the procedure specified in this section". If Legislature would have intended that bar of appeal would apply to all such suits where order of eviction has been passed in a suit which was required to be tried in accordance with the special procedure prescribed under section 14(8) of the Act, then there was no necessity of using the words made in accordance with the procedure specified in this section'. The legislature intended that all such suits should be tried in accordance with the special procedure. It was also conscious of the fact that if for any reason such a suit is not tried in accordance with the special procedure, then the bar will not operate. Therefore, it has used the expressions 'order made in accordance with the procedure specified in this section'. If such an interpretation is not given, then that would make the expressions 'order made in accordance with the procedure specified in this section' redundant which interpretation is not permissible in law. Therefore, I am clearly of the view that in such an eventuality, bar put by sub-section (8) shall not operate and a party shall have right of appeal and civil revision application would not be maintainable. I am in respectful agreement with the view taken in the case of Md. Akhtar*

Khan (supra) by a learned single Judge of this Court and hold that law has been correctly laid down in that decision. In view of the foregoing discussions, the law laid down in this case is summarised as follows:—

(i) When an order of eviction has been passed in a suit required to be tried in accordance with the special procedure prescribed under section 14 of the Act, but has not been tried thereunder, an appeal would lie against eviction decree and civil revision would not be maintainable against order of eviction.

(ii) In a suit which is required to be tried in accordance with the procedure prescribed under section 14 of the Act, a duty is cast upon the Court to try the same in accordance therewith and if it fails to adopt the procedure and any of the parties insists for following the special procedure, the trial court has no option but to grant the prayer.

(iii) If the prayer for following the special procedure has been rejected, then the correctness of the order can be challenged either by filing a review application in accordance with law during the pendency of the suit or by filing a civil revision application before this Court against the rejection order at the interlocutory stage.

(iv) Judgment/decree passed in an eviction suit cannot be challenged on the ground that special procedure prescribed under section 14 of the Act has not been followed.

(v) If special procedure prescribed under section 14 of the Act has been followed in such an eviction suit, which is not required to be tried in accordance therewith, judgment/decree would be liable to be set aside by higher court on this ground alone.

10. Relying of the above judgment, he submits that the bar made out under Sub Section 8 of Section 14 of the Act has got no relevance.

11. So far as the law points are concerned, he submits that by way of referring the paragraph nos.3 to 8 of the written statement that the cause of action was earlier, however, the suit was instituted later on and in view of that, it is barred under Article 67 of the Limitation Act. He further submits that the issue has also not been formulated correctly framed by the learned court and in view of that it is void. He refers to written statement at paragraph no.4 and submits that grounds of waiver, estoppel, acquiescence have been taken and since the suit was instituted belatedly, the respondent has waived the right and

the suit itself was not fit to be dismissed. He further submits that recovery of possession in light of Section 61 of Specific Reliefs Act further makes out a case of interference with the judgments of the learned two courts. He submits that the points raised herein has not been considered by either of the learned courts and in view of that, the further substantial question of law may kindly be framed and the Second Appeal be decided by way of framing further substantial question of law. On this ground, he submits that the law points framed by this Court may kindly be answered in favour of the appellant.

12. Mr. Sudarshan Srivastava, the learned counsel appearing on behalf of the respondent submits that on the provision of Sub Section 8 of Section 14 of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000, was not pointed out before the Co-ordinate Bench when this Appeal was admitted and in view of that, the Co-ordinate Bench has admitted the same. He submits that at the time of admission of this Second Appeal, the respondent was not there and in view of that, after appearance, this fact has been pointed out and as such, on the ground of maintainability and the law points framed by the order dated 03.11.2017 the Second Appeal itself is fit to be dismissed. He submits that once the Court comes to the conclusion that the Second Appeal is not maintainable, the further law points are not required to be answered by this Court. He relied in the case of ***Arati Ghose v. Banwari Lal Jalan*****, reported *in 2008 SCC OnLine Jhar 1158*** and relied on paragraph no.7 of the said judgment, which is quoted below:

> ***7.*** *From the aforesaid facts, it is clear that although the original judgment and decree for eviction passed against the petitioners ought to have been challenged by filing revision under Section 14(8) of the Act of 1982, the petitioners wrongly filed appeal before the District Judge, Deoghar and the matter continued upto this Court and finally, the petitioners accepted the mistake committed by them and preferred this Civil Revision after about 20 years. In this way, in spite of the decree for eviction passed in favour of respondent in the year 1985, the*

petitioners continued occupation of the premises for about 20 years. Even assuming that the petitioners were entitled to renewal of lease for a further period of 11 years from 1982, even that period of 11 years has also expired, but the plaintiff-respondents could not get possession of the premises.

13. He relying on the above judgment, submits that identically the appellant herein by way of referring the first appeal and the second appeal has enjoyed the property for more than a decade and on the same line he further relied in the case of ***Ram Prasad Rajak v. Nand Kumar & Bros.*****, reported in (1998) 6 SCC 748** and referred to paragraph nos.6 and 7 of the said judgment, which are given below:

6. *We have noticed that the respondents filed a revision under Section 14(8) of the Act against the judgment of the appellate court granting a decree for eviction in favour of the appellant. Obviously that revision was not maintainable as there is no provision in Section 14(8) of the Act for a revision against an appellate order. The said sub-section refers only to an order passed by the trial court for recovery of possession in favour of the landlord. If the trial court dismisses the suit, the only remedy of the landlord is to file an appeal under Section 96 CPC. When such an appeal is disposed of by the appellate court, the further remedy of the aggrieved party is only under Section 100 CPC and there is no question of reverting back to Section 14(8) of the Act. By no stretch of imagination, the appellate order or decree can be considered to be an order of the trial court for recovery of possession within the meaning of Section 14(8) of the Act. Hence the revision petition filed by the respondents before the High Court was not maintainable.*

7. *We find however, the objection as to the maintainability of the revision petition was not taken by the appellant in the High Court. The revision was entertained and allowed by the High Court. In order to meet the ends of justice, we treat the said revision petition as a second appeal under Section 100 CPC and proceed to consider whether the judgment of the High Court is sustainable or not. Once the proceeding in the High Court is treated as a second appeal under Section 100 CPC, the restrictions prescribed in the said section would come into play. The High Court could and ought to have dealt with the matter as a second appeal and found out whether a substantial question of law arose for consideration. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the second appeal and consider the merits. It has*

> *been held by this Court in Panchugopal Barua v. Umesh Chandra Goswami [(1997) 4 SCC 713 : JT (1997) 2 SC 554] and Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438 : JT (1997) 5 SC 202] that existence of a substantial question of law is sine qua non for the exercise of jurisdiction under Section 100 CPC. In both the aforesaid cases, one of us (Dr Anand, J.) was a party to the Bench and in the former, he spoke for the Bench.*

14. Relying on the above judgment, he submits that once substantial question of law is made, in light of section 100 of the CPC, then only the second appeal can be admitted. He submits that in view of that the second appeal itself was not maintainable and in spite of that it has been admitted. So far as the other law points are concerned, he submits that the law point no.3 cannot be a substantial question of law and that aspect has been dealt with by the Hon'ble Supreme Court in the case of ***G. Amalorpavan and Others v. R.C. Diocese of Madurai and Others*** reported in ***(2006) 3 SCC 224*** and referred to the paragraph no.9 of the said judgment.

15. He further submits that the learned trial court as well as the first appellate court have considered all aspect of the matter and appreciated the Exhibit 13 in its right perspective and in view of that when further substantial question of law framed by this Court by order dated 03.11.2017 is out of context. He further submits that what has been argued today on the point of limitation and waiver, estoppel, acquiescence, that is not the substantial question of law framed by this Court and in view of that, those argument cannot be a subject matter of the present second appeal. On the point of section 100 CPC he relied in the case of ***Hamida v. Mohd. Khalil*****,** reported in **(2001) 5 SCC 30** and he refers to paragraph no.6 and 7 of the said judgment, which are given below:

> ***6.*** *The High Court has upset the finding of fact recorded by the first appellate court, taking a different view merely on reappreciation of evidence in the absence of valid and acceptable reasons to say that the findings recorded by the first*

appellate court could not be sustained, either they being perverse or unreasonable or could not be supported by any evidence. The High Court neither framed a substantial question of law nor is any such question indicated in the impugned judgment as required under Section 100 of the Code of Civil Procedure. The approach of the High Court, in our view, is clearly and manifestly erroneous and unsustainable in law. Para 10 of the impugned judgment reads:

"The appellate court although has decided the issue of personal necessity but from the judgment it appears that the appellate court has not decided this issue in its correct perspective. Since the trial court has not recorded any finding on the issue of personal necessity, the finding recorded by the appellate court cannot be said to be a concurrent finding of fact. I am, therefore, of the definite view that in such circumstance, this Court can reappreciate the evidence and scrutinize the findings recorded by the appellate court under Section 100 CPC when admittedly this issue was not decided by the trial court.

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The sons of the plaintiff for whose requirement the plaintiff sought eviction, have not been examined. The nephew of the plaintiff was examined as a witness who supported the case of the plaintiff. The plaintiff has also not led any evidence to the effect that the house property where the plaintiff resides, is not sufficient for their own use and occupation. There is also no evidence to the effect that suitable alternative accommodation is not available to the plaintiff for meeting the requirement. I am, therefore, of the view that the finding recorded by the appellate court on the issue of personal necessity cannot be sustained in law for want of sufficient evidence."

As can be seen from the para extracted above, the High Court thought that it could reappreciate the evidence and scrutinize the findings recorded by the first appellate court under Section 100 CPC. This approach is plainly erroneous and against law. The High Court was also wrong in saying that the plaintiff did not lead sufficient evidence to establish his bona fide requirement. As observed by the first appellate court and noted above already, there is evidence of the plaintiff, his nephew and the neighbour. The finding of fact recorded by the first appellate court based on evidence could not be interfered with by the High Court, that too in the absence of any substantial question of law that arose for consideration between the parties.

7. *We repeat and reiterate this position as stated by this Court time and again. In one such judgment in Satya Gupta v. Brijesh Kumar [(1998) 6 SCC 423] this Court, in para 16, has stated thus: (SCC p. 428)*

"16. At the outset, we would like to point out that the

> *findings on facts by the lower appellate court as a final court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible."*

16. He submits that in view of above judgment, the High Court is not required to re-appreciate the evidences at this stage when there is concurrent finding of two learned courts on the facts. He submits that the substantial question of law may kindly be answered in favour of the respondents. He further relied in the case of ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*** reported in **(1999) 3 SCC 722** and referred paragraph nos. 3 to 6 of the said judgment, which are quoted below:

> ***3.*** *After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence.*
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> ***5.*** *It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even*

> *where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.*
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> ***6.*** *If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey [(1976) 1 SCC 803 : AIR 1976 SC 830] held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.*

17. Relying on the above judgment, he further submits that where a point of law has not been pleaded or is found to be arising between the parties and in absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in the second appeal. On these grounds, he submits that the law points may kindly be answered.

18. It is an admitted position that Title Eviction Suit No.1 of 2012 was

instituted by the plaintiff/respondent against the defendant/appellant seeking a decree for eviction of the defendant from the tenanted premises described in the schedule-A of the plaint and for delivery of Khas possession and for decree for cost of suit and further for a decree and for any relief which the Court may deem fit and proper.

19. The learned trial court has framed seven issues to decide the suit and the issue nos.3, 4 and 5 were interlinked with regard to relationship of land-lord and tenant, requirement of the tenanted premises as bona-fide and partial eviction can fulfill the plaintiff's necessity respectively and all these three issues have been taken together by the learned trial court. The learned trial court has appreciated the evidence of both the sides and found that Satyanarayan Prasad Chourasia has stated that he is the owner of the tenanted premises after death of his grand-father Bhaturam Barai and Raghu Ram and after partition of the said property dated 8.9.1999 marked as Exhibit -1 shows the partition has taken place. The plaintiff has further proved the municipal rent receipt marked as Exhibit -3 whereby the learned court has found that Satya Narayan Prasad Chourasia is owner of the tenanted premises. Malgujari receipt marked as Exhibit-4 was also found to be in favour of the plaintiff/respondent. Considering all these aspects and the further evidences of PWs and DWs the learned trial court has come to the finding that the plaintiff/respondent was land-lord of the appellant/defendant and the learned court has further found that the plaintiff was having own house, however, he was staying in a rented house. The learned court has further considered that by the sale deed No.2874 the appellant has purchased the land and constructed the house and in paragraph no.43 she has admitted the fact that house of Monaidand is sufficient for her residence and for business purpose and further in paragraph no.49 and 50 she has stated that she has purchased the land and constructed the house in 1989

and has given it on rent to the Kalu Parwat. In paragraph no.26 the DW2 has stated that she has paid only rent till July. Further the witnesses have disclosed that one of the plaintiff's son is a lawyer and another is of marriageable age are staying in rented house in spite of having their own house and in view of that the learned court has come to the conclusion that in light of Section 11(i)(C) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000 personal necessity has been proved and all these issues have been answered against the appellant/defendant and further other issues have been decided by the judgment dated 18.05.2016. A decree was passed in favour of the respondent and a direction to hand over the tenanted premises to the plaintiff/respondent have been issued.

20. Aggrieved with that, the appellant/plaintiff preferred the Civil Appeal (Title) No.43 of 2016 and by the judgment dated 27.01.2017, the said appeal was dismissed and the learned appellate court has been pleased to affirm the judgment and the decree passed by the learned trial court. The learned appellate court further formulated the point to decide the appeal and after appreciating the oral as well as documentary evidences, the learned appellate court has found that the defendant herself has admitted that partial eviction will fulfill the requirement of the plaintiff and she has also admitted that she has her own house which will be more suitable for residence and carrying out her business which she has put on rent. She has further admitted that son of the plaintiff is carrying out legal practice and the present property will be more suitable. The defendant witnesses have further pointed out that the son of the plaintiff can carry legal practice from other property. It is well settled that choice as to from where the plaintiff or the landlord wants to meet his personal requirement lies with the landlord himself. The tenant cannot put up a defence that the landlord has alternative arrangement to suit his requirement.

Considering all these aspects the learned appellate court has been pleased to dismiss the appeal. Thus, on the facts, there is concurrent finding of two learned courts and there is no error on facts and law and no perversity has been pointed out about those findings and only argument has been advanced for the limitation, waiver, estoppel and acquiescence. However, at the time of admission of the second appeal these law points have not been framed and the averments to them has also not been made in the memo of appeal.

21. In view of that, the judgment of the Hon'ble Supreme Court in the case of ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar(supra)*** is very much clear on the point that if the point of law is not pleaded or is found to be arising between the parties in absence of any factual format, a litigant should not be allowed to raise substantial question of law in second appeal.

22. The law point no.3 formulated by the order dated 03.11.2017 cannot be a law point as has been held by the Hon'ble Supreme Court in the case of ***G. Amalorpavan and Others v. R.C. Diocese of Madurai and Others(supra)*** wherein at paragraph no.9, it has been held as under:

> ***9.*** *The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC*

and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC.

23. In view of above, the judgment of the learned two courts cannot be set aside. Further, in light of the discussions made hereinabove, and what has come to the finding of the learned trial court and the learned appellate court, the law point no.1,2 and 4 framed by the order dated 03.11.2017 has already answered by those two learned courts in its right perspective and the finding of the landlord–tenant relationship as well as of necessity has been taken care of and as such, these law points are answered in favour of the plaintiff/ respondent.

24. The suit was decreed by the impugned order and the decree dated 18.05.2016 and in spite of challenging the judgment and the decree or filing revision under section 14 of the said Act, the defendant/ appellant preferred title appeal before the learned District Judge and thereafter this present second appeal has been filed and this second appeal has been admitted by the co-ordinate Bench on the substantial question of law. However, the substantial question of law was not framed on that date and later on the substantial question of law has been framed with regard to maintainability of the second appeal and in the meantime, stay was also granted by the order dated

16.12.2019. In view of the provisions made under the Jharkhand Building (Lease, Rant and Eviction) Control Act, 2000, particularly, section 14(8) of the said Act, this second appeal itself was not maintainable and the remedy was only to file revision. However, the first appellate court has further given the finding, since this second appeal was admitted by the co-ordinate Bench, this Court to decided all the substantial question of law and, accordingly, it has been discussed hereinabove, and if, the second appeal is admitted, section 100 of the CPC restrictions prescribed in the said section will come into play. It is well settled that the interference with concurrent finding of facts is permissible when materials or the relevant evidence is not considered by the learned courts and if it had been considered it would not lead so.

25. In the case of ***Ishwar Das Jain (Dead) Thr. Lrs. V. Sohanlal (Dead) By Lrs.*** reported in ***AIR 2000 SC 426***, it has been observed that the first appellate court is under duty to examine the relevant materials on record and if refused to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to substantial question of law, then the High Court is fully authorized to set aside the finding. However, it has been discussed hereinabove, both the learned courts have discussed threadbare the oral as well as the documentary evidences and thereafter have given the said finding.

26. The law with regard to the eviction of tenant from the suit premises on the ground of bona-fide need of landlord is well settled. The need has to be a real one rather a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role for dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction. What has been discussed hereinabove in the judgment of the learned trial court as

well as the learned appellate, the bona-fide need has been proved and the defendant/ appellant herself has admitted that the plaintiff/respondent's one son is required the said premises for practicing law and another one has attained marriageable age and it has been further pointed out that the plaintiff/ respondent instead of his own house was residing in tenanted house.

27. What has been discussed hereinabove, the law points are answered accordingly in favour of the plaintiff /respondents. The Court finds that there is concurrent finding of two learned courts and the evidences have been rightly appreciated by both the learned courts. In the second appeal the High Court is not required to re-appreciate the facts when there is no perversity pointed out in the judgments of both the learned courts. Further section 13 of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000, speaks of the provision of section 14 to have over-riding effect and section 14 of the said Act speaks of special procedure for disposal of cases for eviction on the ground of bona-fide requirement and section 14(7) of the said Act speaks of to follow the practice and procedure of the courts of small causes including the recording of evidences and in light of that, sub-section 8 of section 14 of the said Act, bars the appeal.

28. In view of above facts, reasons and analysis, the Court finds that this Second Appeal needs to be dismissed, and accordingly, it is dismissed.

29. Interim order is vacated.

30. Pending petition if any also stands disposed of accordingly.

31. The Trial Court Records be sent back to learned court concerned forthwith.

(Sanjay Kumar Dwivedi, J.)

SI/,
A.F.R.