Karnataka High Court Smt. Lakshamma And Ors. vs B.P. Thirumala Setty And Ors. on 19 September, 2005 Equivalent citations: ILR 2005 KAR 5599 Author: M Chellur Bench: S Nayak, M Chellur ORDER Manjula Chellur, J. 1. The petitioner in HRRP 454/02 and 455/02 is none other than the tenant under the respondent landlord at premises No. 609, V. Main, (Sanchi Honnamma Road), Pipe Line, Srinagar, Banashankari I Stage, I Block, Bangalore-50. The entire premises consists of two non-residential and one residential portions. The petitioner is a tenant in respect of a non-residential premises taken on lease for the purpose of conducting tuition. The brief facts that led to filing of these revisions petitions are as under: 2. The respondent-landlord has instituted HRC Petition 10115/00 Under Section 21(1)(a) and (h) of the Karnataka Rent Control Act i.e. on the ground of tenant being a chronic defaulter and also for bonafide and reasonable occupation on the ground that his brother is no more and he has to provide accommodation to the wife and children of his brother. In the adjacent portion itself, the petitioner is living along with his wife. Earlier, HRC 437/94 was instituted against the very tenant wherein an application Under Section 29 of the Rent Control Act came to be filed. An order came to be passed directing the tenant to pay the arrears of rent. However, eviction petition came to be dismissed on 1-8-1998. The said petition was filed on the ground of requirement of the brother of the landlord. The present petition, according to the landlord, is required for the family of the brother who is no more. He intends to have the family of his brother near by him so that he would be able to look after them. The landlord is the only elder member in the family. In the present eviction petition, the rents are claimed from 1-7-1998 onwards. 3. According to the tenant, the present petition is nothing but an harassment in order to achieve the vindictive motive of the landlord to evict the petitioner herein on some ground or the other. 4. During the pendency of the eviction proceedings, Karnataka Rent Control Act, 1961 came to be repealed and Rent Act of 1999 was promulgated. In the very same proceedings, the landlord filed I.A. No. 6 under Section 31 of the Karnataka Rent Act of 1999 on the ground of being a senior citizen seeking possession of the premises with immediate effect. The tenant not only filed the objections to the said application but also filed applications under Section 42(6)(b) of the New Act seeking permission to contest the case. This was numbered as IA No. 8. IA No. 9 was also filed u/o 13 Rule 10, CPC read with Section 151 CPC to call form the entire records fro the file of Chief Judge, Small Causes Court, Bangalore. 5. IA No 6 filed by the landlord came to be allowed and IA Nos. 8 and 9 filed by the tenant were dismissed. Aggrieved by the same, the tenant has come up in HRRP 454/02 questioning the orders on IA No. 6. HRRP 455/02 is filed questioning the dismissal of IA No. 8. 6. The grounds raised by the petitioner in these two revision petitions are more or less the same. It is contended, as the proceedings were under the 1961 Act (Old Act), the respondent-landlord could not have maintained an application under Section 31(1)(c) of the New Act. Further, the dismissal of the applications filed by the petitioner is against the principles of natural justice as no opportunity was given to the petitioner to cross-examine the landlord to disprove the evidence

adduced by the landlord. This is quite contrary to the principle contemplated under Section 42 of the Rent Act of 1999. It is further contended when earlier HRC petition No. 437/94 on the ground of the requirement of the premises by the brother came to be dismissed, the trial Court ought not to have allowed the present petition as it is hit by principles of res judicata. None of the grounds raised by the present petitioner were considered by the Trial Court. The Court was wrong in allowing the application filed under Section 31(1)(c) of the New Act automatically, without following the procedure contemplated Under Section 42 of the Rent Act. The landlord ought to have amended his petition. 7. As against this, the learned Counsel for the respondent/landlord contended there was no need to file any application for the amendment of the grounds of eviction even if the eviction is sought on the ground available Under Section 31(1)(c) of the Act. In the eviction proceedings, the landlord had to establish that he was more than 65 years of age and the petition schedule property is required for his bonafide requirement i.e. to accommodate his brother's family, therefore, it is not hit by principles of res judicata as the ground of eviction is altogether different from the earlier eviction petition. He further contends Section 70(2)(b) of the New Act saves the proceedings under the Old Act and it has to proceed in accordance with the New Act. It is contended that under Section 31(1)(c), the only requirement is that the landlord must be more than 65 years of age. Therefore, the grounds urged in the earlier petition and the application filed by the landlord under Section 31(1)(c) of the Act, 1999 were considered properly by the Trial Court. According to him, there must be purposive interpretation of the New Act having regard to the savings clause under Section 70 of the New Act. He further contends the learned Trial Judge was not required to look into the objections filed by the tenant to the application under Section 31(1)(c) when once he filed affidavit or application under Section 42 of the Act. Hence, the Trial Court has rightly looked into the provisions of the Old Act and the New Act and has disposed of the matter in accordance with law. Therefore, he seeks dismissal of the above two petitions. HRRP 445/02 and 469/02 8. HRRP 445/02 and HRRP 469/02 are filed by tenant in HRC 92/96. In this case, respondent/landlord sought eviction of the revision petitioner on the grounds enumerated under Section 21(1)(a)(c)(h)(o) and (p) of the KRC Act of 1961, According to the landlord, the monthly rent is Rs. 700/-, but according to the tenant, it is only Rs. 500/- per month. It is further alleged without the consent of the landlord the tenant has erected a permanent platform by causing alterations in the petition schedule premises. One more ground of eviction was acquisition of alternative premises at J.P. Nagar which is occupied by the tenant exclusively for residential purpose converting the petition schedule premises to a non-residential one. The premises was also sought for bonafide use and occupation of the landlord. 9. The tenant appeared and denied the case of the landlord on all the grounds. It is further, contended that the premises was taken on lease exclusively for the purpose of preparing and selling sweets and savouries. 10. When the proceedings were at that stage, Karnataka Rent Control Act was repealed and Karnataka Rent Act of 1999 came into existence. Landlord filed an application Under Section 31(1)(a) of the New Act seeking

immediate possession of the premises by virtue of right conferred under the Act to a widow. According to the landlord, her husband died on 1-7-1979 and she has no shelter of her own, therefore, she requires the premises for her and her family occupation. To this application, the tenant filed objection stating the petition was not maintainable and nothing so far as facts was denied by the tenant. Ultimately, the Trial Curt allowed the application of the landlord under Section 31(1)(a) of the New Act. Aggrieved by the same, HRRP 445/02 is filed. 11. During the pendency of the same petition, respondent/tenant filed an application Under Section 2(3)(g) of the New Act contending that the petition schedule premises is non-residential premises measuring more than 14 sq.mtrs. Therefore, he sought for the dismissal of the petition on the ground of non-applicability of the New Act. This was contended by the landlord strenuously contending that the premises did not lose the character of residential nature. The learned Trial Judge, opining that there was an order already dated 18-10-2000 holding that the premises as residential, the application filed in IA No. 10 was not maintainable and dismissed IA No. 10. Aggrieved by the same, HRRP 469/02 is filed. 12. Learned Counsel for the petitioner contends the New Rent Act is not at all applicable to the premises in question because Section 31 introduced in the new Act would give rise to new cause of action and cannot be agitated in a pending petition. According to him, in a pending proceedings it was not necessary to seek leave of the Court to defend the interlocutory application filed Under Section 31 of the New Act by the landlord. The landlady had to file a separate eviction petition raising the ground contemplated under Section 31 of the Rent Act. She has not even abandoned the other causes of action under the original petition. There is implied leave granted under the New Act to contest the proceedings as objections were already filed and evidence was let in on both the sides. The effect of repeal of the Old Act has to be considered in the light of Section 6 of General Clauses Act. The right of the parties crystallised when the lis commenced prior to the repeal of the Old Act. 13. It was further contended though the premises is a residential building, it has been let out with the knowledge and consent by the landlord to use the same for non-residential/commercial purpose. This is admitted in the cross-examination of the landlady. Under the New Rent Act the small time merchants (tenants) using an area let out which is less than 14 square mtr are protected. But the tenants who use the premises either for non-residential purpose or commercial purpose whose area is more than 14 sq.mtrs have no protection under the Karnataka Rent Act. The landlord has to file a suit for eviction under common law i.e. Transfer of Property. Therefore, the present petition is not maintainable so far as the present tenant is concerned as it abates against her. 14. As against this the learned Counsel for the respondent/landlady contended that the petitioner herein has not challenged I.A. filed by the landlady under Section 31(1)(a) of the Old Act. He relies upon Section 3(a) of the New Act to consider the premises only as a residential premises and not a non-residential used for commercial purpose, therefore, the measurement of the premises does not come in the way of the present proceedings. According to him, the I.A. Under Section 31(1)(a) came to be filed only to see that the

main relief is not frustrated. Therefore, as on the date of the New Act coming into force, the proceedings pending before the Trial Court was required to be disposed of in accordance with the New K.R.C. Act of 1999, therefore, as the material facts were available in the original petition itself, without I.A. the Court could have given the benefit of Section 31(1)(a) to the landlady. No application came to be filed seeking leave of the Court to contest the matter. 15. He further contends the present petition is not maintainable when the admitted rents are not paid Section 45 of K.R.C. Act applicable to the proceedings Under Section 31(1)(c) as well. With these arguments, he sought for dismissal of the revision petitions. HRRP No. 473/02 16. The petitioner in this case was a tenant in Trial Court in HRC 10207/2000. Eviction petition came to be filed on the grounds of chronic default in payment of rents, personal occupation and also that the landlord is a government servant who would retire on 31-3-2000 and requires the premises to accommodate his son who is intending to marry and also himself. This was contested by the tenant on number of grounds. 17. During the pendency of the proceedings, an application Under Section 30 of the New Act came to be filed contending the petitioner being a State Government employee has retired on 31-3-2000 and therefore, he requires, premises for his bonafide use and occupation and seeks immediate possession. The respondent contested this application. However, the Trial Court allowed the said application. Aggrieved by the said order on IA NO. 3, the present HRRP No. 473/02 is filed. 18. The argument for the Learned Counsel for the petitioner is, in the present case as the landlord is prosecuting an application under Section 30 of the Rent Act, what benefits would accrue to the landlords under Section 27 of the Rent Act of 1999 will not be available to the landlord. 19. According to the Learned Counsel for the respondent/ landlord, subsequent to December 2003, the rents are not paid, therefore, under Section 45 of the New Act, the tenant should not be permitted to contest the proceedings. 20. As against this, the Learned Counsel for the petitioner submits the rent could not be deposited on account of dispute Under Section 45(3) of the Act with regard to the quantum of the amount of rent and secondly, such benefit under Section 45 would be available to the landlord only if he is prosecuting the application Under Section 27 of the New Act or where he is prosecuting the revision arising out of an application Under Section 27 of the New Act. 21. Rule 33 of the 2001 Rules is relied upon contending where the procedure is silent or not specifically provided in the Act, the Court shall as far as possible would be guided by the procedure prescribed in Civil Procedure Code. With these arguments the learned Counsel for the petitioner sought for allowing the revision petition. HRRP 438/02 22. This application is filed by the tenant questioning the order of the Learned Trial Judge in HRC 10137/00. In this case, originally, eviction petition came to be filed Under Section 21(1)(h) of KRC Act of 1961 on the ground of bonafide personal occupation of the landlady for residence as there is paucity of accommodation in the premises occupied by the landlady. She also pleads she is aged and a heart patient, therefore, she requires constant help and assistance and the same is extended by her second daughter Sunitha, therefore, she desires to accommodate the family of her daughter Sunitha. This

is contested by the tenant. During the pendency of the proceedings, Karnataka Rent Act of 1999 came into existence and having regard to Section 70(2)(b) of the New Act, an application Under Section 31(1)(a) of the New Act came to be filed on the ground that the landlady is a widow and the premises is required for her use and occupation. The learned Trial Judge allowed the same holding that the "B" petition schedule premises shown in the plan annexed is required by a widow for her immediate occupation. Aggrieved by the same, the present HRRP No. 438/02 is filed. 23. It is contended by the petitioner herein that the landlady was claiming the privilege under Section 31 of the Rent Act as a widow, but on her death, the relief claimed by her becomes infrustuous and it does not survive for consideration. This subsequent event has to be taken into consideration by the Court as the revision is a continuation of the original proceedings. The legal representatives of the original landlady are not entitled for the benefit available to original Landlady under Section 3 (1)(a) of the K.R.C. Act. Therefore, they have to file a fresh petition. It is further contended so far as arrears of rent is concerned, original landlady has not claimed arrears in the eviction petition. The rate of rent was Rs. 1300/- per month and as on the date of presentation of revision petition, there were no arrears. On facts, it is contended, the second daughter along with her family is staying at Door No. 128 and she cannot insist her need in the above proceedings as the eviction was sought under Section 31(1)(a) of the New Act. The second daughter is not at all a dependant on the landlady. 24. As against this, the Learned Counsel for the respondent contends cause of action survives to L.Rs and as required Under Section 42(6)(b), the petitioner herein ought to have sought leave of the Court to contest the matter. No application came to be filed in this regard. Subsequent to the disposal of the matter under Section 31(1)(a), the landlady died and the L.Rs are brought on record during the pendency of the revision petition. I.A. came to be filed for non-payment of rents during the pendency of proceeding. According to the Learned Counsel, Section 45 would apply to eviction petition on the grounds available under 27(2) of the New Act, Sections 28 to 31 and Section 45 must be read in conjunction with Section 27(2)(r). When once there is non-compliance of conditions under Section 45, the petitioners herein are not entitled to contest the matter. With these averments, he sought for dismissal of the petition. 25. The above revision petitions are specifically assigned to this Bench. Such an order came to be passed as the Learned Single Judge of this Court made a reference in HRRP 454/02, as under: "Heard. 2. This revision petition is filed by the respondent-tenant in H.R.C. No. 10115/2000 on the file of the learned 15th Additional Small Causes Judge, Bangalore allowing IA No. 6 filed by the respondent-landlord and rejecting IA Nos. 8 and 9 filed by the petitioner before it. 3. The brief facts of the case are that the respondent-landlord who is alleged to be aged about 60 years has filed the application in the year 2000 claiming possession of the schedule premises in the occupation of the petitioner herein under Section 21(1)(a) and (h) of the Karnataka Rent Control Act, 1961, hereinafter referred to as old Act. After coming into force of the Karnataka Rent Control Act, 1999, hereinafter referred to as the New Act, he made an application purported to be under Section 31(c) of the New Act.

Under the said provision, certain categories of persons have been given special considerations for securing an order of eviction. This is apart from the usual provision under Section 27 of the New Act. Under Section 70 of the New Act proceedings which could be continued under the new Act has to be continued and it does not abate and it is not in dispute that the present eviction petition filed by the respondent did not abate. 4. Without withdrawing the pending HRC case filed under the old Act, the respondent-landlord has filed the application under Section 31(1)(c) of the New Act claiming possession of the schedule premises on the ground that he is more than 72 years old and he requires support from his brother-in-law and his wife who will look after him in his old age and prayed for an order of eviction. It is also pointed out that Explanation (1) to Section 27 of the New Act provides that when a Landlord files an application under Sections 28 to 31 supported by an affidavit and submits that he requires the premises for occupation for himself or for any other members of his family who were dependent on him, the Court shall presume that the preises are so required. It is further submitted that under Explanation (1) to Section 28 of the New Act, immediate possession could be granted on the expiry of 60 days from the date of an order of eviction and when the landlord exercised the right of recovery conferred on him by those Sections including Section 31. Further, the landlord is bound to refund to the tenant such amount of the rent payable for the unexpired portion of the lease. Under Section 42(6)(b) to (d) of the Act, it is provided that when the tenant on whom the summons is duly served in the ordinary way or by Registered post, he is not entitled to contest the proceedings unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains the leave of the Court and the Court shall reject the application for permission to contest the proceedings if no ground is made out by the tenant to contest the proceedings and further if an order is passed denying an opportunity to the tenant to contest the proceedings, the said order could be reviewed by the same Court under Section 42(e) within 10 days from such denial. 5. Now, the Lower Court has passed an order on the application filed by the respondent-landlord purported to be under Section 31(c) of the New Act not giving any opportunity to the petitioner to contest the proceedings. 6. In my view, the above mentioned provisions of the Act requires to be considered by the Division Bench, since several such matters are appearing before the Court and different views are taken by the Trial Judges on similar applications. Further, the question whether a proceeding continued under Section 70(c) of the New Act could be converted into one under Section 31(c) of the New Act has also to be considered. I, therefore, deem it fit to refer the matter to the Division Bench under Section 9 of the Karnataka Rent Control Act. 7. Accordingly, this revision petition is referred to the Division Bench. Office is directed to take necessary orders from the Hon'ble Chief Justice and post the matter before the Division Bench. There shall be an order of stay of the impugned order and the learned Counsel appearing for the respondent is at liberty to seek any further orders from the Division Bench". 26. While making the reference order, the learned Single Judge also observed that the learned Counsel appearing for the parties are at liberty to seek any further

orders from the Division Bench. Therefore, the matters were argued before the Division Bench even on merits apart from the referred questions of law. 27. Having regard to the arguments referred to above, both on behalf of the landlords and the tenant, we would like to take up the questions of controversy, one by one. Section 70 of the New Rent Act reads as under: Repeal and Savings (1) The Karnataka Rent Control Act, 1961 (Karnataka Act 32 of 1961) is hereby repealed. (2) Notwithstanding such repeal and subject o the provision of Section 69: (a) all proceedings in execution of any decree or order passed under the replaced Act, and pending at the commencement of this Act, in any Court shall be continued and disposed off by such Court as if the said enactment had not been repealed; (b) all cases and proceedings other than those referred to in Clause (a) pending at the commencement of this Act before the controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or other authority, as the case may be in respect of the premises to which this Act applies shall be continued and disposed off by such Controller, Deputy Commissioner, Divisional Commissioner, Court, District Judge or the High Court or Other authority in accordance with the provisions of this Act. (c) all other cases and proceedings pending in respect of promises to which this Act does not apply shall as from the date of commencement of the Act stand abated. (3) Except as otherwise provided in Section 69 and in Sub-section (2) of this section, provisions of Section 6 of the Karnataka General Clauses Act, 1899 (Karnataka Act III of 1899) shall so far as may be applicable in respect of repeal of the said enactment, and Sections 8 and 24 of the said Act shall be applicable as if the said enactment had been repealed and re-enacted by this Act. 28. Under the New Rent Act, it has been clearly expressed in certain and definite terms under Clause (b) of Sub-Section of Section 70 that all the matters pending as on the date of coming into force of the Act, shall be continued and disposed of in accordance with the present Act. Special Category land-lords and the procedure 29. In all the proceeding mentioned above, when the matters were still pending before the court of first instance (Trial Court), the Old Act came to be repealed by introducing the Rent Act of 1999. Therefore, undoubtly, one has to apply the provisions of the New Rent Act of 1999 to all above matters. 30. Then, we have to see whether the landlords were required either to withdraw the petitions and present fresh petitions as the special category persons or they could bring to the notice of the Court the grounds available to them under the New Act. As could be seen from the averments in all the petitions, definitely, the ground of personnel occupation of the landlord is sought. Under the Special Category, the Government Servant, either Central or State, a Widow, a handicapped person and a Senior Citizen would get benefit of the presumption in their favour regarding the requirement by virtue of Explanation I of Section 27(2)(r) of the Act. Under the New Act, the landlords are trying to tell the Court that they are entitled for eviction not only under the general ground of eviction i.e. personal requirement of the landlord Under Section 27(2)(r) of the New Act, (old Act 21(1)(h)), but as persons falling under the special category, either Under Section 30 or 31 of the New Act and they are entitled to recover immediate possession of their

respective premises. 31. It would be convenient to make a comparative study of the ground of eviction on the basis of "requirement" of the landlord under general grounds, i.e. Section 27(2)(r) of the New Act and the requirement of "classified landlords" under Section 30 and 31(a)(b)(c). Section 27(2)(r) of the 30. Right to recover immediate Karnataka Rent Act, 1999 possession of premises to accrue to employee of State or Central Government: 27. Protection of tenants (1) Where the landlord is a against eviction: retired employee of the State (1) Notwithstanding anything or Central Government and to the contrary contained the premises let out by him, in any law or contract, no his spouse or his dependent order or decree for the son or daughter are required recovery of possession of any for his own use, such employee premises shall be made by may, within one year from the Court, District Judge the date of his retirement or or High Court in favour of the within a period of one year landlord against a tenant, from the date of save as provided in commencement of this Act, Sub-section (2). whichever is later, (2) The Court may, on an apply to the Court for application made to it in recovering immediate the prescribed manner, possession of such premises. Made an order for the (2) Where the landlord is an recovery of possession employee of the State or of the premises on one or Central Government and has more of the following grounds a period of less than one only, namely: year proceeding the date of his a) To q)... retirement and the premises (r) that, the premises let are let out by him, his spouse required, whether in the or his dependent son or same form or after reconstruction daughter are required by him or re-building, by the landlord for his own use after his for occupation for himself retirement, he may, at any time or for any member of his within a period of one year family if he is the owner before the date of his thereof, or for any person retirement, apply to the Court for whose benefit the for recovering immediate premises are held and that possession of such premises. the landlord or such person (3) Where the landlord, his has no other reasonably spouse or his dependent suitable accommodation: son or daughter referred Provided that where the to in Sub-section (1) or landlord has acquired the Sub-section (2) has let out premises by transfer, no more than one premises, it application for the recovery shall be open to him of possession of such premises his spouse or his dependent shall lie under this clause son or daughter, as the unless a period of one year case may be to make an has elapsed from the date of application under that the acquisition. Sub-section in respect of Explanation-1: For the purpose only one of the premises of this clause and Sections chosen by him. 28 to 31: 31. Right to recover (i) where the landlord in immediate possession of his application supported premises to accrue to a by an affidavit submits that widow: the premises are required by him for occupation 1) Whether the landlord is: for himself or for any (a) a widow and the premises member of his family let out by her, or by her dependent on him, the husband; Court shall presume (b) a handicapped person that the premises are so and the premises let out by required; him; (ii) premises let for a (c) a person who is of the particular use may be age of sixty-five years or required by the landlord more and the premises let for different use if such out by him, is required for use is permissible under use by her or him or for her law. or his family or for any one for ordinarily

living with her or him for use, she or he may apply to the Court for recovery of immediate possession of such premises.

32. With this comparison, we have to see whether the Trial Court was right in considering the plea of the landlords as persons falling under Special Category, by granting the relief of recovery of immediate possession to the landlords.

33. In this regard, we have referred to the following decisions as they deal with circumstances akin to the facts of the present petitions:

V. Rajaswari v. Bombay Tyres International Limited, 1995 Supp (3) SCC 172

J. Chatterjee v. Mohinder Kaur Uppal and Anr.,

Umesh Verma v. Jai devi Bhandari and Anr.,

EMC Steel Limited, Calcutta v. Union of India and Anr. with Smt. Santosh Sethi v. Indian Produce Export Corporation and Anr.,

Surjit Singh Kalra v. Union of India and Anr. with Mahendra Raj v. Union of India and Colonel Ashoka Puri,

34. All the above decisions refer to Delhi Rent Control Act.

Section 14(1)(e) of the said Act deals with the grounds of bonafide need of the landlord (general ground). During the pendency of the proceedings for eviction of the tenant on the ground of bona fide need, several sections came to be introduced in the said Act, i.e. Sec 14-B to 14-D creating special benefit to different category of persons like widow, employees of Central Government and Delhi Administration, etc. who could be termed as vulnerable and needy section of the society. Section 25-B was introduced as a special procedure for disposal of the applications seeking eviction for recovery of immediate possession by classified persons. Several questions came to be raised in the above cases. It was HELD, subsequent change in the legislation would accrue to the benefit of pending proceedings depending upon the facts and circumstances of the case. The Apex Court further held as long as the landlady or landlord establishes that she/he belongs to "that" Special category of persons and the fact that premises is required for her/his own residence, the tenant practically has no defence whatsoever. In that context, it was held the allegation of demand for enhanced rent or who is the tenant out of the respondents would not militate against the plea of requirement of the landlord/landlady claiming benefit under the special category. By introducing special procedure for disposal of such applications, the intention of legislature was to serve the social need to assist the classified persons. The very procedure Under Section 25-B of the Act would contemplate heavy burden on the tenant to counter the plea of the landlord by filing an affidavit. The tenant has to plead such facts which if believed will

sufficiently disprove the contention of the landlord claiming possession of the property under the guise of personal occupation coming under classified persons. Therefore, it is incumbent upon the tenant to raise substantial grounds in the affidavit denying the need of classified persons. He should not be encouraged to drag on the proceedings unnecessarily. In this context, balance has to be maintained between general object of the statute which is to provide protection to tenant against arbitrary eviction by the landlords and the assistance to be rendered to the classified landlords. It is also clear that the tenant cannot contest the applications filed by the classified landlords on the general defence raised in the eviction petitions in the normal course. 35. From the reading of the above decisions, it is very clear that by virtue of repeal of the Old Act and introducing of Karnataka Rent Act of 1999, the petitions filed under the Old Act per se do not become ineffective. Sub-section 6 of Section 42 of the New Act is enacted on the similar lines of Section 25-B of the Delhi Rent Control Act. The Court only has to see whether the subsequent facts including the new legislation are relevant in adjudication of the nature and character of the lis between the parties, at all stages of the proceeding and especially when the Court of first instance has still jurisdiction over the matter i.e. to adjudicate on merits. Under Section 27(2)(r) of the New Act which is equivalent to Section (21)(1)(h) of the Old Act, the Court has to see whether the requirement of the landlord is substantiated or not, it being a ground of eviction of a general nature. 36. Even under Section 30 or 31 of the New Act, the Court requires the landlord or landlady, as the case may be, to substantiate their contention that they fall under special Categorised persons i.e. either as a Senior Citizen or retried government servant (Central or state) or physically handicapped person or a widow and further that the premises is required or needed for his/her own residence or any one who is depending on the landlord/landlady. It is seen the concept of introducing recovery of immediate possession of premises pertaining to certain category of persons is enacted with purpose behind it. The concept seems to be that the persons falling the under Special Category should not be at the mercy of procedural delay. Provisions of Section 28 to 31 of the Act, is a beneficial legislation conferring rights of immediate possession on certain group of persons in recognition of the peculiar situation they are placed in. Because of this factor only, even benefit of presumption of their requirement, is made available to such group of persons. The gamut of the entire new Statute has to be looked in its entirety which provides measures and remedies taking into consideration the precarious situation of both landlords and also the tenants. Hence, one can undoubtedly say that the proceedings which were pending as on the date of introduction of the present Rent Act, would definitely get attracted to the provisions of the New Act and the Court has to decide those petitions only in accordance with the provisions of the New Act. Whether the petitioner/landlord was a retired Government Servant, or a senior citizen or a widow must be well within the knowledge of the tenant who is in occupation of the premises belonging to such landlord. The moment, the applicability of Sections between 28 to 31 of the New Act to the pending matters is brought to the notice of the Court, the Court shall dispose of such matters

in accordance with the New Act. By what method such facts were brought to the notice of the Court is not of much relevance. In the present petitions, the said facts were brought on record by way of affidavit of landlords apart from disclosing them in the original eviction petition. There is no procedural defect as such committed by the Court below in entertaining those matters under the New Act. On the other hand, in view of the savings clause under the New Act, the Trial Court has rightly considered the Special ground raised by each of the landlord/landlady. 37. It is not in dispute that during the pendency of the eviction petitions filed under Repealed Act of 1961, the Rent Act of 1999 came into force. It is also not in dispute all the landlords/petitioners filed affidavits under one or the other provisions of the New Act where relief is immediate and quicker, as Special category persons. In the above petitions, either under Section-30 or Section 31 of the New Act, affidavits came to be filed by the landlords seeking relief under a species of persons. It is not in much dispute that in certain cases the tenants filed applications Under Section 42-6(b) seeking leave of the Court to contest the application for eviction and in other matters no such applications came to be filed. Then, one has to see whether the tenant was required to seek leave of the Court to contest the special grounds raised by the landlord in support of the eviction petitions. Under the new Act Section 42(6)(a) to (e) deals with such procedure which reads as under: 42. Procedure to be followed by the Court: .... (6)(a) every application by a landlord for the recovery of possession of any premises on the ground specified in Clauses (f), (h) or (n) of Sub-section (2) of Section 27, or under Section 30, 31 or 37 shall be dealt with in accordance with the procedure specified in this sub-section. b) the tenant on whom the summons is duly served whether in the ordinary way or by registered post in the prescribed form shall not contests the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave of the Court as hereinafter provided and in default of his appearance in pursuance of the summons or of obtaining such leave, the statement made by the landlord in his application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid. (a) the Court shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises. (b) where leave is granted to the tenant to contest the application, the Court shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day-today hearing and dispose off the application within thirty days of commencement of such hearing. Failing such commencement of hearing or disposal of applications within such time, the Court shall make a record of its reasons therefor. c) Where the leave to contest under Clause (c) is denied to the tenant, he may file an application for review before the Court within ten days of such denial and the Court shall endeavour to dispose of such application within seven days of its filing. 38. Learned Counsel for the petitioner/tenants contended that as the tenants were prosecuting the eviction petitions filed under the Old Act effectively, denying

the grounds of eviction by filing statement of objections and leading evidence, it would have been only a formality to file such an affidavit seeking leave of the Court to permit them to contest the eviction petition of the landlord as a special category person. 39. In some of the HRC petitions, such affidavit seeking leave was filed but however, they were rejected. In other petitions, i.e. HRRP 445/02, HRRP 469/02 and 438/02, no such affidavit came to be filed. 40. As against this, learned Counsel for the landlords contend that by virtue of providing benefit of presumption regarding the requirement of Special Category Landlord, it was incumbent upon the tenant to seek the leave of the Court to contest such ground of eviction. 41. The following decisions relied by the parties on the above aspect are perused:

6. Precision Steel and Engineering Works and Anr. v. Prem Deva Niranjan Deva Taya,

7. P. Suryanarayana (D) By LRs v. K.S. Muddugowramma, 2004 SAR (Civil) 286

8. Smt. K.S. Muddugowramma v. P. Suryanarayana (Dead By LRS) and Ors., 2003 AIR Karnataka HCR 354

9. Jijar Singh v. Smt. Mohinder Kaur,

10. Mannalal Khetan Etc. Etc. v. Kedar Nath Khetan and Ors. Etc., Mannalal Khetah Etc. etc. v. Kedar Nath Khetan and Ors. etc.,

11. The above decisions again deal with Delhi Rent Control Act and also Karnataka Rent Act of 1999 (New Act). The principles laid down in the above decisions are to the effect that the jurisdiction of the Controller is confined to consider the affidavit of the tenant and rejoinder application of the landlord, if any, while entertaining eviction petitions filed by classified persons. In other words, it was HELD, in view of the restrictions conferred on the power of granting leave, if does not contemplate some kind of regular trial. If a question arises whether the oath or affirmation in the affidavit is said to be of a statement made in the application as well as the affidavit or only of the statement made in the affidavit, ultimately, what exactly was the language of the oath embodied in the affidavit would be the relevant consideration while granting the leave. When a statute requires that something shall be done or done in a particular manner or form, without expressly declaring what shall be consequence of non-compliance, the question often arises:: what intention is to be attributed by inference to the legislature ? Where indeed the whole aim and object of the legislature would be plainly defeated if the command to do a thing in a particular manner, did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention of the legislature. It is a question of construction in each case whether the legislature intended the person to do a particular act in a particular manner. While comparing

the special procedure contemplated Under Section 25-B of the Delhi Rent Control Act with that of the procedure Under Section 37(1) of the said Act pertaining to general grounds of eviction, the Apex Court in the case of Precision Steel and Engineering Works and Anr. v. Prem Deva Niranjan Deva Taya (Supra) had an occasion to discuss at length how the court should apply its mind to the issue, whenever a social legislation is made keeping in the mind the sensitive position of certain group of persons. It would be appropriate to narrate the relevant paragraphs of the said judgment, which reads as under: PARA 20- Before concluding on this point conceding that a summary procedure has been devised so that the bans; of law Courts and legal procedure as at present in vogue manifestly showing regard for the truth being the last item on the list of priorities and, therefore, the tenant should not necessarily be permitted to prolong the litigation and cause: hardship to the landlord who is seeking possession on the ground of personal requirement by raising untenable and frivolous defence where speedy decision is desirable in the interest of society, does not imply that ignoring the mandate of law, the Controller should hold trial at a stage not prescribed by the statute. Inability to make good a defence does not render every defence either frivolous or vexatious. In a civil proceeding the Courts decide on the preponderance of probabilities and it may be that while evaluating the evidence the Court may lean one way or the other but the one rejected does not necessarily become vexatious or frivolous. The last two are positive concepts and have to be specifically found and it is not an end product of failure to offer convincing proof because sometimes a party may fail to prove the fact because the other side can so doctor or articulate the facts that the proof may not be easily available. Coupled with this is the fact that the justice delivery system in this country worshipped and ardently eulogized is an adversary system the basic postulate of which was noticed by this Court in Sangram Singh v. Election Tribunal, Kotah, as under: "Now a Code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done on both sides) lost the very means designed for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and properly should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, In the light of that principle." Add to this the harshness of procedure

prescribed under Section 25B. The Controller is the final arbiter of facts. Once leave is refused, no appeal is provided against the order refusing leave (see Sub-section (8) of Section 25B). A revision petition may be filed to the High Court but reaslistically no one should be in doubt about the narrow constricted jurisdiction of the High Court while interfering with findings of facts in exercise of revisional jurisdiction. Compared to the normal procedure certainly the procedure is a harsh one and that considerably adds to the responsibility of the Controller at the time of deciding the application for leave to contest the petition. Wisdom, sagacity and the consequence of refussal to grant leave coupled with limited scope of enquiry being confined to facts disclosed in affidavit of the tenant should guide the approach of the Controller. PARA 21: Since Sangran Singh the ever-widening horizon of fair procedure while rendering administrative decisions set out in Maneka Gandhi should guide the approach of the Court while examining the encroachment, fetters and restrictions in the procedure normally followed in Courts. Speedy trial is the demand of the day but in the name of speedy trial a landlord whose right of re-entry was sought to he fettered by a welfare legislation with its social orientation in favour of class of people unable to have its own roof over the head-the tenant should not be exposed to the vagaries of augmenting that right which even when Rent Restriction Act was not in force had to be enforced through the machinery of law with normal trial and appeal. PARA 22: What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant leave because the statute says 'on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bonafide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself, that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in the eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent

called a constituted attorney; these and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.

12. When the Rent Act of 1999 came into force, the learned Single Judge of this Court had an occasion to deal with similar issue pertaining to the claim of a widow when the proceedings were at the stage of revision Under Section 115, CPC. Smt. K.S. Muddugowramma v. P. Suryanarayana (Dead) By L.R.S and Ors. (Supra). In this case, the landlady came up with a case that she has three sons and the accommodation available was not sufficient and so also, there was no privacy for the members of the family. She was also proposing to perform the marriage of her second son. However, the Courts below did not agree with the factum of performing the marriage of second son and other contentions. By the time the matter reached this Court, the Rent Control Act was repealed and Rent Act came into force. It was HELD the Act providing comprehensive remedy and imparts operational speed and modernises the whole law for the good of the community, may be as between two hardships, i.e. that of the tenant and the landlord, the legislature has made the choice and the Court implements the law based on the policy decision of the legislature. While discussing the rights of the landlord under eviction petition of a general nature, Section 27(2)(r) and Section 31 of the Act, the Court further HELD that the social setting, the nature of the subject matter and above all, the legislative diction which has been deliberately designed have narrowed down the scope for opening the door to any defence based on bonafides or hardship. That being the position in law, the learned Judge held under the facts of the said case, the claim of the petitioner could not be denied at all. As a matter of fact, this decision of this Court was challenged before the Apex Court.

13. The Apex Court in the case of P. Suryanarayana (D) BY LRS v. K.S. Muddugowramma (Supra): PARA-6: So far as the applicability of the provisions of the 1999 Act is concerned, no fault can be found with the view taken by the High Court that the provisions of the 1999 Act apply to pending civil revisions. Section 70 of the 1999 Act repeals the 1961 Act, Clause (b) of Sub-section (2) of Section 70 provides that all cases and proceedings other than those referred to in Clause (a) and pending at the commencement of the 1999 Act in respect of the premises to which the 1999 Act is applicable, shall be continued and disposed of in accordance with the provisions of the 1999 Act. It is not disputed that the scheduled premises, which are in the occupation of the tenant-appellants and form subject matter of these proceedings, are those to which the 1999 Act is applicable. The applicability of Section 70(2)(b) of the 1999 Act is clearly attracted and the High Court was justified in taking notice of the provisions contained in the 1999 Act and deciding the revision pending before it consistently with and keeping in view the provisions of the 1999 Act. PARA 7-Indeed, the provisions of the 1999 Act, especially the provisions

relating to eviction on the ground of bonafide requirement, have a material bearing on the case and the proceedings forming the subject matter of the present appeal. Under the 1961 Act, the relevant ground for eviction of the tenant was contained in Clause (h) of Sub-section (1) of Section 21 which provided for an order for the recovery of possession of premises being made on the ground that the premises are reasonably and bonafide required by the landlord for occupation by himself and so on. However, Sub-section (4) of Section 21 provided that a ground for eviction under Clause (h) above said, in spite of having been made out, yet decree for eviction could not be passed if the Court was satisfied, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord, that a greater hardship would be caused to the tenant by passing the decree than by refusing to pass it. A partial eviction was also permissible consistently with the finding on the question of hardship. Under the 1999 Act, the relevant ground for eviction as contemplated by Clause (r) of Sub-section (2) of Section 27 is that the premises let are required whether in the same form or after reconstruction or re-building by the landlord for occupation for himself or for any member of his family and so on and that the landlord has no other reasonably suitable accommodation to satisfy the said requirement. The concept of comparative hardhsip has been given up and instead Sub-section (3) of Section 27 now provides that Court may, on a ground for eviction under Clause (r) above said having been made out, allow eviction from only a part of the premises if the landlord is agreeable to the same. A new provision has been enacted vide Section 31 of the 1999 Act which provides that if the landlady be a widow and the premises were let out by her or by her husband and the tenanted premises are required for use by her and for her family member or for any one ordinarily living with her she may apply to the Court for recovery of immediate possession of such premises. PARA-8: Explanation (1) appended to Clause (r), Sub-section (2) of Section 27 of the 1999 Act provides, inter alia; Where the landlord in his application supported by an affidavit submits that the premises are required by him for occupation for himself or for any member of his family dependent on him, the Court shall presume that the premises are so required. Another provision enacted by the same Explanation is that the premises let for a particular use may be required by the landlord for a different use if such use is permissible under law. The rules enacted by the abovesaid Explanation are available to be invoked not only for the purpose of Section 27(2)(r) but also for Section 31, the two provisions with which we are concerned as relevant for the purpose of the present case. We have already noted hereinabove that the plea of availability of ground under Section 31 in addition to the one already pleaded and tried by the Rent Controller, was specifically raised by the respondent by way of an amendment in the pleadings and the requisite affidavit making out the ground under Section 31 was also filed. The tenant-appellants had full opportunity of meeting the case which was pleaded by the respondent-

landlady by way of subsequent event based on the enactment of the 1999 Act. PARA 9: In view of the provisions of the new Act having been introduced during the pendency of the revision, the High Court heard the learned Counsel for the parties and gave a fresh look to the relevant facts in the light of the evidence and material available on record and arrived at a finding that ground for eviction under Section 27(2)(r) and Section 31 of the 1999 Act were both made out. PARA 10: The learned Counsel for the appellants has submitted that the High Court has proceeded to decide the case solely on the basis of the presumptions enacted by the 1999 Act in favour of the landlord and has not dealt with other relevant facts and material available on record. It was also submitted by him that in view of the jurisdiction vesting in the High Court being one of revision under Section 115 of the Code of Civil Procedure, the High Court was not justified in upturning the finding of fact arrived at concurrently by the two Courts below. We do not find merit in any of the two submissions so made. The presumption enacted by Explanation-I (i) appended to Clause (r) of Sub-section (2) of Section 27 of the Act is mandatory and the provision which speaks-"the Court shall presume that the premises are so required." The presumption has to be drawn; of course the tenant may rebut the presumption. The mandatory presumption enacted by the 1999 Act shall have the effect of shifting the burden of proof, while the landlord may rest on the presumption, it will be for the tenant to rebut the same."

14. Under Sections 28 to 31 of the new Act to recover the immediate possession of premises belonging to special category persons mentioned therein a right is conferred upon them. By virtue of such special nature of the benefit, the right created for the landlord narrows the scope of defence by tenant. But, however, the tenant has a right to raise a defence in such a situation that the applicant is not a landlord who comes under the special category enumerated under Sections 28 to 31 or that the requirement of the premises is not for the use of the landlord or his family. As long as the requirement under Sections 30 or 31 of the present Act are satisfied, because of the special protection to certain persons categorised under Sections 28 to 31 of the Act, special procedure is made to serve the purpose expeditiously of such special category persons. In that situation the scope of defence by the tenant is very limited. Whether the leave to defend could be granted or not to a tenant will always depend upon the facts and circumstances of each case which could be gathered from the contents of eviction petition filed by the landlord and so also the affidavit filed by the tenant seeking leave to contest the eviction petition. As a matter of fact, one cannot dictate any definite or straight jacket formula for deciding such question. The Court should always remember the objective of the Statue conferring such benefits to the special category of persons, therefore, they cannot be frustrated or defeated by raising untenable or irrelevant defence by the tenant. One should not allow the proceedings to be dragged on

unnecessarily. Unless the tenant makes out a substantial defence in the affidavit seeking leave of the Court to contest the matter, such leave should not be granted.

15. As a matter of fact, the very reading of the provisions of Section 42 Subsection 6 of the Act would indicate that. Unless, the tenant seeks leave to contest the matter with substantial defence, the presumption that would arise in favour of the landlord falling under the special group of persons enumerated under the above sections would automatically require the Court to allow the eviction petition. The seeking of leave of the Court to contest the application in such circumstance is nothing but mandatory. The very incorporation of the above provision requiring the tenant to seek the permission of the Court to contest the matter would go to show frivolous grounds of defence should be curbed/discouraged. It also implies that the requirement of the landlord narrated in the eviction petition should be deemed to have been accepted by the tenant unless such permission to contest is sought and secured by the tenant. Applicability of Section 45 of the Rent Act of 1999

16. Then coming to the question of deposit of rents, both the counsel for the landlords as well as tenants relied upon several judgments of the Supreme Court and High Courts. In HRRP No. 445/ 2002, 469/2002 438/2002 and 473/2002 the contention of the landlord is that the revision petitions deserve to be rejected for not depositing or paying the rent during the pendency of the proceedings for eviction and also for not depositing arrears at the time of institution of the revision petition.

17. The learned Counsel for the parties relied on the following decisions and the same are perused: P.R. Deshpande v. Maruti Balaram Haibatti, ILR 1999 Kar. 623 N.S. Mahmad Jamalia Beevi v. D.N. Shah, G. Doreswamy Naidu v. B.N. Path and Ors., 2000 (4) Kar LJ 322 Muralidhara v. B. Re. Seshadri and Anr., 1999 (5) Kar LJ 330 Mariyam Begum v. Basheerunnisa Begum and Ors., N.D. Thandani (Dead) By Lrs v. Arnavaz Ruston Printer and Anr., Ramachandrappa v. Nagarathna Bai, N.T. Bharathi v. Hotel Olympia, 1990 SC (Supplement) SCC 213 Masthan v. Sirajuddin and Ors., 2002 AIR KANT H.C.R. 115

18. They deal with Karnataka Rent Control Act and the Rent Act of other States. The gist of the above cases is whenever the tenant was required to prefer a revision or to prosecute the revision, unless until his revision petition is accompanied by the either payment or deposit of "all the arrears of rent due" upto the date of payment, his revision petition will not be maintainable. He cannot come out with an excuse that he did not make the deposit along with the filing of revision petition for want of an order from the Court because the statute mandates such payment or deposit by the tenant. It is the boundant duty of the tenant to pay the rent to the landlord regularly and in case of not establishing sufficient cause by

him why he could not pay or deposit the rent as ordered by the Court, the High Court should not grant time to deposit the rent. Therefore, it is an obligation on the tenant to pay the rent regularly as the same is not payable at his option. If a rule prescribes notifying the landlord either of the deposit or of the steps being taken to make such deposit, it is incumbent upon the tenant to notify the landlord. Failure of such notification would go against the tenant. The tenant must be careful whenever there is an order to deposit or pay all the arrears of rent and also regular payment of future rents that accrue from time to time. Any lapse on the part of the tenant in complying with such directions, without sufficient cause, would debar him from even contesting the eviction petition. It is further held, the Courts cannot treat the payment made at irregular intervals as sufficient compliance. If permission of the Court is taken for depositing the arrears of rent, the Court should consider the procedure and time consumed to make such deposit. In that situation, the date of deposit should relate back to the date of filing as the request for such deposit was made while presenting the revision petition.

19. Coming to the facts of the cases on hand, though originally the landlords before the Trial Court initiated proceedings under one or the other ground of Section 21(1) of 1991 Act, by virtue of the repeal of the old Act with the introduction of new Rent Act of 1999, these proceedings would get attracted to the grounds of eviction enumerated under Section 27(2) of the new Act. During the pendency of the proceedings evidence of both the parties also came to be recorded. At that point of time the new Act came into force. Then, the landlords chose to seek immediate possession of the premises claiming benefit under the new Act conferred upon certain class of landlords. Those grounds of eviction came to be allowed. Now the Court has to see whether the benefit which would accrue to the landlord in the case of nonpayment or non-deposit of rent by the tenant during the pendency of the proceedings either before the Trial Court or before the Revisional Court would accrue to the landlords coming under classified category?

20. Section 45 of the new Act reads as under:

21. Deposit and payment of rent during the pendency of proceedings for eviction:

(1) No tenant against whom an application for eviction has been made by a landlord under Section 27, shall be entitled to contest the application before the Court under that Section or to prefer to prosecute a revision petition under Section 46 against an order made by the Court on application under Section 27 unless he has paid or pays to the landlord or deposits with the Court or the District judge or the High Court, as the case may be, all arrears of rent and other charges due in respect of the premises upto the date of payment or deposits and continues to pay or

to deposit any rent which may subsequently become due in respect of the premises at the rate at which it was last paid or agreed to be paid, until the termination of the proceedings before the Court or the District Judge or the High Court, as the case may be.

(2) The deposit of the rent and other charges under Sub-section (1) shall be made within the time and in the manner prescribed and shall be accompanied by such fee as may be prescribed for the service of the notice referred to in Sub-section (5).

(3) Where there is any dispute as to the amount of rent and other charges to be paid or deposited under Sub-section (1), the Court shall, on application made to it either by the tenant or the landlord and after making such enquiry as it deems necessary determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or deposit the rent as aforesaid, the Court, the District Judge or the High Court as the case may be, shall unless the tenant has shown sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the premises or dismiss the appeal or revision petition, as the case may be.

(5) When any deposit is made under Sub-section (1) the Court, the District Judge or the High Court, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Court in this behalf.

52. By reading Section 45 of the new Act, it is clear that the benefit conferred on the landlord under Section 45 is only with reference to the eviction petitions filed under Section 27 of the new Act or a revision petition under Section 46 against any order by a Court on application under Section 27. The arguments of the Learned Counsel for the landlord in this regard was in the absence of availability of such benefit to the classified landlords by virtue of Rule 33 of the new Act Section 151 CPC should be made applicable. This argument of the learned Counsels is not acceptable to us for the simple reason while enacting Section 45 intentionally applicability of Section 45 is provided only for the eviction petitions filed Section 27 of the Act. Sections 28 to 31 confer special benefit or protection to certain categories of landlord. Normally, unless one or the other grounds of eviction contemplated under Section 27 of the New Act is made out, landlords would not be successful to get the vacant possession of the premises. As a measure of check on tenants, Section 45 (Section 29 of the Old Act) is incorporated. There is vast difference in the procedure between eviction petition filed under general grounds (Section 27) and eviction petitions filed under Sections 28 to 31 of the Act. The legislature has purposely excluded the benefit to the special category landlords pursuing eviction petitions on the ground other than the grounds available under Section 27.

Therefore, by virtue of Section 151 CPC, one cannot extend the benefit enduring to the landlords generally under Section 45 to special category landlords. Hence, Section 45 of the Act has no application to the eviction petition pursued under grounds enumerated in Sections 28 to 31 of the new Act. Reg: Residential and Non-Residential Building

53. Then coming to the applicability of the Act based on the nature of premises, under the Old Act, definition of "Building" Under Section 3(a) of the Act would mean as under: "Building" means any building or hut or part of a building or hut other than a farm house, let or to be let separately for residential or non-residential purposes and includes:

i) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut or part of building or hut;
ii) any furniture supplied by the landlord for the use in such building or hut or part of a building or hut;
iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house; "Premises" is defined under Section 3(n) of the Old Act, which reads as under: "Premises" means,-
iv) a building as defined in Clause (a);
v) any land not used for agricultural purposes;

54. Under the New Act also, Section 3(a) defines "Building" as under;

(a) "building" means any building or hut or part of a building or hut other than a farm house, let or to be let separately and includes;
(b) the garden, grounds and out-houses, if any appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut or part of building or hut;

(ii) any furniture or equipment supplied by the landlord for the use in such building or hut or part of a building or hut;
(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or a lodging house; So also, "Premises" is defined Under Section 3(i) of the Act as under:
(iv) a building as defined in Clause (a);
(v) any land not used for agricultural purpose;

55. Section 2 of the present Act deals with the application of the Act. Section 2(3) contemplates or narrates the list of premises to which the present Act does not apply. In HRRP Nos. 445/02 and 469/02, the question is whether the premises in question could be proceeded under the New Act or not in view of the restrictions of applicability of the Act.

56. Section 2(3)(g) of the New Act reads as under;
57. Application of the Act-

(1) ....
(2) ....
(3) Nothing contained in this Act shall apply: (a), (b), (c), (d), (e), (f) ....

(g) to any premises used for non-residential purpose but excluding premises having a plinth area of not exceeding fourteen square meters used for commercial purpose;

57. The Learned Counsel for the parties relied on the following decisions and the same are perused: Konijeti Venkayya and Anr. v. Thammana Peda Venkata Subbarao and Anr., AIR 1957 AP 619 Uttamchand v. S.M. Lalwani, Smt K.S. Muddugowramma v. P. Suryanarayana (Dead By Lrs) and Ors., 2003 AIR Karnataka HCR 354 Managing Director, Lakanpal National Ltd. v. K.M. Kondappa, 2001 (2) RCJ 322
58. The gist of the above decision is as there is immense variety of structures which could be styled as "buildings", it would be difficult to accede to the proposition that every enclosure of a brick, stone work or mud walls covered in by a roof irrespective of the purpose for which it is used and let, is a building within the meaning of the Act. The question in each case depends upon the dominant part of the demised premises and for what purpose the very construction of the building was made and let out. The Court also has to apply the test of dominant intention of the parties while determining the character of the lease by asking itself as to what was the dominant intention of the parties in executing the document, if there is a written document. The possibility of user or a residential accommodation for commercial purpose in future does not make the accommodation a non-residential accommodation. In such event, under the New Rent Act of 1999, residential suitability is the main consideration. The use or purpose of letting is no conclusive test but what determines the residential character of a building is "whatever is suitable or adaptable for residential user even by making some changes can be designated as residential premises". Even if the building was used for residential purpose and later on, it was let out to a tenant carrying on business and in that situation, even if the building structurally appears to have been meant for residence, the locality of the building would also have considerable effect in deciding the nature of the building whether residential or non-residential. In the above decisions, under different situations, the Apex Court as well as the High Courts held the particular building as residential or non-residential. The definition of the building, premises and the applicability of the Act is very important to decide whether a particular premises would come within the purview of the New Act or not.

59. In the present cases HRRP Nos. 445/02, 469/02 (HRC 92/ 96), according to the learned Counsel for the petitioner/tenant, the very eviction petition is not maintainable as the New Act of 1999 is not applicable as the premises is measuring more than 14 square meters used for non-residential purpose. The perusal of the pleadings and the evidence before the Trial Court reveals the Schedule is described as front portion of the premises bearing No. 92/3, Appu Rao Road, Chamarajpet, Bangalore, consisting of a hall, bedroom, kitchen, bathroom and a lavatory apart from the open yard. The nature of construction would indicate it was meant for residence only. According to the landlady also, the premises was let out for residential purpose only and the premises was being used as such by her tenant and her family members for a long time. Only after acquiring the alternative premises by the tenant for her residence, she shifted her family and started using the schedule premises for vending the sweet and savories. According to the tenant, no doubt, this vending of savories and sweets etc. is done in the present premises, but only with the permission and consent of the landlady. Whether, this alone would make the premises, a non-residential one which would be hit by the bar Under Section 2(3)(g) of the Act, has to be considered.
60. In the evidence of the landlady, she does admit that she permitted the tenant to vend the sweets through the window at some point of time. However, the tenant in her evidence admits there is no entrance from the main road to the petition schedule premises. One has to enter the petition schedule premises through the passage. According to the tenants also, the premises consists of one hall, bathroom, kitchen and toilet.
61. With this material on record, we have to see whether the premises in question in the above petition is residential or non-residential one, used for commercial purpose.
62. On comparison of the definition of "building" between the Old and the New Act, in the present Act, building letting out or to be let the words "for residential or non-residential purpose" are removed. For several years, the building in question is used for the residential purpose alone. Admittedly, it is portion of premises No. 92/3, Appu Rao Road, Chamarajpet, Bangalore. On earlier occasion, the landlady was living in the hind portion of the petition schedule premises but the same had fallen on account of the dilapidated state of the premises. Therefore, the back portion is a vacant land. The petition schedule premises is the front portion of the entire premises. To reach the schedule premises, there is no entrance from the main road but one has to pass through the passage. This would again create a doubt with regard to the selling of savories and sweets unless the premises is facing the main road. Normally, it cannot be used for commercial purpose. It has come in the evidence the petitioner/tenant acquired several properties subsequent to the tenancy in question, one at Jayanagar, another at J.P. Nagar an also premises bearing No. 91, adjacent to the petition schedule premises. Nothing is produced before the Trial Court to show what exactly is the expenditure and profit earned by

the tenant from the alleged business of sweets and savories in the petition schedule premises. If some one is selling home-made savories and sweets occasionally, it cannot be termed as commercial activity. The very word "commercial activity", refers to regular business activity of some nature.

63. It is the specific case of the landlady, without her permission, the tenant tried to alter the very nature of the premises. The nature of the premises definitely, should not change according to the whims and fancies of the tenant. Apparently, such action on the part of the tenant is also one of the grounds of eviction under the Act.
64. The main purpose of lease was residential one. The possibility of putting part of it for commercial use like selling sweets and savouries etc. through the window cannot change the nature of the premises even if such permission was accorded by the landlady. Many a time, non-residential premises with minor alterations could even be used for residential purpose. The premises in question was let out for residential purpose. Even then, the said commercial activity, if at all done, is through the window of the premises. It is also not the case of the tenant that the premises in question is unfit for residential purpose any more. Under these circumstances, definitely, Section 2(3)(g) of the New Act, will not come in the way of the eviction petition. Incidentally, on 18-10-2000 the learned trial Judge on similar issue passed an interim order holding the premises in questions a residential premises. This question was decided taking into consideration the controversy raised by the tenant regarding maintainability of the petition after coming into force of the new Act. Long after the said date, the impugned orders came to be passed. In other words, the order dated 18-10-2000, was not challenged by the tenant, therefore, now it is not open to the tenant to raise such a dispute at this stage. Subsequent Events and its Effect
65. In HRRP 438/02, the learned Counsel for the petitioner/tenant urged this Court to take into account the subsequent events which are material and would go to the root of the "requirement" of the landlady. Subsequent to the disposal of HRC petition, the landlady for whose benefit immediate recovery of premises came to be passed, died leaving behind the respondent LRs. As a matter of fact, she died during the pendency of the revision petition. Another contention raised by the tenant is, the second daughter for whose accommodation the landlady sought the eviction of the tenant is residing at Door No. 128 and cannot insist her need in the above proceedings.
66. For this, we place reliance on the following decisions: Yasimsab Fakruddinsab Dori v. Basappa Madanlal v. C. Chandrashekaran and Ors. Pasupuleti Venkateshwaru v. The Motor And General Traders Smt. Phool Rani and Ors. v. S.H. Naubat Rai Ahluwalia
67. The gist of the above decisions would indicate the death of original landlord/landlady in the eviction petition do not per se lead to closure of the proceedings or closure of the action launched by the original landlord. The question is whether such action seeking possession of the premises

would be available to the legal representatives in all circumstances. In a case where the original landlord pleaded his own requirement for running the business in order to maintain his family, on his death. It is not open to his L.Rs to continue the proceedings as their requirement for running the business was not pleaded. Where a decision of a Court or authority becomes final, any subsequent event cannot affect such decision which has become final. If the decision has not become final, on account of the statute providing either an appeal or a revision, the appeal or revision in such circumstances is considered to be in continuation of the original proceedings and therefore, the subsequent events during the pendency of the appeal or revision could be taken note of to mould the relief depending on the facts and circumstances of each case. In the event of subsequent event, disabling the legal representatives of the landlord to seek eviction of the tenant the revisional Court is bound to take note of subsequent events while disposing of the proceedings. Whenever a personal requirement being the cause of action pleaded by the landlord, with his death, said cause of action would perish.

68. So far as death of the respondent/landlady during the pendency of this proceeding, there is no serious dispute. Whether the daughter lives at a rented premises or not is a secondary question. In the normal course, if right to sue survives, the LRs of the deceased/landlady are entitled to come on record and the matter will be decided in accordance with law depending upon the ground of eviction. But, the eviction order for immediate recovery of possession of the property was allowed only on the ground of the landlady being a widow as she needed the premises to accommodate her second daughter so that she would look after her. In view of the subsequent events i.e. death of the landlady, one has to see whether the so-called 'cause of action' of the landlady coming under the special species, could survive to the second daughter. As a matter of fact, landlady originally pleaded eviction on the ground of age and also heart ailment and the assistance of the second daughter who could stay with her along with her family. Therefore, it was not actually the need of the dependent-daughter of the landlady, but, the very requirement of the landlady was the ground of eviction. Subsequent to the New Act of 1999, the ground under Section 31(1)(a) of the Act was pressed into service. Therefore, we cannot hold that the L.Rs. are entitled to continue the proceedings as the very ground of eviction was of a peculiar nature available only to the classified landlords under Section 31(1)(a) of the New Act. The cause of action or the special ground on which immediate recovery is sought comes to an end with the death of the landlady who was a widow. The ground of eviction being personal to the deceased landlady, it does not survive to her L.Rs including her second daughter.

69. In view of the above findings, so far as petition in HRRP 438/ 02 is concerned, it deserves to be allowed setting aside the order dated 10-6-2002 passed on IA No. I in HRC No. 10137/00, in view of the death of the landlady. If the Legal Representatives of the landlady are entitled to

seek eviction on any other ground, if available, they are at liberty to do so in accordance with law.

70. In the above petitions during the pendency of the proceedings before the Trial Court the new Act came into force. As per the savings clause i.e. Section 70 of the new Act the Court had to dispose of the matters in accordance with the provisions of the new Act. Therefore, whatever advantages or disadvantages accrue to the parties by virtue of provisions of new Act had to be made applicable to the pending proceedings. In all the petitions either the landlord or landlady as the case may be have filed affidavit disclosing which category of the classified persons they would fall under. As already stated above, in HRRP 455, 469 and 438/2002 though the landlord or landlady filed affidavit claiming benefit under one of the category of the classified landlords, the tenants did not choose to file affidavits disclosing the grounds which would disentitle the respective petitioners before the Trial Court claiming such benefit. Even in cases where affidavits are filed the Court must be satisfied that the material disclosed in the affidavit seeking leave to contest would bar the landlord claiming such benefit as classified landlords. Then only the question of leading evidence on both sides would arise. In none of the petitions above, the tenants were able to point out such materials which would per-se create doubt regarding the claim of the classified landlord, therefore, the Trial Court was right in allowing the petitions of the landlords.
71. So far as HRRP 454/02 and 455/02 are concerned, in the original HRC petition No. 10115/2000, prior to the coming into force of 1999 Act, in the very cause title, he described his age as 69 years. This is not denied in the original objection statement filed by the tenant. The fact of death of the brother of the landlord is also not in much dispute.
72. Pertaining to HRRP Nos. 445/02 and 469/02, the eviction petition in HRC 92/96, the cause title itself discloses the fact of landlady being the wife of Late Gurunath and she has claimed benefit Under Section 31(1)(a) of the Act, after coming into force of the New Act, contending she needs the petition schedule premises for her bonafide use and occupation on the ground of not having any premises of her own and she needs the petition schedule premises for the use of self occupation and also members of her family. In this case also, though the tenant filed objection statement to the original eviction petition, the tenant has not seriously disputed the fact of landlady being a widow and formal objections in the usual course are filed. As a matter of fact, the tenant did not file application Under Section 42(6) of the New Act, seeking leave of the Court to contest the matter.
73. Pertaining to HRRP 473/02, in HRC 10207/00, he sought for eviction of the tenant on several grounds under the Old Act of 1961 and also contended in view of the responsibility of providing accommodation and the education of his daughter who was doing Engineering, he would not be able to meet the expenses out of his pension amount. During the pendency of the proceedings, under the New Act, he filed an affidavit

seeking benefit provided Under Section 30 of the New Act to an employee of the State Government. The learned Judge relied upon Ex.P.7, CTC disclosing the fact of his retirement on 31.3.2000. It is also noticed from the records though petitioner/landlord was examined, the cross-examination was deferred on 1.12.2001 and later on, the application Under Section 30 came to be filed. Therefore, there was no cross-examination of the landlord as the Court did not consider the averments in the affidavit of the tenant in his favour.

74. In view of the above discussion and reasoning HRRP 438/ 2002 deserves to be allowed and HRRP.454/2002, 455/2002, 445/ 2002, 469/2002 & 473/2002 to be dismissed. Hence, the following order. ORDER HRRP Nos. 454/02, 455/02, 445/02, 469/02 & 473/02 are dismissed. HRRP Nos. 438/02 is allowed with a liberty to the legal Representatives of the landlady to seek eviction on any other ground, if available, in accordance with law in the very same HRC proceedings. The tenants in the revision petitions, which are dismissed, shall hand over vacant possession of the respective schedule property within a month from today. Under the circumstances, no order as to costs is made.