

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.148 of 2013

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1. Ravi Shankar Singh S/O Shri Krishna Singh C/O Lakhan Tea Shop, Dr. Rajendra Prasad Road, Khalifa Bagh, P.S. Kotwali, District Bhagalpur.

.... Petitioner/s

Versus

1. Smt. Shobha Prasad W/O Dr. Bijoy Prasad Resident Of Aliganj, P.O. Mirjanhat, P.S. Mojahidpur, District Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. DEEPAK KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-06-2016

Heard learned counsel for the petitioner and learned counsel for the respondent.

The present revision application has been filed under Section 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act 1982 (hereinafter referred to as the BBC Act) against the judgment and decree of eviction.

The suit premises is admittedly a shop measuring 300 Sq. Ft. which has been purchased by the plaintiff in the year 1997 by registered sale deed dated 06.10.1997. The defendant was admittedly in occupation of the suit premises as tenant therein at the time of purchase by the plaintiff. After purchase the plaintiff filed a petition before the house controller for fixation of rent and by order



dated 29.12.1999 in House Control Case No. 27 of 199 the house controller fixed the rent of the suit premises. The defendant preferred appeal against the said order which was dismissed. Subsequently, the plaintiff filed the present suit for eviction of the defendant on the ground personal necessity for establishing a clinic and chamber. The defendant entered appearance and contested the assertions of the plaintiff. It was the case of the defendant that the vendor of the plaintiff had entered into an oral agreement for sale of the suit premises with him and the advance money was paid to the vender by the defendant. The defendant claimed that thereafter he had been continuing in possession of the suit premises on the basis of the said agreement for sale. It was also pleaded that subsequently the defendant had filed Title Suit No. 216 of 1997 for specific performance of contract. It was further case of the defendant that the plaintiff had got no personal bonafide necessity for the suit premises and the suit had been filed only to harass the defendant-tenant and pressurize him for enhancement of rent, on the pretext of establishing a chamber and clinic.

It would be pertinent to take into notice that by order dated 05.08.2010 passed under Section 15 of the BBC Act, the direction was issued to the defendant to deposit the current rent as well as arrears of rent. The defendant did not comply the said direction and

consequent thereupon the defence of the defendant was struck off.

The learned court below, after the scrutiny of the evidence on record has returned the finding that the plaintiff has got personal necessity for the suit premises and accordingly, the order for eviction of the defendant-petitioner has been passed by the impugned judgment and decree.

Learned senior counsel for the petitioner has firstly submitted that the petitioner is entitled to protect his possession over the suit premises in part performance of contract as envisaged under Section 53A of the Transfer of Property Act. It has been further submitted that the personal necessity as pleaded by the plaintiff is only a pretext whereas in fact the plaintiff's husband has got his hospital within 50 meters of the suit premises which fact has been admitted by him in his deposition. Putting emphasis on the provision as contained in Section 11 of the BBC Act providing that the necessity of the landlord must be reasonable and bonafide, it has been contended that from the facts and evidence it is apparent that it is only the desire of the plaintiff and not the personal necessity as envisaged in Section 11(c) of the BBC Act. It has also been canvassed that the plaintiff must be in dire necessity of the suit premises in order to secure a decree for eviction on that score. It has been further submitted that after the fact has been admitted that the



plaintiff's husband has got his own hospital within 50 meters, the personal necessity has vanished. It has also been submitted by learned senior counsel that the husband of the plaintiff has also got his own clinic in mohalla Aliganj and therefore, the main plea of personal necessity stands diluted. Much emphasis has been laid on the judgments in the suit for specific performance of contract filed by the other tenants against the vendor of the plaintiff and it has been submitted that there are strong circumstances which dent the case of personal necessity as pleaded by the plaintiff. It has been finally submitted that the learned court below has not decided the issue of personal necessity in correct perspective and has ignored the material evidence on record and the impugned judgment and decree is vitiated.

Learned counsel appearing for the opposite parties, however, has supported the impugned judgment and decree for eviction rebutting the submissions made on behalf of the petitioner. It has been contended that the conduct of the petitioner throughout clearly demonstrates his malafide intention to harass the plaintiff and occupy the suit premises even without payment of rent when he had failed to comply the direction issued by the house controller and also the direction issued by the learned court below under Section 15 of the B.B.C Act incurring the consequence of his defence being



struck off. It has been submitted that the husband of the plaintiff has been examined as PW-4 in the suit who has categorically stated that on the date of filing of suit his hospital was not constructed. Thus, there is no admission as put forth on behalf of the petitioner that the plaintiff has got another place for establishing a chamber and clinic in the hospital. It has been pointed out that the suit premises is situated in the centre of the Bhagalpur town and is most suitable for the purpose as pleaded by the plaintiff. It has been canvassed that the learned court below has recorded the findings on the basis of appreciation of evidence on record and there is no perversity or unreasonableness in the same warranting interference in revisional jurisdiction of this Court under Section 14(8) B.B.C Act. It has also been pointed out that the provision of Section 53A T.P. Act cannot be invoked in case of oral agreement for sale.

After considering the submissions on behalf of the parties and perusal of the impugned judgment, it is manifest that the defendant has admitted that he had been a tenant in the suit premises till the oral agreement for sale on 21.04.1996 and since thereafter he has been in possession of the suit premises in part performance of the contract. However, in view of the specific requirement of a registered document evidencing agreement for sale, as envisaged in Section 53A of the Transfer of Property Act, the plea of the



defendant to be in possession of the suit premises in part performance of the contract cannot be legally countenanced. Further the submission on behalf of the petitioner that the requirement of the suit premises as pleaded by the plaintiff is not bonafide and reasonable is not supported by the evidence on record. The deposition of the husband of the plaintiff examined as PW-4 does not disclose any such admission, as put forth on behalf of the petitioner, which would discolour the plea of bonafide and reasonable personal necessity of the plaintiff. The fact that the husband of the plaintiff has got built up a hospital during the pendency of the suit is not by itself sufficient to hold that the need of the plaintiff is not bonafide and reasonable. It has been observed by the Apex Court in the case of **Md. Ayub & Anr vs K.C. Chand 2012(2) S.C.C 155** that the affluence of the landlord is not relevant for considering the plea of his bonafide requirements. It has been further reiterated that the landlord's requirement need not be a dire necessity in order to get a decree for eviction of his tenant. It would also be profitable here to notice the observation by their lordships in **Sarla Ahuja vs United India Insurance Company Limited AIR 1999 S.C. 100** as follows:-

"14. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that



the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide.....While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

Tested on the anvil of the aforesaid dictums of the Apex Court coupled with the fact that the defence of the defendant-petitioner has been struck off, this Court finds that the learned court below has evaluated the evidence on record in accordance with the correct principles of law. It does not appear from the deposition of PW-4 that there is any material inconsistency which would have reflected upon the bonafide of the personal necessity as pleaded by the plaintiff. The entire submission in this regard on behalf of the petitioner has centered around reappreciation which is not permissible under the limited jurisdiction as provided in Section 14(8) of the B.B.C Act. The constitution bench in the recent judgment in the case of **Hindustan Petroleum Corporation Limited vs Dilbahar Singh 2014(9) S.C.C 78** has examined the ambit and scope of such jurisdiction and it has been laid down that



the High Court in the garb of revisional jurisdiction under the rent control statute has not been conferred the status of second court of first appeal and the High Court should not enlarge scope of revisional jurisdiction to that extent.

For the aforesaid reasons and discussion, this Court holds that the impugned judgment is according to law and no ground has been made out warranting interference in the revisional jurisdiction. The revision application is accordingly dismissed.

(V. Nath, J)

Ranjan/-

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