

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.68 of 2022

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Baidyanath Sharma son of Late Krishna Sharma, Resident of Village-
Hasanpur Surat Barai Tola, P.S.-Patori, District-Samastipur.

... .. Petitioner/s

Versus

Smt. Rama Devi W/o Gopal Prasad Khator, Resident of Village-Hasanpur
Surat Barai Tola, P.S.-Patori, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Advocate
		Mr. Aditya Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Shankar Prasad Roy, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

CAV ORDER

14 20-01-2026

This Civil Revision application no. 68 of 2022

has been filed under Section 14(8) of Bihar Building (Lease,
Rent, and Eviction) Control Act, 1982. (hereinafter referred to
as “the Act”) against the judgment and decree dated 27.08.2022
passed by the Munsif, Samastipur in Eviction Suit No. 02 of
2011 whereby and where under the learned trial Court has
decreed the suit directing the defendant/petitioner to vacate the
premises within 90 days from the date of the order otherwise the
plaintiff/respondent would be at liberty to get the delivery of
possession through the process of the court.

2. Heard learned counsel for the petitioner and
learned counsel for the opposite party.

3. Briefly stated, the facts of the case are that the



plaintiff has purchased a piece of land pertaining to Khata no. 185, Plot no. 692 measuring an area 16 dhur through a registered Sale Deed dated 07.03.2008 from her father-in-law namely late Sitaram prasad Khator and constructed structure and has given on rent to the defendant on monthly rent. Further, the defendant has taken premises on rent on monthly rent of Rs.500/- for doing a business of wooden furniture and with the statement that the defendant will pay monthly rent in the first week of every month and will not sublet the premises without consent of the land owner and also will not change structure.

4. It was further case of the plaintiff that a deed of kirayanama was prepare on stamp paper for 11 months dated 26.09.2008 and again it was re-validated for further 11 months till 30.09.2010. Further, the defendant appeared and filed his written statement on 25.04.2011 stating therein that he is the tenant in the suit premises but there is a dispute between the three sons of Sita Ram Khatore and it is the plaintiff who requested the defendant to start a shop in the suit land and the same was constructed by defendant in July, 2008 and when dispute arose it was agreed between the co-sharer of plaintiff that rent will be paid to person who win the case.

5. It was also stated and asserted by the



defendant that "Kirayanama" dated 26.09.2008 and subsequent lease deed for the period 01.11.2009 to 21.01.2010 was executed by the defendant due to fear of eviction and is doing business as a tenant. The lease deed dated 21.01.2010 was for a period of five (5) years and plaintiff has no right to evacuate the suit premises during this period and that defendant has spent Rs. One lakh seventy thousand towards construction of suit shop, which money needs to be adjusted and lastly it was prayed that suit may be dismissed with cost.

6. The trial Court after examining the exhibit-3 held that suit land belonged to Sita Ram Khatore who sold it to plaintiff and unless the sale deed is set-aside by competent Court it will be a valid document and therefore, plaintiff/respondent is the landlord of suit shop and since no complaint was made earlier before any officer or trial Court, therefore signature of defendant on lease deed will be presumed to be valid and legal and it was held that there is relationship of landlords and tenant between the plaintiff and defendant and issued no. "Gha" was also decided in favour of plaintiff; it was held that son of plaintiff i.e., Bikash Kumar wants to run a medicine shop in suit premises who has deposed before trial Court as plaintiff witness no. 6 stated that since 2010 he wants



to run a medicine shop.

7. It was further challenged by the defendant that plaintiff has a medicine shop at Patawari Bazar which is run by her husband and sons and held by the trial Court that her son wants to run his own shop and he has all the right to run his own shop separate from family business; and this issue was also decided in favour of plaintiff and it was held that plaintiff requires the suit shop for bonafide personal necessity and is entitled to get decree of eviction against defendant/tenant and lastly it was held that suit as framed is maintainable and plaintiff has valid cause of action to file the suit and therefore suit was decreed with a direction to defendant to vacate the suit shop within 90 days.

8. The learned counsel for the petitioner submits that from the entire judgment of the learned trial Court, it appears that neither the learned trial Court has framed an issue of partial eviction nor the learned trial Court has considered or whisper a single word with regard to partial eviction that whether the partial eviction will satisfy the requirement of the plaintiff/respondent or not and as such it appears that learned trial Court has failed to consider main ingredients of section 11(i)(C) of the Act.



8.i. He further submits that while dealing with the suit for eviction on the ground of personal necessity, it is onus cast upon the trial Court to frame an issue with regard to partial eviction or deal with the same, which is a requirement of Section 11(i)(C) of the Act. He further relied upon the judgment passed by Co-ordinate Bench of this Court in ***Shyam Babu Sah v. Shyam Babu Sah*** reported in ***PLJR (2023) 1 Page 61***, which reads as “*Bihar Building (Lease Rent and Eviction) Control Act, 1982, Section 11(i)(C) and 14(8) -Revision- Eviction on the ground of personal necessity and plea that the Court below has not considered the question of partial eviction as required by the proviso under Section 11(i)(C) of the act which is mandatory requirement and no issue of partial eviction was framed by the Trial Court.*”

8.ii. Further, it is submitted that the power under the proviso to Section 14(8) of the Act is related to the extent of seeing as to whether the order of eviction is according to law or not for this related purpose, the Court can reappraise the evidence. However, on account of 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 and the High Court will interfere if any case it is found



that the order is based on no evidence or the trial Court has ignored the material evidence which has effected the fine are perverse, unreasonable or having been arrived at without considering statutory requirement for grant of relief. The Trial Court is bound to consider the mandatory requirement of partial eviction for which he has to frame such issue there are trial of suit with opportunity to both the parties to lead evidence on partial evidence as those judgment and decree of the trial Court are not sustainable for want of any finding on issue of partial eviction.

8.iii. The learned counsel further submits that in the above judgment the learned trial Court has already considered the judgment reported in *AIR 1994 SC page 489 (Krishna Murari Prasad Vs. Mitar Singh)* wherein it was observed –

“It is obvious that the High Court proceeded on the basis that a presumption arises that where premises comprises only one room the proviso to clause -C of section 1 of section 11 is not attracted since it is application of not practicable since its application is not practicable. Obviously, this assumption is fallacious since it is proposed that the indivisibility of premises comprises one room.”

8.iv. He further submits that irrespective of its dimension and even when the room is big enough to permit



division to satisfy the need of 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 inquiry has to be done by the trial Court after reaching the conclusion that the landlord requirement for occupation of the premises set up by him has been made out in failing to do so the courts below overlooked the statutory requirement and as such it is clear that even in room to of the subject matter the issue of partial eviction is mandatory.

8.v. The learned counsel has further relied upon judgment rendered by co-ordinate bench of this Court in ***Bimal Kishore Gupta Vs. Smt. Beena Devi & Ors.*** reported in ***PLJR (2001) 2 page 837***, where it has been held that it is duty cast upon the Court to consider the question of partial eviction even though no such plea is taken by the tenant. He further submits that from the aforesaid circumstances and consideration of the judgment it appears that the trial Court has not given any sight on the issue of partial eviction and has failed to consider the mandatory requirement under Section 11(i)(c) of the Act.

8.vi. Further in many cases wherein the issue of partial eviction was not considered, Hon'ble High Court has remanded the case to the learned trial Court for fresh consideration after setting aside the judgment. He further



contended that under the aforesaid circumstances the judgment and decree passed by the learned trial Court is bad without consideration of the mandatory requirement and is fit to be set aside.

9. Learned counsel for the respondent submits that the eviction suit filed under Section 11 (1) (c) of the BBC Act, 1982 was rightly decreed by the learned trial Court on the ground of *bona fide* personal necessity. The relationship of landlord and tenant, rate of rent, and occupation of the suit premises by the defendant/petitioner are all admitted facts. The plaintiff/respondent specifically pleaded in the plaint that the suit premises is reasonably and in good faith required for their own residence and professional use. Based on such evidence, the trial Court recorded a categorical finding that the plaintiffs' need is genuine, reasonable, and in good faith. These findings are based on evidence and are neither perverse nor illegal and therefore do not warrant interference in revisional jurisdiction.

9.i. Learned counsel for the respondent further submits that the defendant/petitioner failed to raise any plea regarding partial eviction either in the written statement or during cross-examination of the plaintiff witnesses, nor did he lead any evidence to show that the plaintiff requirement could



be satisfied by partial eviction. In law, once the landlord proves bona fide personal necessity, the onus shifts upon the tenant to plead and prove that such need can be met by partial eviction. Having failed to do so at the trial stage, the defendant/petitioner cannot be permitted to raise the issue for the first time at the revisional stage.

9.ii. He further submits that the plea of partial eviction must be specifically raised and proved by the tenant at the time of trial and that revisional courts cannot re-appreciate evidence or act as a second court of appeal. It was emphasized that the revisional jurisdiction is limited, as laid down by the Constitution Bench in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh* reported in (2014) 9 SCC 78. He next submits that it may not be out of place to mention here that this Hon'ble Court in a number of cases has said it in so many words that issue of "Partial eviction" has to be raised by defendant/petitioner in its written statement and in his deposition and issue of partial eviction can't be decided "Suo moto" reported in 2010 (4) PLJR 553. Similarly, in judgment reported in 2010 (3) PLJR 483, it was held that "*neither in Evidence nor in pleading defendant stated that requirement of plaintiff will be satisfied by partial eviction then this issue can't*



be raised and the onus is upon defendant to prove the same.”

Other judgment on the point is **2014 (4) PLJR 476** and **2012 (3) PLJR 649; 2013 (2) PLJR 491**.

9.iii. In view of the above submissions, the learned counsel for the respondents prayed that the Civil Revision be dismissed, as the impugned judgment and decree are based on proper appreciation of evidence and settled principles of law, and suffer from no illegality or jurisdiction error.

10. After due consideration of the pleadings of the parties, the issues framed for adjudication, and the oral as well as documentary evidence adduced on behalf of both sides, and upon hearing the learned counsel for the parties, the learned trial Court, by judgment dated 27.08.2022 passed in Eviction Suit No. 02 of 2011, was pleased to allow the suit.

11. The learned trial Court recorded a categorical finding that the plaintiff/respondent is the owner and landlord of the suit premises and that the relationship of landlord and tenant between the parties stands admitted. It was further held that the rate of monthly rent and the occupation of the petitioner as a tenant in the suit premises were not in dispute. The learned trial Court, upon appreciation of the evidence on record, accepted the



case of the plaintiff/respondent that the suit premises is reasonably and bona-fide required for their own use and occupation. The learned trial Court further accepted the evidence that the second son of the plaintiff/respondent need to start a separate business in the suit premises and that the location of the suit premises is suitable for such purpose.

12. Upon an overall appreciation of the pleadings, evidence and material available on record, the learned trial Court concluded that the plaintiff/respondent had successfully established their entitlement to a decree of eviction under Section 11(1)(c) of the BBC Act, 1982. Consequently, the suit was decreed on contest in favour of the plaintiff/respondent and against the defendant/petitioner. The petitioner was directed to vacate the suit premises described in Schedule-I of the plaint within a period of ninety days from the date of the judgment, failing which the plaintiff/respondent was granted liberty to obtain eviction of the petitioner through the process of the Court. It was further ordered that the costs incurred in executing the decree shall be recoverable from the defendant/petitioner. The learned trial Court, however, directed that there shall be no order as to costs.

13. At the outset, it is necessary to reiterate that



the scope of revisional jurisdiction under the said provision is extremely limited as the present Civil Revision has been preferred under Section 14 (8) of the BBC Act, 1982. The revisional Court does not sit as a Court of appeal and cannot re-appreciate evidence merely because a different view is possible. Interference is permissible only when the findings of the learned trial Court are shown to be perverse, based on no evidence, or suffering from jurisdictional error. The legal position in this regard stands conclusively settled by the Constitution Bench of the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh (supra)***. In paragraph 43, the Hon'ble Supreme Court held that:

“The revisional court does not have the power to re-appreciate evidence. The jurisdiction is confined to examine whether the findings of fact recorded by the court below are according to law and do not suffer from perversity or jurisdictional error.”

In the present case, the learned trial Court has framed specific issues, appreciated oral and documentary evidence adduced by both sides, and gave reasoned findings. No perversity or jurisdictional error has been demonstrated warranting interference.

14. Coming to the core issue of bona fide



personal necessity, the law is well settled that the landlord is the best judge of his requirement, and the Court cannot substitute its own wisdom for that of the landlord. The Hon'ble Supreme Court in ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal***, reported in **(2005) 8 SCC 252**, held in paragraph 15 that:

“It is always the prerogative of the landlord to decide how and in what manner he should live or conduct his business. The tenant cannot dictate the terms to the landlord.”

15. The learned trial Court, upon appreciation of evidence, accepted this requirement as genuine and bona fide. The nature and test of bona fide requirement have been elaborately explained by the Hon'ble Supreme Court in ***Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta***, reported in **(1999) 6SCC 222**, paragraph 11 observed that:

“The requirement of the landlord must be honest, genuine and conceived in good faith. It need not be a dire necessity but must be a real and sincere need.”

Applying the above test, the learned Trial Court has rightly concluded that the respondents' need is honest and real, and not a mere pretext for eviction.

16. The contention of the petitioner regarding partial eviction is wholly misconceived. As learned counsel for



the petitioner relied upon the judgment rendered by co-ordinate bench of this Court in ***Bimal Kishore Gupta Vs. Smt. Beena Devi & Ors. (supra)***, where it has been held that it is duty cast upon the Court to consider the question of partial eviction even though no such plea is taken by the tenant. It is a settled principle that once the landlord establishes bona fide requirement, the burden shifts upon the tenant to plead and prove that such requirement can be satisfied by partial eviction. In ***Rahabhar Productions Pvt. Ltd. v. Rajendra K.Tandon***, reported in ***(1998) 4 SCC 234***, the Hon'ble Supreme Court held in paragraph 18 that:

“Once the landlord establishes bona fide requirement, the onus shifts on the tenant to prove that partial eviction would satisfy such requirement.”

Since the plea of partial eviction was neither taken in the Trial Court, the onus shifts on the tenant to prove that partial eviction would satisfy such requirement. In the present case, as rightly noted by the learned trial Court, the petitioner neither raised any plea of partial eviction in the written statement nor led any evidence to substantiate such a plea. In absence of pleading and proof, the tenant cannot resist eviction on the said ground and the onus is upon the petitioner/defendant to prove that partial eviction would satisfy such requirement.



17. On the core issue of bona fide and reasonable personal necessity, the law gives primacy to the landlord's assessment of his own need. In *Prativa Devi v. T.V. Krishnan*, reported in (1996) 5 SCC 353, the Hon'ble Supreme Court categorically held in paragraph 2 that the landlord is the best judge of his residential requirement and the tenant cannot dictate the manner of his living. Further, in *Ramashray Singh v. Bindeshwari Prasad*, reported in 2009 (3) PLJR 91, paragraph 10, it was held that requirement of premises for dependent family members is a legitimate and bona fide requirement.

18. The contention for partial eviction has been consistently followed by co-ordinate bench of this Court in *PLJR 2005 (3) 719*, *PLJR 2013 (2) 491*, *PLJR 2005 (3) 19*, and *PLJR 2016 (4) 20*, wherein it has been held that the plea of partial eviction must be specifically pleaded and proved by the tenant and cannot be permitted to be raised for the first time at the revisional stage. With regard to the existence of cause of action, it is settled law that cause of action is not confined to a single event but consists of a bundle of facts which may arise at different stages. The Hon'ble Supreme Court in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies*, reported in (1989) 2 SCC 163, held in paragraph 12 that cause of action comprises all



those facts which the plaintiff must prove to obtain relief and may arise partly at one place and partly at another.

19. Further, in ***Sopan Sukhdeo Sable v. Assistant Charity Commissioner***, reported in (2004) 3 SCC 137, the Supreme Court held in paragraph 15 that the cause of action crystallizes when the right to sue accrues, particularly upon termination of the legal relationship. Applying this principle, the co-ordinate bench of this Court in ***Ram Prasad v. Sita Ram***, reported in 1998 (2) PLJR 12, held in paragraph 7 that issuance of a notice terminating tenancy furnishes a fresh and valid cause of action for eviction. From the aforesaid principles it is clear that the finding of the learned trial Court that the respondents had a valid and continuing cause of action.

20. The contention raised by the learned counsel for the petitioner relating to the personal need of the Respondent's son, wherein it is well settled principle laid down by Hon'ble Supreme Court in ***Gaya Prasad v. Pradeep Srivastava***, reported in (2001) 2 SCC 604, held in paragraph 10: "*Subsequent events which strengthen the bona fide requirement of the landlord can be taken into consideration.*" In the present case, the primary ground of eviction remains the personal necessity of the Respondent.



21. Upon an overall consideration of the pleadings, evidence, and settled principles of law, this Court finds that the learned trial Court has exercised its jurisdiction properly, applied the correct legal tests, and recorded findings supported by evidence. The impugned judgment does not suffer from any illegality, perversity, or jurisdictional infirmity so as to warrant interference in exercise of revisional jurisdiction.

22. In view of the foregoing discussion, this Court is of the considered opinion that the learned trial Court has correctly appreciated the pleadings, evidence and the settled principles of law governing eviction on the ground of bona fide personal necessity under Section 11 (1) (c) of the BBC Act, 1982. The findings recorded by the learned trial Court regarding the existence of landlord-tenant relationship, the bona fide and reasonable requirement of the respondents for the suit premises, and the non-feasibility of partial eviction are based on cogent evidence and do not suffer from any perversity, illegality or jurisdictional error.

23. This Court further finds that the scope of interference under Section 14 (8) of the B.B.C. Act is limited, and the present Civil Revision does not disclose any ground warranting interference with the well-reasoned judgment and



decree dated 27.08.2022 passed in Eviction Suit No. 02 of 2011. The contentions raised on behalf of the petitioner are devoid of merit and do not persuade this Court to take a different view. Accordingly, the present Civil Revision No. 68 of 2022 is dismissed. The judgment and decree dated 27.08.2022 passed by the learned Munsif, Samastipur in Eviction Suit No. 02 of 2011 are hereby affirmed. All pending IA's with regard to the civil revision no. 68 of 2022 is also disposed off.

24. The petitioner/defendant is directed to vacate and hand over peaceful possession of the suit premises, as described in the plaint, to the respondents/plaintiffs within a period of ninety (90) days from passing of the order of this Court otherwise respondents will have right to vacate the suit premise as per process of law.

(Ramesh Chand Malviya, J)

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