

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.121 of 2018

=====

Sri Arun Kumar Choudhary @ Arun Kumar, son of Late Baidhyanath Choudhary, M/s New Vaishali Electric, At and P.O.- Bhagwanpur, P.S. Sadar, District- Muzaffarpur, resident of Village Mahima Mona, P.O. P.S. Goraul, District Vaishali.

... .. Petitioner/s

Versus

Smt. Mukta Singh, wife of Sri Awadhesh Kumar Prasad Singh, resident of Mohalla P.O.- Bhagwanpur, P.S. Sadar, Town District- Muzaffarpur.

... .. Respondent/s

with

CIVIL REVISION No. 122 of 2018

=====

Sri Bipin Kumar Singh @ Vipin Kumar, son of Sri Basistha Narain Singh, Proprietor of M/s Vaishali Electric at and P.O. Bhagwanpur, P.S. Sadar, Anchal Mushari, District Muzaffarpur, resident of Village Jagdishpur, P.O. Jarang Rampur, P.S. Vaishali (Belsor O.P.), District- Vaishali.

... .. Petitioner/s

Versus

Smt. Mukta Singh, wife of Sri Awadhesh Kumar Prasad Singh, resident of Mohalla P.O.- Bhagwanpur, P.S. Sadar, Town District- Muzaffarpur.

... .. Respondent/s

=====

Appearance :

(In CIVIL REVISION No. 121 of 2018)

For the Petitioner/s	:	Mr. P.N. Sahi, Sr. Advocate.
For the Opposite party	:	Mr. J.S. Arora, Sr. Advocate.
		Mr. Manoj Kumar, Advocate

(In CIVIL REVISION No. 122 of 2018)

For the Petitioner/s	:	Mr. P.N. Sahi, Sr. Advocate.
		Mr. J.S. Arora, Sr. Advocate.
		Mr. Manoj Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-01-2020

Heard learned counsel for the parties.

2. Both the revision applications have been preferred under Section 14 (8) of the Bihar Buildings (lease



rent and eviction) Control Act, 1982 and arise out of two separate judgments dated 16.05.2018 passed by the learned Munsif, Muzaffarpur (East), in Eviction Suit No. 18 of 2008 and Eviction Suit No. 19 of 2008. Both the Eviction Suits were filed by the respondent, who is common in both the cases. By the impugned judgment and decrees, the eviction suits have been decreed in favour of the respondent in respect of the premises in question on the sole ground that the premises are reasonably and in good faith required by the landlord for her personal use. Since the foundational facts, in both the cases, for determination of the legality or otherwise of the impugned orders are substantially identical, both the cases have been heard together and are being disposed of by the present common judgment and order.

3. I have heard Mr. Pushkar Narain Sahi, learned senior counsel appearing on behalf of the petitioners in both the cases and Mr. J.S. Arora, learned Senior counsel representing the respondent, who is common in both the cases.

4. The facts are short. The respondent-plaintiff filed Eviction Suit No. 18 of 2008 for eviction of the petitioner of C.R. No. 121 of 2008 (hereinafter referred to as the petitioner



of 1st case), from the premises described in Schedule-I of the
plaint admeasuring 100 Sq.ft. in the ground floor of a building
in eastern portion over the Plot No. 293, under Khata No. 129,
at Mohalla Bhagwanpur, P.S. Sadar, in the District of
Muzaffarpur. Eviction Suit No. 19 of 2008 was filed by the
same respondent-plaintiff for eviction of the petitioner of C.R.
No. 122 of 2018 (hereinafter referred to as the petitioner of
second case), from the premises described in Schedule-I of the
plaint admeasuring 100 Sq.ft. in the same building. It was the
plaintiff's case that the petitioner of the second case was
initially inducted as a tenant in one room of the building
having area of 200 Sq.ft. at the ground floor of her building in
extreme eastern side facing N.H. 28 and also facing a main
road on northern side, which is the main front portion of the
building. Because of the economic hardship, which the
petitioner of 2nd case was facing, he expressed his desire to
the plaintiff to vacate half of the shop which he was running in
the tenanted premises. His proposal was accepted and half of
the said tenanted premises so vacated by him, was given under
tenancy to the petitioner of the 1st case, by dividing it equally
into two parts by a Ply-Wood partition. In the Northern



portion of the room, the petitioner of the 1st case started a shop in the name and style of '*New Vaishali Electric*' whereas the petitioner of the second case continued with his business of his shop in the name and style of '*Vaishali Electric*'. Both of them were thus occupying 100 Sq.ft. each of the Hall in question.

No written documents were, however, made in connection with the tenancies which were based on oral agreement, mutual understanding and good faith.

The plaintiff's husband, who was serving as a Doctor, after his superannuation, shifted to Muzaffarpur and he decided to set up a Poly Clinic Diagnostics and Vaccination Centre, for which, he was required minimum of 1100 Sq.ft. area in the ground floor, from the 1st front side of the building of the plaintiff. Having thus felt the personal necessity for the said purpose, the plaintiff requested all tenants including the petitioners to vacate the premises, but these petitioners requested her to give them one month more time to vacate the same. Time till January, 2005, was given to the petitioners to vacate the premises, but they did not only fail to vacate, they stopped even payment of monthly rent. Attempts were made



to settle the dispute arising out of refusal by the petitioners-defendants to vacate the premises amicably, but in vain. In the meanwhile, the husband of the respondent-plaintiff, had to face a lot of difficulties in running his clinic, which he was somehow or the other managing from the available rooms of the building. For want of suitable accommodation, he could not establish Poly Clinic Diagnostics and Vaccination Centre with modern equipments and facilities. For the said purpose, front portion of the premises, which was under occupation of the petitioners, was immensely required and there was thus *bona fide* and reasonable need of the premises in question for her personal use. It was also asserted that partial eviction would not be sufficient for the *bona fide* and reasonable need of the plaintiff and her family. Since despite service of legal notices, the defendants/petitioners refused to vacate the premises, the eviction suits under Section 11 (1) (c) of the Act were filed.

5. On notice, the petitioners-defendants appeared in the respective cases resisting the claim of the plaintiff/respondent of *bona fide* and reasonable requirement for the said premises for her personal use. They asserted that



the plaintiff had herself converted the eastern side room of her building into two-shops room with Ply-Wood partition and had tenanted the north-eastern converted shops to the petitioner of the 1st case and south-east converted shop to the petitioner of the second case on monthly rental of Rs.300/- per month for each shop to be enhanced by 10 per cent every three years. According to them, the plaintiff had taken a sum of Rs.25,000/- from each of the petitioners as refundable security deposit. They further asserted that in the year 1998, the plaintiff had managed to get the electricity connection of the building disconnected whereafter the defendants were compelled to pay a sum of Rs.500/- per month as monthly rental from January, 1999. They had applied for electricity connection, which was objected to by the plaintiff, which compelled them to file House Control Case No. 17 of 2008 in the court of S.D.O. (East), Muzaffarpur, for fixation of fair rent and restoration of electricity connection. After an enquiry conducted by the concerned Magistrate, a report was submitted recommending rate of Rs. 8/- per Sq.ft. per month as fair rent. It was the case of the defendants that because they had approached the rent controller, the plaintiff filed the



eviction suits on false pretext of personal necessity of the suit premises. They took a plea in their written statement that there were nine shops besides a stair-case in the building, out of which, in two rooms the plaintiff's-husband was running his clinic adjacent west to which, one room is in tenancy of Vikas Electric, two rooms are in tenancy of Bihar Hotel and two rooms are vacant whereas one room is in tenancy of someone who runs a business of medicine shop. They also asserted that the plaintiff is a Professor in M.D.D.M. College, Muzaffarpur, and her husband after retirement, is getting substantial amount of pension and lives retired, relaxed life. He, though, runs his clinic in two rooms of the building, he is not a regular and sincere practitioner. They further asserted that the Poly Clinic does not require 1100 Sq.ft. of area in the ground floor and the two rooms occupied by the plaintiff's husband for Pathological Clinic was sufficient for the said purpose. They further pleaded that the eastern face of the building which contains the suit premises, is not at all suitable for the purpose of running the said Poly Clinic because of busy National High-way. The plaintiffs-defendants adduced evidence, both, oral and documentary.



6. After having appreciated and analyzed the evidence adduced by the parties, both, oral and documentary, the court below has, in the impugned judgment and decrees, recorded his findings that it being an admitted fact that the husband of the plaintiff is a retired Doctor and a skilled Pathologist, who is a healthy man and is capable of running a Poly Clinc, the need of personal necessity of the suit premises as claimed by the plaintiff was reasonable, *bona fide* and genuine. The court below further recorded that considering the small area of the suit premises (100 Sq.ft.), partial eviction would serve no purpose of the either parties and in any case, substantial need of the plaintiff, cannot be fulfilled by partial eviction.

7. Mr. P.N. Sahi, learned Senior counsel appearing on behalf of the petitioners in both the cases has argued that apparently the husband of the plaintiff retired in 2003 and at this advance age, it may not be possible for him to run a Poly Clinic. He has submitted that the plaintiff did not have any reasonable, *bona fide*, genuine personal necessity of the suit premises and the suit was filed only for getting the petitioners evicted from the suit premises. He has submitted that the court



below has miserably failed to appreciate the fact that the suit premises was not suitable for running a Poly Clinic because of its location just adjacent to a busy National Highway. He has argued that the petitioner's husband would have used other shop rooms available in the building, if more area was required for running the Poly Clinic and Diagnostic Centre, which aspect has not been duly appreciated by the court below. He has further submitted that the plaintiff had let-out premises in the vicinity in the same building to another person and evidence to this effect was adduced before the court below, despite which, the court below failed to appreciate that the requirement was not at all *bona fide* and the suit had been filed with *mala fide* intention.

8. Mr. J.S. Arora, learned senior counsel appearing on behalf of the plaintiff-respondent on the other hand, has submitted that the court below has considered the rival pleadings on record and evidence adduced by the parties and after appreciation of evidence, he has recorded his specific finding to the effect that the premises in question was reasonably and in good faith required by the plaintiff for her own occupation. He has submitted that this Court exercising



revisional jurisdiction under Section 14(8) of the Act may interfere with the findings recorded by the court below only, if such findings are perverse, based either on no evidence or contrary to evidence. He has argued that in a suit for eviction on the ground of personal necessity, it is not for the defendant to suggest an alternative to the landlord for satisfying his personal necessity to occupy tenanted premises. He has relied on the Supreme Court decision in case of *Savitri Sahay Vs. Sachidanand Ptrasad*, reported in *(2002) 8 SCC 765*. Reliance has also been placed on a decision of this Court in case of *Hanuman Prasad Gupta Vs. Shankar Choudhary*, reported in *2012 (3) PLJR 649* in order to counter the plea of partial eviction by applying proviso to Clause (c) of sub section (1) of section 11 of the Act. He has drawn my attention to a rough sketch map of the building which partrays the location of suit premises, which has been brought on record by way of Annexure-A to the counter affidavit. He has submitted, with reference to the said rough sketch map that the suit premises are in the front portion of the building, which the plaintiff considers to be most suitable for running the Poly Clinic and Pathological Centre. The plaintiff's husband being



admittedly skilled in the field, her *bona fide* personal requirement to occupy the suit premises, could not be questioned. Reliance has also been placed by him on another decision of this Court in case of ***Martin & Harris Pvt. Ltd. Vs. Shri Vardhaman Nagar Society***, reported in **2017 (3) PLJR 611** to contend that revisional jurisdiction under Section 14(8) of the Act has its own limitations whereunder this Court may not enter into the exercise of re-appreciation of the evidence.

9. There is no dispute in respect of relationship of landlord and tenant between the plaintiff and these petitioners/defendants. Clause (c) of Section 11(1) of the Act provides one of the grounds, on which a tenant may be liable to eviction. It contemplates that on the ground that a building is reasonably and in good faith required by the landlord for his own occupation or for occupation of any person for whose benefit the building is held by the landlord, a tenant can be evicted by a decree passed by the court. It would be beneficial for the purpose of quick reference to reproduce Sections 11 (1) (c), 14 and 17 of the Act which read as under:



“11. Eviction of tenants.—(1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act 14 of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the court on one or more of the following grounds—

*(a)-(b)****

(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



henceforth constitute the building within the meaning of clause (b) of Section 2 and the rent so fixed shall be deemed to be fair rent fixed under Section 5;

Explanation I.—In this clause the word 'landlord' shall not include an agent referred to in clause (f) of Section 2.

Explanation II.—Where there are two or more premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference.

14. Special procedure for disposal of cases for eviction on ground of bona fide requirement.—(1) Every suit by a landlord for the recovery of possession of any premises on the ground specified in clause (c) or (e) of sub-section (1) of Section 11 shall be dealt with in accordance with the procedure specified in this section.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with procedure specified in this section:



Provided that on an application being made within sixty days of the date of the order of eviction, the High Court may, for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

17. When a tenant is entitled to restoration of possession and compensation.—Where the landlord recovers possession of any building from the tenant by virtue of a decree secured because of clauses (c) and (e) of sub-section (1) of Section 11 and the building is not occupied by the landlord, or by the person for whose benefit the building is held, within one month of the date of vacation of the building by such tenant, or the building having been so occupied, is re-let within six months of the date of such occupation to any person other than such tenant without the permission of the Controller, the court may, on the application of such tenant, made within one month of his vacating the building and giving the landlord an opportunity of being heard, by order direct the landlord to put such tenant in possession of the building or to pay him such



compensation as may be fixed by the court or both.”

Thus it is to be seen that, under the said Act, if there are two or more premises the landlord could choose which one would be preferable to him or her and the tenant cannot question such preference”.

10. It can be easily noticed that Section 14 of the Act lays down special procedure for disposal of cases on the ground of *bona fide* requirement. The *proviso* to sub section (8) of section 14 confers upon the High Court jurisdiction to call for records of the case for the purpose of satisfying itself that an order under the section, is according to law. Sub section (8) bars appeal or second appeal against recovery of possession of any premises made in accordance with the procedure prescribed in Section 14 of the Act. I must record at this stage that no ground has been taken on behalf of the petitioners to the effect that any procedure prescribed under Section 14 of the Act has not been followed by the court below while passing the impugned judgments. Explanation 2



of the *proviso* to Clause (c) of sub section (1) of section 11 of the Act stipulates that where there are two or more premises let-out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference. The answer to the submissions made on behalf of the petitioners to the effect that alternative spaces are available in the same building which could be used for the purpose of establishing a Poly Clinic and Pathological Centre lies in explanation 2 of the proviso to Clause (c) of sub section (1) of Section 11 of the Act. The said explanation had fallen for consideration before the Supreme Court in case of **Savitri Sahay** (supra).

The Supreme Court held in paragraph-9 as follows:-

“9. The next question which, however, arises is whether the conclusion of the High Court that the findings of the trial court were perverse can be said to be correct. Under normal circumstances if a landlord during the trial gets vacant possession of some other premises which are equally suitable and chooses to let them out on higher rent then it may be arguable that the need of the landlord, made out in the eviction petition, was not reasonable or in good faith.



However, as seen above, the said Act provides specifically, in Explanation II, that even though a landlord may have two or more premises which have been let out, it is for the landlord to choose which one would be preferable to him or her and the tenant could not question such preference. In this case, the appellant had indicated a preference for the flat occupied by the respondent. She had given a reason why she preferred this flat. She was an old lady. She therefore could not climb to the first floor and thus the two flats on the first floor were not suitable to her. The other flat on the southern side of this building faced a road which was a very busy road and would therefore be noisy. This particular flat faced the bungalow in which she has been residing for so many years and also faced an open piece of land belonging to her husband. The trial court accepts these reasons. The High Court has merely set aside the decree on the ground that the appellant had chosen not to occupy the three other flats which became available in the same building. In our view, Explanation II to Section 11(1)(c) permitted the landlord to ignore other premises and to prefer a particular premise. The appellant having made a preference cannot be forced to occupy other premises which may become available. Further, the appellant was not required



to keep those premises vacant because her eviction suit was pending, nor was there any duty cast on the appellant, under any provision of law, to offer those other premises to the respondent. If the respondent had so desired, he could have offered to vacate the flat preferred by the landlady and move into one of those other premises. If the appellant had refused to accept such an offer, it possibly could have been said that the landlady was merely seeking to get vacant possession in order to get higher rents. In that case it could have been inferred that the need of the appellant was not genuine and/or in good faith. No such case has been made out. In view of the specific provision in the said Act the reasoning of the High Court cannot be sustained”.

(Underlined for emphasis)

11. The scope of the revisional jurisdiction of the High Court under Section 14 of the Act has been considered by this Court in case of ***Martin & Harris Pvt. Ltd. Vs. Shri Vardhaman Nagar Society***, reported in **2017 (3) PLJR 611 (S.C.)** relying on principles decision in case of ***Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh***, **AIR, 2014 S.C. 3708**. In case of ***Dilbahar Singh*** (supra), the



Supreme Court, while dealing with the Rent Control Acts has enunciated the principle to be kept in mind exercising revisional jurisdiction in following terms.

“The scope of revisional jurisdiction under various Rent Control Acts has fallen for consideration before the Constitution Bench of the Apex Court in the case of Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh A.I.R. 2014 S.C. 3708 and their lordships have laid down the principles governing the revisional jurisdiction of the High Court in such matter as follows:-

“.....The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that the finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in



exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.....”

12. In view of the discussions as above, I do not find any reason for this Court to interfere with the impugned judgment and decrees. The findings recorded by the court below on the point of *bona fide*, reasonable, personal necessity of occupation of the premises in question for



plaintiff’s personal use cannot be said to be suffering from any legal infirmity requiring this Court’s interference.

13. These applications have no merits and are, accordingly, **dismissed**.

14. There will be no order as to costs.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	17/01/2020
Transmission Date	N.A.

