

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.33 of 2023

Sanatan Sah, Son of Tauzi Lal Sah, Resident of Mohalla-Sadipur (Kaura Maidan, College Road), P.S.-Kasim Bazar District-Munger.

... .. Petitioner/s

Versus

Rakesh Kumar Gupta, Son of Late Ram Lakhan Gupta, Resident of Mohalla-Sadipur (Kaura Maidan, College Road), P.S.-Kasim Bazar District-Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Sushmita Mishra, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Sinha, Advocate
		Mr. Arvind Kumar Sharma, Advocate
		Mr. Chetan Kumar, Advocate
		Mr. Chhitij Parashar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 21-09-2023

Heard learned counsel for the parties.

2. This Civil Revision Application under Section 14 (8) of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'BBC Act') has been filed for setting aside the judgment / decree dated 17.10.2022 passed by learned Sub-Judge Ist, Munger in Eviction Suit No. 06 of 2008 whereby and whereunder the aforesaid suit filed by the opposite party/respondent (plaintiff in the trial Court) on the ground of personal necessity has been decreed and the petitioner/defendant in the trial Court has been directed to vacate the suit property within sixty days of passing the decree.

Brief Facts

3. The Opposite Party / plaintiff filed the Eviction Suit



No. 06 of 2008 stating that after the death of plaintiff's father, his elder brother Chandramani Prasad Gupta became Karta, Manager and representative of Joint Hindu undivided family. The joint family own and possess a house bearing holding No. 5 and 5 'A'(old) corresponding to 5 and 6 (new) at Kaura Maidan Munger and present suit is filed for eviction of defendant from one of Khatal of said holding. The joint family of plaintiff divided on the basis of Yaddast partition between the brothers. After partition, the suit premises fell in Khas share of the plaintiff. The plaintiff has become owner of suit premises who is in constructive possession and defendant is tenant.

4. The further case of the plaintiff is that he intended to start food grain business for source of income and livelihood of his family and requires the suit premises for his own use and occupation and requested defendant to vacate the suit premises. Elder brother of the plaintiff has also requested to vacate suit premises but defendant refused to vacate the suit premises without any reason hence, the eviction suit on the ground of personal necessity has been filed.

5. The defendant filed written statement claiming that Chandramani Gupta is landlord of the defendant who has never informed about the fact that after partition plaintiff became



landlord and there exists no relationship of landlord and tenant between the plaintiff and defendant. One Dinesh Chand Gupta has also asked rent through notice dated 15.07.2009 from the defendant/petitioner.

6. The further case of the defendant is that the boundary of suit premises as mentioned in Schedule-II of the plaint differs from tenancy premises in occupation of defendant. Plaintiff's elder brother Chandramani Prasad Gupta had filed Eviction Suit No. 66 of 1985 and in Second Appeal No. 302 of 1991 in this Court, the rent was increased from Rs. 45 to Rs. 450 per month. It is further stated that defendant has no necessity of suit Khatal as he is a lawyer and never intended to do business.

7. The trial Court framed issues. Both the parties lead their evidences and the Court below on consideration of evidence and after hearing the parties decreed the suit and directed the defendant to vacate the suit premises within sixty days and hand over possession thereof to the plaintiff.

8. The trial Court framed nine issues including the formal issues for consideration. On the issues whether the relationship of landlord and tenant exists between the parties and whether the plaintiff needs the suit premises personal, reasonable, *bona fide* and in good faith. The learned trial Court held that there is



relationship of landlord and tenant between the parties, the plaintiff has reasonable and *bond fide* need for his personal use.

Submissions on behalf of Parties

9. Learned counsel for the petitioner has submitted that there is no landlord and tenant relationship between the parties. The finding of the learned Court below is not in accordance with the material on record. The learned Court below has neither framed issue on the point of partial eviction and also there is no finding on the same, accordingly, impugned judgment/decreed is not sustainable.

10. Further, learned counsel for petitioner has submitted that petitioner/defendant has never paid any rent to plaintiff and the plaintiff failed to prove that he is the owner of the suit premises. The defendant is aged about 79 years and has been running a grocery shop in the suit premises since 1960 and the defendant suffers hardship on his eviction from the suit property and the plaintiff has no necessity of the suit Khatal.

11. On the other hand, learned counsel for respondent has submitted that the learned Court below has passed the impugned order on the basis of the evidence and there is no illegality in the impugned order which requires the interference of this Court in its revisional jurisdiction. Further, he has submitted that in



revisional jurisdiction, this Court cannot re-appreciate the evidence to take different view and to correct the finding of facts.

12. Further, it is submitted by the learned counsel for the respondent that the witnesses have supported the case of the plaintiff and the same is corroborated by the documentary evidence. He pointed out that PW-2 Chandramani Prasad Gupta elder brother of the respondent in his evidence supported the case of plaintiff that after death of his father, he became Karta and family was joint till Yaddast partition dated 02.04.2006 and the suit premises in which petitioner is tenant was allotted in share of plaintiff and he had given received rent to him in cash because the plaintiff became landlord of the suit premises and he became entitled for receiving rent.

13. On the point of partial eviction, learned counsel for respondent has submitted that 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.

Consideration

14. Having heard the learned counsel for the parties and on perusal of the impugned order, it appears that the learned Court below observed that defendant is tenant in suit premises, though he has stated that plaintiff's brother Chandramani Prasad Gupta is his landlord not the plaintiff but the plaintiff produced sufficient evidences to prove that suit premises was allotted to him after partition dated 02.04.2006 and after receiving rent from defendant, Chandramani Prasad Gupta is giving rent to the plaintiff. So there exists relationship of landlord and tenant between the plaintiff and tenant.

15. The learned Court below further held that plaintiff has produced sufficient evidence for proving his personal, *bona fide* and reasonable need of the suit premises and defendant has not produced sufficient evidences to contradict the same and hence it is clear that the need of the plaintiff of suit premises is personal, reasonable, *bona fide* and in good faith.

Scope of power under the proviso to Section 14(8) of BBC Act

16. The power under the proviso to Section 14 (8) of the Act of this Court is limited to extent of seeing as to whether the



order of eviction is according to law or not. For this limited purpose, the Court can reappraise the evidence as an Appellate Court and will not interfere with the order on the ground that on appreciation of evidence a different view can be taken. In other as of an Appellate Court not it is as limited as of revisional Court under Section 115 of the Code of Civil Procedure. Thus this Court will interfere in case it is found that the order is based on no evidence or the Court below has ignored the material evidence, which has ignored the material evidence, which has affected the findings or the findings are perverse, unreasonable or having been arrived at without considering the statutory requirements for grant of relief.

Personal necessity

17. It is well settled law that a tenant take a premises from the landlord to conduct his business or for the purpose of residence, it is always choice of landlord to choose premises for his business or residence (see: **Anil Bajaj Vs. Vinod Ahuja (2014) 15 SCC 610**). The *bond fide* need should be genuine, honest, conceived in good faith and may not be a pretext to evict the tenant or only for increasing the rent.

18. 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.

19. The Rent Control legislation was enacted to strike a reasonable balance between requirement of tenants for adequate protection against the aggressive designs of greedy landlord to evict the tenant or to increase rates of rent to an exorbitant limit. The basic object of the Rent Control legislation is to save harassment of tenants from unscrupulous landlords and not to deprive the landlords of their properties for all time to come.

20. It is settled proposition of law that necessity need not be proved as a dire necessity. The **Hon'ble Supreme Court in Mohd. Ayub Vs. Mukesh Chand [(2012) 2 SCC 155]** has discussed the concept of *bond fide* requirement of plaintiff with comparative hardship between landlord and tenant. It has been held that landlord's requirement need not be a dire necessity. The Supreme Court observed that when the tenant did not make



any genuine effort to find out any alternative accommodation, even during the pendency, the tenant cannot claim hardship in future.

Partial Eviction

21. Under the proviso of Section 11 (1) (C) of the BBC Act it is also mandatory on the part of the court to consider the issue of partial eviction by recording specific finding as with regard to reasonable requirement of such occupation of the plaintiff landlord being satisfied by evicting the tenant from the part only of the building. It is now well settled that under BBC Act on ground of personal necessity cannot be allowed without recording a finding on partial eviction.

22. According to the settle law, the court while considering the partial eviction has to consider firstly the extent of the premises and then to consider the reasonable requirement of the landlord which has to be determined on the basis of the evidence on record and not on the basis of mere desire or wish of the landlord and thereafter the court has to consider as to whether the said reasonable requirement would be satisfied substantially and not fully by partial eviction.

23. The Apex Court in case of **Badri Narayan Bhutada Vs. Govindram Ramgopal Mundada (2003) 2 SCC 320** held



as under:

“It is expected of the parties to raise necessary pleadings so as to enable parties to adduce evidence and bring on record such relevant material as to enable the Court forming an opinion on the issue as to comparative hardship and consistently with such finding whether partial eviction could meet the ends of justice. Even if no issue has been framed, the Court may discharge its duty by taking into consideration such material as may be available on record.”

24. In the judgment of Hon'ble Supreme Court in **Krishna Murari Prasad Vs. Mitar Singh AIR 1994 SC 489**; it is held:-

“3. It is obvious that the High Court proceeded on the basis that a presumption arises that where the premises comprises only of one room, the proviso to Clause (c) of Sub-section (1) of Section 11 of the Act [i.e. Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982] is not attracted since its application is not practicable. Obviously, this assumption is fallacious since it pre-supposes indivisibility of a premises comprised of one room, irrespective of its dimensions and even when the room is big enough to permit division to satisfy the needs of the landlord as well as tenant. It is a question of fact in each case whether such a partial eviction can be made or not. This enquiry has to be made by the Court after reaching the conclusion that the landlord's requirement for occupation of premises set up by him has been made out. In failing to do so, the Courts below overlooked this statutory requirement.”

25. In **Krishna Murari Prasad** case (Supra) the Hon'ble Supreme Court further held:-



“The proviso to Clause (c) of Sub-section (1) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 lays down that where the Court thinks that the landlord’s reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only and allowing the tenant to continue the occupation of the rest of the premises 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. Obviously, this situation is reached when the landlord has proved his requirement to make out a ground for obtaining eviction of the tenant. In the present case, landlord’s requirement having been found proved, the Court had to consider the matter further according to this proviso and an order for eviction from the entire premises could be made only if a decree for partial eviction in the manner provided could not substantially satisfy the landlord’s requirement”

26. On perusal of the impugned Judgment, it appears that the learned Court below after discussing the evidence on record given finding that on the basis of aforesaid facts and pleading of both parties and evidence oral and documentary produced by them and in the view of the circumstances, it is proved that plaintiff and defendant are landlord and tenant and the plaintiff is entitled to evict the defendant from suit premises.

Conclusion

27. Learned counsel for the tenant-petitioner did not point



out any infirmities in the plaintiff's evidence nor pointed out non-consideration of material evidence by the learned Court below in arriving the findings of fact. In this case, the Court below has found that the requirement of the plaintiff is *bona fide* and reasonable one and the learned counsel for the petitioner has not been able to assail the aforesaid finding. Thus, it is rightly held that the suit premises are required by the plaintiff reasonably and in good faith and accordingly, the conditions for eviction as provided under Section 11 (1) (c) of the Act have been fulfilled.

28. Thus, in the opinion of this Court the relationship of landlord and tenant in between the parties stands proved. In the facts and circumstances of the case, this Court does not find any error in the finding recorded by the trial Court.

29. However, In view of settled proposition of law that the Trial Court is bound to consider the mandatory requirement of partial eviction the judgment and decree of the trial Court is not sustainable for want of any finding on partial eviction, accordingly, the matter is remitted for the limited purpose to trial Court to consider and record the finding on the partial eviction after hearing both the parties and if required, to grant opportunity to both the parties to lead evidence on partial



eviction.

30. The Trial Court is directed to decide the issue of partial eviction and of relief within the period of four months from the date of receipt/production of certified copy of this judgment.

31. This Court is not inclined to interfere in respect of other findings as recorded by the Trial Court and same is left undisturbed.

32. In view of the aforesaid finding, observation and direction, this Civil Revision Application is disposed of.

33. Any other pending application(s), if any, also stand(s) disposed of.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	AFR
CAV DATE	12.09.2023.
Uploading Date	21.09.2023.
Transmission Date	

