

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.679 of 2010

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Daya Shankar Prasad son of Ram Lakhan Prasad, resident of Rampur Rajwa
(Known as Hasanpur Bazar), Police Station Hasanpur, District Samastipur.
.... Petitioner(Defendant)

Versus

Kamal Kumar Goyal, son of Late Mahadeo Agrawal, resident of Maranchi
Ujagar (Known as Hasanpur Bazar), Police Station Hasanpur, Post Office
Hasanpur Sugar Mills, District Samastipur.

....Opposite Party (Plaintiff)

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Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

10 01-04-2016 Heard Mr. Bhavesh Kumar, learned counsel
appearing for the petitioner and learned counsel for the
respondents.

2. The present revision application has been filed
under Section 14(8) of the Bihar Building (Lease, Rent &
Eviction) Control Act, 1982 (hereinafter referred to as the 'B.B.C
Act') against the judgment and order dated 24.05.2010 passed in
Eviction Suit No. 05 of 2001 by which the learned court below
has passed the eviction decree against the defendant-petitioner.

3. At the outset, learned counsel for the petitioner has
submitted that the defence of the defendant-petitioner was
already struck off for violation of the direction of the court for
deposit of current rent and arrears of rent under Section 15 of the
B.B.C Act. Learned counsel however, has further submitted that



the only point for consideration in this revision application is that the learned court below has not considered the issue of partial eviction of the defendant-petitioner over the suit premises. It has however been accepted by the learned counsel that there is no such plea or evidence on behalf of the defendants indicating his agreement to such partial eviction as required under the proviso to Section 11(c) of the B.B.C Act. The learned counsel for the landlord-opposite party has supported the impugned judgment and has submitted that in view of the law laid down in the case of **M/s Bata India Ltd. vs Dr. Md. Qamruzzama** reported in **1993(1) PLJR Pat. 87**, that it was for the defendant-tenant to express his agreement for partial eviction and in absence, the court is not required to decide the said issue.

4. After considering the submission and perusal of the impugned judgment, it is manifest that the relationship of landlord and tenant has been found between the parties by the learned court below and the said finding has not been assailed by the learned counsel for the petitioner. The fact is also admitted that the defence of the petitioner has been struck off. It has also been accepted that there is no evidence or any material on record to show that the petitioner has ever expressed his agreement for occupation of the suit premises in part. The principle in this regard has been laid

down by a Bench decision of this Court in the case of **M/s Bata India Ltd. vs Dr. Md. Qamruzzama** reported in **1993(1) PLJR Pat. 87**, holding as follows:-

"It would appear that while the main clause entitles the landlord to secure eviction of the tenant on the ground mentioned therein, the proviso mandates the court to hold enquiry as to whether the plaintiff's needs can be substantially satisfied by part eviction of the tenant from the premises. The question is who has to prove that the requirement can be satisfied substantially by part eviction. In our opinion, the landlord cannot be saddled with the onus of proof in this regard. He having proved that he requires 'the building' which means the whole suit premises, he cannot be expected or asked to prove by evidence that his need can be satisfied by part eviction. That will amount to asking him to prove the negative. In our opinion, once the landlord has proved the need of the premises, onus shifts on the tenant. The expression 'and the tenant agrees to such occupation' strengthens the view that while holding enquiry on the question of partial eviction it is the tenant who has to express his readiness and willingness for part occupation of the premises and to show that the plaintiff's need can be substantially satisfied by evicting him from only part of the premises and allowing him to continue in occupation of the rest of it. No part of the

defendant's evidence on the point of partial eviction was brought to our notice. We thus fail to understand as to how the petitioner can assail the finding on the question of partial eviction on the ground that there is no specific evidence on the point."

5. In view of the principles of law as above laid down, in a case where the defendant has admittedly not brought on record any material indicating before the learned court below his agreement for part occupation of the suit premises, the issue of partial eviction is not required to be considered once after holding that the plaintiff has got personal necessity. As such this Court finds that the impugned judgment has been passed in accordance with law.

6. This revision application is, accordingly, dismissed.

(V. Nath, J)

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