

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Revision No. 180 of 2014**

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Vijay Kishore Sah Son of Shiv Jee Sah Resident of village - Parashurampur, P.S.-  
Parsauni, District - Sitamarhi.

.... .... Defendant-Petitioner

Versus

Hari Mohan Trivedi, Son of Late Ram Jeevan Trivedi, Resident of village -  
Mohalla - Gaushala Chowk, P.S.- Sitamarhi, District - Sitamarhi.

.... .... Plaintiff-Opposite Party

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**Appearance :**

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR**

**SRIVASTAVA**

**CAV JUDGMENT**

**Date: 20-06-2018**

1. This revision petition has been filed under Section 14(8) of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "Act") by the defendant-petitioner against judgment dated 28.10.2014 passed by learned Munsif, Sitamarhi in Eviction Suit No. 01 of 2009, C.I.S. Eviction Suit No. 40 of 2014 by which and where under he decreed the aforesaid suit in favour of plaintiff-opposite party on the ground of his personal necessity directing the defendant-petitioner to give vacant possession of the suit premises to the plaintiff-opposite party within two months from the date of the decree and on failure to comply the order, the plaintiff-opposite party can resort to the process of the court for eviction of defendant-petitioner.



2. The plaintiff-opposite party filed above stated Title Eviction Suit No. 01 of 2009 against the defendant-petitioner for eviction of the defendant-petitioner from one room of R.S. plot no. 5624 situate at Village Punaura now known as Goshala Chawk, Sitamarhi. The case of the plaintiff-opposite party is that plot no. 5624 was allotted to his father in private partition and after death of his father, he along with his brother came in joint possession of the aforesaid plot no. 5624. Further case of the plaintiff-opposite party is that there was an old house over the above stated plot which was removed by him and got constructed new structure consisting seven rooms and out of the aforesaid seven rooms, the defendant-petitioner is tenant of one room. The aforesaid room was let out to defendant-petitioner in January 1993 for running Homeopathy shop on the monthly rent of Rs. 400/- and at the time of taking the aforesaid room on rent, the defendant-petitioner agreed to vacate the same whenever the same is required to the plaintiff-opposite party. Further case of the plaintiff-opposite party is that the plaintiff-opposite party decided to start business of vegetable seeds and pesticides and the room in question was suitable for him to start the aforesaid business and accordingly, in November 2007 he requested the defendant-petitioner to vacate the room in question for the above stated personal need of the plaintiff-opposite party so that he could start his business. The



defendant-petitioner assured to vacate the aforesaid room in December 2007 but in spite of assurance given by the defendant-petitioner, he did not vacate the room in question and started sending rent through money orders. The plaintiff-opposite party several times requested the defendant-petitioner to vacate the room in question but his all request went in vain and thereafter, he sent a legal notice to the defendant-petitioner. Even on receipt of the legal notice, the defendant-petitioner did not vacate the aforesaid room and thereafter the plaintiff-opposite party filed the above stated suit under Section 11(1)(c) of the Act.

3. The defendant-petitioner appeared before the court below and with the leave of the court filed his written statement. The defendant-petitioner admitted the relationship of landlord and tenant between him and plaintiff-opposite party but averred in his written statement that plaintiff-opposite party is not in need of the room in question because he runs his business of seeds from his house. He further averred that at the time of renovation of his house, plaintiff-opposite party took Rs. 50,000/- from him and the aforesaid amount has not been returned to defendant-petitioner as yet. He further averred in his written statement that plaintiff-opposite party has let out all the seven rooms of the premises and he has sufficient space in his house to run his business and as a matter of fact, the plaintiff-opposite



party has brought the present suit with mala fide intention on the instigation of his brother Manoj Trivedi with whom the defendant-petitioner had some differences. The defendant-petitioner further averred that he has no other place for running his business and in case of eviction, his business would be demolished and his family will face starvation. He further averred that to west of the disputed room, there is a vacant shop which was earlier let out to one Girdhari Sharan but subsequently, the aforesaid Girdhari Sharan vacated the said room during pendency of the suit and, therefore, the plaintiff-opposite party may start his business from the aforesaid room which has been vacated by said Girdhari Sharan or may ask the defendant-petitioner to take possession of the aforesaid room.

4. The learned court below on the basis of pleadings of the parties framed the following issues:-

- (i) *Whether the suit is maintainable?*
- (ii) *Whether the plaintiff has got cause of action and right to Sue?*
- (iii) *Whether the suit is barred by the law of limitation estoppel acquiescence?*
- (iv) *Whether the suit is barred by the provision contained in Section 11(1)(c), Bihar Buildings (Lease, Rent and Eviction) Control Act?*
- (v) *Whether the plaintiff requires the suit premises for his personal necessity?*
- (vi) *Whether the plaintiff is entitled to get decree of eviction against the defendant?*



*(vii) Whether the plaintiff is entitled to any other relief or reliefs?*

5. The learned court below while dealing with issue no. 5 came to conclusion that plaintiff-opposite party requires the room in question reasonably and in good faith for running his business and plaintiff-opposite party is entitled to get decree of eviction against the defendant-petitioner.

6. Learned counsel appearing for the defendant-petitioner assailed the impugned judgment and decree arguing that above stated Girdhari Sharan was examined as DW-5 and said Girdhari Sharan very clearly stated that he had vacated the room which was just beside the room in question and, therefore, it is obvious that plaintiff-opposite party may start his business from the above stated vacated room because the size of the aforesaid room as well as room in question is almost similar and the need of the plaintiff-opposite party can easily be satisfied. Learned counsel for the defendant-petitioner cited decision of **Amarjit Singh vs. Smt. Khatoon Quamarain** reported in **AIR 1987 SC 741** in which the Hon'ble Apex Court while dealing with a case filed under Delhi Rent Control Act (59 of 1958) held that *"If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it out for higher income, she would be disentitled to evict her tenant on ground of her need and the philosophy and*



*principle of rent restriction law have nothing to do with the private exploitation of property by the owners of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation."*

7. He further submitted that "*A mere wish or desire of the landlord to acquire possession over the tenancy premises cannot be said to be a bona fide and reasonable requirement and the court has to judge the hardship of the parties.*" In support of above stated contention, he cited decision of **Badrinarayan Chunilal Bhutada vs Govindram Ramgopal Mundada** reported in **2003(2) PLJR (SC) 53**.

8. Learned counsel appearing for the defendant-petitioner further submitted that at para 15 of the impugned judgment, the learned court below gave wrong finding to this effect that defendant-petitioner has not pleaded in his written statement in respect of partial eviction whereas the fact of partial eviction has been pleaded by the defendant-petitioner in his written statement. He further submitted that moreover, the defendant-petitioner, specifically, pleaded in his written statement and DW-5 Girdhari Sharan also stated that a vacant room was available to the plaintiff-opposite party and the plaintiff-opposite party could satisfy his need by the aforesaid vacant room.

9. Learned counsel appearing for the defendant-petitioner further submitted that no doubt, during pendency of this revision petition, the defendant-petitioner has already been evicted from the room in question through the process of the court but the possession



of defendant-petitioner can be restored under Section 144 of the C.P.C. In support of his above stated contention, learned counsel for the defendant-petitioner relied upon a judgment delivered by **Hon'ble Madras High Court in A.G. Pasupathy vs. Mohamed Ismail on 14 October, 1997**. He also relied upon decision of **Gurdit Singh (Dead) through LRs. and others vs. Nirmal Singh and another** reported in **2001(1) PLJR (SC) 191**. He also relied upon decision of **Binayak Swain vs. Ramesh Chandra Panigrahi and another** reported in **AIR 1966 SC 948** as well as decision of **Rajindera Singh (Dead) through LRs. & Ors. vs. Prem Mai & Ors.** reported in **2007(4) PLJR (SC) 128**.

10. On the other hand, learned counsel appearing for the plaintiff-opposite party refuted the above stated submissions arguing that plaintiff-opposite party, successfully, proved his bona fide personal need by placing reliable evidences before the court below and this court while exercising the revisional jurisdiction has a very limited scope to go through the evidences available on the record. In support of his above stated contention, he referred decision of **Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh** reported in **2015(1) PLJR (SC) 187**, the judgment of **Chandrika Prasad (D) Thr. LRs. & Anr. vs. Umesh Kumar Verma & Ors.** reported in **2002(1) PLJR (SC) 144** and the judgment of **Ravi Atal &**



**Anr. vs. Smt. Ganga Devi** reported in **2012(3) PLJR 144** and the gist of all the aforesaid decisions is that *“the revisional jurisdiction cannot be equated with appellate jurisdiction and the revisional jurisdiction under Section 14(8) of the Act is neither limited as under Section 115 of the C.P.C. nor wide as that of an appellate court and the High Court cannot enter into appreciation or re-appreciation of the evidence merely because it is inclined to take a different view of the facts as if it were a court of facts but High Court, however, is obliged to test the order of the lower court on the touch stone of what is according to law and for that limited purpose enter into reappraisal of evidence for ascertaining that the conclusion of the lower court is reasonable.”*

11. On the strength of the aforesaid decisions, learned counsel for the plaintiff-opposite party submitted that there is nothing on the record to show that the learned court below committed any jurisdictional or any other error. Learned counsel for the plaintiff-opposite party further submitted that the defendant-petitioner could not succeed to prove that another shop was vacant which was sufficient to satisfy the need of the plaintiff-opposite party. He submitted that no doubt, DW-5 claimed before the lower court that he had vacated his shop but Advocate Commissioner, who was examined before the court below, found the above stated shop of DW-5 locked and, therefore, it cannot be said that DW-5 had vacated his shop. He further submitted that DW-1 as well as several witnesses examined on behalf of defendant-petitioner claimed that all the seven rooms of the



plaintiff-opposite party were occupied by the tenants. He further submitted that it is the choice of the landlord to choose a particular premise to satisfy his need and it is not an obligation on the part of landlord to make an offer of another premise to the tenant before filing eviction Suit. He further submitted that defendant-petitioner has not taken plea of partial eviction in his written statement nor any evidence was led by him on the above stated point and, therefore, the learned trial court rightly decided the above stated point. He further submitted that the court cannot take suo motu cognizance of partial eviction unless it is pleaded in written statement and the evidence is led on the above stated point. He further submitted that moreover, before passing the decree for partial eviction, the court must satisfy that landlord and tenant can both conveniently occupy the disputed premises as two units. In support of his above stated contention, he referred decision rendered by this Court in the case of **The Director of National Cadet Corps & Ors. vs. Smt. Ram Piari Devi & Ors.** reported in **2010(4) PLJR 553**.

12. Having heard the contentions of both the parties, I went through the record. Admittedly, the plaintiff-opposite party brought the above stated eviction suit on the ground of personal necessity. The relationship of landlord and tenant between plaintiff-opposite party and defendant-petitioner is not in dispute. The



defendant-petitioner only disputes the personal need of plaintiff-opposite party on the ground of his financial position as well as availability of another shop to the plaintiff-opposite party. It is well known fact that financial capacity of the landlord does not play any role in the case of eviction under the Act and, therefore, the aforesaid ground of defendant-petitioner is devoid of merit. So far as availability of another room to the plaintiff-opposite party is concerned, it is specific case of the defendant-petitioner that during pendency of the eviction suit, DW-5 Girdhari Sharan, who was tenant of plaintiff-opposite party, vacated his shop and handed over the vacant possession of the aforesaid shop to the plaintiff-opposite party. The aforesaid Girdhari Sharan has been examined in the case as DW-5 and stated that in November 2009 he had vacated his shop and handed over possession to the plaintiff-opposite party. It is pertinent to note here that on the prayer of defendant-petitioner, an Advocate Commissioner was appointed and the Advocate Commissioner visited the suit premises and found a room adjacent to the room in question but he failed to verify as to whether the aforesaid room was vacant or not because the shutter of the aforesaid shop was found down and closed. Therefore, it is obvious that defendant-petitioner could not succeed to prove that vacant room was available to the plaintiff-opposite party to start his business. Moreover, it is the choice of the



landlord to choose a particular premise to satisfy his need and the tenant cannot compel him to choose a particular premise to satisfy his need.

13. The defendant-petitioner has challenged the impugned judgment on the ground that learned trial court failed to take notice of this fact that partial eviction of the room in question can satisfy the need of the plaintiff-opposite party but it is obvious from perusal of the impugned judgment that learned court below has discussed the aforesaid point in accordance with law and I am also of the view that the court cannot take cognizance of partial eviction suo motu unless it is pleaded and evidence is led in this regard and parties to the proceeding agree to the partial eviction but in the present case, the plaintiff-opposite party has denied the partial eviction and therefore, in my view, there is no perversity or illegality in the impugned judgment of learned court below.

14. Admittedly, the defendant-petitioner has already been evicted from the suit premises but in my view, if he succeeds in this revision petition and the impugned judgment and decree is set aside, then certainly the defendant-petitioner has right to get the possession of the disputed room but on the basis of aforesaid discussions, I am of the opinion that there is no illegality, irregularity or perversity in the impugned judgment and decree and there is no scope for this court to



interfere into the same and hence, in my view, this revision petition is devoid of merit. Accordingly, this revision petition stands dismissed.

**(Hemant Kumar Srivastava, J)**

SHAHZAD/-

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