

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.172 of 2018

Dilip Kumar Agrawal, Son of Late Girdhari Lal Agrawal, resident of Janta Fancy Vastralaya, Mangal Bazar, Katihar, P.S. and District- Katihar.

... .. Petitioner/s

Versus

1. Kamakhya Prasad, Son of Late Kunj Bihari Lal, resident of Mohalla Barmasiya Near Jagannath Mandir, P.O., P.S. and District- Katihar.
2. Dr. Pravin Chandra, Son of Kamakhya Prasad, resident of Mohalla Barmasiya Near Jagannath Mandir, P.O., P.S. and District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bimlendu Mishra, Adv.
For the opposite party/s	:	Mr. Pramod Kumar Sinha, Adv.
	:	Mr. Gyan Prakash Ojha, Adv.
	:	Mr. Uday Shankar Pandey, Adv
	:	Mr. Chetan Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-02-2021

I.A. No. 2 of 2021 in C.R. No. 172 of 2018

I.A. No. 3 of 2021 in C.R. No. 172 of 2018

I.A. No. 2 of 2021 has been filed on behalf of petitioner under Order 22 Rule 4 of C.P.C. whereas I.A. No. 3 of 2021 has been filed by opposite party under Order 22 Rule 10A of C.P.C. for expunging the name of opposite party no. 1 Kamakhya Prasad, who died during pendency of this revision application on 31.08.2020 leaving behind following as his legal heirs and representatives.



(i) Prabhat Chandra (Son)

(ii) Prakash Chandra (Son)

(iii) Rajani Prasad (Daughter)

(iv) Dr. Prawan Chandra (Son) (Opposite party no. 2)

As opposite party no. 2 legal heir and successor of deceased opposite party no. 1 is already on record, revision petition will not abate.

Eviction suit was filed on the ground of personal necessity of opposite party no. 2 and he is the owner of tenanted premises, as such, right to sue survives upon him, under such circumstances there is no need to substitute other legal heir and representatives of deceased opposite party no. 1 as they have no right, title and interest in suit property.

I.A. No. 2 of 2021 is accordingly disposed of.

Civil Revision No. 172 of 2018

This civil revision application under Section 14(8) of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 has been filed by petitioner (tenant) for setting aside the order dated 01.10.2018 passed in Title (Eviction) Suit No. 1 of 2011 passed by learned Sub-Judge-I, Katihar by which he has decreed the suit in favour of opposite party (landlord) on ground



of his personal necessity.

opposite party (landlord) had filed aforesaid title eviction suit for eviction of petitioner (tenant) under Section (11) (1)(c) of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 on the ground of bonafide personal necessity.

Suit premises is a double storied shop having a total area of 628 sq ft. including a space of 340 sq. ft. on the ground floor situated in Mangal Bazar, Katihar and same was purchased by deceased opposite party no. 1 (landlord) through registered sale deed dated 06.12.2005 and thereafter Jamabandi and holding were created in the name of deceased opposite party no. 1 and subsequently it was allotted to opposite party no. 2 in a family arrangement dated 11.06.2008 and thereafter suit premises was recorded and mutated in the name of opposite party no. 2 (landlord) in the records maintained by State Government as well as Municipal Corporation.

Opposite party no. 2 (landlord) as well as his wife is a medical practitioner and required suit premises for opening clinic for their medical practice and the suit premises was ideally located for running the clinic of opposite party no. 2 (landlord) and his wife.

Petitioner (tenant) filed his written statement



and contended that suit premises is situated in the middle of Mangal Bazar and is full of noise and pollution and comprised of two rooms, one at the ground floor which is being used as shop and another room at 1st floor which is being used as godown and is not suitable for medical clinic.

Opposite party no. 2 (landlord) has his residential palatial building in Barmasia having sufficient accommodation and same is better suited for opening medical clinic and many reputed doctors have their clinic in near vicinity, as such, requirement of opposite party no. 2 (landlord) is neither bonafide nor in good faith.

Opposite party no. 2 (landlord) has other better choices in the Kunj Niketan Katra to open medical clinic, as they own the entire Katra which has large number of shops. Opposite party no. 2 (landlord) had initially filed a case before Rent Controller being House Control Case No. 2 of 2007 for enhancement of rent which was raised to Rs. 1920/- per month and said rent case is still pending before the Collector, Katihar after being remanded by the Commissioner, Purnea.

It was further stated that opposite party no. 2 (landlord) is not a medical practitioner rather he is posted as Assistant Professor in the department of Preventive and Social



Medicine and his wife is also in service in Nursing home, as such, both cannot do private practice.

It was further contended that opposite party no. 2 (landlord) is in habit of pressurizing their tenants to enhance the rent and once rent is enhanced they permit tenants to continue in said premises, and as such, his requirement is neither bonafide nor in good faith.

On the basis of rival pleading of the parties, the trial court framed eight issues for adjudication among which issue no. 5- whether there is relation of landlord and tenant between the parties. Issue no. 6- whether personal necessity of petitioner of the suit premises is bonafide and in good faith. Issue no. 7- Whether partial eviction of suit premises will satisfy the need of petitioner, were the prime issues.

Opposite party no. 2 (landlord) has examined altogether 7 witnesses. Documentary evidence produced were receipt nos. 7572, 5004 and 5638 marked as Exhibits 01,01/A and 01/B. Rent receipts issued by State Government marked as Exhibits 02, 02/A and 02/B. Power of Attorney marked as Exhibit-3 . Panchanama marked as Exhibit-4, sale deed marked as Exhibit- 5 and original receipts marked as Exhibit-6.

Opposite party no. 2 (landlord) has been examined



as P.W. 7 and in his examination-in-chief he has deposed that he is Assistant Professor in Katihar Medical College and was conferred MBBS degree in 2001 and MD degree in 2011 and is entitled to do private practice and at present he does his private practice in different rented shops and the suit premises is best suited for his private practice, as it is located in middle of town and near the hospital. His wife is also a doctor, who has specialization in radiology and for want of suitable place he has to practice in rented shop. The suit premises came into his share after family partition and his name has been mutated in the records maintained by the State as well as Katihar Municipal Corporation. He is owner of the suit premises. The whole suit premises he requires for his personal need and his requirement cannot be satisfied by partial eviction. All P.Ws. examined on behalf of opposite party supported the claim of opposite party no. 2.

Petitioner (tenant) has examined altogether 19 witnesses. Documentary evidence produced were Patta records marked as Exhibits- A and A1, Rent Agreement marked as Exhibit- B and rent receipts marked as Exhibits- B1 to B8, application made to Rent Controller marked as Exhibit-C.

Petitioner/tenant has been examined as O.P.W. No.



18 and in his examination-in-chief he has deposed that suit premises is double storied and he had taken one shop on ground floor and one room above the shop on rent and several other tenants have their shops on ground floor. Shop on the ground floor is 10 ft. wide and 24 ft. in length and room above said shop is of same size. Opposite party/landlord has three storied big residential house in Barmasia and opposite party/landlord resides on 2nd floor and the room at ground floor are best suited for private practice. Many doctors are doing private practice in nearby places and same is near the main road.

The suit premises is not suitable for running clinic as there is much rush and traffic. There is noise and pollution. The requirement of the suit premises for opening clinic is only a pretext and after eviction he will let out the suit premises on higher rent. Other opposite party witnesses have supported the case of petitioner/tenant and denied the claim of opposite party/landlord of requirement of suit premises for opening medical clinic.

On the basis of oral and documentary evidence adduced by the parties, the trial court held that there is relation of landlord and tenant between the parties. Trial court has found that opposite party no. 2 is a medical practitioner and requires



his suit premises for opening of his medical clinic alongwith his wife and in absence of suit premises, opposite party no. 2 himself has taken a shop on rent to run his clinic and if landlord has more than one premises let out to the tenants then it is the choice of the landlord to select one of the tenanted premises which he requires for his personal requirement and the trial court has further found that suit premises is located by the side of main road and ideally suited for opening medical clinic and has held that suit premises is required by opposite party no. 2 in good faith and for his personal necessity.

Trial Court has held that landlord has pleaded that he requires whole premises to run his medical clinic and has adduced evidence on this issue. Trial Court has further held that requirement of landlord cannot be satisfied by partial eviction of suit premises and he need whole suit premises to meet his necessity.

This Court while considering the issue of partial eviction in case of Shri Vinod Kumar Gupta & Anr. Vs. Smt. Pushpa Devi & Anr. since reported in 2005(3) PLJR 719 in paragraph no.9 of said judgment has held as follows:-

“9. So far the question of partial eviction is concerned, the law is well settled that the landlord cannot be saddled with the onus



of proving as to whether bonafide requirement can be substantially satisfied by order of partial eviction as once the landlord has proved his bonafide need of the premises, onus shifts on the tenant. This view has been taken by a Division Bench of this Court in the case of M/s Bata India Ltd. vs. Dr. Md. Qamruzzama reported in MANU/BH/0328/1992: 1993(1) P.L.J.R. 87, which has held that it is the tenant who has to express his readiness and willingness for part occupation of the premises and to show that the plaintiff's need can be substantially satisfied by evicting the defendant from only part of the premises and allowing him to continue in occupation of the rest of it. In the instant case the defendants' evidence is completely silent on the point of partial eviction, whereas paragraph-6 of the impugned order fully shows that the plaintiffs have claimed and proved that their necessity will not be satisfied by partial eviction of the suit premises. Hence, in my view, the petitioners cannot raise the question of partial eviction at the revisional stage on the ground that there is no specific evidence on the point. This view also finds support from another decision of this Court in the case of Food Corporation of India & Ors. vs. Vishun Properties & Enterprises & Ors. reported in 1995 B.B.C.J. 711 in which it has been specifically held that plea for partial eviction must be raised in the written statement or deposition and is not to be decided suo motu. Here the defendants have completely failed to show that they raised any such question either in the written statement or in their evidence, which clearly indicates that they were not



ready for partial eviction. Furthermore, it is an admitted fact that the defendants are running their Oil Mill in the entire suit premises, which is one room (katra). Hence it is apparent that the requirement of the plaintiffs, who also want to run an Oil Mill, can be satisfied only by eviction of the defendants from the entire suit premises.”

Counsel for the petitioner (tenant) has relied upon judgment and order passed by this Court in Civil Revision No. 226 of 2011 (Shakuntala Devi Vs. Sajjan Kumar Bajoria) since reported in 2013 (3) PLJR 395 to support his contention that requirement of opposite party (landlord) is neither bonafide nor in good faith but only a ploy to evict him to let out shop on higher rent. Para 11 and 12 of which reads as follows:-

“11. The two statements of the plaintiffs as reproduced hereinabove is eloquent of the fact that although the market complex was constructed in the year 2003 i.e. after completion of the graduation by the son of the plaintiff, despite shops available at the ground floor and first floor of the complex, the son was not settled in any one of the shops available in the complex nor any reason had been stated why he was not settled in one of such shops and why the present shop is the most suitable for the son except that the plaintiff's son would remain idle until the defendant is evicted from the suit premises. The words "reasonably and in good faith" occurring in Section 11(1)(c) of the Act are rather crucial and even when read with Explanation-II, while reserving a right in



the landlord to choose one of the many premises held by him, the preference exercised by the landlord should be discernible from his pleadings and his dispositions. The preference exercised by a landlord for a particular premises based upon the plea of personal necessity and bona fide requirement cannot be upon mere asking and in absence of a reason, howsoever diminutive it may be, unless the preference finds support therefrom, should not be mechanically allowed.

12. In the circumstances set forth hereinabove, this Court is under no confusion that the plea of bona fide requirement is not as bona fide as being projected by the plaintiff rather is a ploy to seek eviction of the defendant. The trial court having noticed the statement of the landlord that his son would remain idle until the shop is vacated, yet has recorded a finding in his favour despite no evidence oral or documentary to show the preference for the suit shop and even in absence of any reasons assigned supporting the preference. The findings is based on no evidence rather the evidence is to the contrary. Even if the landlord has a right to choose one of the shop available at his disposal his bona fides has to be reflected from the statement made in the plaint or from his statement recorded during his examination. In the present case the statement of the plaintiff in preference of the shop reflects arrogance, obstinacy and the might of the landlord who is prepared to keep his son in idleness until eviction of the defendant. This definitely is not the legislative intent of the words "reasonably and in good faith" occurring in Section 11(1)(c) nor



when it affords an option to the landlord to make an option under Explanation-II of the said provisions.”

Counsel for the opposite party (landlord) has relied upon the judgement and order passed by Apex Court in Case of Akhileshwar Kumar and Ors. Vs. Mustaqim and Ors. since reported in 2003 (1) PLJR 271 in support of his contention that court cannot thrust its own choice on landlord. Once it has been proved by a landlord that suit premises is required bonafide by him and as such satisfaction with stands the test of objective assessment than choosing of the premises has to be left to the choice of the needy. Paragraph no. 5 of which reads as follows:-

“5. We find it difficult to sustain the observation of the High Court that the requirement pleaded by the plaintiffs falls short of felt need and is merely a desire. The judgment of the trial Court is a detailed and exhaustive judgment which has taken into consideration each and every available piece of evidence and relevant circumstances assessed with objectively, consistently with the relevant principles of law and hence the finding is one which could not have been upset by High Court in exercise of its revisional jurisdiction. Moreover, as we have pointed out, the manner in which the High Court has proceeded to form an opinion at variance with the findings of the trial Court is wholly unsustainable.”



Counsel for the opposite party (landlord) has also referred judgment and order passed by Apex Court in Case of Savitri Sahay Vs. Sachidanand Prasad, since reported in 2003 (1) PLJR 171, paragraph no. 9 which reads as follows:-

“9. The next question which, however, arises is whether the conclusion of the High Court that the findings of the trial Court were perverse can be said to be correct. Under normal circumstances if a landlord during the trial gets vacant possession of some other premises which are equally suitable and chooses to let them out on higher rent then it may be arguable that the need of the landlord, made out in the Eviction Petition, was not reasonable or in good faith. However, as seen above, the said Act provides specifically, in Explanation II, that even though a landlord may have two or more premises which have been let out, it is for the landlord to choose which one would be preferable to him or her and the tenant could not question such preference. In this case, the Appellant had indicated a preference for the flat occupied by the Respondent. She had given a reason why she preferred this flat. She was an old lady. She therefore could not climb to the first floor and thus the two flats on the first floor were not suitable to her. The other flat on the Southern side of this building faced a road which was a very busy road and would therefore be noisy. This particular flat faced the Bungalow in which she has been residing for so many years and also faced an open



piece of land belonging to her husband. The trial Court accepts these reasons. The High Court has merely set aside the decree on the ground that the Appellant had chosen not to occupy the three other flats which became available in the same building. In our view, Explanation II to Section 11(1)(c) permitted the landlord to ignore other premises and to prefer a particular premise. The Applicant having made a preference cannot be forced to occupy other premises which may become available. Further the Appellant was not required to keep those premises vacant because her Eviction Suit was pending, nor was there any duty cast on the Appellant, under any provision of law, to offer those other premises to the Respondent. If the Respondent had so desired, he could have offered to vacate the flat preferred by the landlady and move into one of those other premises. If the Appellant had refused to accept such an offer, it possibly could have been said that the landlady was merely seeking to get vacant possession in order to get higher rents. In that case it could have been inferred that the need of the Appellant was not genuine and/or in good faith. No such case has been made out. In view of the specific provision in the said Act the reasoning of the High Court cannot be sustained.”

Counsel for the opposite party (landlord) has referred to judgment and order passed by this Court in Civil Revision No. 169 of 2013 Md. Ehsam Rasul Vs. Munni Devi, since reported in 2016(4) PLJR 20 in support of his submission



regarding limitation of revisional jurisdiction under Rent Control Acts and has referred paragraph nos. 6 and 7 of said judgment which reads as follows:-

“6. The Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, MANU/SC/0738/2014: 2014 (9) SCALE 657 : [2015 (1) PLJR (SC) 187] has clearly underlined the limitation of the revisional jurisdiction under Rent Control Acts holding that the revisional court in such a case cannot become 'a second court of first appeal'.

7. This Court finds that the findings recorded by the learned court below are in accordance with law and therefore no interference is warranted in revisional jurisdiction under Section 14(8) of the B.B.C. Act in the impugned judgment and order of eviction. The revision application is, accordingly, dismissed.”

After considering the submissions and perusal of the judgment and order as impugned, this Court finds that the trial court after elaborate, scrutiny and due appreciation of the material evidence on record has arrived at the finding that opposite party (landlord) requirement of suit premises is bonafide and in a good faith. The plea of petitioner(tenant) that the residential house of the opposite party (landlord) in Barmasia or other shop in Katra is more suitable for opening of



the medical clinic is not enough to discard the personal necessity of the opposite party (landlord) of the suit premises as it is not for the petitioner (tenant) to dictate the terms upon which the requirement of opposite party (landlord) is to be judged, moreover, when it has come in evidence that petitioner (landlord) in absence of suit premises is running his medical clinic in tenanted premises. The judgment and order cited by the counsel for the petitioner (tenant) is not applicable in facts and circumstances of present case as in present case no where it is pleaded that other shops were vacant or became vacant and were equally suitable for opposite party (landlord).

This Court does not find any error or infirmity in the order passed by the trial court requiring any interference by this Court in its revisional jurisdiction.

Accordingly, the Civil Revision is dismissed.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2021
Transmission Date	NA

