

(Para 17 & 18); 38 DLR (AD) 196; 46 DLR(AD) 121; 2 DLR (PC) 83; 29 DLR (SC) 13; 33 DLR (AD) 55; 32 DLR 52; 63 DLR (AD) 83; 27 DLR 643; 14 BLT (AD) 83; 29 DLR 214; 17 DLR 677; *Porkrn Kuly Vs. Attanchari Velappil Manwarded*, AIR 1954 Mad 382; *Sohan Lal Vs. Poonam Chand*, AIR 1961 Raj 32; *Sree Naresh Vs. Kamallal*, AIR 1952 Cal 1952; *Giriza Deri Vs. R. C. & E. Office*, AIR 1965 All 366; 46 DLR (AD) 346; 1981 BCR (AD) 41; 49 DLR (AD) 144; 2 MLR (AD) 112; 31 DLR (AD) 183; 1 BLD (AD) 19; 36 CWN 480; 43 DLR (AD) 225; 50 DLR (AD) 210; 53 DLR (AD) 6; 5 MLR (AD) 295; 5 BLD (AD) 77; 1984 BCR 520; 31 DLR (AD) 155; 38 DLR (AD) 196; 36 DLR 47; 4 MLR (AD) 410; 2 BLD (AD) 151; 43 DLR (AD) 230; 1984 BCR (AD) 151; 43 DLR (AD) 230; 1984 BCR (AD) 516; 43 DLR (AD) 115 ref.

**Mr. Akhtar Imam, Advocate with
Mrs. Rubaiya Zafar Khan, Advocate**

... For the Defendant-Appellant

**Mr. A.J. Mohammad Ali, Advocate with
Mr. Forrukh Rahman, Advocate**

... For the Plaintiff-Respondents

Judgment

Sharif Uddin Chaklader, J.

Appeal from Original Decree No. 181 of 2010 and Civil Revision No. 4570 of 2009 by contesting defendant having arising out of the self same cause of action and having related to the same property are taken up together and this judgment would govern both these appeal and rule.

2. The facts relating for disposal of the appeal are that, plaintiffs are the heirs of late Professor Yusuf Ali and after his death, his heirs, plaintiffs, become the owners and demands for entering into an agreement with defendant for leasing the demised property describing in the schedule to the plaint at

monthly rental at Tk. 45,000/- from 01.10.1996 to 30.09.1999 with a condition that defendant would pay the rent to the defendant appellant at the first week of each of the month according to English calendar but the defendant appellant at no point of time paid the rent as per terms of agreement and out of rent of Tk. 45,000/- sometimes paid rent, at Tk. 500/-, sometimes 2,000/-, 5,000/-, 10,000/- as a result huge amount of money as rent was fallen due. Plaintiffs on 01.09.2002 served legal notice upon defendant under section 100 of the Transfer of the Property Act and thereafter, filed the suit.

3. Defendant appellant's case is that, the father of the plaintiffs, late Professor Yusuf Ali and this defendant had good relationship. The defendant established "Datco Private Limited" Company and this defendant through this Company earned foreign currency for this country. Defendant at first took rent of the disputed premises at a monthly rental at Tk. 25,000/- from 1984 and thereafter, upon an agreement, tenancy was extended from 01.10.1996 to 30.09.1999 and rent was fixed at Tk. 45,000/- for 3(three) years. Tk. 5,40,000/- was paid as advance with a condition that this advance will be adjusted against monthly rent. Defendant after spending huge amount of money made renovation of the suit property and after expiry of the period of lease, on adjustment of the advance money, tenancy still continuing. It is further case of this defendant that during this extension period of lease, plaintiff No.1 took Tk. 1,50,000/- and also other plaintiffs took money from him stating that they are in need of cash money, in total Tk. 15,01,100/-. Defendant appellant having in dilemma as to who is the land lord, filed House-Rent Control Case No. 19 of 2001 and regularly paying rent in that suit. Defendant appellant having scent that he may be

ultimately ousted from the suit premises filed (100) Suit No. 17 of 2002 in the court of Assistant Judge, 2nd Court, Dhaka (subject matter of Civil Revision No. 4570 of 2009) which was decreed by the learned Assistant Judge but dismissed by the appellate Court.

4. Defendant also filed another written statement on the similar facts.

5. Learned Assistant Judge framed 5 issues and after examination of 2 witnesses for the plaintiffs and 2 witnesses for the defendant, decreed the suit.

6. Mr. Akhtar Imam, with Mrs. Rubaiya Akter Khan, learned Advocates appearing for the defendant-appellant, canvassed before us, three grounds which are:- i) the appellant is not a defaulter as he paid rent regularly till today and claim of the plaintiffs that the appellant owes them Tk. 3,59,500/- as unpaid rent is baseless as clear from a close examination of the exhibits which reveals that the appellant has paid Tk. 3,37,600/- in excess; ii)- the plaintiffs respondents have waived and/or acquiesced their rights to question the Appellant's irregular-mode of payment, having accepted such payments and having consented to such irregularity for over 15 years and having benefited from such irregularity during months when the respondent paid Tk. 1,00,000/-, which is more than double the monthly rent, further the appellant has taken the plea of waiver at the earliest opportunity, but is, at the trial stage can be seen from paragraph No. 3 of the written statement. iii) the final burden to prove that the appellant has defaulted is on the plaintiffs as he who asserts must prove. The provisional burden lies on the appellant and the appellant has adduced adequate evidence of payment of rent to discharge that burden.

7. Learned Advocate refer to certain exhibits which according to him prove payment of rent as:-

i). Debit Vouchers dated 30.11.99 & 30.11.2001 signed by both parties Exhibit Ga and Gha, ii) Statement of Accounts dated 24.10.2001 signed by both parties Exhibit Uma, Lease Agreement dated 01.10. 1996 Exhibit No. 1 and Challan Forms Exhibit Chha Series.

8. Learned Advocate elaborate his submissions that, plaintiffs did not adduce any evidence to discharge the final burden of proof and also submits that despite being legally obliged to provide rent receipts as per section 13 of the Premises Rent Control Ordinance 1991 read with Rule 6 of the Premises Rent Control Rules 1964, they have not given rent receipts to the appellant. There is no bonafide requirement as claimed by the plaintiffs as there being 8 owners for selling the property as there is no precedent to support the finding of the trial court that the power/right to sell a property falls within the ambit of 'bonafide requirement' as per section 18(i)(e) of the Ordinance and as such the court completely misinterpreted the said legal concept. Plaintiff No. 1 and 4 initially deliberately made false statements that they require the property for their own accommodation as during cross examination, plaintiff No. 1 admitted the fact of having executed a registered baina on 01.02.2009 and not needing the property for personal accommodation anymore. Notice under section 106 of the Transfer of Property Act which is a mandatory pre-requisite for any lawful eviction was never received and in any case defective and/or not in due compliance with the above law for not giving the notice period required under section 106 as reflected in the judgment.

9. Learned Advocate Mr. Akter Imam, on payment of rent in lump and thereby plaintiff claimed or acquiesced their right to question

the Appellant's irregular mode of payment having accepted such payment and having consented to such irregularity for over 15 years relied on the decisions of 1983 B.L.D 116 (para 9), 40 DLR (AD) 89, (para 11), 40 DLR (AD) 1 (para 17 and 18). Mr. Akter Imam, learned Advocate on the question of granting rent receipt submits that, respondent legally obliged to provide rent receipts as per section 13 of the Premises Rent Control Ordinance 1991 read with section 6 of the Premises Rent Control Rules, 1964 and relied on the case of 38 DLR (AD) 196. Learned Advocate on the question of service of notice under section 106 of the Transfer of Property Act submits that it is mandatory and pre-requisite for any lawful eviction and relied on the case reported in 29 DLR (HC) 214 and 8 DLR 316 wherein it is held that "In the absence of legal proof that a valid notice as required under section 106 terminating a monthly tenancy was served on the tenant, a suit for eviction is not maintainable."

10. Mr. A. J. Mohammad Ali, with Mr. Farrukh Rahman, Advocates appearing for the plaintiff-respondents, on the other hand, submit that, the trial court did not make any error of law as the court considered both the case of contractual and statutory tenancy in the judgment. The tenancy was considered as terminated for the reason of establishment of bonafide requirement. Learned Advocate further submits that the learned Judge did not make any error of law in concluding that he who asserts must prove; the onus of proof lies on the tenant in a situation where he asserts that he paid rent in time and not a defaulter or where the tenant claim right of occupancy; no payment was made by money orders; payment of rent was made in lump does not help the tenant from the mischief of defaulter. Learned Advocate further submit that the learned Judge

did not make any error of law in concluding that the tenant failed to prove the fact of expenditure for renovation etc. as the burden lies on the tenant. Learned Advocate further submits that, the trial court did not make any error of law in concluding that the landowner has shown that they have no other premises in Dhaka as such the plaintiffs required as 'must' the property as bonafide requirement. Learned Advocate lastly submit that trial court did not make any error of law in concluding that the notice was duly served as it was sent by registered post at the registered address of the defendant as such, as per provision of Section 27 of the General Clauses Act 1868 and section 106 of Transfer of Property Act it is deemed to be good service as postal receipt was submitted by the landowner as evidence, the relevant date is the date on which it is served which is also presumed to be correct under section 27 of the General Clauses Act and rightly observed by the learned Judge that service of notice need not be defeated for slight inaccuracy.

11. Mr. A. J. Mohammad Ali, learned Advocate, relied on the case of 46 DLR (AD) 121 wherein it is observed that "The tenancy was considered as terminated for the reason of establishment of bonafide requirement." On the question of burden of proof lies on whom learned Advocate relied section 101 of Evidence Act and submit that he who asserts must prove; the onus of proof lies on the tenant in a situation where he asserts that he paid rent in time and not a defaulter; or where the tenant claim right of occupancy. No payment was made by money order. Payment of rent in lump does not help the tenant from the mischief of defaulter. Learned Advocate relied on the case of 2 DLR (PC) 83, 29 DLR (SC) 13, 33 DLR (AD) 55, 32 DLR 52, 63 DLR (AD) (2011) 83. Learned Advocate also submits that bonafide requirement that the landowner has shown that

they have no other premises in Dhaka is being the presence of element of 'must' for upholding bonafide requirement. Learned Advocate next relied on the case of 27 DLR 615, 14 BLT (AD) (2006) 83 on the case of validity of eviction notice submits that in concluding that the notice was duly served as it was sent by registered post as per Section 101 of General Clauses Act 1868 and section 106 of TPA. Postal receipt was also submitted by the landowner as evidence and relied on the case of 29 DLR (HC) 214 and 17 DLR (HC) 671.

12. Let us proceed with our own judgment. On the submissions of the parties questions are raised for determination as to whether defendant is a defaulter and next, whether plaintiffs occupied the premises bonafide.

13. To answer the question, we have to consider the law as well as fact. Law must apply on the facts of each case. Facts make law to apply it in its true perspective. There may be law and unless there is fact to apply it, such law remains in the book not in practice or reality. As such to answer the question as formulated herein above we must see the depositions as well as exhibits to see whether the learned Judge committed error of law as well as fact in decreeing the suit.

14. Let us quote relevant portions of depositions of witnesses adduced by the parties. Md. Ayub Ali, plaintiff No.1, in his deposition stated as:-

আমি আমার বিবাদী নসিখী সম্পত্তিতে ভাড়াটিয়া হিচাবে ছিলাম। বর্তমানে খালিভাবে আছে। আমার পিতার সহিত বিবাদীর ভাড়াটিয়া ১-১০-৯৬ তারিখ হইতে ৩০-১-৯৯ ইং পর্যন্ত মাসিক ভাড়া ধার্য ছিল ৪০ হাজার টাকা। ভাড়াটিয়া চুক্তির মেয়াদ শেষ হওয়ার পরে বিবাদীসহ আমার কোন চুক্তি হয় নাই। ভাড়া চুক্তি নবায়ন না হওয়ার পরে বিবাদী বে-আইনীভাবে নসিখী সম্পত্তিতে বসবাস আছে। ভাড়াটিয়াসহের চুক্তি

অনুযায়ী ৩০-১-৯৯ ইং তারিখে বিবাদী নসিখী সম্পত্তি ছাড়িয়া দেয় নাই। বিবাদী নসিখী সম্পত্তিতে বসবাস করিয়া আছে। বিবাদী নসিখী সম্পত্তিতে নিয়মিত ভাড়া প্রদান করে। বিবাদীর কাছে আমাদের হাজির থাকে ২ লক্ষ ৬৬ হাজার টাকা। আমার পিতা ভাড়াটিয়া চুক্তি থাকে অবস্থায় যারা হওয়ার পর থেকে নসিখী সম্পত্তিতে মান পাওয়ার এর বসবাস করিতোহে।"

নসিখী বাড়ী বিবাদী ভাড়া নেওয়ার পরে বিবাদী নসিখী সম্পত্তির ভাড়া নিয়মিত পরিশোধ করে নাই। বিবাদী অনিয়মিতভাবে আশ্রয় করিয়াছে। এমনকি বিবাদী ৫০০/- টাকার ভাড়া পরিশোধ করিয়াছে। আমার পিতার সহিত সম্পন্নিত ভাড়া এগ্রিমেন্ট এর মেয়াদ ৩০-১-৯৯ ইং তারিখ পর্যন্ত ছিল। উক্ত চুক্তির মেয়াদ শেষ হওয়ার পরে আমার পিতার সহিত আর কোন এগ্রিমেন্ট হয় নাই।

বিবাদী জেষ্ঠি ভাড়াচারী হওয়ার করিয়াছিল। আমাদের সহিত জেষ্ঠি ভাড়াচার সত্যাক্ষর কোন চুক্তি হয় নাই। নসিখী সম্পত্তির বাড়ীটি খালি করিয়া দিতে বনি করান আমাদের নসিখী সম্পত্তির বাড়ী বসবাসের জন্য প্রয়োজন আছে। আমাদের চাকর পছন্দে আর কোন বসবাসের আশা নাই। আমরা বর্তমানে ভাড়া বড়ীতে বসবাস করিতেছি। বিবাদী মোর পূর্বক নসিখী সম্পত্তিতে বসবাস করিতেছে।

বিবাদী আমার মৌখিক অনুসরণে নসিখী সম্পত্তির দখল ছাড়িয়া দিয়া যায় নাই। বিবাদী নসিখী বাড়ী না ছাড়িয়া ভালবাসন করিতে থাকে। বিবাদীর সহিত আমার পিতার যে ভাড়া চুক্তির হয় উহার মূল চুক্তির পরে আমার কাছে আছে। উক্ত চুক্তির আমি আদালতে দাখিল করিলাম। বিগত ১-১০-৯৬ ইং তারিখের ভাড়া চুক্তি আদালতে দাখিল করিলাম (প্রদ-১)। উক্ত চুক্তির মেয়াদ শেষ হওয়ার পরে নসিখী সম্পত্তি ছাড়িয়া না দেওয়ার আমি বিগত ২৯-৮-২০০২ ইং তারিখের স্বাক্ষরিত উকিল নোটিশ প্রেরণ করা হয়।

আমার আর মামলায় বাদী মেট্রি ৮ জন। আমি নিঃশঙ্ক এবং অন্যের পক্ষে সাক্ষ্য প্রদান করিতেছি।

২-৮ নং স্বীকৃতি আবেদনকে অব্যাহতে রাখা প্রণয়নের জন্য ক্ষমতা প্রদান করিয়াছে।

বিবাদীর চুক্তির মেয়াদ ৩০-৯-১৯৯৯ ইং সালে শেষ হইয়া গিয়াছিল। তাত্ত্বিক মেয়াদ খর্বিত করা হইবে না উক্ত আদি ১ মাস পূর্বে বিবাদীকে জানাই। তবে উক্ত আদি ১ মাস পূর্বে বিবাদীর সুনির্দিষ্টভাবে মনে নাই। আমি উক্ত বিষয় বিবাদীর অফিস কলনীতে জানাইয়াছিলাম। বিবাদী বাড়ী খুজতে সময় লাগবে অর্থাৎ সময় চাহিয়া ছিল। আমি মৌখিকভাবে বিবাদীকে কোন সময় বর্ণিত করি নাই। পরবর্তী ১ মাসে কোন আবেদন না বাহ তখন আদি ১-৯-২০০২ ইং তারিখে আইনগত ব্যবস্থা গ্রহণ করি। ১-৯-২০০২ ইং তারিখ এর পূর্বে আমি নিষিদ্ধভাবে কোন আইনগত ব্যবস্থা গ্রহণ করি নাই। বিবাদী ইতোপূর্বেও মালিশ বড়ীর ভাড়া নিষিদ্ধভাবে পরিশেষ করিত না। বিবাদী মালিশ বড়ীর ভাড়া প্রথমে ভাড়াটার এর মাধ্যমে পরবর্তীতে ভাড়া খুজা দিতে থাকিলে সাদা কাগজে স্বাক্ষর দিত।

P.W.2 Begum Ayesha Khorshed, in her deposition stated as:-

"মালিশী সম্পত্তি আমার পিতা জনাব মৃত ইউসুফ আলী সাহেবের ছিল। আমার পিতা ১৭ই এপ্রিল চুক্তির মধ্য সরকারের স্বাধীনতার সময় পর্যন্তই ছিলেন। তিনি ৫ বছরের প্রথম শিক্ষা মন্ত্রী ছিলেন। মালিশ বড়ীর বিষয়ে আমার আর স্মরণ নব্বের করি। মৃত বিন সালেমের এর মধ্যে আমার পিতার ১৯৯৬ ইং সাল থেকে ৩০-৯-৯৯ ইং তারিখ পর্যন্ত বড়ী ভাড়ার এগ্রিমেন্ট ছিল। উক্ত এগ্রিমেন্ট শেষ হওয়ার পরে তিনি মালিশ সম্পত্তিতে বসবাস করিতে থাকে। বিবাদীকে মালিশ সম্পত্তি বাহ বাহ ছাড়তে বলি তাহা সত্ত্বেও তিনি বাড়ী ছাড়েন নাই। অবৈধভাবে বাড়ীতে বসবাস করে আসছে। মালিশ সম্পত্তি আমারদের প্রত্যেকের। আমার মা ও আইয়ের মালিশ সম্পত্তির বড়ী কবরসের জন্য খুবই প্রয়োজন। আমার পিতার দেকাতে মালিশ সম্পত্তি ছাড়া আর কোন বাড়ী নাই।"

Defendant who was examined as D.W. 1 in his deposition stated as:-

"উক্তব্য, এই বিবাদী বহু টাকা ব্যয় করিয়া উপরোক্ত ভাড়া মালিশী বড়ীর অধিকারীন ও বহির্ভাগে সংস্কার করা মেয়াদত সহ প্রয়োজনীয় স্থাপনা নির্মাণ পূর্বক জেলা সালে দাকা অবস্থায় বর্ণিত প্রকল্পের ইউসুফ

আলী সাহেব বর্তমান বসীশনকে তদীয় তরফা বিকল্পিত তদারিখ বিধানের দ্বারা বিগত ৩-১২-১৯৯৮ ইং তারিখের দুস্বাক্ষর করেন। বলা অবশ্যক, ইতোপূর্বে বর্ণিত ইউসুফ আলী সাহেব কর্তৃক সম্পাদিত চুক্তিপত্রের মেয়াদ অতিক্রান্ত হইবার পর বসীশনকে পরবর্তী চুক্তির মেয়াদ নব্বাচন পূর্বক চুক্তিপত্র সম্পাদনের অনুরোধ করিলে ২-৯-৯৯ নং বসীশন ১ নং বসীশকে তাহাদের পক্ষে মালিশী বড়ীর বিষয়ে বিবাদীর সহিত চুক্তিপত্র সম্পাদন সহ প্রয়োজনীয় কথাবার্তা বক্তব্যের মৌখিক ক্ষমতা প্রদান করেন। বলা অবশ্যক, বসীশন মেহেতু একত্রিত হইয়া তদার মালিশী মিত্র বিবাদীর নিকট হইতে ভাড়ার টাকা গ্রহণ করেন নাই, সেইহেতু বিবাদী কর্তৃক উক্ত পরকৃত টাকা ভাড়ার টাকার সহিত সমন্বয় হয় নাই। বলে বিবাদী বসীশনের নিকট তাহার পরকৃত টাকা পাতন রহিয়াছে।"

Defendant witness No. 2, A.T. M. Morshed, who is relation of defendant No. 1 in his deposition stated as:-

"১ নং বসী আইডের আলী সবার পক্ষে signature করে তাকা মিতা ২০০৪ সালের বিবাদীর DGM (Accounts) মুকল অফিস প্রেস্ট্রী। Debit Voucher শুদি জনতার করতেন। Debit Voucher মাধ্যমে বিভিন্ন সময়ে মোতা ১২,০১,৯০০/- টাকার statement কবিল করা হইয়াছে যা মুকল অফিসের তৈরী করা। বসীরা অফিস ভাড়া মিতা মালিশী বাড়ীতে বিবাদীর টাকার বিভিন্ন সময়ে সংস্কার করা হয়। সংস্কার বাবদ ৮৪ সাল হইতে ৪০, ১২, ৮১২/- টাকা বসীরা বিবাদীকে দেত নাই। মালিশী সম্পত্তির ব্যাং, পানি, বিদ্যুৎ বিল বিবাদী মোতা এবং bill up to date পরিশেষ করা আছে।

15. Plaintiff exhibited lease agreement as exhibit-1, legal notice as exhibit-2 and Postal receipt as exhibit No.3. Defendant exhibited as many as 7 exhibits, as Exhibit Ka to Niyo. Lease agreement as exhibit -Ka, Debit Vouchers dated 30.11.1999 as exhibit Ga to Gha, statement of accounts dated 24.10.2001 signed by both parties as exhibit Uma, Order sheet of House Rent Case No. 19 of 2001 as Exhibit 'Cha' challan forms dated 7.01.2002 in House Rent Control Case No. 19 of 2001 filed in the court of 2nd Assistant Judge, Dhaka dated 27.01.2001 as exhibit Chba series and exhibit 'Ja' is the Order sheet of House Rent Case No.

of 1977 filed in the Second Court of Assistant Judge, Dhaka.

16. In the suit for eviction prime question calls for determination as to whether the tenant is defaulter, whether landlord requires the suit property bonafide and thirdly, whether the defendant tenant or plaintiff landlord violate any terms of the lease agreement, of the three condition or criteria for eviction, if any one of the condition found against the tenant he/she has not avoid mischief of eviction. Of the three conditions for eviction, first one is defaulter. Defaulter is of two categories i.e. defaulter and habitual defaulter. A person become defaulter the moment he does not pay the rent within the period mentioned in the agreement for tenancy, or non payment or omission to pay at the due time and place or neglect to pay rent in time. Defaulter stands as omission or failure to perform a legal or contractual obligation. It may intentional, unintentional or willfull and all these categories, if proved, tenant shall be evicted. As such, a tenant must be vigilant at hand in payment of rent and to collect receipt of payment from the land lord. Law gives all the arms in the hand of land lord for eviction of a tenant whether desirable or undesirable and to avoid eviction tenant must pay rent within the agreed date.

17. A tenancy always created by agreement, it may be oral or written. A tenant must honour the terms of the agreement to have protection of law of several type or kinds of tenancy, where rent tenants are tenant at will. As per Black's law Dictionary, 'such type of tenancy has been designed as a tenancy in which the tenant hold possession with the land lords consent but without fixed terms (as per duration or rent), a tenancy that is terminable at the will of either the framework or transferee and that has no designated period of duration. Such a tenancy may be terminated by either

party upon fair notice' when tenancy duly created and the tenant put in possession, he is owner of the premises for the time being and has all the usual right and remedies of an owner to defend his possession but it does not create a right to complete and exclusive possession which right preserved with the land lord. As per Section 2(g) of Premises Rent Control Act, (Act No. III of 1991) tenant means any person by whom or on whose account, rent is payable for any premises and includes legal representative as defined in Code of Civil Procedure, 1908 (V of 1908) and a person continuing in possession after the termination of a tenancy in his favour.' A tenant is put into possession under certain terms and condition, a breach of terms by land lord entitled the tenant to claim damage but by the tenant led him to eviction from the premises.

18. Bonafide requirement has not been defined under the Act. Bonafide means, according to Tomlin's law Dictionary 'in good faith, without fraud or deception, honestly, openly, sincerely. In the case of *Porkrn Kulty - Vs.- Attaucher Velappil Manwarded*, AIR 1954 Mad 381, bonafide requirement given the meaning reasonably requires. The land lord must have a genuine present need of the building for his occupation. In the case of *Sohan Lal -Vs-Pooram Chand*, AIR 1961 Raj 32 bonafide has been given the meaning that 'Nothing is bonafide which is not done with due care and attention' In Black's law Dictionary bonafide has been defined as in good faith, made in good faith, without fraud or deceit, sincere, genuine. In the case of *Sri Naresh -Vs- Kanailal*, AIR 1952 cal 1952, bonafide requirement defined as " there must be a short of "must have" element in the need of land lord and also that his want or need of the house must be honestly felt by him.' In the

case of *Giriza Deri Vs. R.C. & E. Office*, AIR 1965 All 366 the definition of bonafide requirement is the land lord has a genuine need to occupy the accommodation, that is, he must have necessary to occupy it and the necessity must be bonafide or genuine one.

19. In the back drop of such legal fiction let us proceed with our own judgment.

20. It appears that suit was filed for eviction. The lease agreement, as it appears was from 01.10.1996 up to 30.9.1999. Plaintiff served legal notice on 29.2.2009 and suit having filed on 25.9.2002 as per Article 139 of the Limitation Act is not barred by limitation as law provide for institution of such suit within 12 years from the date of determination of tenancy. It appears from order sheet of House Rent Control Case No. 19 of 2001 that it was filed on 27.01.2001, long 15 months of the expiry of the agreement which was expired on 30.09.1999 i.e. House Rent Control Case was filed at the time when there was no lease agreement.

21. It is the case of plaintiff that defendant is defaulter in payment of rent. It is the case of defendant that he paid the rent through debit vouchers which is exhibited as exhibit Ga and Gha. There is no law qualifying payment of rent by debit vouchers. It may be a personal arrangement without any legal basis or force. If we consider the lease agreement then we find that rent was fixed, at first, at Tk. 25,000/-, later on, fixed at Tk. 45,000/- from the period of 01.10.1996 to 30.09.1999. On reference to the vouchers it appears that in spite of fixing the rental at Tk. 45,000/- as monthly rent, defendant sometime pay Tk. 500/-, sometime Tk. 2,000/-, sometime Tk. 5,000/-, and sometime Tk. 10,000/-. In this way during the time of agreement, rent was paid piling dues at Tk. 91,500/- and after expiry of lease

agreement, up to 01.09.2002 i.e. occupation of the premises, rent was fallen due at Tk. 2,68,000/-, in total Tk. 3,59,500/-. On reference to the vouchers it appears that defendant paid rent for March, 1999 at Tk. 10,000/-, April and May, 1999 did not pay any rent, June, 1999 on three different dates rent was paid in total Tk. 32,000/-, July, 1999 paid Tk. 6,000/- in this way, defendant paid monthly rent up to 2008 with assertion that he paid advance money of Tk. 5,40,000/- to adjust. On reference to the exhibit Gha it can easily be seen that payment as made was made sometimes beyond 7th of the following month. No rent was paid by this defendant as per lease agreement and no rent receipt produce in Court to qualify his such payment as payment for tenancy. The relationship between tenant and landlord is good but when it brought to the court, the court shall go with the law not with the relationship as it was then a past and closed chapter. In many of the decisions it is held that payment in lump do not exonerate defendant from eviction. We may refer to the decisions reported in 46 DLR (AD) 346, 448 1981 BCR (AD) 41, 49 DLR (AD) 144, 2 MLR (AD) 112, 31 DLR (AD) 183 and 1 BLD (AD) 19.

22. Since defendant did not pay rent as per terms of lease agreement and no rent receipt produced in Court showing payment of rent and defendant's claim of payment of rent in debit vouchers having not refer to the monthly rent of the suit premises, as such, this debit vouchers does not in any way save the defendant from the mischief of defaulter to be evicted from the suit premises.

23. Next question is whether the suit premises required by the landlord bonafide. In many decision it is held bonafide requirement must be proved. In some cases it is held that merely stating that plaintiff required the suit premises

bonafide is not enough, further evidence is required. But we have seen there is no definition of bonafide requirement. It is gathered on the basis of "judge made law" with reference to facts of each of the case. In Black's Law Dictionary bonafide has been defined as in good faith, made in good faith, without fraud or deceit, sincere genuine. In the case of Sri Naresh -Vs- Kanailal, AIR 1952

Cal. 852, bonafide requirement defined as there must be a sort of "must have" element to the need of land lord and also that his want or need of the house must be honestly felt by him. In the case of Girija Devi -Vs- R.C.& E. Officer, AIR 1965 All 366 the definition is that land lord has a genuine need to occupy the accommodation, that is, he must have necessity to occupy it and the necessity must be bonafide or genuine one"

24. In the instant case in hand plaintiffs claim that they need the premises bonafide as they had no other option to reside in Dhaka City as plaintiff's mother is serious ill and for her treatment, the premises is required. Secondly, plaintiffs claimed that after the death of Professor Yousuf Ali, he survived by 8 sons and daughters as such, the ownership of homestead and possession there of remain unsettled as such, they have to go for multi storied construction which required demolishment of the present structure. Multi storied construction in the present day for accommodation of the sons and daughters is one go of days is law by itself. High rise building has been encouraged by the government for accommodation of densely populated Dhaka City. Concept of accommodation has been changed dramatically for the last decade or so. Now a days families feels comfort in residing at flats in a compact premises rather in homestead as such for use and occupation, for congenial atmosphere, if

the plaintiffs, after the death of original owners, 8 in number, required the premises for building and rebuilding purpose it is enough to held that the suit premises is required by the plaintiffs bonafide. In the decision of 56 C.W N. 480, 43 DLR (AD) 225, 50 DLR (AD) 210, 53 DLR (AD) 6 and 5 MLR (AD) 295 it is held bonafide requirement has no definition and it is to be consider on the facts of each case.

25. This defendant made out a case that he paid advance money and renovated the suit premises with huge money which is to be adjusted by deducting in proportionate quantum of money from rent. If the case of the defendant is true the he could take shelter of Section 10 of the Premises Rent Control Act. But he did not. On the question of renovation as he claim to tune of Tk. 50 laes is beyond the terms of the contract as in term 8(c) of the lease agreement tenant was allowed to make minor repair to the tune of Tk.500/- per month. Law also provide in section 13 of the Act that Landlord bound to give rent receipt and if not, tenant can demand to that and bring landford to court as Section 27 of the Act provide for punishment of he landford for not providing rent receipt. Defendant at no point of time went to court to enforce his legal right as aforesaid. Reference may be made to the decision of 5 BLD (AD) 77, 1984 BCR 520, 31 DLR (AD) 155, 38 DLR (AD) 196, 56 DLR 47.

26. Defendant raised objection as to service of notice. Notice for determining tenancy is as per Section 106 of the Transfer of Property Act, 1882 provide for 15 days notice and it will take effect from the date of receive of the notice. This notice was issued on 1.8.2002 long after expiry of tenancy agreement which expired on 30.9.1999. An illegal occupant can not take protection of law and can not challenge the notice on the ground it was not served as per

settle law. Illegal occupant can desire a notice so that he may not be surprised by the act of the landlord but can not take shelter of law by saying notice is illegal as it was not served following the law. Decisions reported 4 MLR (AD) 410, 2 BLD (AD) 151 speaks that notice is only giving information to the tenant that he will not continue with the tenancy.

27. In the instant case defendant make out a case that notice was not served upon them but it is seen that notice was issued at the address of defendant and it was sent by registered post with acknowledgement due, exhibit 2 and 3. Section 27 of the General Clause speaks notice if issued (to the tenant) at the address, which defendant did not deny at any point of time, speaks that it is served.

28. It is the case of defendant that he paid rent in House Rent Control Case. It appears that tenancy, lease agreement expired on 30.9.1999. It appears that the aforesaid case was filed on 27.01.2001, long after expiry of tenancy as such payment of rent in House Rent Control case is also tainted with default, reference may be made to the decisions of 43 DLR (AD) 230, 1984 BCR (AD) 516, 43 DLR (AD) 115, and 46 DLR (AD) 494.

29. Defendant lastly submits that payment was accepted by the landlord. It is also defendant's case that lump payment was accepted by the landlord thereby lost the right for eviction of the defendant. It is settled that in accepting rent after defendant being defaulter does not exonerate defendant from eviction. Moreover, it is proved that the tenant defendant is defaulter, accepting of rent in any way, can not be construed as waiver, estoppels and acquiescence.

30. Let us now refer some decisions on this score. The Appellate Division in the case of P.K. Chakraborty-Vs- A.P. Chowdhury 1981

BLD (AD) 19- 1981 BCR (AD) 41 held that "A tenant paying rent of several months in a lump shall ordinarily be treated as defaulter unless there is a contract to the contrary or such payment is covered by waiver or acquiescence on the part of the landlord" The case of Ramjan Ali Mistry -Vs- Md. Hedayatullah, 31 DLR (AD) 183 where in it is held that "payment of rent in lump shall not exonerate tenant from being a defaulter unless there is contract to the contrary or such payment cover waiver or acquiescence on the part of the landlord." The case of Premal Ranjan Das -Vs- Nasima Khatun 49 DLR (AD) 144-1997 MLR 112, wherein it is held that " A tenant who has failed to pay rent within the date stipulate in the agreement, or in the absence of agreement, according to the provision of the Ordinance will be defaulter and not entitled to protection. It is, however, open to him to plead that the landlord waived his right to receive rent in terms of the agreement or the law." In 46 DLR (AD) 343 it is held that "Advance payment of rent is not sufficient to save the tenant from being defaulter." In this decision the case of Ramjan Ali Mistry -Vs- Md. Hedayatullah 31 DLR (AD) 183, Profulla Kumar Chakraborty -Vs- Anil Pros-had Choudhury and others, 33 DLR 55, the case of 40 DLR (AD) 89 and 40 DLR (AD) 109 were relied. In the case of Nurul Islam-Vs.-Ali Hossain Miah, 50 DLR(AD) 114 it is held that "Under the tenancy agreement rent of the previous month was to be paid by the 1st week of the next month. Admittedly the defendant on 3,5,86 sent by money order the rent for the month of March and April 1986 together to the plaintiff and as such the defendant clearly defaulted to pay rent at least for the month of March, 1986."

31. On the question of advance payment the Appellate Division in the case of Sumsuddin -Vs- Md. Hossain, 31 DLR (AD) 155 held that " Clause (a) of section 10 of the premises Rent Control Ordinance prohibits the acceptance of any sum of money over and above the rent

payable by a tenant. This clause has also made illegal even any claim or invitation of an offer for the payment of such sum of money in the form of premium, salami or fine either when tenancy is being created or renewed, or during its continuance. Under Clause (b) no one is allowed to claim or receive a payment of more than one month's rent in advance.

42. Agreement for lease is void under section 51 of the Contract Act when its object is not lawful and that it having not been registered is unenforceable and also inadmissible in evidence.

43. The agreement to pay Tk. 19,200/- by way of advance rent was undoubtedly a part of the consideration of the transaction as defined in section 2(d) of the Contract Act. This contravenes positive statutory mandate as provided in section 10 (b) of the Premises Rent Control Ordinance.

44. In view of the unenforceability of the agreement the position is that the appellant is a monthly tenant who is liable to ejection if he makes default in payment of rent as provided in section 18 (5) of the Premises Rent Control Ordinance." In the case of Ramjan Ali Mistry - Vs.- Md. Hedayetullah, 31 DLR (AD) 183 wherein it is held that "i) In the case of default in payment of rent, a tenant is protected, notwithstanding the provisions of Transfer of Property Act or the Contract Act from ejection as long as he pays rent to the full extent allowed by the East Pakistan Premises Rent control Ordinance and he performs the conditions of the tenancy. The expression 'as long as tenant pays rent' indicates that the point of default on the part of the tenant will be not only the date of filing of the suit but will continue till decree is passed. It does not however mean that if the tenant subsequent to the filing of the suit has deposited the rent with the Rent controller, the default incurred earlier is cured. On the contrary the tenant's liability for default even

after the filing of the suit continues under the law till the passing of the decree.

(ii) Protection of the tenant against ejection is on the fulfillment of certain conditions. He should pay rent to the full extent allowable by the Ordinance and if he does so, he is protected from ejection on the ground of default in the payment of rent. It further sets out the terms of payment of rent. It is to be paid within the time fixed by the contract, and in the absence of any such contract, within fifteenth day of the month next following for which the rent is payable or he can deposit rent in terms of section 19. Under the explanation of sub-section (5) of section 18 a landlord shall not be deemed to have refused to accept any rent unless the rent is remitted within the period referred to in that sub-section by postal order and there has been compliance with other details given therein."

35. The case of Nur Begum-Vs.- Dr. Yusuf Ahmed and another, 50 DLR (AD) 210 wherein it is held that "Requirement of the demised premise for an adult son and a widowed daughter cannot be said to be a requirement of any one else other than the plaintiff's because they are very much within his family."

36. On the question of service of notice the Appellate Division held in the case of Nurul Islam-Vs.-Ali Hossain Miah 50 DLR (AD) 114 wherein it is held that "Notice sent to the tenant by post at the address of the suit premises having been returned unserved with the remark of the postal authority 'let' was presumed to be good service." In the case of Abdul Aziz -Vs.- Abdul Majid 46 DLR (AD)121 wherein it is held that " If the period of lease expires with efflux of time or if the interest of the lessor is transferred, that will be a good ground for eviction of a tenant under the "Transfer of Property Act, but "shall not of itself be deemed to be satisfactory cause within the meaning of clause 9(c) of sub-section (1) of

section 18 of the Ordinance. A protection from eviction will be available to the tenant if he is ready and willing to pay rent to the full extent allowable by the Ordinance, notwithstanding the expiry of the term of lease and notwithstanding the transfer of interest of the lessor." In this decision it is further held that "A person continuing in possession after terminating of a tenancy in his favour is also a tenant." And further held that "Rent control legislation is a special law giving a greater protection to a tenant so long he pays rent and performs the conditions of the tenant." In the case of Kalu Mondal-Vs.- Begum Fazilatun Nessa, 46 DLR (AD) 53 it is held that "The provision contemplates an enquiry as to whether the tenant was entitled to the benefit of the protection from ejection due to more necessary when the tenant comes with a positive case that due to some abnormal situation it was beyond his control to pay rent. Conditions like war of liberation should be read in the statutory provision as an exception clause to the sub-section." In the case of Nur Begum-Vs.- Dr. Yusuf Ahmed and another, 2 MLR 380 it is held that "The refusal to accept the notice under section 106 of the T. P. Act, by the successor Chairman of the Governing Body addressed to the outgoing Chairman and sent under the care of the defendant No. 2 of a Kindergarten school can very well be construed as refused by the Chairman and as such the service of notice under section 106 of the T. P. Act is held to be proper service." In this decision further held that "Requirement of the demised premises for an adult son and a widowed daughter of the plaintiff cannot be said to be a requirement of anyone-else other than the plaintiff's because they are very much within the family of the plaintiff." In the case of Shar Banu -Vs.- Md. Abdus Sobhan and others, 2 M.L.R. 253 it is held that "A tenant is

not entitled to make deposit of rent with the House Rent Control unless the land lord has refused to accept the same sent to him by Money order under section 18 of the Ordinance.

37. When a monthly tenancy was determined by the land lord serving notice under section 106 of the Transfer of Property Act, upon the original tenant his legal heirs do not inherit the tenancy right in the premises and they also not entitled to fresh notice under section 106 of T.P. Act. Deposit of rent with the House Rent Controller after expiry of the due date is of no save the tenant from being a defaulter."

38. On the question of bonafide requirement we may refer to the case of Sri Naresh -Vs- Kannai Lal 56 C.W.N. 480 wherein it is held that "It has already been pointed out by this Court that the word "require" is something more than the word "desire" It was said by Mr. Justice Backland in the well-known decision in the case of Rekhah Chand Doogar V. J.R.19 Cruz (I) [(1922) 26 C.W.N. 499] that in the case of requirement there is an element of need. With great respect to the learned Judge it maybe pointed out that the same element of need is also present in the case of desire. We do not desire what we do not need. Psychologists point out that there cannot be a desire without want or need. The real distinction between "desire" and "require" lies in the insistence of that need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire." It is from this standpoint that the question of requirement has to be determined. The word "bona fide" or "in good faith" has got to be interpreted in the light of the definition of "in good faith" given in the Bengal General Clauses Act. "in good faith" according to the Act means "honestly" and without negligence. Therefore in the present case what has got to be seen is that there must be a sort of "must have" element in the need of the landlord and also that his want or need of the house

honestly felt by him. That both the elements are satisfied in the present case will appear from the judgments of both the courts below. Under the circumstances the courts were right in granting a decree of ejectionment."

39. In 1985 B.C.R.-96 it is held that "Simple deposit that amount of rent without cause of bonis of desire money can not consider full deposited such a case is not maintainable." In the case of Zaher Ahmed -Vs.- Manik Sardar, 1 D.L.R (AD) 63 wherein it is held that "The landlord is under legal obligation to prove that he needs the premises for bonafide requirement. Expansion of existing business in a shop room adjacent to the room let out constitutes bona fide requirement." In the case of Hashir Ahmed and others -Vs.- Ayub Ali Mollah 5 M.L.R. 1 wherein it is held that "When it is proved that the monthly tenant defaulted in payment of rent to the land lord, he is liable to be ejected on ground of being a defaulter and he can not have any protection under the Premises and Rent Control Ordinance or the Transfer of Property Act. The court can well pass the decree for ejectionment only on ground of default of payment of rent and in so doing it is not necessary for the court to investigate as to the bonafide requirement." In the case of Mohd. Rafique Sowdagor -Vs.- Hajji Ahmed Miah Sowdagor, 4 M.L.R. (AD) 100 held that "Agreement taking advance on condition of adjustment with monthly rent as in the instant case being contrary to law is void. When the defendant is proved to be a defaulter and the notice u/s 106 of T.P. Act is held as sufficient compliance with the requirement of law, the decree passed by the trial court and affirmed by the High Court Division in revision does not suffer from any illegality and such no interference is called for." In the case of Monowara Begum-Vs.- Atiqullah 4 M.L.R. (HC) 240 it is held that "It is settled law that a tenant once admitted as such can not ward his eviction by setting up title by virtue of purchase from co-sharer without surrendering possession of the premises." Learned

Advocate for the respondent relied on the decision the case of Maria Keshi D'Rosario Vs. Hassan Movies Ltd, 41 D.L.R (AD) 135 where in it is held that "The onus to bring a case within the ambit of s. 19 as to deposit lies on the tenant and conditions for remittance by Money Order and deposit with Rent Controller are to be fulfilled by him before he makes deposit. The tenant must offer the rent of a month with in the period fixed in the contract, if any, or within the fifteenth day of the next month as referred to in section 18(5). If the rent offered is refused the tenant shall remit it by Money Order within the period fixed, and if the Money Order is returned undelivered, then the tenant shall deposit it with the Rent Controller within fifteen days of return of the Money Order."

40. On an over all consideration of the entire matter we find that the learned Judge committed no illegality in decreeing the suit. We find no substance in the appeal.

41. We have seen that defendant filed the suit subject matter of Civil Revision, for restraining the plaintiff landlord permanently from evicting defendant i.e. challenging the title of the plaintiff. It is settled principle of law that tenant can file suit but that he can done after surrendering the suit premises to the plaintiff landlord. Moreover, at no point of time tenant has right to challenge the title of landlord. Moreover, we find that defend-ant being a defaulter can not restrain the plaintiff landlord from evicting him from the suit premises permanently. We find no substance in the rule.

42. In the result, the appeal is dismissed without any order as to cost.

43. Rule of Civil Revision No. 4570 of 2009 is accordingly discharged.

44. Send down the lower court records.

Communicate this order at once.

Ed.