

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.255 of 2017

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Ajit Kumar Sah, Son of Shri Gopal Lal Sah, Resident of Mohalla Shiv Shankar Sahay Road, Naya Tola, Bhikhanpur, Police Station Ishakchak, District Bhagalpur.

... .. Petitioner/s

Versus

Uma Shankar Singh, Son of Late Rajendra Singh, resident of Mohallal- Rai Bahadur Devi Prasad Dhandhanian Lane, Sujaganj, Police Station Kotwali, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kamal Narayan Chaubey, Sr. Adv. Mr. Ambuj Nayan Chaubey, Advocate Mr. Ashok Kr. Garg, Advocate Mr. Ritu Priyadarshi, Advocate Mr. Dineshwar Pandey, Advocate
For the Respondent/s	:	Mr. Deepak Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-08-2023

Heard learned senior counsel appearing on behalf of the petitioner as well as learned counsel for the opposite party/respondent.

2. The matter has been coming up under the heading “for hearing on admission” and I intend to dispose of the matter at the stage of admission itself.

3. The petitioner has filed the instant revision petition under Section 14(8) of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter ‘the Act’) against the judgment and decree dated 18.09.2017 and 17.04.2017, respectively passed in Title Eviction Suit No. 14 of 2012 by



learned Munsif-II, Sadar Bhagalpur whereby and whereunder the defendant petitioner has been directed to handover the vacant possession of the premises to the plaintiff/opposite party within 60 days from the date of the said order.

4. The plaintiff/opposite party brought a suit with prayer for eviction against the defendant/petitioner for the property mentioned in Schedule-A of the plaint. Shorn of unnecessary details, the case of the plaintiff is that the plaintiff is the landlord of the suit property mentioned in Schedule-A having area of 220 square feet. The defendant/opposite party is a tenant on the basis of oral agreement for a rent of Rs. 2500/- per month. The defendant/opposite party used to pay the rent every month @ of 2500/- per month. The rent was lastly paid on 11.08.2011 and thereafter the defendant stopped paying rent. The plaintiff has further submitted that he did not bring the suit on the ground of default payment of rent but he has filed the suit on the ground of personal necessity since his son was unemployed and the plaintiff wanted to open a general store in the suit property. The plaintiff further mentioned that the premises is suitable for the occupation of his son and it was not possible to accommodate him in one of the rooms of the suit property as the same was only 10 ft. wide towards the road. The plaintiff served the



respondent with a legal notice demanding the due rent and eviction on the ground of personal necessity. However, the defendant replied the notice with wrong facts and did not make the payment of arrears of rent and later on refused to even vacate the premises.

5. The defendant/petitioner admitted the fact that he was tenant in 220 square feet area of the premises but the defendant denied the rent of Rs. 2500/- and further stated that it was a one room premises in which he has been running his shop and the rent is only Rs. 600/- per month which he has been sending through money order to the plaintiff. The defendant has further submitted that the defendant has filed a title suit bearing Title Suit No. 185 of 2012 against the plaintiff for specific performance of contract as the plaintiff was in need of money and he entered into a contract of sale of the whole suit premises with the defendant and the defendant agreed to purchase the suit property for Rs. 20,00,000/-. The defendant made payment of Rs. 15,19,325/- on different dates to the plaintiff and only Rs. 4,80,675/- remained due and the sale deed was to be executed on 30.09.2011. When the plaintiff refused to execute the sale deed, the defendant filed Title Suit No. 185 of 2012. The defendant has further submitted in his written statement that the



son of the plaintiff has been doing some work. The plaintiff is also having other tenants and their premises are more suitable for running the business of the plaintiff. The defendant has also submitted that the defendant was not ready for partial eviction since he has paid a huge amount for the total area of 1560 square feet of old Ward no.-14, new Ward No.-38, Khata No. 366, Khesra No. 128.

6. The learned trial court after framing issues on the point as to whether the plaintiff has bona-fide requirement of the premises on the ground of personal necessity and also about the issue of partial eviction to satisfy the need of the plaintiff, came to the finding that the plaintiff was having bona-fide requirement on the ground of personal necessity, negated the question of partial eviction and decreed the suit of the plaintiff against the defendant and directed the defendant to vacate the suit premises within 60 days of the order.

7. The defendant/petitioner has challenged the order, inter alia, on the grounds that the judgment and decree is without jurisdiction and grave error on record has been committed by the learned court below. Impugned judgment is misleading and erroneous. The ground has also been taken that for exercising the power under Section 14 of the Act, reappraisal of evidence



by this Court is imperative. The learned trial court jumped to a conclusion on assumption.

8. Learned senior counsel appearing on behalf of the petitioner submits that while recording its findings, the learned trial court did not discuss the evidence on the point of bona-fide requirement and personal necessity of the plaintiff. Hence, the pronouncement of the learned trial court is not supported with reasons and judgment not discussing the evidence and reasons recorded for arriving a conclusion remains a hollow pronouncement. Learned senior counsel further submits that there is no dispute over landlord tenant relationship and the petitioner does not want to raise any other ground to challenge the order of the learned trial court. But from the record, it is apparent that the learned trial court failed to assess the evidence on record and without discussion of the evidence, came to a conclusion which is not permissible in law. The learned senior counsel further submits that the instant petition has been filed under Section 14(8) of the Bihar Building (Rent & Eviction) Control Act, 1982 and scope is certainly wider than Section 145 of the Code of Civil Procedure but this Court could not reappraise the evidence for arriving at a decision in this regard.

9. Learned senior counsel relied on the decision of the



Constitution Bench of the Hon'ble Supreme Court reported in 2015 (1) PLJR 187 in the case of ***Hindustan Petroleum Corporation Ltd. Vs Dilbahar Singh***, Para-45 of the said judgment reads as under:-

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on reappreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that 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 of 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 reassess the evidence for coming to a



different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration 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”.

10. Learned senior counsel further submits that though the decision was rendered with regard to Rent Control Acts of other states but the principle remains the same that in revision, High Court shall not exercise its power as an appellate court to re-appreciate or reassess the evidence for coming to a different finding on facts. The learned senior counsel further submits that power of the Court is the creature of the statute and where the said power has not been vested, it cannot be exercised. Revisional power cannot be equated with the power of the reconsideration of all questions of the fact and court of first appeal. Thus, the learned senior counsel submits that the decision of the learned lower court is not according to law and hence this revision is fit to be allowed.

11. Learned counsel appearing on behalf of the plaintiff/opposite party opposes the contention made on behalf of the petitioner. Learned counsel further submits that the petitioner brought a false and frivolous suit bearing Title Suit



No. 185 of 2012 on the basis of some forged and fabricated documents and said suit of the petitioner was dismissed. The learned counsel further submits that the plaintiff has brought on record a number of witnesses and evidence to show his bona-fide requirement on the ground of personal necessity. On the other hand, the defendant failed to controvert this evidence and failed to show that the plaintiff was not having any bona-fide requirement. The plaintiff had not cross-examined the witnesses on the point about his case against personal necessity of the plaintiff and has also not brought any evidence of his own to rebut the contention of the plaintiff. The learned counsel submits that the order of the learned trial court would not suffer from infirmity if the evidence has not been discussed in details. In paragraph no.9 of the impugned judgment, the learned trial court has mentioned about support of the assertion of the plaintiff by the witnesses in their evidence. The said evidence remained unrebutted. Furthermore, though the defendant has specifically stated that partial eviction would not suffice for his purpose still the learned trial court has discussed the evidence in detail and arrived at the conclusion that from partial eviction the need of the plaintiff could not be satisfied.

12. Learned counsel relied on decision of this Court



reported in, 2010 (3) PLJR 483 in the case of **Chadradeep Kumar vs. Gatrimal Kanodia**, regarding onus on the defendant.

Paragraph No. 25 of the said judgment reads as under:-

“25. The decision of partial eviction was also considered in the impugned judgment by the learned court below. It may be noted that neither in his pleadings nor in his evidence the defendant has ever stated that the requirement of the plaintiff can be satisfied by partial eviction. Although the onus was squarely upon the defendant to make such statement and to prove it by valid evidence but neither any statement has been made in his pleadings nor any material has been produced in that regard. On the other hand, from the pleadings of the plaintiff as well as the depositions of P.W. 2, P.W. 3, P.W. 4, P.W. 6, P.W. 8 and P.W. 9 and also from the documents of the Reserve Bank of India, Industries Department and Export and Import Department (Exts.-10, 11, 12 & 13), it is quite apparent that the plaintiff requires the entire premises as the validity intended to do his business of import and export of pickles, ghee, coffee and readymade garments in the suit premises and for that purpose the plaintiff genuinely requires the entire ground floor of the suit premises and his requirement cannot be legally fulfilled by any partial eviction.”

13. Perused the records.

14. I have given my thoughtful consideration on different aspects of the matter. From the submission made before this Court, it comes out that though the petitioner has taken a number of ground to assail the order of the learned trial court,



he has confined his argument before this Court only on the point that the learned trial court failed to discuss the evidence regarding bona-fide requirement and personal necessity of the plaintiff. So, the other contentions are not of significance for this Court. I have gone through the lower court records containing the evidence of the witnesses adduced on behalf of the plaintiff as well as the defendant. From perusal of this evidence, I find that the witnesses who deposed on behalf of the plaintiff, namely, PW-2, PW-3, PW-4 and PW-5 have all supported the case of the plaintiff regarding his ground of personal necessity and bona-fide requirement. The evidence of the defendant is silent on this point and except for simple assertion that the plaintiff has no such necessity or the son of the plaintiff, for whose occupation, the plaintiff wanted eviction of the defendant from the suit property, not requiring the same, nothing of substance has come in the evidence of the defendant. Even in cross-examination the plaintiff's witnesses, this fact has not been rebutted. Now coming back to the contention of the learned senior counsel regarding powers of this Court not to reappreciate or reassess the evidence in its revisional jurisdiction, I would like to stress that this Court though finds that the trial courts should have been more circumspect and



should have discussed the evidence of the plaintiff on the point of bona-fide requirement and personal necessity yet it has mentioned that all the witnesses of the plaintiff have supported the statement of the plaintiff regarding his bona-fide requirement and personal necessity for opening a general *kirana* store for employment of his son and the suit premises is most suitable for it. It would suffice for the purpose since it is not the case of the petitioner/defendant that this finding was against the evidence.

15. Moreover, in the instant matter this Court is not going for reappraisal of the evidence to come to a different finding on facts. However, this Court would like to stress that if the evidence is there and merely because the fact that it was not elaborately discussed in the impugned order, the same would not become wrong or without jurisdiction. In its revisional jurisdiction this Court is required to examine whether the order impugned before it suffers from any procedural illegality or irregularity and this Court does not find any such illegality or irregularity in the impugned judgment of the learned trial court. The order of the learned trial court may be cryptic on the point of personal necessity and bona-fide requirement of the plaintiff but it could not be said to be perverse or illegal since evidence



on record shows what has been stated by the learned trial court is correct and it is in terms of the evidence adduced before it.

16. The reliance placed by the learned senior counsel on the case of ***Hindustan Petroleum Corporation Ltd.*** (supra) is of no help to the case of the petitioner since this Court has neither appreciated the evidence to arrive at a different finding nor made any reappraisal of the evidence. It has only looked into the evidence to confirm the statement of the learned court below.

17. While discussing the Constitution Bench decision in the case of ***Hindustan Petroleum Corporation Ltd.*** (Supra), Hon'ble Supreme Court in the case of ***Mohd. Inam vs. Sanjay Kumar Singhal and Ors.***, reported in ***(2020) 7 SCC 327***. Observed in paragraph no. 26 of the said judgment as under:-

“26. It can thus be seen, that the Constitution Bench in Dilbahar Singh case [Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] has settled the position, that the revisional power does not entitle the High Court to interfere with the finding of the fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence is confined to find out as to whether the finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. It has been held, that 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, in such a case, it is open to correction because it is not treated as a finding according to law.”

18. Thus, the stand taken by this Court finds support in the aforementioned decision of the Hon’ble Supreme Court that the consideration or examination of the evidence is confined to find out as to whether the finding of facts rendered by the learned court below is in accordance with law and does not suffer from any error of law.

19. At the same time, this Court cannot lose sight of the fact that the eviction suit was brought in the year 2012. There is no dispute over landlord-tenant relationship. We are in the year 2023. The defendant set up a defence regarding his title and he lost his Title Suit No. 185 of 2012. So, the matter could not be allowed to linger on merely on a technical point by sending the matter back to the learned trial court for discussion of the evidence and recording the same finding when this Court has already observed that the point raised by learned senior counsel is not sustainable.

20. Even the issue of partial eviction have been discussed



at length by the learned trial court which has mentioned the evidence of the prosecution in detail about the requirement of the plaintiff not being fulfilled with partial eviction.

21. In the light of discussion made hereinabove, I do not find any merit in the instant revision petition and the same is dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A
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