

(1992) 11 PAT CK 0021
In the Patna High Court
Case No : Civil Revision No. 1097 of 1990

M/s Bata India Ltd.

APPELLANT

Vs

Dr. Md. Qamruzzama

RESPONDENT

Date of Decision : 03-11-1992

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11, 14(3)
Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (1993) 1 PLJR 87

Hon'ble Judges : S.N. Jha, J;Aftab Alam, J

Bench : Division Bench

Advocate : K.D. Chatterjee and Dilip Kumar Sinha, for the Appellant; Mojibul Haque and M.N. Samiullah, for the Respondent

Judgement

S.N. Jha and Aftab Alam, JJ.—In this revision u/s 14 (3) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (in short "the Act") the defendant-tenant has challenged the order of its eviction from the premises which is portion of a room of a house situated at Sabzibagh, one of the quarters of Patna town. The plaintiff's case, in its material particulars is that he is a doctor by profession presently employed in the service of the State Government and due to superannuate on 31.1.90. He intends to practise as a doctor and requires the premises to man his clinic for which the premises is quite suitable According to the plaintiff further, he has five sons and four daughters, all unmarried, all of whom requires more space for studies, living and recreation. Two of the sons after completion of their studies are unemployed and they want to do their business. Thus, the plaintiff requires the premises bona fide for own use. On these averments the suit was instituted on 19.1.89. The defendant contested the claim saying that more suitable accommodation was available to the plaintiff. The premises situate in a narrow lane is not suitable for use as clinic and other business purposes. It also denied the landlord-tenant relationship.

2. The trial court held that the plaintiff was the landlord and he needs the

premises for own use reasonably and bonafide. It also held that partial eviction would not satisfy his needs.

3. Mr. K.D. Chatterjee, Learned Counsel for the petitioner, initially challenged the correctness of the finding on the question as to whether the need could be reasonable and bonafide but, after some arguments, gave up the challenge. He argued, with emphasis, the question of partial eviction atone. It was submitted that even though the finding of the trial court on the point of bonafide and reasonable requirement is held to be according to law, in the absence of any specific evidence as to whether the plaintiff's need can be substantially satisfied by partial eviction of the defendant from the premises, the order of its eviction from the whole of the suit premises, cannot be sustained. He placed reliance on *Nasirul Haque v. Jitendra Nath Dey* [AIR 1984 Supreme Court, 1799: 1984 PLJR 79 (SC)] He also referred to 1991 BBCJ, 192. Mr. Mojibul Haque, appearing for the opposite party, on the other hand, supported the findings of the trial court submitting further that the delivery of possession of the premises having already been effected, this revision has become infructuous. In reply, Mr. Chatterjee submitted that if the impugned order of eviction is ultimately set aside the defendant will be entitled to restitution u/s 144 of the CPC and, therefore, the revision cannot be said to have become infructuous.

4. The ground of personal necessity is contained in clause (c) of sub-section (1) of section 11 of the Act. The said clause along with the relevant part of its proviso reads as follows :?

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 :

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly,...

(emphasis added)

5. It would appear that while) the main clause entitles the landlord to secure eviction of the tenant on the ground mentioned thereto, the proviso mandates the court to bold enquiry as to whether the plaintiff's needs can be substantially satisfied by part eviction of the tenant from the premises. The question is who has to prove that the requirement can be satisfied substantially by part eviction. In our opinion, the landlord cannot be saddled with the onus of proof in this regard. He having proved that he requires "the building" which means the whole suit premises, he cannot be expected or asked to prove by evidence that his need can be satisfied by part eviction, That will amount to asking him to prove the negative. In our opinion, once the landlord has proved the need of the premises, onus shifts on the tenant. The expression "and the tenant agrees to such occupation" strengthens the view that while holding enquiry on the question

of partial eviction 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 him from only part of the premises and allowing him to continue in occupation of the rest of it. No part of the defendant's evidence on the point of partial eviction was brought to our notice. We thus fail to understand as to how the petitioner can assail the finding on the question of partial eviction on the ground that there is no specific evidence on the point.

6. It has to be kept in mind that the suit premises is a portion of a room which was covered but by putting almirahs, shelves and wooden partition. It is portion of a residential house which has been allotted to the plaintiff in a family partition in which his family members live. The plaintiff has examined 7 witnesses in all, including his son Parwez as P.W. 3, his brother Sadruzzama as P.W. 5, his another brother Akiluzzama as P.W. 6, besides himself as P.W. 7. In his evidence P.W. 7 stated the portions of the suit premises would be utilised in various ways, as his chamber, for making medicines as also to provide sit-in place to the waiting patients. The other witnesses supported him. Mr. Chatterjee submitted that in big cities clinics are being run in even smaller accommodation. That may be so but this cannot be said to be a general rule. The area of the premises is said to measure 15"X 12" as per the plaint, although the defendant's witnesses, namely, D.Ws. 2 and 3 stated that it was 10" x 10" and 12"x 10?" respectively. It is common knowledge in this part of the country that middle class doctor's clinic or lawyer's chamber in portion of his residential house is used during off hours for nonprofessional purposes as well. This is what the plaintiff has precisely placed. He stated that he would also utilise the premises for his own use as well as to provide space to his grown up children where they can also study and relax. In a case where need is composite, and, in fact, this was one of criticisms advanced by Mr. Chatterjee at one stage, it cannot be said that smaller area would suffice the plaintiffs need. The requirements of a professional, be he a doctor, a lawyer or an architect, would vary from person to person and it cannot be laid down as a hard and fast rule that a doctor must practice in a smaller accommodation, than area comprising the suit premises.

7. Having considered the evidence on record, we do not find any error in the finding on the question of partial eviction. The contention of Mr. Chatterjee has thus no substance. This revision is devoid of merit and is, accordingly, dismissed, but in the circumstances, without any order as to costs.