

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.36 of 2015

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Kuldeep Singh @ Kuldip Singh, S/O- Late Surjit Singh, resident of
Neemchand Road, P.O. + P.S. + Distt.- Kishanganj.

.... Petitioner/s

Versus

Md. Ishaque Alam, S/O- Abdul Razzaque, resident of Lohar Patti Road,
P.O. + P.S. + Distt.- Kishanganj.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

5 15-07-2015 Heard the learned counsel appearing on behalf of the
petitioner.

This 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 'BBC Act') calling in
question the legal sustainability of the judgment and order of
eviction dated 07.02.2015 passed in Eviction Suit No. 03 of 2014.

The factual expose' need no mention in detail.
Suffice it to state that the Eviction Suit No. 03 of 2014 had been
filed for eviction of the defendant on the ground of personal
necessity alone. The plaintiff has claimed to have purchased the
suit premises by registered sale deed dated 01.09.2012 and



22.04.2013 and it is his case that Surjit Singh, father of the defendant, was already the tenant in the suit premises on the monthly rental of Rs. 1200/-. It is further case of the plaintiff that the monthly rent was subsequently enhanced by the plaintiff to Rs. 1500/- which was being paid by the present defendant who is the son of the earlier tenant Surjit Singh and has been continuing as tenant in the suit premises after the death of his father. The plaintiff has stated that he has been carrying on his jewelry business in a shop on rent but the eviction decree has been obtained against the plaintiff by his landlord and the execution case has also been filed seeking dispossession of the plaintiff from the said shop due to which the personal necessity for the suit premises has arisen to the plaintiff.

The defendant, after service of notice, appeared in the suit and filed his written statement contesting the case of the plaintiff and has denied his status as tenant of the plaintiff in the suit premises. It is the specific case of the defendant that his wife Pinki Kaur is the tenant in the suit premises as nominated/authorized by the earlier tenant Surjit Singh (father of the defendant).

The plaintiff thereafter filed the petition on 08.01.2015 praying to reject the written statement filed by the

defendant. The asseverations in the petition were that as the defendant had not taken leave of the court to contest the suit as required under Section 14 (4) of the BBC Act, the written statement filed by him cannot be accepted, and the statement made by the plaintiff in the plaint must be deemed to have been admitted entitling him for an order of eviction.

The defendant filed his rejoinder and has asserted therein that the provision of Section 14 (4) of the BBC Act cannot be attracted in the facts of the case as he has denied his status as tenant of the plaintiff and therefore, he was not required to file an affidavit and obtain the leave to contest the suit as required. It has, therefore, been prayed by the defendant that his written statement be accepted.

The learned court below, after hearing the parties, has passed the impugned judgment and order granting the decree of eviction as prayed on the basis of deemed admission under the provision of Section 14 (4) of the BBC Act and has directed the defendant to handover the possession of the suit premises to the plaintiff.

While assailing the judgment and order, Mr. Sinha, the learned counsel for the petitioner has submitted that the learned court below has misconstrued the provision as contained



in Section 14 (4) of the BBC Act and has wrongly applied the same to the facts and circumstances of the present case. It has been propounded that the requirement of filing an affidavit stating the grounds for obtaining the leave to contest the suit will not be applicable in cases where the defendant-tenant denies his status as tenant in the premises in question and contest the plea of existence of the relationship of landlord and tenant with the plaintiff. It has been canvassed that the specific prayer of the defendant before the learned court below was to decide the issue of existence of relationship of landlord and tenant as preliminary issue but the same has not been considered by the learned court below. It has been next contended that the issue of partial eviction has not been determined and there is total non-application of mind by the court in this regard. It has also been argued that the plaintiff is owner of seven shops which are still vacant and can be used by the plaintiff for the purpose of meeting his necessity. The learned counsel, however, has not denied the existence of personal necessity of the suit premises by the plaintiff. The learned counsel has placed reliance on the decision in the case of **Champa Devi Vs. Kaushalaya Devi 1991 (1) PLJR 38** in support of his submission that the provision of Section 14 (4) of the BBC Act should be liberally construed. Further, reliance has been placed on the

decision in the case of **Nagendra Prasad Barnwal Vs. Jitendra Prasad Barnwal 1998 (2) P.L.J.R. 582** and in the case of **Md. Jahangir Vs. Smt. Kirti Devi 2001 (4) P.L.J.R. 488** in support of the contention that the partial eviction was mandatorily required to be considered by the court by making appropriate inquiry.

Per contra, Mr. Narayan, the learned senior counsel appearing on behalf of the plaintiff-opposite party has submitted that the provision as contained in Section 14 (4) BBC Act is mandatory and the suit is bound to be decreed on the basis of deemed admission as envisaged under the said provision in a case where the tenant fails to obtain the leave to contest the suit as required. It has also been pointed out that the decision in the case of Champa Devi (supra) relied by the learned counsel for the petitioner has been overruled later on by a Bench decision of this Court in the case of **Manik Roy Vs. Raghunandan Prasad 1993 (2) P.L.J.R. 215**. The learned senior counsel has further also submitted that in paragraph-11 of the plaint the plaintiff has categorically stated that the partial eviction of the defendant-tenant from the suit premises would not satisfy the need of the plaintiff but this assertion has not been denied by the defendant-tenant even in his written statement where he has made his reply in paragraph-23 of the written statement to this assertion of the plaintiff. It has

also been urged that the learned court below has considered the issue of partial eviction and has rightly recorded its finding on the basis of the materials on record.

After perusal of the impugned judgment and considering the rival submission on behalf of the parties, it is manifest that the gravamen of the controversy demonstrably pertains to the interpretation of the provision as contained in section 14 (4) of the BBC Act. However, in view of the Bench decision of this Court in the case of Manik Roy (supra) the issue is no more res integra. It is also apparent that the learned counsel for the petitioner has placed his reliance on the decision in the case of Champa Devi (supra) which has been already overruled by this decision. It has been held by their lordships:-

“6. A Bare perusal of the provisions would make it clear that in a case where the summons has been duly served on the tenant he is precluded from contesting the suit unless he files an affidavit, “stating the grounds on which he seeks to make such contest and obtains leave from the court as hereinafter provided”. In absence of such an affidavit or leave the landlord is entitled to an order of eviction as if the statements made by him (landlord) are admitted by the tenant.



Sub-section (5) provides that the tenant would be entitled to grant of leave to contest if his affidavit ‘discloses such facts as would disentitle the landlord from obtaining an order of eviction’. In my opinion, the provisions of sub-section (4) and (5) have to be read together. So read, it is obvious that ‘leave to contest’ within the meaning of sub-section (4) can be granted only if the tenant in his affidavit has disclosed material facts which would disentitle the landlord to an order of eviction.

“10.....I have no manner of doubt that in view of the special procedure provided for trial of suit for eviction on the ground of personal necessity or expiry of the period of tenancy, the requirement of taking leave of the Court as provided under Section 14 (4) is mandatory and in its absence neither the written statement can be accepted nor the defendant can be allowed to contest the suit. In my opinion, the decision rendered in **Champa Devi’s case** (supra) does not state the law correctly and deserves to be overruled.”

In view of the aforesaid dictum, the submission on



behalf of the petitioner that the provision of Section 14 (4) BBC Act shall not be applicable in cases where there is denial of relationship of landlord and tenant cannot be accepted. The provision of Section 14 (4) of the BBC Act mandatorily requires the tenant to disclose on affidavit the grounds on which he seeks to contest the suit for eviction. Such grounds necessarily include the denial by the tenant of existence of relationship of landlord and tenant. The leave to contest the suit is to be granted by the court only after the satisfaction that the tenant has disclosed such facts as would disentitle the landlord from obtaining an order of eviction on the ground (s) as prayed. The attempt on behalf of the learned counsel for the petitioner to distinguish the cases where the defendant-tenant denies the relationship of landlord and tenant from the provision of Section 14 (4) BBC Act is neither supported by the statutory provision nor appears to be reasonable in view of the intent and purport of Section 14 (4) BBC Act. This submission is accordingly overruled as misconceived.

Even otherwise also, the learned court below has considered the material brought on record by the parties on the issue of denial of relationship of landlord and tenant by the defendant-tenant. The sheet-anchor of the case of the defendant-petitioner that his wife Pinki Kaur is tenant the affidavit sworn by



his father Surjit Singh. This affidavit has also been annexed with this revision application. But the further material on records disclose that this affidavit has never been given effect. The counterfoils of the landlord's rent receipts produced on behalf of the plaintiff show that it was the defendant Kuldeep Singh who has been paying the rent for the suit shop to the plaintiff upto May 2015 and has also put his signature on these counterfoils. Further, the plaintiff has also produced the information supplied by the Superintendent of Post Office to the plaintiff under the Right to Information Act which shows that it was the defendant Kuldeep Singh who had sent the rent of the month of November and December to the plaintiff by money order. There is no pleading by the defendant-tenant that the original owner of the suit premises i.e. vender of the plaintiff was ever informed that the tenancy had been transferred to Pinki Kaur on the basis of the said affidavit and there is also no pleading that the Pinki Kaur was ever accepted as tenant by the previous owner or by the plaintiff. In absence of cogent corroborating pleadings and evidence, the affidavit has remained only a self serving document. The learned court below has correctly scrutinized the pleadings and materials on record in this regard and this Court does not find any infirmity in the finding recorded by the learned court below.



The fact of personal necessity of the plaintiff for the suit premises has not been denied by the petitioner. It has also not been disputed that a decree for eviction has been passed against the plaintiff for the shop where he has been carrying on his jewellery business as tenant and in view of this fact the plaintiff need has arisen for the suit shop for shifting his jewelry shop in the suit shop. The plaintiff has also stated in paragraph-11 of the plaint that he needs the entire suit shop and the partial eviction would not satisfy his requirement. As described in the schedule of the plaint, the area of the suit shop is 10feet X 13feet. Even in the written statement, which has been filed by the defendant-petitioner, though without obtaining the leave as required, the statement made in paragraph-11 with regard to partial eviction has not been specifically denied. Nonetheless the learned court below has considered the issue of partial eviction on the basis of the available materials on record and thereafter has come to the conclusion that the partial eviction of the tenant from the suit premises would not satisfy the need of the plaintiff.

Relying on the decision in the case of Nagendra Prasad Barnwal (supra) and Md. Jahangir (supra), the learned counsel has assailed this finding by dubbing the same as non consideration and has propounded that the learned court below



ought to have made the 'inquiry' on this issue. The learned counsel for the petitioner, however, has failed to elaborate as to what more enquiry could have been done by the learned court below in the facts and circumstances of the case. This Court is therefore not inclined to accept this submission on behalf of the petitioner in the back drop of the facts reflecting upon the conduct of the defendant-tenant in his insistence upto this Court that he is not required to take the leave of the court to contest the suit even in view of the mandatory provision of Section 14 (4) of the BBC Act as there is denial of the relationship of landlord and tenant. The whole design appears to be for the purpose to delay and elongate the proceeding of the eviction suit.

As noticed earlier, the legislature has envisaged 'deemed admission' by the tenant of the statements made by the landlord in the suit for eviction in such cases and the landlord, perforce section 14 (4) BBC Act has been made entitled to an order of eviction on this basis. In the present case, the landlord has categorically come out with the case of the requirement of the entire suit shop stating that the partial eviction would not satisfy his need. This statement shall also be deemed to have been admitted by the defendant-tenant. The learned court below however was aware of the requirement to consider the issue of partial eviction

and has recorded its finding on this issue also. This Court in the facts and circumstances of the present case has not been persuaded to hold that the said finding is not in accordance with law.

During the course of argument, the learned counsel for the petitioner has fairly accepted that in view of the explanation-II in Section 11 (c) BBC Act, the tenant is not entitled to question the preference of the suit premises by the landlord.

In view of the aforesaid facts and discussions, this Court holds that the impugned judgment and order of eviction is according to law and does not require interference.

Ex consequenti, this revision application is dismissed.

(V. Nath, J)

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