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MEHMOODA GULSHAN

v.

JAVAI HUSSAIN MUNGLOO

(Civil Appeal Nos. 1398-1399 of 2011)

B

FEBRUARY 17, 2017

[KURIAN JOSEPH AND A.M. KHANWILKAR, JJ.]

Rent Control and Eviction:

C *Jammu and Kashmir Houses and Shop Rent Control Act, 1966 –*
s. 11(1)(h) – *Eviction – Requirement of landlord for own*
D *occupation – It could mean occupation by member of a family – On*
facts, eviction petition by landlord seeking tenanted premises for
his son – Trial court allowed the petition holding the need for
premises as genuine, however High Court held the requirement of
own occupation not established for non-examination of the son,
E *for whose benefit, eviction was sought – Held: Requirement of*
landlord for own occupation could mean occupation by member of
a family – Mere non-examination of family member who intends to
do business cannot be taken as a ground for repelling the reasonable
requirement of the landlord – Son, being unemployed and
F *undereducated, landlord able to establish that business was the*
available option and tenanted premises was the only space
available – Thus, genuine need for the premises established –
Landlord having established reasonable requirement of tenanted
premises for own occupation, order passed by the trial court restored,
and that of the High Court set aside.

Allowing the appeals, the Court

G **HELD:** 1.1 It has clearly come in evidence of the appellant
that her one son is unemployed and in view of unemployment, he
was frustrated. The appellant's husband had contracted second
marriage and he had deserted the appellant. The appellant herself
was unemployed with no source of income. The appellant, hence,
prayed that the property be returned to her so that her son can
look after the family. In cross-examination, she denied the
suggestion that the son was doing business with his father. It had
also been stated further that "except the premises and the

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residential house, the plaintiff has no other property". The trial court meticulously analyzed and appreciated the reasonable requirement of the premises for the business to be managed by the son of the appellant especially in her peculiar family circumstances. The trial court appreciated the evidence in the right perspective and held that it is not mere desire but genuine need. The finding of the trial court was challenged mainly on the ground that the son, for whose benefit the eviction is sought, was not examined. The main ground on which the appellant was non-suited in the first appeal and the intra-court appeal is that the appellant failed to establish her reasonable requirement for own occupation. [Paras 12, 13] [700-E-H; 701-A]

1.2 Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. The question whether there is a reasonable requirement by the landlord of the premises, would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. The eviction is not sought on the last limb of section 11(1)(h) of the Act namely, "for the occupation of any person for whose benefit the house or shop is held". The premises sought to be evicted is not held for the benefit of the son alone; but the whole family. It is for the own occupation of the landlord. It has been established in the facts of this case that the landlord was not happy and content with the paltry rent received from the premises. The landlord intended to engage her son in the business at the premises. It is for the landlord to decide as to the best use the premises should be put to. There is nothing wrong on the part of a landlord in making plans for a better living by doing business engaging her son. Having regard to the background of the son who is unemployed and undereducated, the appellant was able to establish that business was the available option and the tenanted

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A premises was the only space available. Thus, the genuine need for the premises has been established. Unfortunately, the High Court has missed these crucial aspects. [Paras 14, 21] [701-B-C; 705-E-H; 706-A]

B 1.4 The appellant having established a reasonable requirement of the tenanted premises for own occupation, is entitled to succeed. The judgment of the Single Judge in the first appeal and confirmed in the intra-court appeal by the Division Bench, is set aside. The judgment and decree of the trial court is restored. The respondent is granted a period of three months to surrender vacant possession. [Para 22] [706-B-C]

C *Bega Begum and others v. Abdul Ahad Khan (dead) by Lrs. and others* (1979) 1 SCC 273 : 1979 (2) SCR 1; *Joginder Pal v. Naval Kishore Behal* (2002) 5 SCC 397 : 2002 (3) SCR 1078; *Ajit Singh and another v. Jit Ram and another* (2008) 9 SCC 699 : 2008 (13) SCR 555; *C. Karunkaran(dead) by Lrs. v. T. Meenakshi* 2005 (13) SCC 99; *Gulraj Singh Grewal v. Dr. Harbans Singh and another* (1993) 2 SCC 68 : 1993 (1) SCR 149 – referred to.

Case Law Reference

E	1979 (2) SCR 1	referred to	Para 15
	2002 (3) SCR 1078	referred to	Para 17
	2008 (13) SCR 555	referred to	Para 18
	2005 (13) SCC 99	referred to	Para 19
F	1993 (1) SCR 149	referred to	Para 20

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1398-1399 of 2011.

G From the Judgment and Order dated 23.10.2009 of the High Court of Jammu and Kashmir at Srinagar in LPA No. 175 of 2009 & CMP No. 275 of 2009.

V. Giri, Sr. Adv., Deepak Prakash, Ms. Saumiya Sinha, Vishal Somany, Raneev Dahiya, (For Jogy Scaria), Advs. for the Appellant.

Ms. Diksha Rai, Ms. Kanika Saran, Sagar Vaish, Advs. for the Respondent.

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The Judgment of the Court was delivered by A

KURIAN, J. 1. Whether the requirement of the landlord for own occupation could also mean occupation by a member of the family, in this case, the son, is the short question arising for consideration.

2. Appellant filed Civil Suit No. 42 of 2000 seeking eviction of the respondent from the premises let out to him on 15.11.1997 for a period of eleven months. The said tenancy was verbally extended for a further period of eleven months though it was the contention of the respondent that the said extension was for eleven years. Since, the premises was not vacated after the extended period of eleven months, the suit was filed for eviction. B

3. Besides the ground on expiry of the period, it was the case of the appellant that the premises was required for her own use. To quote from paragraph-5 of the plaint: C

“5. xxx xxx xxx xxx xxx

i. That the plaintiff has been deserted by her husband namely : Ch. Mohd Khatai who has arranged 2nd marriage in the state of Bangalore, leaving behind the plaintiff and two sons namely Shujat Huyder aged 27 years unemployed and Waseem Hyder aged 15 years, presently reading in 9th class. D

ii. That the plaintiff has no source of income after the desertion by her husband and elder sons being of 27 years old is still unemployed because of the fact, that the son of the plaintiff namely Shujat Hyder is simply a matriculate. E

iii. That the plaintiff being a house lady and intends to use the rental premises by observing his elder son to start his own business as such the plaintiff requires the rental premises for her son who can support the family in the long run. F

iv. That the plaintiff has no other source of income except to use the rental premises by observing her elder son for starting his own business in the rental premises. G

v. That the son of the plaintiff cannot claim any Govt. service because of the fact he is simply a matriculate and he is at the verge of crossing the age limit.

vi. That the plaintiff cannot absorb her son in any private H

- A institution, he only alternative is to start his business in the rental premises.
- vii. That the plaintiff requires the rental property for her personal use, enabling her elder son to establish the business therein.
- B viii. That the plaintiff has a liability of her sons, as such requires the rented property for establishing own business therein.”
4. The following issues were framed by the trial court:
- C “1. Whether the defendant was bound to hand over the possession of the suit premises to the plaintiff after the period of tenancy was over on 13.11.1999? OPP.
2. Whether the plaintiff requires the suit premises for her unemployed son?... OPP
3. Whether the plaintiff has rented the premises for period of 11 years, as such is stopped from claiming the eviction before the stipulated period?... OPD
- D 4. What is the comparative advantage and disadvantage of the parties?... OPP/OPD
5. Whether the requirement of the plaintiff will be satisfied by partially affecting the defendant from suit premises?... OPD
- E 6. To what relief the plaintiff is entitled to?”
5. Since we are concerned mainly with the requirement on the ground of own occupation, we confine references only to the consideration of issues 2 and 4.
- F “Issue No.2: With regard to issue no.2 whether the plaintiff require the premises for her unemployed son.
- There is ample evidence on the file lead by the plaintiff as well as admitted in cross examination by the defendant that the husband of plaintiff has married with a Hindu girl at Cochin and he is residing with his second wife there. The plaintiff has two sons both of them are idle. The elder one being of the aged of about 30 years is not doing any work and that way is idle. It is also on the record that he is not qualified so that he may aspire for any government job nor has it been proved by the defendant that he is associated with the business of his father at Kochin. Every parent
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has a cherished desire to get his or her ward settled in some job so that he can have a sustenance in his life. The plaintiff does not possess any commercial building other than the suit premises where her son could start any business for his sustenance. Though it is settled law on the subject that there is a difference between desire and requirement. Requirement means when objectively seen there must be the necessity with the party to require the premises for his own use. It is not a sheer desire only whether the landlord may show his intent to occupy the premises. So there is a difference between the two situations and while differentiating the two situations the evidences on the file is sufficient to prove that the son of the plaintiff is in his 30s and is still idle. In these hard times, the family requirements cannot be met by mere rent of Rs. 5000/- which defendant is paying. So in the given circumstances, it has been proved by the plaintiff that plaintiff requires the suit premises for her unemployed son. The defendant has though tried to controvert this position but have not been able to convince the court that the son of the plaintiff is in any manner associated with the business of his father at Cochin. So this issue is also decided in favour of the plaintiff.

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Issue No.4: With regard to issue no.4 of comparative advantage and disadvantage of the parties, the law on the subject is very clear that we have to take into account while comparing the advantages and disadvantages of the respective parties the interests of the person for whose benefit the house and shop is held whether he being landlord or the tenant. The explanation to clause (h) of the J&K Houses and Shop Rent Control Act contains specific provisions regarding the weighing and measuring the relative hardship which may be caused to the tenant or landlord in case of granting or refusing a decree for eviction. The principle of law enacted with the expansion is to the effect that the law will lean in favour of the person to whom the greater inconvenience and hardship is caused and would grant the relief to the landlord only when his hardships are likely to exceed the hardships which may be caused to the tenant. Thus, the question of comparative advantage and disadvantage has an important bearing on the question of granting or refusing the relief. The question of balance of convenience or principle of comparative advantage and disadvantage will come up only when the court is satisfied that

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A the premises are reasonably required by the landlord or any person
for whose behalf the house or shop is held. But before this is to be
decided, the court has to find and determine two things i.e. I)
reasonable requirements of the landlord or the person for whose
benefit the house or shop is held; II) comparative advantage and
disadvantage of the landlord or any person and the tenant and
B these two ingredients must coexist. So what is to be seen while
comparing these two aspects, we have to consider the reasonable
requirement of the landlord or ejection of his tenant. The question
of requirement always differs from case to case depending on
the facts of its own. While comparing advantages and
disadvantages of the parties, we have to apply our mind objectively
C firstly to this aspect whether requirement of the landlord is real
and is only not a desire, but there is some compulsion that he
requires the premises for his own use and it is also to be seen
whether by eviction the defendant may not be put to such a
disadvantage in which he cannot be compensated. So, the need
D of the landlord must be pressing one and real. Applying this test to
the facts of the instant case and taking stock of the evidence
recorded by the defendant as well as by the plaintiff, it is not
disputed. It is also in the evidence that the landlords is not having
any source of income other than the rent received through Rent
E controller and naturally speaking the amount of Rs.5000/- per
month is so paltry amount in these hard times when every item of
the day to day needs is so costly that hardly she cannot sustain
her family. Thus in the given situation it is the landlord whose
need is more pressing and real and is put to disadvantage in
comparison to the disadvantage which would be caused to the
F defendant by eviction because the machinery installed can be
removed with much ease and he can get on rent any other
alternative premises in the vicinity and that will not put to jeopardy
the interests of the defendant. Therefore, the comparative
advantage and disadvantage is also in favour of the landlord.
G Hence, this issue is also decided in favour of the plaintiff.”

6. Issue No. 5, on partial eviction, was also answered in favour of
the plaintiff. Thus, by judgment dated 12.12.2007, the suit was decreed.

7. Aggrieved, the respondent filed Civil First Appeal No. 228 of
2007 before the High Court of Jammu and Kashmir at Srinagar. The

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learned Single Judge, by judgment dated 04.08.2009, allowed the appeal. A
According to the learned Single Judge:

“From the pleadings it would appear that the premises is required for the son of the respondent. The respondent’s case before the trial court was that her son was unemployed and that the suit premise was required for him. The trial Court, as noticed above, found that the respondent has two sons both of them are alive. The elder one of the age of 30 years, is not doing any work and that way is idle. The trial Court has further found that the son of the respondent is not qualified so that he may aspire for any government job. On going through the evidence it would, however, appear that the findings are based on either the statement of the plaintiff or her witnesses. The best witness in these circumstances, to depose on the personal requirement was the son of the respondent himself but he has not been examined as witness before the trial Court. No explanation has been given for his non examination.” B
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8. It was also held that:

“There is nothing in the statement of the respondent which could even indirectly suggest the nature of the business that her son intends to carry on this property, his resources to carry on the business and his aptitude and physical strength and other facts requisite for such a purpose. Thus the evidence is so vague that no reliance can be placed on it. E

Reasonable requirement is a question of law but whether the landlord has, in a suit for eviction under Section 11 (h) of the J&K Houses and Shops Rent Control Act, proved it or not is essentially a question of fact. Onus to prove is on the plaintiff. While judging the requirement of a landlord (or the person for whose use the shop is required), the court has to take into account a variety of factors such as the social status of the concerned person, the standard of his living, his habits, his comforts, the state of his health, the number of his family members, the nature of business he intends to start and the suitability of the property for such business, the resources he has got to run the business and F
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A the like. If the very person who needs the shop for his use is reluctant to appear before the Court, the Court would not extend any help to him and would not grant any relief in his favour.”

B 9. Aggrieved, the appellant filed intra-court appeal as Letters Patent Appeal No. 175 of 2009 leading to the impugned judgment dated 23.10.2009. The Division Bench concurred with the learned Single Judge and held that the appellant has failed to prove that the premises was required for own occupation, and hence, the appeal.

C 10. Heard Mr. V. Giri, learned Senior Counsel appearing for the appellant and Ms. Diksha Rai, learned Counsel appearing for the respondent.

11. Section 11(1)(h) of the Jammu and Kashmir Houses and Shop Rent Control Act, 1966 (hereinafter referred to as “the Act”), is the relevant provision:

D “Section 11(1)(h) “... where the house or shop is reasonably required by the landlord either for the purposes of building or re-building, or for his own occupation or for the occupation of any person for whose benefit the house or shop is held;”

E 12. The main ground on which the appellant was non-suited in the first appeal and the intra-court appeal is that the appellant has failed to establish her reasonable requirement for own occupation. Having not examined the son who intends to do the business, according to the High Court, the requirement of own occupation was not established.

F 13. We fail to understand the approach made by the High Court. It has clearly come in evidence of the appellant that her one son is unemployed and in view of unemployment, he was frustrated. The appellant’s husband had contracted second marriage and he had deserted the appellant. The appellant herself was unemployed with no source of income. The appellant, hence, prayed that the property be returned to her so that her son can look after the family. In cross-examination, she denied the suggestion that the son was doing business with his father. It had also been stated further that “except the premises and the residential house, the plaintiff has no other property”. The trial court has meticulously analyzed and appreciated the reasonable requirement of the premises for the business to be managed by the son of the appellant especially in

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her peculiar family circumstances. In our view, trial court has appreciated the evidence in the right perspective and held that it is not mere desire but genuine need. The finding of the trial court was challenged mainly on the ground that the son, for whose benefit the eviction is sought, has not been examined.

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14. Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Under the Act, the landlord needs to establish only a reasonable requirement. No doubt, it is not a simple desire. It must be a genuine need. Whether the requirement is based on a desire or need, will depend on the facts of each case.

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15. In Bega Begum and others v. Abdul Ahad Khan (dead) by Lrs. and others¹, this Court has taken the view that the requirement only connotes an element of genuine need. To quote from paragraph-13:

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“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 the 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 States 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.”

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16. Bega Begum (supra) has also considered the scope and ambit of the expression “reasonable requirement” at paragraph-17:

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“17. This brings us to the next limb of the argument of the learned Counsel for the respondents regarding the

¹(1979) 1 SCC 273

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A interpretation of Section 11(1)(h) of the Act. Section 11(1)(h)
of the Act runs thus:

B “11(1)(h)... where the house or shop is reasonably
required by the landlord either for purposes of building
or rebuilding, or for his own occupation or for the
C occupation of any person for whose benefit the house
or shop is held;

D *Explanation.*—The Court in determining the
reasonableness of requirement for purposes of building or
rebuilding shall have regard to the comparative public
benefit or disadvantage by extending or diminishing
accommodation, and in determining reasonableness of
requirement for occupation shall have regard to the
comparative advantage or disadvantage of the landlord or
the person for whose benefit the house or shop is held
and of the tenant.”

E It was submitted by Mr Andley, learned Counsel for the
respondents that the words used in Section 11(1)(h) are
“that the house should be required by the landlord for his
own occupation or for the occupation of any person for
whose benefit the house or shop is held”. It was argued
that the words “own occupation” clearly postulate that the
landlord must require it for his personal residence and not
for starting any business in the house. We are, however,
unable to agree with this argument. The provision is meant
for the benefit of the landlord and, therefore, it must be so
F construed as to advance the object of the Act. The word
“occupation” does not exclude the possibility of the landlord
starting a business or running a hotel in the shop which also
would amount to personal occupation by the landlord. In
our opinion, the section contemplates the actual possession
of the landlord, whether for his own residence or for his
G business. It is manifest that even if the landlord is running a
hotel in the house, he is undoubtedly in possession or
occupation of the house in the legal sense of the term.
Furthermore, the section is wide enough to include the
necessity of not only the landlord but also of the persons
H who are living with him as members of the same family.”

17. In Joginder Pal v. Naval Kishore Behal², after extensively referring to all the decisions of this Court and some other High Courts, it was held that in interpreting “own use”, the court should adopt a practical and meaningful approach guided by realities of life. The guidelines are being summarized at paragraph-33:

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“33. Our conclusions are crystallised as under:

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(i) The words “for his own use” as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression — landlord requires for “his own use”, is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal “emanations” of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence — economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

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(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord’s own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as “his own” occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as “his own” and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord’s claim.

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- A (iv) While casting its judicial verdict, the court shall adopt a practical and meaningful approach guided by the realities of life.
- (v) In the present case, the requirement of the landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord “for his own use” within the meaning of Section 13(3)(a)(ii).”
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18. Joginder Pal (supra) was followed in many subsequent decisions and one close to the dispute in the instant case is Ajit Singh and another v. Jit Ram and another³. It has been held at paragraph-19:

- C “19. From the aforesaid decision of this Court (in *Joginder Pal case*), 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.
- D ...”

19. In C. Karunkaran (dead) by Lrs. v. T. Meenakshi⁴, one issue which arose for consideration was whether non-examination of the person for whose need the building was required was fatal. It was held that “mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady”. To quote:
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- “... Mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady. In a number of decisions, [this fact is acknowledged by the first appellate court also], it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case. ...”.
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20. In Gulraj Singh Grewal v. Dr. Harbans Singh and another⁵, this Court had an occasion to see whether a landlord can be non-suited on the ground of non-examination of the son for whose benefit the premises is sought to be vacated. This Court held that in case the need has otherwise been established in evidence, the non-examination is not material. At the best, it is only a matter of appreciation of evidence. To the extent relevant, paragraph-8 reads as follows:
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³ (2008) 9 SCC 699

⁴ Civil Appeal No. 2773 of 2002 decided on 06.10.2005

- H ⁵ (1993) 2 SCC 68

“8. Learned counsel for the appellant submitted that the personal need found proved is only of respondent 2, son of respondent 1, who did not enter the witness-box and, as stated in an affidavit filed in this Court, even he is carrying on his profession at a place about 25 kms. away from Ludhiana, in our opinion, this finding of fact is unassailable. The High Court has clearly observed that no meaningful argument could be advanced on behalf of the appellant to challenge this finding of the appellate authority. Respondent 1 who is the father of respondent 2, has supported and proved the need of respondent 2, who also is a landlord. The fact that for want of suitable accommodation in the city of Ludhiana, respondent 2 is at present carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlord’s need. In these circumstances, the non-examination of respondent 2 also, when respondent 1 has examined himself and proved the need of the landlord, is immaterial and, at best, a matter relating only to appreciation of evidence, on which ground this finding of fact cannot be reopened. . . .”

21. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. It may be crucially relevant to note that the eviction is not sought on the last limb of Section 11(1)(h) of the Act namely, “for the occupation of any person for whose benefit the house or shop is held”. The premises sought to be evicted is not held for the benefit of the son alone; but the whole family. It is for the own occupation of the landlord. It has been established in the facts of this case that the landlord was not happy and content with the paltry rent received from the premises. The landlord intended to engage her son in the business at the premises. It is for the landlord to decide as to the best use the premises should be put to. There is nothing wrong on the part of a landlord in making plans for a better living by doing business engaging her son. Having regard to the background of the son who is unemployed

A and undereducated, the appellant was able to establish that business was the available option and the tenanted premises was the only space available. Thus, the genuine need for the premises has been established. Unfortunately, the High Court has missed these crucial aspects.

B 22. The appellant having established a reasonable requirement of the tenanted premises for own occupation, is entitled to succeed. Therefore, the appeals are allowed. The judgment of the learned Single Judge in the first appeal and confirmed in the intra-court appeal by the Division Bench, which is impugned in these appeals, is set aside. The judgment and decree of the trial court is restored. The respondent is granted a period of three months to surrender vacant possession.

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23. There shall be no order as to costs.

Nidhi Jain

Appeals allowed.