

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.144 of 2024

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Mumtaz Alam S/o Md. Sajad Alam, R/o Vill-Bari Khanjarpur, Bhagalpur at present Tenant in Shop No. 7, Ground Floor of Tapasya Complex, Boring Road, P.S.-S.K. Puri, Dist-Patna.

... .. Petitioner/s

Versus

1. Smt. Rita Roy W/o Late Ram Bilas Roy, R/o Mohalla-Tapasya Complex, Boring Road, S.K. Puri, P.S.-S.K. Puri, Dist-Patna.
2. Rohit Roy, S/o Late Ram Bilas Roy, R/o Mohalla-Tapasya Complex, Boring Road, S.K. Puri, P.S.-S.K. Puri, Dist-Patna.
3. Mamta Roy D/o Late Ram Bilas Roy, R/o Mohalla-Tapasya Complex, Boring Road, S.K. Puri, P.S.-S.K. Puri, Dist-Patna.
4. Shalini Roy, D/o Late Ram Bilas Roy, R/o Mohalla-Tapasya Complex, Boring Road, S.K. Puri, P.S.-S.K. Puri, Dist-Patna.

... .. Opp party/s

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Appearance :

For the Petitioner/s : Mr.Brij Bihari Tiwary, Advocate

For the Opp party/s : Mr.Md. Waliur Rahman, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

8 30-07-2025 Heard Mr. Brij Bihari Tiwari, learned counsel for the petitioner and Mr. Md. Waliur Rahman, learned counsel for the opposite parties.

2. A tenant under a decree of eviction questions its correctness in the present revision application.

3. This civil revision application has been preferred by the defendant-petitioner against the judgment and decree



dated 04.03.2024, passed in Title Eviction Suit No. 456 of 2014 by the learned Civil Judge (Junior Division)-III, Patna Sadar. The said decree was passed under Section 11(1)(c) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'the BBC Act', for the sake of brevity), on the ground of personal necessity.

4. The plaintiffs-opposite parties are the owners of the suit premises. They instituted the present eviction suit against the defendant-petitioner on two grounds as envisaged under Section 11(1)(c) and Section 11(1)(e) of the BBC Act. It was contended that the suit premises are required reasonably and in good faith by plaintiff no. 1 for her own occupation as she intends to establish a boutique therein with the help of plaintiff no. 3, who is currently unemployed. Further, the plaintiffs also asserted that the lease period has expired. Upon consideration of the pleadings and evidence, the learned Trial Court decreed the suit under Section 11(1)(c) of the BBC Act, holding that the plaintiffs have got *bona fide* and reasonable personal necessity for the suit premises. The plea for partial eviction was answered in the negative, as it failed to address the plaintiffs' *bona fide* need.



Description of the Suit Premises:

5. The suit premises, as described in Schedule–II of the plaint, comprises Shop No. 7 situated on the ground floor of *Tapasya Complex*, measuring about 186 square feet. The premises is situated at Boring Road, P.S.-S.K. Puri, District–Patna, within commercial-cum-residential Plot No. 11, S.K. Puri, Circle No. 249, Ward No. 34, under the Patna Municipal Corporation. The boundaries of the suit premises are as follows:

North:	Staircase and bathroom of the owner
South:	Shop No. 6
East:	Owner's passage
West:	Commercial Plot No. 12

6. The case of the plaintiffs', in nutshell, is that the plaintiff No. 1, her husband late Ram Bilash Roy and mother-in-law were co-owner of the said complex with their definite share in the said complex fully described in Schedule-1 of the plaint. It is pleaded that the defendant- petitioner is a tenant of one of the shops at ground floor of the said complex which is fully described as Schedule-II of the plaint. In year 2009, the husband of the plaintiff No.1, Late Ram Bilash Roy, and his mother Late Janki Devi were alive. Her husband Ram Bilash Roy and mother-in-law died on 29.07.2013 and 28.05.2010 respectively



leaving behind the plaintiffs who are their heirs. Plaintiff No.1 is wife of Late Ram Bilash Roy and Plaintiff No.2 is his son and plaintiff No.3 and 4 are his daughters. The plaintiffs are co-sharer of said Schedule-1 property so they are co-owner in respect to the property fully described in Schedule-2 of the plaint. It is further pleaded the defendant- petitioner approached Late Ram Bilash Roy, his wife (Plaintiff No.1) and mother-in-law Late Janki Devi for letting out the shop in suit on lease and offered a rent of Rs. 1800/- (Rupees one thousand eight hundred) per month. The land owners accepted his proposal of the said suit shop. Accordingly, a memorandum-cum-agreement to lease was prepared on 24.02.2009 to avoid further confusion. The tenancy of the lease shop was commenced from 1st January, 2009 to 31st December, 2013. The defendant has been paying the rent regularly till December, 2013. It is further contended that the terms of lease contains various terms including that the tenant will vacate the premises of suit after expiry of lease but the defendant has not vacated the suit premises. The plaintiffs served legal notice on 20.11.2013 through her lawyer to the defendant- petitioner demanding to vacate the premises of suit on the determination of said deed. It is further contended that at the time of execution of the Memorandum of Lease Agreement,



it was agreed that the lease deed would be registered, and both parties would share the registration cost fifty-fifty, but in spite of request the defendant- petitioner did not allow the deed to be registered although this term is also mentioned in column No. 15 of the deed. It is further pleaded that there is another term in the said deed that in case the defendant desire to extend further period he had to give notice before the expiry of the lease. The defendant did not exercise the said option and, therefore, has no legal right to remain in possession of the suit premises from 1st January 2014 onwards.

7. Further case of the plaintiffs' is that the suit premises is needed for *bona fide* personal necessity of plaintiff No.1. She became widow on 29.07.2013 and she has no other source of income hence she wants to start boutique shop in the suit premises with help of plaintiff No.3 as she is unemployed. She will operate the said business smoothly as she is living in the said "*Tapasya Complex*". She cannot start any other business as the other is not suitable as the boutique business. So, her need is *bona fide* and reasonable. It is further pleaded that the plaintiffs requested to the defendant-petitioner several times to deliver vacant possession of suit premises but he did not ready for same, hence, the suit.



8. The defendant-petitioner contested the suit, contending, *inter alia*, that the plaintiffs have instituted the present suit with the ulterior motive of pressurizing the defendant either to accept excessive rent or to vacate the premises, so that the plaintiffs may let it out to a new tenant for a substantial premium and at an exorbitant rent. It is an admitted fact that the defendant-petitioner has been a tenant in the suit shop for over 28 years and has time to time increased the rent in accordance with the wishes of the landlord. The original landlords, Late Ram Bilash Roy and Late Janki Devi, never compelled the defendant to pay any excessive or unreasonable rent during their lifetime.

9. After the demise of the original landlords, Late Ram Bilash Roy and Late Janki Devi, plaintiff No.1, along with her son and daughters, have filed this suit allegedly motivated by personal gain. It is admitted that the lease agreement executed between the parties for a term of three years is an unregistered document. As such, it is not admissible in law for the purpose of seeking eviction on the ground of expiry of the lease term. Consequently, the defendant-petitioner continues to remain a lawful month-to-month tenant. With respect to the alleged personal necessity, the defendant- petitioner contends



that the claim is neither genuine nor *bona fide*. It is further submitted that "Tapasya Complex" is a big G+3 structure. On the ground floor alone, there are nine shops, and the defendant occupies only one of them. Despite this, Plaintiff No.1 has specifically sought eviction only of the defendant and not of any other tenant. Further, the first floor of the complex is let out to a beauty parlor and a coaching center. The second floor is also under the tenancy of a coaching institute. The third floor is being used by the plaintiffs themselves for residential purposes. These facts, according to the defendant-petitioner, indicate that the claim of personal necessity is not genuine but a pretext to evict the defendant-petitioner for ulterior motives.

10. It is further pleaded that the eviction proceedings initiated exclusively against the defendant-petitioner is *mala fide*. Plaintiff No.1 initially claimed that the suit premises were required for starting a boutique business. However, only a month or two prior to the issuance of the legal notice to the defendant-petitioner, she disclosed that the shop was to be used by her son, Rohit Roy, for his business. These contradictory statements by the plaintiff No.1 demonstrate that the alleged need for the premises is neither personal nor *bona fide*. It is further contended that plaintiffs Nos.3 and 4, the daughters of



Plaintiff No.1, are both married and reside with their respective in-laws. They have no interest in the suit property, nor is Plaintiff No.3 genuinely intending to participate in any boutique business as claimed. In fact, in January 2014, the plaintiffs began pressurizing the defendant-petitioner to increase the monthly rent from Rs. 1,800/- to Rs. 3,500/-. Upon the defendant's refusal, the plaintiffs filed this frivolous and vexatious suit. Plaintiff No.1 has no genuine requirement for the suit premises. The ground floor of 'Tapasya' Complex comprises nine shops. Plaintiff No.1 herself is operating a tailoring business from the inner portion of one of these shops, despite the availability of several shopfronts (*katras*) on the front side. The plaintiffs have specifically targeted the defendant-petitioner, while taking no action against other tenants, who have complied with their demands. Moreover, since January 2014, the plaintiffs, acting with *mala fide* intent, have refused to accept rent from the defendant-petitioner. Consequently, the rent has been regularly remitted through money orders. In view of the above facts and circumstances, the plaintiffs are not entitled to any of the reliefs claimed in the suit. The suit is wholly devoid of merit and is liable to be dismissed with costs.



11. Upon completion of pleadings and consideration of rival contentions the following issues were framed by the learned Trial Court:-

“(i) Is the suit as framed and filed maintainable?

(ii) Whether the plaintiffs have got a valid cause of action for the suit?

(iii) Is the suit barred by Limitation, estoppel, waiver and acquiescence?

(iv) Whether the suit is bad for misjoinder and non-joinder ?

(v) Whether there exists relationship of Landlord and tenant between the parties?

(vi) Whether the defendant is liable to be evicted on expiry of period of lease deed?

(vii) Whether the plaintiffs have personal necessity of the suit house and whether partial eviction of the suit premises will satisfy the requirement of plaintiff?

(viii) Is the plaintiffs entitled for the decree of eviction of suit premises?

(ix) To what relief and reliefs if any the plaintiffs is entitled?”

12. In support of their claim on the aforementioned issues, the plaintiffs examined a total of seven witnesses and produced seven documents, which were marked as exhibits. The



defendant–petitioner, in turn, examined eight witnesses and submitted two documents, which were also marked as exhibits.

13. The learned Trial Court, upon consideration of the pleadings and the oral and documentary evidence adduced by the parties, arrived at the following findings enumerated below and decreed the suit on contest, without costs, by its judgment and decree dated 04.03.2024. The Court directed the defendant-petitioner to vacate the suit premises (shop) within 60 days from the date of the judgment, failing which the plaintiffs would be at liberty to have the defendant evicted from the suit premises through process of the Court. The findings are as follows:-

(i) The plaintiffs have established their *bona fide* personal necessity for the suit premises, and the shop in question is found to be suitable for the proposed business.

(ii)The defendant has not pleaded that his requirement could be met through partial eviction of the suit premises.

(iii)The entire area of the shop, measuring 186 sq. ft., has been sought by the plaintiffs in view of their *bona fide* personal necessity to start a boutique business. The demand is neither unreasonable nor can their requirement be substantially fulfilled through partial eviction of the suit premises.



(iv) The issue as to whether partial eviction of the defendant-petitioner would suffice to meet the plaintiffs' requirement is answered in the negative and decided in favour of the plaintiffs and against the defendant-petitioner.

(v) The suit is held to be maintainable, and the plaintiffs are found to have a valid cause of action.

14. Aggrieved by the judgment and decree passed in Title Eviction Suit No. 456 of 2014 by the learned Trial Court, the defendant-petitioner(tenant) has preferred the present revision application.

15. From perusal of the pleadings and the materials on record, including the oral and documentary evidence of the parties, it is evident that there is no dispute regarding the ownership of the suit premises of the plaintiffs and the tenancy of the defendant therein. The existence of landlord-tenant relationship between the parties is, thus, an admitted fact. Further, the defendant-petitioner does not dispute the said relationship, but has challenged the findings of the learned Trial Court specifically on the issue of the plaintiffs' claim of personal necessity.

16. With regard to the issue of partial eviction, the



learned Trial Court has discussed the matter in detail.

17. Accordingly, the following point arises for consideration and adjudication in the present civil revision application:-

(a) Whether the plaintiffs have failed to establish their claim of personal necessity for the suit premises beyond all reasonable doubt ?

18. Learned counsel for the petitioner submits that the learned Trial Court has failed to properly evaluate the evidence both oral and documentary adduced by the parties, and as such, the findings recorded therein stand vitiated. It is further submitted that plaintiff No. 1 has no reasonable personal necessity for the suit premises to establish a boutique business, as claimed. The plaintiffs/opposite parties have taken inconsistent stands regarding the alleged requirement. Initially, in the legal notice issued to the petitioner, the plaintiffs stated that the shop was needed for the business purposes of her (plaintiff no.1) son, Rohit Roy. However, during the course of proceedings, the plaintiffs changed their version, claiming instead that the shop was required to open a boutique by plaintiff No. 1, allegedly with the help of plaintiff No. 3, her daughter. This contradiction raises serious doubt about the *bona*



fide nature of the claim and undermines the credibility of the plaintiffs' case. It becomes a matter of judicial scrutiny as to which version ought to be believed and which is to be disbelieved. It is further submitted that although the plaintiffs own several shops within the commercial complex, they have chosen to seek eviction of only the shop in possession of the petitioner. This discriminatory approach indicates *mala fide* intention and an ulterior motive rather than a *bona fide* need. Further submission is that the lease agreement relied upon by the plaintiffs is unregistered and, therefore, inadmissible in law. It cannot be the basis for initiating or sustaining an eviction suit, as it does not meet the legal requirement for admissibility under the Indian Evidence Act and Registration Act. Further submission is that the learned Trial Court has erred in accepting the claim that plaintiff No. 1 requires the suit premises with the help of plaintiff No. 3, her daughter, despite the fact that the said daughter is married and residing in her matrimonial home with no active involvement in the alleged business activity. In the light of the above, learned counsel for the petitioner submitted that the plaintiffs have failed to prove any *bona fide* personal necessity for the suit premises, and the impugned findings of the learned Trial Court are liable to be set aside. The plea of *bona*



fide requirement is not as *bona fide* as being projected by the plaintiff; rather, it is a ploy to seek eviction of the defendant. Reliance has been placed on the judgment rendered in the case of ***Smt. Shakuntala Devi vs. Sajjan Kumar Bajoria***, passed in ***Civil Revision No. 226 of 2011, dated 11.03.2013***.

19. On the other hand, learned counsel for the opposite parties has claimed *bona fide* personal requirement of the suit premises for operating a boutique business therein. It is admitted by the defendant-petitioner himself that no other shops are vacant. Further, it is submitted that plaintiff No. 1 (PW-1), Rita Roy, has clearly stated in her examination-in-chief that the plaintiffs have a personal requirement for the suit shop, as plaintiff Nos. 3 and 4 are her daughters who live with her, her husband has passed away, and her income has been reduced. In such circumstances, they have decided to open a boutique in the suit shop, and she has no other suitable shop to run the business. It is also stated in her cross-examination that her daughter takes care of her, works in a private job in Delhi, and wants to live with her. In paragraph 25 of her cross-examination, PW-1 has stated that, due to the necessity of her daughter and to keep herself occupied, she has filed this suit to vacate the shop. PW's-2 and 4 have also supported the plaintiffs' case.



20. After analyzing the evidence adduced by the plaintiffs, i.e., PWs-1, 2 and 4, it is evident that they have consistently supported the plaintiffs' claim of *bona fide* personal necessity. The witnesses produced by the defendant were unable to establish their case that the plaintiffs do not have a personal necessity. Learned counsel for the plaintiffs-opposite parties further submitted that the question of partial eviction has been discussed elaborately. It is further submitted that once the landlord has proved the *bona fide* need of the premises, onus shifts on the tenant. The defendant-petitioner failed to prove that the personal necessity would be substantially satisfied by partial eviction of the suit premises. The plea of the plaintiffs with regard to necessity of entire suit shop has not been contested by the defendant-petitioner either in his written statement or in cross-examination. Reliance has been placed in the case of *Anamika Roy Vs. Jatindra Chowrasiya* and others reported in (2013) 6 SCC 270, wherein the Hon'ble Apex 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.”

21. After considering the submissions made on behalf



of the parties and on perusal of the impugned judgment and the materials on record, it is clear that the landlord-tenant relationship is admitted between the parties. The plaintiffs' claim the suit premises for plaintiff No. 1 to start a boutique business. It transpires from the impugned judgment that the learned Court below has recorded its findings on the basis of a thorough scrutiny of the evidence led by both parties. Plaintiff No. 1 was herself examined as PW-1. In paragraph 7 of her examination-in-chief, PW-1 stated that the plaintiffs have a personal requirement for the suit shop, as plaintiff Nos. 3 and 4 are her daughters who live with her, her income has been reduced after the death of her husband. Plaintiff No.1 has decided to open a boutique with the help of her daughter (plaintiff no.3) in the suit shop and she has no other suitable premises to run the boutique business. In paragraph 24 of her cross-examination, she further stated that her daughter takes care of her. PWs 1, 2, and 4 have supported the plaintiffs' case on the ground of *bona fide* personal necessity.

22. DW-2, in his evidence, stated that when he approached the landlord for an extension of the lease, the request was denied on the ground of personal necessity. He further deposed that the landlords informed him that they



required the premises for their own use. The defendant-petitioner also admitted that no other shop in the complex is vacant. It is an admitted fact that plaintiff No. 1 is a widow, and after the death of her husband, the family's income has reduced. She now intends to improve her financial condition by starting the proposed business with the help of her daughter, PW-3.

23. The evidence adduced by the plaintiffs led to a clear finding and the learned court below rightly held that the plaintiffs are entitled to institute the suit on the grounds of *bona fide* personal necessity and good faith, and as such, the plaintiffs require the suit premises for her (plaintiff no.1) business; however, this fact has not been disproved by any material evidence produced by the defendant.

24. In view of the aforesaid facts and circumstances, the finding of the lower court that the plaintiffs have a *bona fide* personal requirement for the suit premises appears to be just, legal, and proper.

25. In view of the judgment of the Hon'ble Apex Court *in the case of Kasthuri Radhakrishnan and others Vs. M. Chinnian and another reported in (2016) 3 SCC 296*, the revisional jurisdiction under the Rent Control Acts is circumscribed by limitations and the revisional court is only to



see whether order for eviction is according to law or not. Their Lordships in the aforesaid judgment had 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 Corporation Limited vs. Dilbahar Singh** (2014) 9 SCC 78. Justice R.M. Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus:*

“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 reappreciation of the evidence, its view is different from the court/authority below. The consideration of 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 reappreciate 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...”

26. In view of the aforesaid analysis, this Court does not find that the learned Court below has committed any error of jurisdiction and illegality in passing the impugned judgment. This Court is also not persuaded to hold that the judgment and decree passed by the learned Court below for eviction is not in accordance with law.



27. This Civil Revision application is, accordingly,
dismissed.

28. Pending interlocutory application(s), if any, shall
stand disposed of.

(Khatim Reza, J)

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