

(2009) 11 JH CK 0021
In the Jharkhand High Court
Case No : Civil Revision No. 50 of 2007

Arihant Trading Agency

APPELLANT

Vs

Shankar Lal Bhartia and Sunil Kumar Jain

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1), 14(8)

Citation : (2009) 11 JH CK 0021

Hon'ble Judges : Ramesh Kumar Merathia, J

Bench : Single Bench

Advocate : P.K. Prasad and Rohit Roy, for the Appellant; Amar Kumar Sinha and Kundan Kumar Ambastha for Opposite Party No. 1, for the Respondent

Judgement

Ramesh Kumar Merathia, J.—This civil revision application has been filed u/s 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short "the Act") by the defendant-petitioner (hereinafter to be referred to as "the tenant") against the judgment and decree dated 28.5.2007 passed by the Munsif, Ranchi in Eviction Suit No. 7 of 2004 decreeing the suit filed by the plaintiff-opposite party No. 1 (hereinafter to be referred to as "the landlord") for eviction on the ground of personal necessity.

2. Mr. P.K. Prasad, learned senior counsel appearing for the tenant assailed the impugned judgment and decree on two grounds-(i) the requirement of landlord is not bonafide and is a mere desire without any element of need; and that (ii) the question of partial eviction has not been considered by the learned trial court in the manner required under the Act.

3. On the other hand, Mr. Amar Kumar Sinha, learned Counsel appearing for the landlord supported the judgment and decree under revision.

4. The case of the landlord, inter alia, is that the suit holding was held by him as Karta of Hindu Undivided Family; and that the suit premises (a shop) was required for one of his sons Vishnu who wishes to expand his business; that the

landlord himself is sitting idle and wants to do his own business; that no other accommodation is available and the suit premises is suitable for the purpose; and that such need will not be satisfied by the partial eviction.

5. Separate written statement was filed by opposite party No. 2-Sunil Kumar Jain (defendant No. 1) saying that the proprietor of the firm Arihant Trading Agency (defendant No. 2) is his brother-Anil Kumar Jain, who alone is necessary party in the suit, and in his absence, the suit cannot proceed. Thereafter he traversed the plaint on merit. On such objection, Anil Kumar Jain was added as defendant No. 3. A separate written statement was filed defendants No. 2 and 3 i.e. Arihant Trading Agency and Anil Kumar Jain jointly. It appears that for this reason, no notice was issued to proforma opposite party-Sunil Kumar Jain, by the Bench admitting this civil revision application.

6. The case of the petitioner-tenant, inter alia, is that the requirement of the landlord is not bonafide; that there was mezzanine floor in the shops which can be used for keeping goods; and that on the south-western portion of the suit holding, one shop is lying vacant which can be used by the landlord; and that recently some shops were given on rent to tenants.

7. Six Issues were framed by the trial court. With regard to Issue No. 3, it was held that there exist a relationship of landlord and tenant between the parties. This finding is not disputed by the tenant.

8. Issue No. 4 regarding personal necessity and Issue No. 5 regarding partial eviction were taken up together by the trial court. After considering the respective cases and the evidences brought on record, the learned trial court, inter alia, held that Exts. 3 to 3/c disclosed that Vishnu was consignee agent of M/s Supreme High Fidelity Private Limited for "Alpine Brand" for the State of Jharkhand; and that he entered into the distributor agreement with M/s Morfeus Design Private Limited, but due to non-availability of space, he is not in a position to expand his business, as he has only a shop of 11ft. x 8ft. in his possession; and due to acute shortage of space, Vishnu and his brother Natwar used to keep their merchandise in the passage of the building; and that the landlord has got no other vacant space; and that the suit premises is the suitable place; and that about 500 sq.ft. is required by the landlord whereas the suit shop is only about 220 sq. ft. and, therefore, partial eviction will also not satisfy the requirement of the landlord.

9. Mr. Prasad, appearing for the tenant and Mr. Sinha, appearing for the landlord took me to the pleadings and the evidences.

10. Sunil Kumar Jain-defendant No. 1 as D.W. 3 in paragraph 37 and Anil Kumar Jain-defendant No. 3 as D.W. 4 in paragraph 72 admitted in their cross-examination that Vishnu and Natwar used to keep their merchandise in the passage outside their shops. D.W. 2 has admitted in paragraph 22 that the south-western shop is used as godown by Natwar. D.W. 3 has admitted in paragraph 25 that one of the tenants-Triveni Sales has been in occupation for 8-10 years. D.W.

4 has admitted in paragraph 83 that two other shops in Suresh Babu Street have been in occupation of the tenants from before the suit premises was occupied by them. The tenants themselves have admitted in their evidences that no shops are vacant in the suit holding. The tenants could not prove their case that any shop room was let out by the landlord recently. The case of the tenant is that other space including mezzanine floors is available which is suitable and can satisfy the requirement of the landlord.

11. It appears that the landlord has reasonable and bona fide requirement of the suit premises for Vishnu as he is having a shop of 11ft. x 8ft. only and he is a distributor of Jharkhand of one company and had entered into an agreement for other company for distributorship, but due to non-availability of space, he could not expand his business. The landlord has further proved that south-west corner of the building is a small godown used by Natwar brother of Vishnu who is running his separate business. It has also been proved that the suit premises is suitable for requirement of the landlord.

12. Moreover Explanation II to Section 11(1)(c) of the Act provides that:

Where there are two or more premises let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference.

In the present case, the tenant could not prove that any other suitable place of about 500 sq. ft. required by the landlord is available to him.

13. Regarding partial eviction, even though the tenant did not controvert the case of the landlord that the entire suit premises was required, but even then, the trial court framed issue and considered whether the need of the landlord/tenant could be satisfied by partial eviction. It appears that the suit premise is only 220 sq.ft, whereas it has been proved that the requirement is of about 500 sq. ft.

14. The cases relied on behalf of the tenant are of no help to them. In the cases *Lagandeo Prasad v. Nawal Kishore Prasad and Anr.* 1999 (1) PLJR 919; *Bhola Prasad Sah and Ors. v. Ram Dhani Prasad and Ors.* 2004 (1) PLJR 462 and *Krishna Murari Prasad v. Mitar Singh* 1994 (1) PLJR 87 the trial court did not consider the issue of partial eviction in accordance with law but, in the present case, even though the requirement of entire suit premises by landlord was not controverted by the tenant, issue was framed and it has been held that partial eviction will not satisfy the requirement of the landlord. In the case of *Sachida Nand Prasad v. Srimati Savitri Sahay* 1998 (3) PLJR 541 the landlord had rented out tenanted premises vacated prior to or during the pendency of the suit; and, therefore, his need was held not bonafide, but in the present case, it has been established that no shop was given on rent after 1995-96, and during pendency of the suit; and that the need is reasonable and bonafide. Moreover, this judgment was overruled-see *Savitri Sahay Vs. Sachidanand Prasad*, .

15. On the other hand, the cases relied on behalf of the landlord supports their contention- Gulab Chand Prasad v. Budhwanti and Anr. 1985 PLJR 622 (F.B.); Akhileshwar Kumar and Others Vs. Mustaqim and Others, and Sarawgi Textiles v. Ajay Modi and Anr. 2009 (3) J C R 465 (Jhr), (affirmed by Supreme Court)-may be seen.

16. After considering the entire matter in detail, as stated above, I do not find any merit in this civil revision application which is, accordingly, dismissed. The tenant-petitioner is directed to vacate the suit premises within two months, failing which, the landlord-opposite party No. 1 will be entitled to get it vacated through the process of the Court.