

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.5 of 2010

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Md. Hamid Ali S/o Md. Mustaffa Kamal R/O Vill.- Gewal Bigha, P.S.-
Rampur, Distt.- Gaya

... .. Petitioner

Versus

1. a. Md. Shah Jehan.
b. Shahnaj Bano, Wife of Late Md. Fakruddin.
c. Gulsan Ara, Wife of Md. Gayasuddin.
All son and daughters of Late Abdul Shakoor, R/O Vill.- Gewal Bigha, P.S.-
Rampur, Distt.- Gaya
2. Md. Shanawaz S/O Late Abdul Sakoor R/O Vill.- Gewal Bigha, P.S.-
Rampur, Distt.- Gaya

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Adv
	:	Mr. Partha Gaurav, Adv
For the Respondent/s	:	Mr. Rajeev Kumar Singh, Adv
	:	Mr. Mukesh Kumar Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 18-04-2019

Heard learned counsel for the parties.

2. This civil revision under Section 14(8) of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 is by the tenant against the judgment and decree dated 27.11.2009 passed in Eviction Suit No.19 of 2006, whereby the suit of the opposite parties for personal necessity against the petitioner has been decreed by the learned trial court.

3. The challenge is on the ground that the learned court below erred in holding that the plaintiffs-opposite parties have proved a case of bonafide and reasonable personal



necessity of the suit land and has not correctly considered that plaintiffs' personal necessity would be satisfied by partial eviction.

4. The case and claim of the plaintiffs-opposite parties as disclosed in the plaint is that plaintiff No.1 owns and possesses Holding No.694/1 situated in Ward No.9/27 at Mohalla-Gewal Bigha, P.S.-Rampur, District-Gaya. The said building consists of several shops let out to different tenants who are running their business. One of the shops measuring 6' 9" x 14'6" was in possession of the petitioner on monthly rent of Rs.500/-. Plaintiff No.2, who is son of plaintiff No.1, was looking after the management of the said building. Md. Naushad Alam grandson of plaintiff No.1, who was physically disabled required to start business of sale of paints in the suit premises as he was unemployed lying idle, hence, the suit premises was bonafidely and personally required by the plaintiffs-opposite parties. They asked for vacation, which the defendant-petitioner refused. Further case is that though the tenant was defaulter in payment of rent, however, for that grievance, separate proceeding would be instituted. The plaintiffs further pleaded that the personal necessity of the plaintiffs would not be satisfied by partial eviction of the defendant from the suit premise.



5. The petitioner filed written statement refuting the case and claim of the plaintiffs on the ground that Naushad Alam is doing business of crockery in the adjoining shop in the same building, hence, he is not unemployed rather concocted requirement is made out just to evict the tenant and fetch more rent. Petitioner further asserted that he had advanced Rs.50,000/- and unless that is adjusted, the petitioner cannot be asked to vacate the suit premise. According to the petitioner, several shops were there in the building, and the plaintiffs were in possession of Shop No.6 and 7 which was suitable to fulfill their need; petitioner asserted that Naushad Alam is not a physically disabled person rather his one leg is shorter than another, however, is capable to do his work conveniently. The defendant-petitioner has improved his business by investing more money, hence, just to throw him on road, the suit cannot be decreed.

6. Thereafter, the plaintiffs filed a supplementary affidavit stating therein that the business of Bharat Crockery and Tent House is of Md. Shoib Alam @ Pintoo, another grandson of plaintiff No.1 and nephew of plaintiff No.2, running in Shop No.7. There is no Shop No.6 rather that portion is used as entrance in the residential portion. The plaintiffs further denied about any advance taken from the tenant.



7. The trial court framed six issues for consideration, three issues were important; one was regarding relationship of landlord and tenant between the parties which was in fact not an issue, as the relationship is admitted by the petitioner in the pleading as well as in the evidence. Other two issues were whether the plaintiffs require the suit premises reasonably and bonafidely for their personal necessity and whether the partial eviction would serve the purpose of the plaintiffs.

8. On consideration of evidence, the learned trial court held that there is relationship of landlord and tenant between the parties, the requirement of plaintiffs is reasonable and bonafide for personal use and partial eviction would not serve the requirement of the plaintiffs.

9. Learned counsel for the petitioner submits that it has come during evidence that during pendency of the suit one of the rented premises was vacated by the tenant, Kohinoor Medical and the same was in possession of the plaintiffs. The plaintiffs should have used that premise to fulfill the personal necessity. Moreover, even some bigger premises were in possession of other tenants and there was no explanation for exercise of option by the plaintiffs to the premises under rent



with the petitioner. The requirement is not bonafide and in the guise of requirement, the plaintiffs want ejectment to let it to some other tenant on higher rent.

10. Learned counsel for the opposite parties submits that all the plaintiffs' witnesses, P.W.1-Md. Sarfaraj Khan, P.W.2 Md.Irshad Alam, P.W.3-Kafil Ahmad, P.W.4-Md. Jafar Iqbal, P.W.5-Md.Aftab Alam, P.W.8-Md. Naushad Alam, deposed that he is need of the suit premise and P.W.9-Shahanbaj. Plaintiff No.2 had consistently deposed that Md. Naushad Alam is unemployed, he is in need of the suit premises to start business of paint. The size of the suit premises would not make it feasible for partial eviction to fulfill the need of the plaintiffs. P.W.8 is specific that New Bharat Tent House is business of his elder brother-Md. Shoib Alam. He further stated that the tenant running shop in the name of Kohinoor Medical is still in the said shop. Further submission is that though the tenants' witnesses D.W.1- Md. Sahid Raja, D.W.5-Iqbal Hussain, D.W.8 Mustafa Kamal, the father of the defendant and D.W.10-Hamid Abi, the defendant has stated that Naushad is not in need of the suit premises, as he is already engaged in the business of crockery. However, neither the defendant has stated nor evidence has come that partial eviction of the suit premises



would serve their purpose. D.W.1 has admitted that Naushad is physically disabled in the sense that his one of the leg is shorter than another. The same is admission of the party defendant in the pleading as well as evidence.

11. The law is well settled by a catena of judgments that “reasonable requirement” of the landlord *postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.*” The Hon'ble Supreme Court has quoted the aforesaid view of earlier judgment in **Bega Begum Vs. Abdul Ahad Khan**, reported in (1979) 1 SCC 273, in the case of **Pratap Rai Tanwani and Anr Vs. Uttam Chand and Anr**, reported in (2004) 8 SCC 490. In the case, in hand, the requirement pleaded and proved by the plaintiffs-opposite parties is apparently reasonable, as there is element of need rather simple desire to get the suit premises. Plaintiffs’ grandson is unemployed and he desires to start business of paint. The plaintiff’s witnesses have denied that he is involved in business of crockery rather the business of crockery is of another brother Shoib. No contrary evidence has been brought on the record,



therefore, the reasonable and bonafide personal requirement of the plaintiffs is well proved.

12. In the case of **The Director of National Cadet Corps and Ors Vs. Smt. Ram Piari Devi and Ors**, reported in **[2011 (1) BJLR 0093(Pat)]** a Bench of this Court considered the judgment of this Court reported in **2007 (4)PLJR, Mostt. Jagtarna Kuer Vs. Lalmuni Kuer**, for proposition that when no plea of partial eviction is taken in the pleading or in the evidence before Trial Court by the tenant regarding satisfaction of requirement by partial eviction, such plea cannot be allowed to be raised at the appellate stage.

13. In this case, the defendant has not pleaded nor led any evidence much less even suggested to the plaintiffs' witnesses that partial eviction would serve the purpose. Moreover, the learned trial court has recorded a positive finding that partial eviction cannot serve the purpose of the plaintiffs.

14. In the result, I find that the judgment of the learned court below does not suffer from any infirmity especially infirmity regarding error of record, exercise of jurisdiction with material irregularity and illegality or inconsistent with the settled law.



15. Hence, this civil revision application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	04.04.2019
Uploading Date	18.04.2019
Transmission Date	NA

