

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.220 of 2019

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Kanhaiya Prasad Khetan Son of Yugal Kishore Khetan @ Yugul Prasad Khetan Resident of Mohalla- Behind Bhavnath Mandir, P.S.- Siwan Town, District- Siwan, Bihar, At present Resident of Mohalla- Gauri Market, P.S.- Siwan Town, District- Siwan.

... .. Petitioner/s

Versus

Manoj Kumar Barnwal Son of Late Rameshwar Prasad Barnwal Resident of Mohalla- Telhatta Bazar, P.S.- Siwan Town, District- Siwan, Bihar. At present Resident of Mohalla- Gauri Market, P.S.- Siwan Town, District- Siwan, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Kumar, Adv. Mr. Netan Chouhan, Adv.
For the Opposite Party/s	:	Mr. Md. Waliur Rahman, Adv. Mr. Rakesh Kumar Shrivastava, Adv. Mr. Md. Kamal Ashraf, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 17-12-2024

Heard Mr. Prashant Kumar, learned counsel for the petitioner and Mr. Waliur Rahman, learned counsel for the opposite party.

2. This Civil Revision application has been filed under Section 14(8) of the Bihar Building (Lease, Control and Eviction Control) Act, 1982 (hereinafter referred to as 'BBC Act') against the judgment and decree dated 29.08.2019 passed in Eviction Suit No. 11 of 2016 by the learned Munsif-I, Siwan which was filed seeking eviction of the defendant/petitioner from the suit premises on the ground of personal necessity and also other ancillary reliefs



for the shop, in question, which has been decreed by the Trial Court.

3. The plaintiff/opposite party filed Eviction Suit No. 11 of 2016 in the Court of Munsif, Siwan for eviction of the defendant/petitioner from the suit premises (shop) situated at Ward No. 8 (new), Holding No. 684 (new), Shop No. 1 area 14 ft x 11 ft on the ground of personal necessity along with the statement that the suit shop has been allotted to his share under family partition in Pre-Litigation Case No. 181 of 2008 dated 01.05.2008. It is further stated that the share, in question, with sufficient frontage and other ones were not sufficiently ventilated. The shop, in question, required re-construction due to the dilapidated condition of the shop. The plaintiff has pleaded that his two sons are unemployed and, hence, the plaintiff required the suit premises (shop) to maintain his family. Further case of the plaintiff is that the shop in question was taken on rent by the petitioner prior to the year 1980 from the mother of the opposite party on condition that during the pendency of the tenancy if partition takes place then he shall be deemed to continue with the coparcener who will get the said shop in share. It has been averred that currently the monthly rent Rs. 1500/- was agreed to be paid but the defendant/petitioner was paying only Rs. 1000/-.



4. On summons, the defendant appeared and filed his written statement and admitted the relationship of landlord and tenant but denied the claim of the plaintiff/opposite party. There is no valid cause of action for the eviction suit. Monthly rent of Rs. 1000/- was being paid to the plaintiff/opposite party and when he refused to accept the same, it was being paid through money-orders. It is further contended that the tenancy was created in the year 1963 without any terms and conditions. Further, it is pleaded that the shop in question was taken by the father (defendant no. 1) of original defendant no. 2/petitioner. After partition in the family of defendant/petitioner, the said shop came in the share of the petitioner in which the defendant is running his general store. It is contended that the plaintiff has no personal necessity for the shop in question. The plaintiff himself owns a shop in which his elder son helps in his business and his younger son is pursuing his studies and he also denied the dilapidated condition of the shop and that no fresh construction is required. The rent was regularly paid to the landlord in respect to the land in question. It is further pleaded that the plaintiff has several shops out of which some of them are let out and some of them are in his possession. The plaintiff has no cause of action for the suit so the entire case of the plaintiff for the alleged personal necessity does not hold good.



5. Upon completion of the pleadings and upon consideration of rival contentions of the parties, the Trial Court affirmed the issues and decided the suit on the basis of evidence and materials on record and held that the relationship of landlord and tenant between the parties is not in dispute rather the same is admitted by the defendant. The plaintiff has adduced four oral witnesses in support of their case as well as three documentary evidence i.e. the legal notice (Ext.-1), Ext.-2 (rent receipts of Holding No. 684) and Ext.-3 (order passed in Pre-Litigation Case No. 181 of 2008) which shows partition between members of the family of the plaintiff while the defendant in support of his case adduced three oral witnesses but no documentary evidence has been produced in support of the pleadings. So far the claim of rent as Rs. 1500 per month is concerned, the plaintiff has failed to prove with regard to rent of Rs. 1500 per month. So far dilapidated condition of shop in question is concerned, the plaintiff's witness specifically adduced on this point that the shop in suit is very old and is in dilapidated condition and the witnesses were not cross examined by the defendant on the said point. Moreover, the case of the defendant/petitioner is that the tenancy was created in the name of his father in the year 1963 and continued since then. The case of the plaintiff with regard to dilapidated condition of the said shop in



question has been proved by the plaintiff. So far personal necessity is concerned, the Trial Court after scrutinizing the evidence of the PW-1 as well as other witnesses of the plaintiff too proved the case of personal necessity on the strength of evidence of the defendant that the plaintiff himself is running a cloth business and his elder son is helping him and younger son is pursuing studies and further held that plaintiff has proved his case for personal necessity of the shop for his two sons and decreed the suit.

6. Being aggrieved by the impugned judgment and decree, the defendant has filed the present Civil Revision application.

7. From the perusal of the pleadings and evidence of the parties, it is apparent that it is not in dispute that the plaintiff is the owner of the suit premises and defendant was his tenant and hence, the relationship of landlord and the tenant between the parties is admitted fact due to which no issue on the said question was framed by the lower court. The defendant has not challenged the relationship of landlord and tenant between the parties before this Court also, rather, he has challenged the findings of Trial Court with regard to the issue of personal necessity and has not challenged the non-framing of the issue of partial eviction. Hence,



the following points are to be considered and decided in this Civil Revision application:-

(a). Whether the plaintiff has been able to prove his claim of personal necessity of the suit premises beyond all reasonable doubt?

(b). Whether the partial eviction of the tenant would satisfy the requirement of the plaintiff?

8. Learned counsel for the petitioner has submitted that the learned court below has not properly considered the evidences of the parties and therefore, the findings are vitiated. It has been contended that the plaintiff has not produced any report/expert evidence as required in law to establish that the shop was in dilapidated condition and required re-construction. It is further submitted that both the sons of the plaintiff whose necessity has been claimed have not been proved by the plaintiff in support of his case. Learned counsel for the petitioner further submits that the plaintiff himself owns a shop in which his elder son helps him and his younger son is pursuing his studies. The plaintiff has miserably failed to establish his case on the ground of personal necessity or requirement for re-construction. It is submitted that plaintiff has so many shops in the area. He could have settled his sons in one of the shops available in the said area. The preference exercised by



the landlord for a particular premises/shop based upon the plea of the personal necessity and bonafide requirement cannot be upon mere asking and in absence of a reason, howsoever, diminutive it may be, unless the preference find support from there, should not be mechanically allowed. The reliance has been placed in the case of *Shakuntala Devi Vs. Sajjan Kumar Bajoria reported in 2013 (2) BLJ 208 (2013 (3) PLJR 395)*.

9. On the other hand learned counsel for the plaintiff/opposite party has submitted that plaintiff/opposite party has claimed bonafide personal requirement of the suit premises for their two sons, who are unemployed and defendant/petitioner himself admitted this fact that younger son of the plaintiff/opposite party is pursuing his studies. The plaintiff/opposite party has succeeded to prove this fact that he has personal necessity of the shop and the shop is in dilapidated condition. However, the defendant/petitioner himself admitted in paragraph no. 5 of his written statement that the tenancy has been coming since 1963 and further the defendant/petitioner in his written statement contended that the younger sons of the opposite party is pursuing his studies. Learned counsel for the plaintiff/opposite party submits that the Trial Court has come to the finding that relationship of landlord and tenant exists in between the parties and the plaintiff has



bonafide personal necessity of the shop for establishing his business and there is no pleading of the defendant/petitioner regarding partial eviction. It is further submitted that the scope of revision under the provision 2 of Section 14(8) of the BBC Act though wider than the scope of revision under Section 115 C.P.C. but is not so wide as to permit re-appreciation of evidence and reach to a different conclusion. The reliance has been placed in the case of *Shree Bharat Bhushan Vs. Amar Kumar Salarpuria* reported in **2012 (4) PLJR 100**.

10. Learned counsel for the plaintiff/opposite party further placed reliance in the case of *Nagrajmal Baid Vs. Ramrati Devi and Ors.* reported in **1979 BBCJ 541** wherein, the plaintiff required the suit premises for carrying his own business by the sons of the plaintiff and they require re-modelling. The objection raised by the defendant/petitioner in eviction of a tenant for re-modelling and re-constructing the premises was not a ground for obtaining a decree for eviction. In the aforesaid case this Court has held that:-

“Under Section 11(1) of the Control Act (BBC Act) which prohibits the landlord from obtaining a decree for eviction on the ground of personal occupation even though he may have to re-model the building to suit his convenience. The only requirement under



Section 11(1) (c) of the BBC Act is that the landlord must reasonably and in good faith require the building for his own occupation or for occupation of any person for whose benefit the building is held by the landlord”.

11. Hence, the learned court has rightly decreed the suit and there is no apparent error of jurisdiction and material irregularity in the aforesaid judgment.

12. Upon considering the submissions made on behalf of the parties, evidence adduced and materials on record as well as impugned judgment, it is manifest that there is admitted relationship of landlord and tenant between the parties. The plaintiff's case for the need of suit premises is for establishing a business for his two unemployed sons. All the plaintiff's witnesses have supported the factum of personal necessity of the plaintiff as pleaded in the plaint in their evidence. PW-1, PW-2 and PW-4 have supported the case of requirement of shop for the sons of the plaintiff, who are unemployed. PW-1 is plaintiff himself and he adduced his evidence and categorically stated that the shop in suit is required for business for his two adult unemployed sons. While defendant himself stated that the plaintiff is doing his cloth business in which his elder son helps and his younger son is pursuing his studies. However, the necessity for employment of two sons of plaintiff is in full contradiction with the evidence



adduced by the defendant witness. While the evidence of plaintiff specifically adduced that the shop in question is most suitable place for business of his sons.

13. In the aforesaid circumstances, the findings of the Court below that the plaintiff had personal bonafide requirement and the suit premises appears to be legal and proper. The reference in this regard may be made to a decision of this Court in the case of ***Tip Top and Ors. Vs. Smt. Indramani Devi*** reported in ***AIR 1982 Pat 190 (23)*** as well as in the case of ***Dr. Hemchandra Jha Vs. Smt. Anjana Lal*** reported in ***1987 PLJR 582 (13)***.

14. So far the question of partial eviction is concerned, it is quite apparent that plaintiff has pleaded that he has bonafide personal requirement for the entire premises for her his business but the defendant nowhere pleaded that the requirement of the plaintiff would be satisfied by the partial eviction, although, it is a settled law that once personal necessity is proved, the onus shifts on the tenant to show that partial eviction shall satisfy the personal necessity of the plaintiff. Reference in this regard may be made to a decision of this Court 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 the 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 another vs. Loknath Newatia*** reported in **2014 (4) PLJR 476**. The plea of the plaintiff with regard to necessity of entire suit shop has not been contested by the defendant either in his written statement or in cross-examination. The defendant has neither asserted before the Trial Court nor this Court that a portion of the premises will satisfy the requirement of the plaintiff/opposite party. The reference in this regard may be made to a decision of the Hon'ble Apex Court in the case of ***Anamika Roy vs. Jatindra Chowrasiya and others*** reported in **2013 (6) SCC 270**, wherein, the Hon'ble Supreme Court has held as follows:-

“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 plaintiff/opposite party.”

15. The evidence adduced by the plaintiff came to clear finding that the Trial Court has rightly held that the plaintiff is entitled to bring the suit for personal necessity and it is in good faith. As such, the plaintiff requires the suit premises for establishing the business for his two sons. The finding of the learned court below that the plaintiff has bonafide personal requirement of the suit premises appears to be legal and proper.



16. In view of the judgment of the Constitution Bench of the Apex Court in the case of ***Kasthuri Radhakrishnan Vs. M. Chinniyan*** reported in ***(2016) 3 SCC 296***, the revisional jurisdiction under the rent control acts is circumscribed by limitation and the revisional court is only to see whether order for eviction is according to law or not. The consideration or examination of the evidence by the High Court in revisional jurisdiction under the Control Act is confined to find out that the findings of the fact recorded by the Court below is according to law and doesn't suffer from any error of law. Their Lordships in the aforesaid case have observed as follows:-

“..... so far as the issue pertaining to exercise of revisional jurisdiction of the High Court while hearing revision petition arising out of eviction matter is concerned, it remains no more res integra and stands settled by the Constitution Bench of this Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh [Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] . R.M. Lodha, C.J., the learned Chief Justice speaking for the Bench held in para 43 thus : (SCC pp. 101-102)

“43. 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 re-appreciation 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 as to 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 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.”

17. In the aforesaid facts and circumstances, this Court finds that the plaintiff-opposite party has been able to sufficiently prove that he has bona fide requirement of the suit premises for starting business for his sons. The defendant has miserably failed to disprove the claim of the plaintiff by any cogent material. In that regard, findings of learned court below with regard to personal necessity is, hereby, affirmed.

18. So far the point of partial eviction is concerned, it is apparent from the materials on record as well as the admitted claims of the parties that neither the plea of partial eviction was taken by the defendant in his pleadings nor any evidence has been adduced by him to show that the defendant's partial eviction from the suit premises would satisfy the requirement of the plaintiff.

19. In view of the aforesaid discussions and decisions of the Hon'ble Supreme Court as well as material on record, it is apparent that both the points raised by the defendant/petitioner with regard to personal necessity and partial eviction fails.

20. This Court does not find any illegality or jurisdictional error in the impugned judgment of the learned court



below. This Court is not persuaded to hold that the judgment and order by the court below for eviction is not in accordance with law.

21. Accordingly, the Civil Revision application is dismissed having no merit in it.

(Khatim Reza, J)

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AFR/NAFR	NAFR
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