

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.84 of 2021

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Arun Kumar Gupta son of Ayodhya Prasad Gupta resident of Muhalla- Sadar Bazar, Jamalpur, P.O and P.S Jamalpur, District- Munger

... .. Appellant/s

Versus

1. Manas Sah @ Manas Shaw son of late Etwari Sah @ Etwari Shaw residents of Muhalla- Sadar Bazar, Jamalpur, P.O and P. S Jamalpur, District- Munger
2. Manish Kumar, son of Manas Shaw Residents of Muhalla- Sadar Bazar, Jamalpur, P.O and P. S Jamalpur, District- Munger

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vaidehi Raman Prasad Singh, Adv.
For the Respondent/s	:	Ms. Sushmita Mishra, Adv.
		Mr. Ram Sevak Chaudhary, Adv.
		Mr. Rakesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 25-09-2024

Heard Mr. Vaidehi Raman Prasad Singh, learned counsel for the appellant and Ms. Sushmita Mishra, learned counsel for the respondents.

2. This Second Appeal has been filed by the defendant/respondent-appellant challenging the judgment and decree of the learned appellate court below.

3. The matter arises out of Eviction Suit No. 01 of 2013 which was filed by the plaintiffs/appellants-respondents for eviction of sole defendant on the ground of personal



necessity of the plaintiffs for the suit premises and also on the ground of default in payment of rent by the defendant.

4. On 31.01.2023 these following substantial questions of law were formulated while admitting the appeal:-

(i). Whether the rent for the month of October and November having being sent by Money Order in December which was refused by the land lord could be held by appellate court to be a defaulter?

(ii). Whether the judgment of learned appellate court is vitiated on account of non-consideration of the reasonings of learned trial court while reversing its findings?

(iii). Whether the findings of the appellate court is based on the errors of record and non-consideration of material evidence both oral and documentary?

(iv). Whether the finding of the lower appellate court that the plaintiffs were able to prove bonafide personal necessity is vitiated on account of non-consideration of evidences of DW- 2 (para 5, 6 and 7), DW-4 (para 3 to 5), DW-5 (para 3 and 5), DW-6 (para 6 and 12) and PW-5 (para 1 and 4 of cross examination) in that regard.



5. The case of the plaintiffs is that the plaintiff no. 1 being the *karta* of the joint family let out the suit premises bearing Holding No. 25 (part) situated at Sadar Bazar, Jamalpur to the defendant on monthly rental of Rs. 950/- as per English calendar and the defendant had been running his shop of electric goods. The defendant paid rent of the suit premises up to September, 2012 by making signature in the copy of the plaintiff no. 1 but he failed to pay rent of the suit premises to the plaintiffs since October, 2012 up till now despite repeated demands. Further, the case of the plaintiffs is that the plaintiff no. 2, who is a young and educated son of plaintiff no. 1 required the suit premises for running his office of Fly Ash Brick business for his employment and to earn his livelihood. Hence, the plaintiff no. 1 has a bonafide personal necessity of the suit premises for self-employment of plaintiff no. 2 and, as such, plaintiff no. 1 also seeks eviction decree of the defendant from the suit premises. The plaintiff no. 1 on 15.01.2013 sent an Advocate notice requesting the defendant to vacate the suit premises and to pay arrears of rent but the defendant neither vacated the suit premises nor paid the arrears of rent and in response, the defendant sent reply dated



28.01.2013 through his lawyer containing all false statements in the said reply to the Advocate's notice and refused to vacate the suit premises. Hence, the plaintiffs have a cause of action to file the suit.

6. On summons the defendant/appellant had filed his written statement in the suit and had denied the claim of the plaintiffs/respondents by filing his written statement. It is contended that the plaintiffs have filed the suit to enhance the rent of the suit premises. Earlier, the plaintiffs had brought Eviction Suit No. 19 of 1986 on the ground of default which was compromised after enhancement of rent from Rs. 370/- to Rs. 950/-. The defendant denied the assertion made in the plaint that the plaintiffs have got rent up to September, 2012 only. In fact he had paid rent for October, 2012 on 10.11.2012 and the plaintiffs had promised to give the receipt on the other day. But when the defendant approached the plaintiffs for the receipt of the month of October, 2012, then plaintiffs told the defendant that he has to pay "pagri" for the premises to the tune of Rs. 1 lakhs and enhanced rental of Rs. 2000/- per month. On being apprehensive, the defendant started sending monthly rent (Rs. 1000/-) through money order which was



refused by the plaintiffs. The defendant never defaulted in payment of rent of the suit premises. It is further pleaded that the plaintiffs are rich person of Jamalpur Town and they are in possession having a three-storied residential house at Sonarpatti, Jamalpur and a famous Samrat Hotel at Jamalpur. It is further contended that the plaintiffs have twelve shops for rent purpose out of which six are still vacant. If the plaintiff no. 2 desires he can start his office of Fly Ash Brick business in those vacant shops and the ground for eviction on personal necessity is not justified. He further contended that despite aforesaid premises for rent there are three tenanted shops by the side of suit premises and its boundary given by the plaintiffs shows that there are other tenants and the plaintiffs have more than enough space to start the business of Fly Ash Brick. The plaintiffs knowingly and intentionally have filed this present suit for eviction without any cause of action.

7. The learned trial Judge framed as many as seven issues of which the relevant issues are:-

(i). Whether the defendant/appellant is defaulter to pay rent of the suit premises since October, 2012.



(ii). Whether the plaintiffs/respondents are entitled for a decree of eviction on the ground of his bonafide personal necessity.

8. The learned trial Judge on the basis of evidence brought on record came to view that there was no any default in payment of rent by the defendant nor was there any question of bonafide personal requirement of the plaintiffs. Being of this view, the Trial Court dismissed the suit.

9. Being dissatisfied with the aforesaid judgment and decree, the plaintiffs preferred Eviction Appeal No. 05 of 2017 and the learned lower Appellate Court upon re-appreciating the evidence on record and considering the submissions raised at the Bar, came to hold that the plaintiffs were able to prove bonafide personal necessity for the plaintiff no. 2 and the learned Trial Court has erred in holding that the plaintiffs did not require the suit property for the bonafide personal necessity and it was created just to vacate the suit premises from the tenant.

10. So far question of default in payment of rent is concerned, the plea of plaintiffs is that the tenant did not pay rent for two consecutive months by the end of next following



month hand to hand and created false story regarding payment of rent for the month of Oct, 2012 on 10.11.2012 and allegedly demanded rent receipt which is false story, which is proved from Ext. B by which the defendant sent the rent for the month of October, 2012 through money order on 20.12.2012. If the tenant had paid the rent of October, 2012, he would not have sent it by money order. The defendant in paragraph 6 of his written statement has not mentioned that he went to the plaintiffs for paying rent of the month of October, 2012 with D.W.-2 Raj Kumar Paswan and there is no uniformity in the evidence of DW-2 and DW-6 and Ext.-B also proved that the defendant did not pay the rent of October, 2012 on 10.11.2012 hand to hand as alleged. The defendant proved through oral as well as documentary evidence that he went to the plaintiffs for paying the rent of October, 2012 on 10.11.2012 and the plaintiffs refused to take rent payable to them which is mandatory requirement before sending monthly rent through money order. Therefore, the plaintiffs have proved that defendant failed to pay monthly rent of October, 2012 till filing of the suit. Therefore, defaulted the payment of rent for more than two consecutive months.



11. The Trial Court has erred in holding that the defendant was not at default in making the payment of rent to the plaintiffs. Accordingly, the judgment and decree passed by the Trial Court was set aside and the appeal was allowed.

12. Facing failure before the lower Appellate Court, the defendant preferred Second Appeal before this Court and the same was admitted on 31.01.2023.

13. Mr. Vaidehi Raman Prasad Singh, learned counsel appearing on behalf of defendant/appellant while questioning the judgment of the lower Appellate Court has submitted that there was absolute lack of necessity for the plaintiffs to maintain the suit which, in fact, was a ploy to remove the defendant in the garb of running office of Fly Ash Brick business for the employment and earning livelihood by plaintiff no. 2. In this regard, the learned lower court failed to consider the relevant part of the evidence of DW-4, DW-5 and DW-6 with regard to personal necessity to the effect that the plaintiff no. 2 runs his office at some other place and that he has one vacant shop behind the premises in question. It is further submitted that the learned lower Appellate Court mis-directed itself by the provision of Section 19(1) of Bihar



Building (Lease, Rent & Eviction) Control Act, 1982 and refused to accept rent is *sine qua non* for remittance of rent by postal money order. It is further contended that there is no denial of the fact that monthly rent for the month of October, 2012 onwards were remitted through postal money order and it cannot be said that the defendant had defaulted in paying rent for two consecutive months. The learned Appellate Court without taking into consideration the remittance of monthly rent since October, 2012 through postal money order and the acknowledgment thereof Ext.-B2 to B8 has erred in holding that defendant has failed to pay monthly rent since October, 2012.

14. Learned counsel vehemently submitted that the defendant/appellant adduced evidence such as DW-2, DW-4, DW-5 and DW-6, who proved the acknowledgment of remittance through money order (Ext.-B2 to B8). So far requirement of Section 19(1) of the Act is concerned, the defendant witness DW-2, who is employee of the defendant, specifically stated in paragraph 6 of his cross examination that defendant Arun Kumar Gupta had gone in the month of November, 2012 for paying the rent for the month of October,



2012 to plaintiff no. 1 who accepted, the rent but did not issue any receipt. In the background of aforesaid facts and materials on record, the learned lower Appellate Court wrongly decreed the suit.

15. On the other hand, learned counsel for the respondents has submitted that the plaintiffs/respondents have claimed bonafide personal requirement of the suit premises for plaintiff no. 2, who is his son for opening office for Fly Ash Brick business which has been proved by the cogent materials on the record. It is apparent from the record that DW-2 himself claimed to be an employee of defendant. He stated in paragraph 6 of his evidence that he had gone with the defendant to the plaintiffs for paying the rent of month of October, 2012 which was accepted by the plaintiffs without giving any rent receipt. On the contrary, the defendant case is that he remitted the rent through money order for the month of October, 2012 till filing of the suit which is contrary to the evidence adduced by the defendant no. 2. It is further submitted that the evidence of DW-2 and DW-6 and Ext.-B also proved that the defendant did not pay the rent for October, 2012 on 10.11.2012 physically. In such view of the



matter, the plaintiffs were able to prove that the defendant failed to pay the monthly rent from October, 2012 till filing of the suit. Hence, the learned lower Appellate Court has rightly decreed the suit.

16. Considering the submissions made on behalf of the parties and upon perusal of the impugned judgment as well as substantial questions of law having been framed by this court in this appeal, it is manifest that relationship of landlord and tenant is admitted between the parties.

17. So far substantial question of law that bonafide personal necessity of the plaintiffs for the suit premises with regard to opening the office of Fly Ash Brick business is concerned, with regard to factum of personal necessity, the plaintiffs witnesses have pleaded in the plaint as well as in their evidences to support the case of requirement of shop in question. Manish Kumar, who has been examined as P.W. 2 has deposed that he is running a Fly Ash Brick business at Jamalpur Industrial Area and he needed the suit shop to open his office as the factory is at a distance from the town and the suit premises is located at main Station Road, Jamalpur, which is the most suitable place for running the office. P.W. 3, Pawan



Kumar, who is one of the tenants of plaintiffs has also stated in his examination-in-chief that plaintiff no. 2 is running a factory of Fly Ash Brick in Jamalpur Industrial Area and for this business he requires an office and the suit premises is the most suitable place to open the office as it is situated at the main Station road, Jamalpur. P.W. 4, Ramchandra Paswan has stated in his examination in-chief that he is working in Fly Ash Brick factory of Manish Kumar which is situated at Jamalpur Industrial Area and the suit premises is the most suitable place as it is situated on the main Station road, Jamalpur. P.W. 5, Sunil Tanti has stated that plaintiffs have taken a plot of land from Bihar Government in Jamalpur Industrial Area and set up a Fly Ash Brick business since 1 ½ years. The industrial area is on distance from the market area. Plaintiff no. 2 requires an office, a showroom for his Fly Ash Brick business and the suit premises is the most suitable place to open an office. Raj kr. Paswan, who was examined as D.W. 2 has admitted in his cross examination that the son of plaintiff no. 1 is running a factory of Fly Ash Brick near Jamalpur Pahad and he requires the suit property to open an office of Fly Ash Brick business. He further stated that Station



road, Jamalpur is a busy road. Nirmal Kant Mishra, D.W. 3, has stated in his cross examination that disputed shop is situated at main Station road, Jamalpur abutting east. The main road is in front of the shop. Defendant Arun Kumar Gupta was examined as D.W. 6, who is the tenant of the suit premises. He has stated in his cross examination that he has knowledge that the plaintiff no. 2 has set up a Fly Ash Brick factory in Jamalpur Industrial Area and he is running his factory at Jamalpur.

18. After perusing the evidences of the plaintiffs and defendant and materials on record, the Appellate Court meticulously examined the testimony of P.W. 2, 3, 4 and 5 as well as D.W. 2, 4 (numbered as 3, actually 4), and 6 and came to a finding that plaintiffs have succeeded to establish that they are having requirement of office for the said business at the suitable place i.e. shop, in question, and the suit premises on the basis of situation/position is the most suitable place for the plaintiffs for their requirement. The defendant in his written statement has contended that the plaintiffs have many premises in which he can open his office. D.W. 4 (numbered as 3, actually 4) namely, Nirmal Kant Mishra has stated in his



examination in-chief that one shop of the plaintiffs was vacant behind the shop, in question. Plaintiff can open his office there for his business.

19. So far evidence of D.W. 5 namely, Vinod Sharma is concerned, he has stated in paragraph 3 of his examination-in-chief that plaintiffs have 3 big houses at Sonarpatti Road, Jamalpur and Samrat Hotel wherein, plaintiffs have opened office for the business of plaintiff no. 2 but no such documentary evidence has been produced so as to prove that plaintiff no. 2 was having office for his business.

20. In the aforesaid facts and circumstances, this Court finds that plaintiffs/respondents have been able to sufficiently prove that they have bonafide requirement of the suit premises for opening Fly Ash Brick business office for plaintiff no. 2. Defendant has miserably failed to disprove the claim of the plaintiffs by any cogent material. In this regard, learned Appellate Court, which is final court of facts, finds that the plaintiffs' bonafide personal requirement of the suit premises appears to be legal and proper. The Hon'ble Apex Court in the case of **M.M. Quasim Vs. Manohar Lal Sharma & Ors** reported in **AIR 1981 SC 1113** has held that:-



“The landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant.”

21. The substantial questions of law no. 2, 3 and 4 are answered in favour of the plaintiffs/respondents and against the defendant/appellant.

22. The suit was a composite suit initiated on both grounds i.e. default in payment of rent and bonafide personal necessity. The defendant nowhere pleaded that the requirement of the plaintiffs would be satisfied by partial eviction. It is a settled law that once personal necessity is proved, the onus shifts on the tenant to satisfy that partial eviction shall satisfy the personal necessity of the plaintiffs.

23. It is apparent from the materials on record as well as admitted claims of the parties that neither the plea of partial eviction was taken by the defendant in his written statement nor any evidences have been adduced by him to show that the defendant's partial eviction from the suit premises would satisfy the requirement of the plaintiffs.



24. Reliance has been placed on the judgments in the case of **Food Corporation of India and others vs. Vishun Properties and Enterprises and others** reported in **1995 BBCJ 711** as well as in case of **M/s Bata India Ltd. vs. Dr. Md. Qamruzzama** reported in **1993(1) PLJR 87 (DB)** and also in the case of **Hira Lal Das and Anr. vs. Loknath Newatia** reported in **2014 (4) PLJR 476**. In case of **Anamika Roy vs. Jitendra Chowrasia and Ors.** reported in **2013 (6) SCC 270**, the Hon'ble Supreme Court has held that:-

“The defendant neither before the appellate court nor before the trial court or in the High Court has asserted that a portion of the premises will satisfy the requirement of the plaintiffs-respondents.”

25. The learned Appellate Court held that the plaintiffs have succeeded to prove that the defendant-appellants were defaulter in payment of rent while the learned Trial Court held that the plaintiffs failed to prove that defendant-appellants were defaulter in payment of rent.

26. It is apparent from the records that the defendant on refusal of acceptance of monthly rent of Rs. 1000/- of October, 2012, he sent the same through money order on 19th



December, 2012. Likewise, monthly rent for the month of November was sent through money order on 20.12.2012 and thereafter for the consecutive months. It is apparent from materials on record that money order receipts are a conclusive evidence of remittance by money lender. Moreover, default for two consecutive months which begins from October, 2012, November, 2012 and ends on 31st December, 2012. Before 31st December, 2012, defendant/tenants could not be held defaulter.

27. On refusal of landlord (plaintiffs) to accept the rent before the expiry of grace period, the tenant (defendant) could not be said to have defaulted in payment of rent. He has discharged the statutory obligation.

28. In view of the above discussion, the learned Appellate Court wrongly held that the plaintiffs were able to prove that the defendant failed to pay the monthly rent from October, 2012 till the filing of the suit. Hence, defaulted the payment of rent for more than 2 consecutive months.

29. Thus, substantial question of law no. 1 is answered against plaintiffs-respondents.



30. In view of the foregoing discussions, there is no merit in appeal filed by the appellant.

31. However, the learned lower appellate court below was quite justified in arriving at the finding that bonafide personal requirement of the suit premises appears to be legal and proper.

32. Accordingly, the Second Appeal is hereby dismissed but without any order as to costs.

33. Let the lower courts records of Munsifi Eviction Appeal No. 5 of 2017 as well as Eviction Suit No. 1 of 2013 received in the present case be returned to the concerned court below forthwith.

(Khatim Reza, J)

prabhat/sankalp

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