

(2004) 06 JH CK 0030
In the Jharkhand High Court
Case No : AFAD No. 82 of 1989 (R)

Ishwari Singh @ Ishwari Prasad Singh	APPELLANT
Vs	
Shyam Sundar Prasad and Others	RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(1), 11A

Citation : (2004) 3 JCR 539

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : N.N. Tiwary and Shekhar Sinha, for the Appellant; Jaya Roy, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal at the instance of defendant- appellant is directed against the impugned judgment and decree dated 22.4.1989 and 4.5.1989 passed in title appeal No. 17 of 1986 by Shri Yugal Kishore Prasad, 6th Additional District Judge, Palamau at Daltonganj whereby and whereunder the title appeal No. 17 of 1986 was dismissed and title appeal No. 23 of 1986 was allowed and the judgment passed in title suit No. 10 of 1975 was affirmed regarding the eviction of the defendant-appellant of the ground of bona fide requirement of the suit premises and further finding of the trial Court that the defendant-appellant is not a defaulter was set aside and the defendant-appellant was held to be a defaulter and the suit of the plaintiff-respondent was decreed in full.

2. The original plaintiff Dhilani Malahin had filed title suit No. 10 of 1975 for the eviction of the defendant-appellant from the suit premises standing over a portion of Plot No. 709, Khas Mahal, holding No. 1065, Ward No. 14 situate at Abadganj in the town of Daltonganj, District Palamau and also for the arrears of rent. The suit was decreed in part by 1st Additional Munsif, Palamau vide its judgment and decree dated 31st March, 1986 and 10.4.1986 respectively. The

defendant- appellant filed title appeal No. 17 of 1986 against the impugned judgment and plaintiff-respondent also filed title appeal No. 23 of 1986 against the judgment aforesaid. Both the appeals were heard analogous by the lower appellate Court and by the impugned judgment title appeal No. 17 of 1986 was dismissed and title appeal No. 23 of 1986 was allowed as a result of which the suit of the plaintiff-respondent was decreed in full. The original plaintiff Dhilani Malahin has died during the pendency of this appeal before the lower appellate Court.

3. The case of the plaintiff-respondent, in brief, is that Smt. Dhilanai Malahin is the owner of the suit premises and her eldest son Ram Chandra Prasad looks after her affairs and manages the same for and on her behalf and said Ram Chandra Prasad inducted defendant-appellant as a tenant in the suit premises on a monthly rent of Rs. 60/- and tenancy was in accordance with the English Calendar month and the terms of the tenancy was agreed between the parties as detailed in para 3 of the plaint. The defendant-appellant had paid the rent to the plaintiff-respondent through her son Ram Chandra Prasad up to the month of March, 1971 at the agreed rate of Rs. 60/- per month for which her son Ram Chandra Prasad had granted receipts to the defendant-appellant on plain papers. The defendant-appellant, thereafter, defaulted in payment of the rent willfully from the month of April, 1974 till the date of the filing of this suit and has forfeited his right of tenancy. It is alleged that the defendant-appellant has also badly damaged the suit premises against the terms of the tenancy. The further case of the plaintiff-respondent is that her grandson Kashilal who is the son of Ram Chandra Prasad has joined Bar and he is a practicing lawyer at Daltonganj and it is difficult to accommodate him in her present residential house and there is bona fide requirement of the suit premises for him and on request the defendant-appellant promised to vacate the suit premises on the first day of September, 1974 but later on evaded to do so and the Advocate's notice sent to him also yield no result and hence the necessity of the suit.

4. The case of the defendant-appellant in his written statement, inter alia, is that the suit has been filed by Ram Chandra Prasad and not by Dhilani Malahin and said Ram Chandra Prasad is not the son of Dhilani Malahin and the suit premises exclusively belongs to plaintiff-respondent Dhilani Malahin as her Stridhan property and she has no legal obligation to provide for accommodation for Kashi Lal aforesaid. It is alleged that Dhanna Mallah had two wives, namely, Rupiya Malahin and Dhilani Malahin. Dhanna Mallah had four sons including Ram Chandra Prasad born of Rupiya Malahin and he had a son Thunni Mallah born of Dhilani Malahin and the said Kashi Lal is the son of Ram Chandra Prasad. It is alleged that the suit house belongs to Dhilani Malahin but it is incorrect to say that Ram Chandra Prasad looks after her affairs. The further case of the defendant-appellant is that he was inducted as a tenant in the suit premises at a monthly rent of Rs. 30/- in the year 1970 by Dhilani Malahin and it is false to say that the rent was Rs. 60/- per month. Dhilani Malahin used to collect rent from him and receipt in token of acceptance the rent was never granted by the

plaintiff-respondent Dhilani Malahin and he has paid the rent of the suit premises till the month of January, 1975 and he is not a defaulter. The defendant-appellant has also denied that there was any other term of the tenancy as alleged and he has damaged the suit premises. It is also alleged that said Ram Chandra Prasad has already his own residential house in the town of Daltonganj and besides that he has a house near the Court compound which he has let out on rent to various tenants and thus there is no bona fide requirement of the plaintiff-respondent Dhilani Malahin for the suit premises. No notice as alleged has ever been served upon him and the plaintiff-respondent Dhilani Malahin has no cause of action for the suit.

5. In view of the pleadings of the parties the trial Court has framed the following issues for adjudication in this case :--

(i) Is the suit as framed maintainable ?

(ii) Has the plaintiff cause of action ?

(iii) Has the suit been filed by real Dhilani Malahin and is the Dhilani Malahin and Rupia Devi the same person ?

(iv) Is the plaintiff entitled for eviction of the defendant from the suit house and it is she entitled for a money decree against the defendant on account of arrears of rent ?

(v) To what relief or reliefs the plaintiff is entitled ?

6. It is relevant to mention here that a petition u/s 11-A of the Bihar Building (Lease, Control and Eviction) Act, 1947 was filed by the plaintiff-respondent for a direction to the defendant- appellant to deposit the arrears of rent and also the current rent and the said petition was allowed by the trial Court vide order dated 1.5.1979 directing the defendant-appellant to pay the arrears of rent w.e.f. February, 1978 and also the current rent @ Rs. 30/-per month by every 15th day of the following month failing which his defence will be struck off. The defendant-appellant preferred CR No. 143 of 1979 (R) before the Court which was dismissed. The plaintiff-respondent filed a petition for striking off the defence of the defendant- appellant which was rejected and the plaintiff-respondent preferred civil revision No. 204 of 1981 (R) against the order of the trial Court refusing to strike off the defence of the defendant-appellant and the said revision was allowed and the defence of the defendant-appellant was struck down. The defendant-appellant preferred SLP (C) 2185 of 1985 before the Apex Court which was also dismissed.

7. In view of the evidence oral and documentary on the record the trial Court while decision issue No. (iii) taking into consideration the admission of DW 3 and DW 4 has held that Dhilani Malahin and Rupiya Devi is one and the same person and the alias name of Dhilani Malahin is Rupiya Devi and Ram Chandra Prasad is born of Dhilani Malahin and this suit has been filed by Dhilani Malahin. The trial Court while deciding issue No. (iv) has held that there is relationship of landlord

and tenant between the parties and the monthly rent of the suit premises is Rs. 30/- and after the defence against ejectment having been struck down the defendant-appellant has deposited a sum of Rs. 2160/- towards the arrears of rent for the period from February, 1975 to January, 1981 @ Rs. 30/- and, thereafter, he is depositing the current rent month to month and as such defendant-appellant is not a defaulter and no arrears of rent is due against him of the suit premises and the ground of ejectment of the defendant-appellant being defaulter is not tenable. It has also been held that the plaintiff-respondent has been able to show that the suit premises is bona fide required by the plaintiff-respondent for her grandson Kashilal who is admittedly a practicing lawyer and as such the defendant-appellant is liable to be evicted on this score. In view of the findings aforesaid the suit was partly decreed directing the defendant-appellant to vacate the suit premises and to deliver possession to the plaintiff-respondent. However, the claim for arrears of rent from the month of April, 1974 till the date of filing of the suit was not allowed to the plaintiff-respondent

8. Being aggrieved by the judgment of the trial Court the defendant- appellant preferred title appeal No. 17 of 1986 and the plaintiff-respondent also preferred title appeal No. 23 of 1986. The learned appellate Court below on re-appraisal and re-appreciation of the evidence oral and documentary on the record while deciding both the appeals by the impugned judgment has affirmed the finding of the trial Court regarding the bona fide requirement of the suit premises of the plaintiff-respondent for the occupation of Kashilal and also reversed the finding of the trial Court on the question of default and held that the defendant-appellant is a defaulter and the appeal filed by the defendant-appellant was dismissed and the appeal filed by the plaintiff-respondent was allowed. The learned appellate Court has also observed that the contention made on behalf of the defendant-appellant that the plaintiff-respondent has constructed a big residential house near the Civil Court premises is hypothetical in character and there is no admission of any witness of the plaintiff-respondent regarding the said fact that subsequent to the filing of the suit the plaintiff-respondent has constructed another big house which is enough to serve the purposes of Kashilal aforesaid and the said contention was negatived.

9. While admitting the appeal for hearing this Court has formulated the following substantial questions of law which runs thus :--

(a) whether the finding of the Court below on the question of default can be sustained in law ?

(b) whether the Court below was correct in law in refusing to take into consideration the subsequent event i.e. construction of a new building by the respondent ?

10. Assailing the impugned judgment on the question of default it has been submitted by the learned counsel for the defendant-appellant that there is non-

consideration of the evidence on the record by the appellate Court below and it has erroneously set aside the finding regarding default in favour of the defendant-appellant when it was a specific case of the defendant-appellant that Rs. 750/- was spent in respect of the repair of the suit premises which was to be set off towards the rent as per the terms of the tenancy and furthermore there is evidence on the record that the defendant-appellant has paid the rent of the period prior to the institution of this suit to the plaintiff-respondent and whenever he has paid rent no receipt was granted to him by the plaintiff-respondent and due to the non- consideration of the evidence aforesaid the finding arrived at by the appellate Court below is erroneous. It has also been submitted regarding the finding of bona fide requirement of the suit premises as claimed by the plaintiff-respondent that there was a subsequent event in this case which is to the effect that the plaintiff-respondent has acquired a house after the institution of this suit at Mohalla Belwatikkar and PW 3 Ram Chandra Prasad aforesaid in para 10 of his evidence has admitted the said fact and the said house consists of three bed rooms and the defendant-appellant has averred the said subsequent event in his memorandum of appeal before the Court below and this subsequent event is sufficient to take care of the bona fide requirement of Kashilal who is said to have joined the legal profession as an Advocate and the learned Court below has not adverted in his finding that the said acquired house is not suitable for the purposes of the plaintiff-respondent so as to entitle him to evict the defendant-appellant from the suit premises. Lastly it has been contended that order of eviction of the defendant-appellant from the suit premises passed by the learned appellate Court below is without recording a finding on the question of sufficiency of partial eviction and as such the impugned judgment cannot be said to be in accordance with law and is equally not sustainable. In support of his contention reliance has been placed upon the ratio of the case of Dr. Hemchandra Jha v. Smt. Anajan Lal 1987 PLJR 582.

11. IN contra, it has been submitted by the learned counsel for the plaintiff-respondent that both the Courts below have concurrently held that the original plaintiff Dhillani Malahin required the suit premises bona fide for the use and occupation of her grandson Kashilal who had joined legal profession as an Advocate and the suit premises is very near to the Civil Court building and it is most suitable for his profession as an Advocate and the suit house is situate in Mohalla Abadganj. It has also been submitted that the plaintiff has her house in Mohalla Belwatikkar which is at a considerable distance from the Civil Court and further she has also acquired a house during the pendency of this suit in Mohalla Belwatikkar aforesaid and this subsequent acquisition of the house is in no way suitable for the purposes of her grandson Kashilal and the suit premises is only suitable for his purpose from the point view of his legal career and future prospect and, therefore, the subsequent event has no relevancy in this case. It has also been contended that both the Courts have concurrently on consideration of the entire evidence on the record have held that the requirement of the suit premises is a bona fide and reasonable one for the use and occupation of Kashilal

and the said finding is a finding of fact which should not be interfered in this appeal. It has also been contended that eviction of the defendant-appellant has been sought on two fold grounds i.e. default in payment of rent as well as its bona fide requirement and in this view of the matter there was no need for the appellate Court to record a finding regarding the fact that the said bona fide requirement of the plaintiff-respondent may be substantially satisfied by evicting the tenant from a part only of the suit premises and allowing the tenant to continue occupation of the rest. Thus no interference is required in the impugned judgment. In support of his contention reliance has been placed upon the ratios of the case of Ms. Labanya Neogi Through Lrs. Power of Attorney Holder Shri Dr. Subhasis Neogi Vs. M/s W.B. Engineering Company, and Prem Prakash Sah v. Bhadarmall Sharma 1983 PLJR 705.

12. It is relevant to mention at the very outset that there is a relationship of landlord and tenant between the parties and the parties and the defendant-appellant has been inducted as a tenant in the suit premises in the year 1970 by Ram Chandra Prasad the son of the original plaintiff. The suit premises is situated in Mohalla Abadganj which is in the close vicinity of the Civil Court. The original plaintiff has also a house at Belwatikkar in which she is residing presently with her family members. There was a dispute regarding the rate of monthly rent of the suit premises between the parties. The learned trial Court vide order dated 1.5.1979 u/s 11-A of the Eviction Act, 1947 has held that the monthly rent of the suit premises is Rs. 30/- and directed the defendant-appellant to deposit the arrears of rent from the date of filing of the suit till the date of the order and, thereafter, deposit of the future rent at a rate of Rs. 30/- per month on every 15th of the following month and the said order was affirmed by this Court in CR No. 143 of 1979 (R). Due to the non-compliance of the order dated 1.5.1979 aforesaid the defence of the defendant-appellant against ejection was struck off vide order passed by this Court in civil revision No. 204 of 1981 (R). Where the amount of two months rent lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by the contract or in the absence of such contract by the last day of the month next following that for which the rent is payable or by not having been validly remitted, amounts to default. Here the specific case of the plaintiff-respondent is that the defendant-appellant has defaulted in payment of rent willfully from the month of April, 1974 till the date of the filing of the suit and the plaintiff-respondent has claimed the rent of the said period as arrears of rent in the suit itself. The cause of action for the suit thus arose due to the non-payment of due rent from the month of April, 1974 till the date of the filing of the suit. Primarily the Rent Act has been enacted to protect the tenant but it also takes care of the interest of the landlord inasmuch as it provides that the tenant be a rent paying tenant and that he must pay it within time. The order u/s 11-A of the Eviction Act, 1947 of payment of Arrears Rent w.e.f. the date of the filing of the suit and future rent of the suit premises which has subsequently been deposited by the defendant-appellant is in no way a mitigating circumstances in respect of the question of default as set

up in the plaint and proved by the legal evidence on the record. The learned trial Court has, therefore, misdirected himself holding that the defendant-appellant is not a defaulter. This finding has been rightly reversed by the learned appellate Court on re-appraisal of the evidence on the record and there is no illegality in respect thereof. The learned appellate Court below has also rightly negated the case of set off of Rs. 750/- as the cost of construction or repair of the suit premises incurred by the defendant-appellant as claimed and has rightly held that the defendant-appellant is a defaulter. The absence of threadbare discussion of the evidence by the lower appellate Court in the impugned judgment in respect thereof cannot be viewed as an illegality in the facts and circumstances of this case. Therefore, the finding of the learned appellate Court below on the question of default that the defendant-appellant is a defaulter does not suffer with any illegality and it is sustainable in law,

13. The original plaintiff has also sought for the eviction of the defendant-appellant from the suit premises on the ground that the suit premises reasonably and in good faith is required for the occupation of her grandson Kashilal and for whose benefit the building is held by her in view of the fact that the said building is situated in the close vicinity of the Civil Court and said Kashilal is a practicing Advocate and has joined the Daltonganj Bar. There is no denying the fact that the original plaintiff has her residential house in Belwatikkar which is admittedly far away from the Civil Court premises. It is an admitted fact that the suit premises is in the close vicinity of the Civil Court. During the pendency of this suit the original plaintiff has also acquired another house in Belwatikkar and it consists of three bed rooms etc. This is definitely a subsequent event. This learned appellate Court below in the impugned judgment has addressed himself to this subsequent event while considering the bona fide reasonable requirement of the original plaintiff of the suit premises and considering the said aspect has affirmed the finding of the trial Court that the requirement of the original plaintiff of the suit premises is reasonable and in good faith for the occupation of Kashilal. Therefore, the crux of the matter revolves around the finding arrived at by the learned Courts below on the issue whether the original plaintiff requires the suit premises reasonably and in good faith in the existence of the subsequent event stated above for the occupation of Kashilal for whose benefit the building is held by her and the said finding is in accordance with law and the said bona fide requirement of the suit premises is not a mere camouflage. It is relevant to quote Section 11 (1)(c) of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1947 which reads thus :--

"11 (1)(c).--Where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord."

It is manifest that the landlord may evict the tenant from the suit premises on the ground of his bona fide requirement for personal necessity or for the necessity of any person in whose benefit she holds the suit premises and she has

to prove by cogent evidence her bona fide requirement of the suit premises for the eviction of the tenant and she has further to prove that the person for whose benefit the eviction is sought is the owner of the property and he has right to occupy the same in his own right. The Apex Court while examining the legislative intent by using the words bona fide need or genuine need has observed in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , which runs thus :--

"An order for recovery of possession is permissible on one or more of the specified grounds. One such ground is the premise let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words "need" and "require" both denote a certain degree of want with a thrust within demanding fulfilment. "Need" or "requirement" qualified by word "bona fide" or "genuine" preceding as an adjective--is an expression often used in Rent Control Laws. "Bona fide" or "genuine need" of the landlord or that the landlord "genuinely requires" or "requires bona fide" an accommodation for occupation by or used for himself is an accepted ground for eviction and such expression is often employed by Rent Control legislation draftsman. The two expression are interchangeable in practice and carry the same meaning."

It has further been observed by the Apex Court which reads thus :--

"Considering dictionary meanings 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 "require bona fide" is suggestion of legislative intent that a mere desire which is 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 ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bona fide would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then asked the question to himself where in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the Court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the Court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than

one accommodation available to the landlord, his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose, the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

On the touchstone of the ratio of the case of Shiv Sarup Gupta (supra) the existence of the subsequent event as admitted by PW 3 in para 10 of his evidence does in no way affect the bona fide reasonable requirement of the original plaintiff of the suit premises. She has already a house in Belwatikkar in which she is residing with his family members and the said house was not convenient for her grandson Kashilal from the point of view of his legal profession as an Advocate and that is why the suit premises situate at Abadganj in the close vicinity of the Civil Court was bona fide required by her for the occupation of said Kashilal. The new house which has been purchased during the pendency of this appeal and has been constructed is situate in Mohalla Belwatikkar itself and in view of the facts and circumstances of this case read with the purposes for which the suit premises is required by her, the subsequently acquired house does not also suit the purposes of the original plaintiff for and in connection with the need of Kashilal. Therefore, the deed of the original plaintiff of the suit premises as pleaded and proved by her is undoubtedly natural, sincere and honest and hence it is her bona fide need and as such the defendant-appellant cannot compel her to have the subsequent acquired house at Belwatikkar to put Kashilal in occupation thereof. The subsequent acquisition of the house in Belwatikkar in the facts and circumstances of this case does not at all satisfy her bona fide and reasonable requirement for the purposes for which the suit premises is required and the alternative accommodation though available is still of no consequence to her as the same is not reasonably suitable to satisfy the felt need which she has succeeded in demonstrating objectively to exist. In the case of Shiv Sarup Gupta (supra) it has been observed which runs thus :--

"Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherever the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the Court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

It, therefore, appears to me that the alternative accommodation by virtue of the acquisition of a house at Belwatikkar during the pendency of this case is of no

consequence as the same is not reasonably suitable to satisfy the felt need of Kashilal of the suit premises which the original plaintiff has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation to entail denial of the defendant-appellant must be reasonably suitable obviously in comparison with the suit premises wherefrom the defendant-appellant is sought to be evicted. The learned Court below was correct in law in refusing to take into consideration the subsequent event i.e. the acquisition of a house in Mohalla Belwatikkar and its construction by the original plaintiff. In the case of Ms. Labanya Neogi (through LRs) (supra) it has been observed by the Apex Court that finding recorded by the first appellate Court after considering entire evidence on the record is not liable to be interfered with. In the case of Prem Prakash Sah (supra) it has been observed by the Patna High Court that since the two Courts concurrently held that the plaintiff had personal necessity for the suit premises the High Court in second appeal will not interfere with that finding unless an error of law or irregularity could be shown in that finding and the said finding is final and binding on the High Court in second appeal. The bona fide reasonable requirement of the suit premises of the original plaintiff for setting Kashilal in view of his future prospect in his legal profession is a concluded finding of both the Courts below based on the proper appreciation of the evidence on the record and, therefore, it does require no interference. I see no substance in the contention put forward on behalf of the learned counsel for the defendant-appellant and the ratio of the case relied upon by him in support of his contention has no application to the facts of his case. Question of consideration of partial eviction has also no relevancy in view of the fact that the defendant-appellant is also a defaulter due to the non-payment of rent due.

14. There is no merit in this appeal and it fails. The impugned judgment of the learned appellate Court below is hereby affirmed. The appeal is dismissed with costs.