

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.98 of 2013

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Sanjay Sinha, advocate son of late Abhay Kumar Sinha of Frazer Road Chauraha, Behind Hotel Avanti, Patna and resident of 5/5 Baby Home, A.N. Path, North Shri Krishnapuri, P.S. Sri-Krishnapuri, Patna.

.... Petitioner/s

Versus

Ashok Kumar Sinha, Advocate, son of late Kedar Nath Verma, Frazer Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. B.N.P. Singh, Sr. Adv.

For the Respondent/s : Mr. Binod Kumar Singh, Adv.

Mr. Shyam Sunder Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

10 26-08-2015 Heard Mr. B.N.P. Singh, the learned senior counsel appearing on behalf of the petitioner and Mr. Binod Kumar Singh, the learned counsel appearing on behalf of the opposite party.

Questioning the legal acceptability of the impugned judgment and order of eviction against the defendant-petitioner, the present revision application has been filed under Section 14 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'B.B.C. Act').

The suit premises as described in schedule-I of the plaint consists of a self contained flat having latrine, bathroom, kitchen and three pucca well furnished rooms situated in Mohalla Frazer Road, Patna.



The learned senior counsel appearing on behalf of the petitioner, at the outset, has submitted that the relationship of landlord and tenant between defendant-petitioner and plaintiff-opposite party is not being disputed. It has further also been submitted that the medical condition of the plaintiff and his wife as claimed by the plaintiff is also not being disputed. It is, therefore, in this backdrop that the cases of the parties is to be noticed and determined.

The plaintiff has claimed in the plaint that he is aged about 65 years and has been living on the 1st floor of the main building with his wife and his professional chamber as an advocate is on the ground floor of the same building. It is the case of the plaintiff that he has suffered a massive heart attack in the month of March 2005 and had to undergo bypass surgery. The plaintiff has further stated that he and his wife suffer from arthritis in the knee joints and considering their physical condition they have been medically advised to avoid exertion and strain. It has been further averred that both the plaintiff and his wife find it difficult to climb up and down the stairs and the suit premises being a self contained flat in the ground floor is quite suitable and appropriately comfortable according to the need and requirements of the plaintiff. It has also been the case of the plaintiff that the partial eviction of the

defendant from the suit premises will not satisfy the need of the plaintiff.

The case of the defendant as pleaded in the written statement is that he is using the suit premises as an advocate chamber being a legal practitioner in income tax department and the same is not suitable for occupation by the plaintiff for residential purposes. It is the case of the defendant that there is only two members in the family of the plaintiff i.e. the plaintiff himself and his wife and they have sufficient accommodation in the building under their occupation. It is also the case of the defendant that there are six other tenants who are in occupation of the plaintiff's building but the plaintiff has malafidely preferred to seek eviction of the defendant in place of other tenants on the ground floor. It is further case of the defendant that the plaintiff has no bonafide or reasonable requirement of the suit premises and the allegations made by the plaintiff in this regard are false.

The learned court below after considering the pleadings and evidence of the parties has returned the finding that the plaintiff has succeeded in establishing his bonafide personal necessity of the suit premises for his occupation. It has also been found that the partial eviction of the defendant from the suit premises would not satisfy the requirement of the plaintiff. After deciding the other

issues also in favour of the plaintiff, the learned court below has passed the impugned judgment and decree/order for eviction.

Assailing the impugned judgment, Mr. B.N.P.Singh, the learned senior counsel for the petitioner has firstly submitted that the finding of the learned court below on the issue of bonafide and reasonable requirement of the suit premises by the plaintiff is vitiated due to non-consideration and misconstruction of the evidence as well as the facts and circumstances of the case. It has been canvassed that the materials available on record indicate that the requirement of the suit premises as made out by the plaintiff is only a pretence as the suit premises is not at all fit for residence of the plaintiff. Elaborating his submission, the learned senior counsel has placed the relevant portions of the pleadings of the parties as well as the impugned judgment, and has laid stress that the suit premises is only 350 square feet and cannot be used for residential purposes. It has, therefore, been submitted that the learned court below has wrongly granted the decree of eviction to the plaintiff without appreciating this fact and in the same breath, the learned senior counsel has further submitted that the learned court below has wrongly decided the issue of partial eviction. In the last, it has been faintly also argued that the suit has been wrongly filed before the Sub Judge on the basis of the monthly



rent of Rs. 5555/- as fixed by the house controller but in view of the appeal filed by the defendant against this order of the house controller, the valuation of the suit should have been on the basis of the earlier rate of rent which was Rs. 969/- and according to which the court of Munsif would have the jurisdiction to entertain the suit.

Mr. Binod Kumar Singh, the learned counsel for the plaintiff-opposite party, in his turn, has supported the impugned judgment and has submitted that the findings of the learned court below are based upon consideration of entire pleadings and evidence of the parties. It has been propounded that according to the well settled legal position, a tenant is not entitled to question the choice of the landlord with regard to the suitability of the premises. It has also been argued that there is no pleading or evidence aliunde on behalf of the defendant that the partial eviction would satisfy the need of the plaintiff and that too in face of specific pleading in paragraph-10 of the plaint that the partial eviction would not satisfy his need which has not been denied by the defendant in his written statement. It has also been argued that the revisional jurisdiction of this Court under proviso to Section 14 (8) of the B.B.C. Act is circumscribed by the said provision itself and does extend to appreciation of pleadings and evidence in



order to interfere with the findings of fact unless the same is shown to be perverse or unreasonable in any manner. Replying to the submission with regard to the pecuniary jurisdiction of the court, it has been contended that mere filing of an appeal against the order of house controller would not operate as suspension of the said order and in this view of the matter, the plaintiff has given the correct valuation of the suit according to the rent fixed by the house controller.

The learned counsel for both the parties have referred to and relied upon a number of decisions which shall be considered appropriately henceforth.

It would be profitable at the outset to notice the law laid down by the Apex Court in the case of **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) Scale 657** with regard to the ambit and scope of the revisional jurisdiction of the High Court under the rent control Acts. Their lordships after considering the import of the terms “legality or propriety”, “regularity, correctness, legality or propriety” and “legality, regularity or propriety” as used in the rent control Acts have finally laid down as follows:-

*“.....The consideration or examination of
the evidence by the High Court in*



revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above.

However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as the court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity....

(emphasis supplied)

Under the proviso to Section 14 (8) of the B.B.C. Act, the revisional power of the High Court has been restricted to the extent of satisfying itself that an order for eviction is 'according to law'. The nature and scope of this specific provision of the BBC Act directly came up for consideration by the Apex Court in the case of **Chandrika Prasad Vs. Umesh Kumar Verma 2002 (1)**

SCC 531. It has been ruled as follows:-

“7.....In a revision petition filed under proviso to the above sub-section (8) of Section 14 of the Act, the High court has to satisfy itself as to whether the order of eviction passed under Section 14 of the Act was in accordance with law. The scope of the revisional jurisdiction depends on the language of the statute. Though, revisional jurisdiction is only a part of the appellate jurisdiction, it cannot be equated with that of a full-fledged appeal.

8.....the High Court, however, is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law” and for that limited purpose may enter into reappraisal of evidence for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is

wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available.

11....We are, therefore, of the opinion that the High Court not only overlooked the findings of the trial court which were based on evidence but treated the revision petition as an appeal and did not test the order of the trial court on the touchstone of whether it is according to law. The finding of the High Court is erroneous and accordingly we hold that the impugned judgment is not sustainable in law.....”

The submissions on behalf of the petitioner in the present case is now to be considered within the aforesaid boundaries of the revisional jurisdiction as enunciated by the Apex Court. It is manifest that the personal necessity of the plaintiff for occupation of the suit premises is primarily based upon his physical debility to reside in upper floor of the building. The medical condition of the plaintiff, having undergone a bypass surgery and suffering from

arthritis in the knee joints, has not been denied on behalf of the petitioner. It has also not been denied that the wife of the plaintiff is also suffering from arthritis in the knee joints. As such, the reasonable requirement of the plaintiff and his spouse to reside in the ground floor of the building is established and cannot be branded as malafide in this backdrop.

The suit premises is admittedly on the ground floor. However, the contention on behalf of the petitioner is two fold: firstly that the suit premises is not suitable for the residence of the plaintiff and secondly that there are other tenants occupying the portions of the ground floor in the building and the plaintiff should have, instead, sought their eviction as the portions in occupation of those tenants are more suitable for the residence of the plaintiff. Thus the issue for determination in this revision application converges to the consideration as to whether the tenant petitioner can resist his eviction from the suit premise by questioning the propriety of the choice of the landlord-plaintiff to reside in the said premises.

By legislative intendment and precedents, it is by now well settled that the landlord is the sole arbiter to the suitability of the premises in accordance with his requirement. By adding explanation-II to section 11 (1) (c), BBC Act the legislature has



precluded the tenant from questioning the preference of the premises by the landlord. In **Savitri Sahay Vs. Sachidanand Prasad A.I.R. 2003 SC 156** the Apex Court after taking into notice this explanation-II to Section 11 (1) (c) BBC Act has also ruled that this explanation has permitted the landlord to ignore other premises and to prefer a particular premises, and has also repelled the contention on behalf of the tenant that for this reason it could have been inferred that the need of the landlord was not genuine or in good faith and the eviction was sought to get vacant possession in order to get higher rents. The Apex Court in this case has also taken into notice the provision as contained in section 17 of the BBC Act entitling the tenant to restoration of the possession and compensation if the premises is not occupied within one month of the date of restoration of possession or re-let within six months to any person other than such tenant. Similar view has been reiterated by the Apex Court in **Rishi Kumar Govil Vs. Maqsoodan 2007 (4) SCC 465** as follows:-

“19. In Ragavendra Kumar V. Firm Prem Machinery & Co. it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He

has complete freedom in the matter.

In Gaya Prasad v. Pradeep Srivastava it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi V. T.V. Krishnan it was held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live...”

In the present case, the medical condition of the landlord-plaintiff-opposite party and his wife and their requirement to reside on the ground floor for the said reason have not been questioned. From the pleadings and submissions on behalf of the parties, it is also manifest that the landlord-plaintiff-opposite party at present resides in the first floor of the building and the portions of the ground floor of the main building as well as the annexe building is in occupation of tenants including the present petitioner. The chamber of the landlord-plaintiff, who is an advocate, is admittedly on the ground floor. In this view of the matter, the choice of the landlord-plaintiff to seek eviction of the



tenant-petitioner from the premises in his occupation for the purpose of his residence cannot be said to be unreasonable or to be not in a good faith for the reason that the eviction of other tenants in the ground floor has not been sought for. The submission on behalf of the petitioner in this regard is thus held to be devoid of merit. The allied submission that the suit premise is not fit for residence of the plaintiff is equally misconceived for the same reason that the landlord's discretion in this regard cannot be judicially evaluated at the instance of the tenant.

The next submission on behalf of the petitioner relates to the finding on the issue of partial eviction. The plaintiff in paragraph-10 of the plaint has specifically stated that his need of the suit premises could not be satisfied by partial eviction of the defendant. In his reply in paragraph-22 of his written statement to this paragraph, the defendant-petitioner has not denied the said fact. There is no pleading or evidence on behalf of the defendant-petitioner that his partial eviction from the suit premises would satisfy the need of the plaintiff. In the present revision application also no such averment at all has been made. To the contrary, it has been repeatedly pleaded by the defendant-petitioner that the suit premises is a small room over an area of 350 square feet which is not suitable for residence of the plaintiff. The trial court while



considering this issue has taken into notice the evidence led on behalf of the plaintiff demonstrating that the suit premises has got only one exit door and to allow a stranger to occupy the suit premises along with the family of the plaintiff would be interference in the privacy of the plaintiff. On behalf of the petitioner, no material has been pointed out during the course of submission to persuade this Court to hold this finding to be unreasonable or perverse in any manner.

It has been next submitted on behalf of the petitioner that the suit should have been filed before the court of Munsif in view of the earlier rent to be Rs. 969/- per month and it has been wrongly filed before the Court of Sub Judge on the basis of the monthly rent of Rs. 5555/- of the suit premises which has been fixed by the rent controller but against which the appeal filed by the petitioner is pending. In view of the admitted fact that the rent of the building has been fixed by the rent controller to be Rs. 5555/- per month and there is no pleading or evidence to show that the said order of the rent controller has either been stayed or reversed, this Court finds it difficult to align with the submission by the learned senior counsel for the petitioner that till the decision of the rent appeal filed by the petitioner, the rent of the suit premises as fixed by the rent controller should be taken to be in

abeyance. Even otherwise also in view of the specific provision under Section 21 (2) C.P.C. the petitioner is precluded from raising such objection pertaining to pecuniary jurisdiction as it is not the case of the petitioner that such objection was raised in the court of first instance at the earliest possible opportunity and there has been failure of justice by the trial of the suit before the court of Sub Judge.

For the aforesaid reasons and discussions, this Court comes to the conclusion that the impugned judgment and order is in accordance with law and requires no interference. This revision application is, accordingly, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(V. Nath, J)

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