

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.85 of 2014

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Satyendra Singh Son of Late Chandradeo Singh Resident of Village - Dahaur,
P.O.- Pahleza, P.S.- Dehri, District - Rohtas at present Ashramgali, Paliroad,
Dehri, District – Rohtas

... ..Defendant/ Petitioner/s

Versus

Smt. Rashmi Mehra Wife of Sri Abhay Chandra Mehra Resident of Mehra
Bhawan, Dehri on Sone, P.O.- Dehri,P.S.- Dehri, District- Rohtas

... ..Plaintiff/Opposite party

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Appearance :

For the Petitioner/s : Mr. S.S.Dwivedi, Sr. Advocate
Mr.Uma Shankar Singh
For the Respondent/s : Mr. Sanjay Kumar Giri
Mr. Vikas Ratan Bharti
Mr.Manoj Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV JUDGMENT

Date : 07-03-2024

I have already heard the learned counsels for the parties.

2. The present civil revision application has been preferred by the defendant/petitioner to set aside the judgment/order dated 02.05.2014 in Eviction Suit No. 11 of 2008, passed by Munsif, Dehri-on-sone, Rohtas, directing the defendant/petitioner to vacate suit premises in favour of the plaintiff/opposite party.

3. The brief fact of the case is that the landlady of the premises/plaintiff/opposite party brought a suit against the



defendant/petitioner with the averment that he is the tenant of the premises in question and is running a shop of confectionery/sweets. As per the deed of *kirayanama*, the tenancy commenced on 01.01.2008 and was to be terminated on 30.11.2008. The rent payable was fixed at Rs. 800 per month. The deed of rent agreement is Ext. 1. It was stipulated in the deed that the premises was to be vacated at a prior notice of two months. In paragraph-2 of the plaint, it has been averred that, without the consent of the landlady, the petitioner herein installed an overhead water tank in his shop. She sent a letter to the petitioner/tenant on 27.05.2008 for removal of the overhead water tank, in reply whereof the tenant demanded Rs. 30,000/- from the landlady in lieu of the cost incurred on the installation of that overhead water tank. In paragraph-3 of the plaint, it is averred that she sent a notice to the petitioner on 02.06.2008, requesting him to remove the overhead water tank, but he paid no heed and sent reply to the Advocate of the plaintiff on 02.07.2008 and warned the plaintiff to take shelter of the court. In paragraph- 4 of the plaint, it has been averred that the Advocate of the plaintiff sent a reply on 09.07.2008, directing the tenant to vacate the premises till 10.08.2008 on the ground of personal necessity. In paragraph-5 of the plaint, the plaintiff



described the personal necessity of the premises for the business of her son and it was said to be a *bona fide* requirement of the plaintiff.

4. The petitioner in his written statement denied the ground of personal necessity as well as the violation of the terms of the deed of agreement.

5. The learned counsel for the petitioner submitted that the plaint itself shows that the landlady was not happy with the petitioner as he had installed an overhead water tank in his shop which was necessary for smooth running of the shop as it was a shop of sweets/confectionery. The installation of overhead water tank as per the submission of the learned counsel is neither the material deterioration nor wastage to the property. The second submission of the learned counsel is that the present suit has been filed for eviction of the tenant on the ground of *bona fide* and reasonable personal necessity, but the plaintiff miserably failed to prove that it was her personal necessity for the need of her son in *bona fide* and reasonable manner. The conduct of the landlady/plaintiff itself shows that the premises in question was not required by her, rather she was infuriated due to installation of the overhead water tank, which was necessary for smooth functioning of his shop. In paragraph-3 of



her plaint, she admitted the fact that she sent a notice to the tenant to remove the water tank within a week. That letter was sent on 27.05.2008. In that letter, she did not mention that the premises was necessary for business of her son. Again on 02.06.2008, she sent a notice and in that notice also there is no whisper of personal necessity of the premises for her son. Only in the 3rd notice, which was sent to the appellant on 09.07.2008 it has been mentioned for the first time that she needed the premises for the personal necessity of her son. This conduct of the plaintiff/opposite party itself shows that the ground of *bona fide* personal necessity is afterthought and it has not been proved. He has submitted further that in the plaint it has only been mentioned that the premises was needed for personal necessity for business of her son but the nature of business has not been specified/mentioned therein. The only son of the plaintiff/opposite party has been examined as P.W.2 and his statement is contrary to the plaint. In paragraph-22 of his deposition, he has stated that he had gone through the plaint and this fact has been mentioned in the plaint that the son of the plaintiff was to open a shop of Bajaj Electronics. This statement of the son of the plaintiff is factually wrong. In the plaint, it has not been mentioned that this witness wanted the premises for



opening of a shop of Bajaj Electronics. His mother (the plaintiff, P.W.1) in paragraph-12 of her cross-examination has stated that her son (P.W.2) owns a Bajaj Motor-cycle Agency, but this fact does not find place in the plaint, which shows that the plaintiff intentionally concealed this fact only to depict her son as unemployed.

6. The learned counsel for the petitioner has also submitted that in para 20 of his cross-examination, P.W.2, the son of the plaintiff, has admitted that there are 13 shops in that premises which shows that the plaintiff and her son are well off and they are not in *bona fide* need of the premises in question. The learned counsel in support of his submission relied upon two decision of Hon'ble Supreme Court. The first decision is reported in **(2001) 5 SCC, page 705 (Deena Nath Vs. Pooran Lal)** and the second decision has been reported in **(1999) 6 SCC page 222 (Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta)**. The relevant portion of para 15 of *Deena Nath's case* (supra) is extracted hereinbelow:-

“.....The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first requirement by the landlord which means that it is not a mere



whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation.....”

7. The relevant portion of para 13 of **Shiv Sarup**

Gupta’s case (supra) is also extracted hereinbelow:-

“13. Chambers 20th Century Dictionary defines bona fide to mean “in good faith : genuine”. The word “genuine” means “natural : not spurious : real : pure : sincere”. In Law Dictionary, Mozley and Whitley define bona fide to mean “good faith, without fraud or deceit”. Thus the term bona fide or genuinely refers to a state of



mind. Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant.....”

8. On the other hand, the learned counsel for the plaintiff/opposite party submitted that the personal need of the plaintiff was well proved. As per his submissions, the *bona fide* personal necessity has been fully discussed in the impugned order. He submitted that the plaintiff/landlady may evict the tenant for expansion of his/her business. He submitted that the nature of business to which the plaintiff has to run is not mandatorily required to be disclosed in the plaint. In support of his submission, he relied upon a decision of Hon’ble Supreme Court, reported in ***AIR 2010 SC page 721 (Ram Babu Agarwal Vs. Jay Kishan Das*** and submitted that the *bona fide* need of the



landlord in that case was disbelieved by the High Court, as the son of the plaintiff had no experience in the business of footwear which was reversed by the Hon'ble Supreme Court. In my view, this decision is entirely different from the facts of the present case. In the case in hand, the *bona fide* need of the landlady is a fact in issue, whereas in ***Ram Babu Agarwal's*** case it was held by the Hon'ble Supreme Court that the experience in a business is not a pre-condition to prove the *bona fide* need of the landlord.

9. The second decision relied upon by the learned counsel for the plaintiff/opposite party is a decision of Hon'ble the Supreme Court, reported in ***(2021) 15 SCC page 75*** and that case is also not applicable in the facts and circumstances of the present case. In that case, the Hon'ble Supreme Court, while considering the grounds of the personal necessity of an NRI landlord, has held that it is not for the tenant to dictate how much space is adequate for the proposed business.

10. In my view, the conduct of the plaintiff/opposite party did not prove the *bona fide* or reasonable personal necessity for opening of the shop of her son. In the first and second notice sent to the tenant, she did not even whisper about the personal necessity, but in the third notice which was



sent within a period of two months approximately after the second notice, the ground of personal necessity was recited for the first time. In para 3 of the plaint, the plaintiff has admitted that she sent notices to the tenant for removal of the overhead water tank. Had she required the premises for opening of the shop of her son, she should have necessarily averred this fact in that notice itself. Even in the second notice, she directed the petitioner/tenant only to remove the overhead water tank and in that notice also she did not whisper about the personal necessity. The statement of the son of the plaintiff, who has been examined as P.W.2, is factually incorrect. In his deposition, he has stated that in recitals of the plaint, it has been pleaded that the plaintiff was in need of the premises for opening of the shop of Bajaj electronics, but in fact there is not even an iota of whisper of the fact in the entire plaint that the son of the plaintiff needed the premises for opening of the Bajaj electronics shop.

11. On the basis of above-mentioned observations, the plaintiff/opposite party miserably failed to establish the ground of *bona fide* and reasonable personal necessity, as envisaged in Section 11(1) (c) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982.

12. I do not find any merit in the impugned order



dated 02.05.2014 passed in Eviction Suit No. 11 of 2008, which is hereby set aside.

13. Consequently, the present civil revision application stands allowed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	15.12.2023
Uploading Date	07. 03.2024
Transmission Date	

