

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17023 of 2014

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Qaisar Hayat @ Quasar Hayat

.... Petitioner/s

Versus

Rajesh Pabra & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Najeeb Ahmad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

9 23-11-2015

Heard the learned counsel, Mr. Najeeb Ahmad on

behalf of the petitioner and the learned counsel, Mr. P.K.Jaipuriyar on behalf of the respondents on merit in admission matter with consent of the parties although, the writ application has been listed under the heading for orders on petitions placing the I.A. filed by the petitioner for stay of further proceeding in execution case.

It appears that the plaintiffs-respondents filed eviction suit under Section 11(1)(c) of the Bihar Building(Lease, Rent & Eviction) Control Act, 1982 on the ground of personal necessity only. The said suit was decreed. Against the said decree, the petitioner filed Civil Revision before the High Court. The High Court remanded the matter for consideration of partial eviction according to the provision as contained in proviso of Section 11(1)(c) of the B.B.C. Act. The trial court thereafter on the basis of evidences and after hearing the parties recorded a finding that if



the plaintiff-landlord is given 129.3 sq. ft. out of the suit property, his requirement will be substantially satisfied. The landlord then filed execution case being Execution Case No.2 of 2007 for executing that decree. The Nazir thereafter measured the land and granted only 14 ft. 9 inch to the landlord, therefore, the landlord filed application objecting the Nazir's report stating that in fact, the plaintiff has been granted 19 ft. 10 inch X 5 ft. i.e. 129.3 sq. ft. but according to the report of the Nazir, only 14 ft. 9 inch X 5 ft. has been granted which is contrary to the decree. The court below allowed this objection application filed by the plaintiff-landlord. Against that order allowing objection, the present petitioner filed review application. By the impugned order, the court below has rejected the said review application.

The present application under Article 227 of the Constitution of India has been filed by the petitioner challenging the original order of the Executing Court allowing the objection application filed by the plaintiff-respondent and also the order whereby the Executing Court rejected the review application filed by the petitioner.

The learned counsel, Mr. Najeeb Ahmad appearing on behalf of the petitioner submitted that in fact, in the plaint, the plaintiff mentioned the length of the suit property as 25 ft. 3 inch



which is a mistake and the Nazir in his report clearly stated that in fact, at the spot, the verandah described by the plaintiff in the plaint is not in existence. Therefore, if it was a mistake of the plaintiff then the plaintiff should suffer but the court below without considering this aspect of the matter has held that the requirement of the landlord is to be seen and not the tenant. According to the learned counsel, if the landlord is given 129.3 sq. ft. excluding the verandah then automatically the petitioner will be ousted from the entire suit property. In such circumstances, the court below has wrongly not reviewed the application filed by the petitioner. On these grounds, the learned counsel submitted that both the orders are liable to be set aside.

On the other hand, the learned counsel, Mr. Jaipuriyar submitted that the total area of the suit property is much more than 129.3 sq. ft. and according to the provision as contained in Section 11(1)(c) of the B.B.C. Act, only the requirement of the landlord is to be seen. The learned court below, therefore, considering this provision has rightly allowed the objection petition filed by the landlord and also has rightly rejected the review application.

Admittedly, the plaintiff's suit for eviction on the ground of personal necessity has been decreed by the trial court. On remand for consideration of partial eviction, the trial court

clearly recorded a finding that requirement of the landlord shall be substantially satisfied if the landlord is granted 129.3 sq. ft.

Proviso to Section 11(1)(c) of the B.B.C. Act reads as follows:

(c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord:

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall hence forth constitute the building within the meaning of clause (b) of section 2 and the rent so fixed shall be deemed to be the fair rent fixed under section 5;

In view of this provision, the requirement of the landlord is only to be seen by the Court and the Court below in view of this direction has clearly recorded the finding that the reasonable requirement of the landlord will be satisfied if 129.3 sq. ft. is given to the landlord.

So far the argument of the learned counsel that no area will remain in possession of the tenant if the area measuring 129.3 sq. ft. is given to the landlord because at this spot the Nazir did not

find the verandah in existence which was in fact encroached is concerned, it may be mentioned here that proviso to Section 11(1)(c) provides that if the tenant agrees to such occupation then only the proportionate fair rent is required to be fixed and if the tenant is not agreeable to such occupation of the landlord then on this ground, the requirement of the landlord cannot be decreased or the tenant cannot be granted more area from the required area of the landlord. It may be mentioned here that the tenant has not challenged the finding of the court below passed by the court below after remand. From perusal of the order passed by the court below, it appears that the court below has considered the provision and has rightly held that the requirement of the landlord is only to be seen in view of the provision as quoted above.

I, therefore, find no merit in this writ application under Article 227 of the Constitution and, therefore, there is no question of interference in the impugned order. Accordingly, this writ application is dismissed. The I.A. is also thus dismissed.

(Mungeshwar Sahoo, J)

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