
(1989) 04 PAT CK 0026
In the Patna High Court
Case No : Civil Revision No. 235 of 1988

Padam Singh Jain

APPELLANT

Vs

Chandra Brothers and Others

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1), 13, 14
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 2 Rule 3
Partnership Act, 1932 — Section 69(2)
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1990 Patna 95 : (1990) 1 PLJR 797 : (1990) 2 RCR(Rent) 121

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Shreenath Singh and Parameshwar Prasad Singh, assisted by Upendra Prasad Sinha, for the Appellant; S.C. Ghose, assisted by Sukumar Sinha and Lalan Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This civil revision application is directed against the judgment and decree dated 15-12-1987 passed by Sri Ishwari Prasad, Subordinate Judge, IIIrd Court, Patna in Title Eviction Suit No. 68/9 of 1985/86 whereby and whereunder the said learned Court decreed the suit filed by the plaintiff-opposite party for eviction of the defendant-petitioner.

2. The facts of the case, bereft of all unnecessary details are as follows:--

The plaintiff-opposite party No. 1 initially instituted the aforementioned Title Eviction Suit No. 68 of 1985 purporting to be in terms of Section 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter for the sake of brevity called the said Act) for eviction of the petitioner on the ground of its personal necessity being a portion of the ground floor of a building commonly known as "Chandda Bhawan" situated in New Market, Station Road, being holding No. 64/93, Circle No. 235 Ward No. 10 and also from the entire second

floor of the said building measuring about 900 sq. ft., except one room which is said to be in the occupation of the plaintiff.

It was alleged in the plaint that the plaintiff No. 1 firm was a group of concerns namely, Chandra Industrial Corporation and Electrical and Machinery, which deal in manufacture, contract and distribution business.

The ground floor of the building in question consists of three rooms and one small Verandah out of which two rooms and the Verandah are under the tenancy of another tenant, namely, Shiv Muni and Co. and rest one room on the ground floor is in the occupation of the defendant-petitioner.

The first floor of the building is in occupation of the plaintiff wherein it with great difficulty has allegedly been accommodating its head office as also had offices of its sister concerns namely, Chandra Industrial Corporation and Electrical and Machinery.

The entire second floor measuring about 900 sq. ft. is in occupation of the defendant-petitioner except one small room measuring about 72 sq. ft., wherein the plaintiff stores electrical materials with great difficulty. The second floor of the said building was let put to the defendant-petitioner for a period of eleven months on 1-9-1980. The defendant-petitioner had been paying a monthly rental of Rs. 80/- per month for the tenants premises on the ground floor and Rs 600/- for the premises on the second floor as referred to above.

According to the plaintiff the deed of lease with regard to the second floor expired on 31-8-1981 and despite several requests made by the plaintiff, the defendant did not vacate the tenanted premises, although the same was bona fide and in good faith required by the plaintiff.

3. In application for amendment of the plaint was filed by the plaintiff No. 1 under Order 6, Rule 17 of the CPC (hereinafter called the Code) and by an order dated 2-4-1987 passed by the learned Court below the said application was allowed and the opposite party Nos. 2 to 5 were added as plaintiffs Nos. 2 to 5 in the aforementioned suit, allegedly on the ground that they were the present partners of the plaintiff No. 1- firm.

4. It may be mentioned herein that from the aforementioned order dated 2-4-1987 it appears that the defendant-petitioner filed an application on 28-8-1986 purported to be in terms of Order 30, Rule 2 of the Code asking the plaintiff to disclose the names of the partners of the plaintiff-firm.

5. In the aforementioned suit the defendant-petitioner upon appearance sought for and was granted leave to contest the suit and thereafter written statement was filed. In the said written statement the defendant, inter alia, took the following pleas:--

(a) One suit for eviction in respect of two tenanted premises is riot maintainable.

(b) One of the tenants being M/ s. Indrapur, alleged by partnership firm, the suit

was not maintainable in absence of the said partnership firm and its other partners.

(c) The plaintiff-firm being not registered, in terms of Section 69 of the Indian Partnership Act, 1932 (hereinafter called the Partnership Act), the suit at the instance of the plaintiff No. 1 was not maintainable.

(d) The plaintiff has no genuine need for the premises in suit.

6. The learned Court below by the impugned judgment overruled the preliminary objections relating to the maintainability of the suit raised on behalf of the defendant-petitioner and further held that the plaintiffs have been able to prove their bona fide requirement of the suit premises and on that, ground the learned Court below decreed the plaintiff-opposite parties' suit.

7. Before proceeding further it may be mentioned that when this civil revision application was taken up for hearing on 31-1-1989, the learned counsels for the parties jointly prayed that the records of the Title Eviction Suit No. 68 of 1985 be called for. The said prayer was allowed and this case taken up for hearing again upon receipt of the lower Court records.

8. Mr. Shreenath Singh, learned counsel appearing on behalf of the defendant-petitioner raised three contentions in support of this revision application.

9. Firstly, the learned counsel submitted that the suit is bad for multifariousness inasmuch as one suit is not maintainable for eviction of a tenant from two different tenanted premises; more so when one of the tenants is not the defendant-petitioner himself but a partnership firm known as M/s. Indrapuri which, besides the petitioner has two other partners namely, Tara Devi and Shobha Jain.

Secondly, the learned counsel submitted that the petitioner No. 1 firm being not registered under the Partnership Act, the suit filed by it was not maintainable in view of Section 69(2) thereof.

In this connection, the learned counsel submitted that admittedly the plaintiff No. 1-firm had let out the building in question and in this view of the matter contract of tenancy thus existed by and between the plaintiff No. 1 and the defendant-petitioner and in this view of the matter, the suit was not maintainable as admittedly the plaintiff No. 1-firm was not registered under the Indian Partnership Act. The learned counsel in this connection drew my attention to the evidence of P.W. 1 in paragraph 8 of his deposition and as contained in Annexure 1 as also the evidence of P.W. 3 in paragraph 10 of his deposition and as contained in Annexure 2 to this civil revision application.

The learned counsel in support of this proposition has placed reliance upon *Gorakhnath Champalal Pandey v. Hansraj* 74 CWN 269 ; *Saifuddin Hussainibhoy Siamwala and Others Vs. The Burma Cycle Trading Co.,* ; *Bharat Sarvodaya Mills Co. Ltd. Vs. Mohatta Brothers,* and *Seth Loonkaran Sethiya and Others Vs. Mr.*

Ivan E. John and Others, .

The learned counsel thirdly submitted that in terms of, the provisions contained in Section 11(1)(v) of the said Act the necessity of the landlord must be its personal necessity and in that view of the matter the purported necessity of a "sister concern" of a firm cannot be said to be the necessity of the plaintiff No. 1-firm.

According to the learned counsel the concept of "sister concern" in the context of the partnership firm is unknown in law, and in that view of the matter, the two firms being two different entities, requirement of one cannot be said to be the requirement of another. According to the learned counsel, thus the plaintiffs' case of alleged requirement of the suit premises as set out in the plaint and as has been found by the learned Court below that the suit premises were required for occupation of M/s. Electrical and Machinery, purported to be a "sister concern" of the plaintiff cannot be said the requirement of the plaintiff No. 1-firm itself and thus the suit was liable to be dismissed.

10. Mr. S.C. Ghose, the learned counsel appearing for the plaintiffs-opposite parties on the other hand, in reply submitted as follows:--

(a) The defendant-petitioner being a tenant in respect of both the premises and the requirement of the plaintiff being the same as set out in the plaint, one suit for eviction of the defendant-petitioner in respect of both the premises; one situate on the ground floor and another situate on the second floor of the same building, is maintainable.

(b) The learned counsel submitted that although, plaintiff No. 1-firm was not registered, with the Registrar of Firms as envisaged under the Indian Partnership Act, but all the partners of the plaintiff No. 1 having been impleaded as plaintiffs, the suit was not barred u/s 69 of the Partnership Act.

The learned counsel, in this connection, has relied upon a decision of the Supreme Court in Chhotelal Pyarelal, The Partnership Firm and Others Vs. Shikarchand, .

The learned counsel has further drawn my attention to the provisions contained in Sections 11 and 13 of the said Act and submitted that as the said provisions contained non obstante clauses, a landlord may institute a suit irrespective of a bar imposed under a different Act, namely, Indian Partnership Act, 1932. According to the learned counsel, a landlord is entitled to file a suit for eviction if a cause of action arises therefore as contemplated u/s 11(1) of the said Act and such a suit cannot be said to be barred Section u/s 69 of the Indian Partnership act only because the landlord is not a firm registered thereunder.

(c) Learned counsel submitted although there is no concept of sister concern under the law but the same must be viewed not in a pedantic manner but should be given the same meaning and construed in such a manner so as to give effect to the practice prevailing in trade and commerce. According to the learned

counsel as the partners of both the firms are common, the requirement of one firm must be construed as requirement of another being for personal occupation of the landlord within the meaning of the provisions contained in Section 11(1)(c) of the said Act.

11. In view of the rival contentions of the parties, as noted hereinbefore, the questions, which fall for consideration in this civil revision application are as follows:--

(a) Whether the suit filed by the plaintiffs was bad for multiferiousness and whether in any event the same was maintainable in absence of M/s. Indrapuri?

(b) Whether a suit for eviction filed by the plaintiffs as landlord as against the defendant as tenant is barred u/s 69 of the Partnership Act, as the plaintiff No. 1-firm is not registered with the Registrar of firms ?

(c) Whether the requirement of M/s. Electrical and Machinery a sister concern of the plaintiff No. 1 can be said to be a necessity of the plaintiffs as envisaged u/s 11(1)(c) of the said Act.

12. Re: Question No. (a)

From the pleadings of the parties as also the evidence of the defendant-petitioner it is evident that tenancy was created in the name of the defendant-petitioner in respect of a room situate on the ground floor of the "Chandra Bhawan" where for a sum of Rs. 80/- was being paid by way of monthly rent; whereas the tenancy in respect of the premises situate on the second floor of the said building was said to have been taken in the name of M/s. Indrapuri, wherefor a sum of Rs. 600/- was to be paid by way of monthly rent.

13. It has been admitted by the defendant in his written statement that in respect of the said premises situated on the second floor of the said building an agreement was entered into- by and between the plaintiff-opposite party No. 1 and the defendant-petitioner.

The cause title of the said agreement reads thus:--

"This lease is made the first day of September, 1980 between, M/s. Chandra Brothers, New Market, Patna 800001 (hereinafter called the landlord) of the one part and Sri Padam Singh Jain aged 53 years son of late Cyan Chand Raid C/o M/s. Indrapuri, New. Market, Patna 800001 (hereinafter called the tenants) of the other parts."

14. The said agreement was signed by the defendant-petitioner as a tenant and one of the partners of M/s. Chandra Brothers as landlord. The aforementioned agreement was as Ext. 3/a before the learned Court below.

15. It is thus clear that the defendant-petitioner entered into the said agreement in his personal capacity and not as a partner of and on behalf of the alleged "M/s. Indrapuri and in this view of the matter if the petitioner had been carrying on

business in partnership along with some other persons, M/s. Indrapuri did not become a tenant under the plaintiffs and thus the plaintiffs were entitled to institute a suit for eviction against the defendant-petitioner alone.

In this view of the matter, in my opinion, M/s. Indrapuri was not a necessary party inasmuch as there was no privity of contract or privity of estate by and between the plaintiff and the said M/s. Indrapuri.

16. It is now well settled that a tenant cannot deny the title of landlord. It is admitted by the parties that the defendant-petitioner had been paying rent to M/s. Chandra Brothers pursuant to the aforementioned agreement dated the 1st September, 1980 (Ext. 2/A) and in this view of the matter the defendant-petitioner cannot deny the title of the plaintiffs nor can raise any plea that the partnership firm M/s. Indrapuri was a tenant of the plaintiffs.

17. In *Tej Bhan Madan Vs. II Additional District Judge and Others*, it has clearly been held that if a tenant pays rent to the landlord he is precluded from challenging his title on the general principles of estoppel between the landlord and the tenant. It has further been held in the said decision that the provisions contained in Section 116 of the Indian Evidence Act is not exhaustive with regard to the law of estoppel. Following the said decision a similar view has been taken by this Court in *Sayeed Abdul Wahab v. Mohd. Sakman*, 1989 BLJ 332.

18. Thus even if the defendant-petitioner has been carrying on any business under the name and style of M/s. Indrapuri along with the other two lady parties, who even on the petitioners own admission in his evidence were sleeping partners, in my opinion, the suit cannot be said to be bad for non-impleading M/s. Indrapuri as a party thereto. Thus, in my opinion, M/s. Indrapuri was neither a necessary party nor a proper party and in this view of the matter, the question of the suit being hit by the proviso to Order 1, Rule 9 of the Code does not arise.

19. At the cost of the repetition it may be stated that the plaintiffs in the cause title of the plaint has described the defendant in the same manner as occurring in the aforementioned agreement dated 1st Sept., 1980 (Ext.2/A).

20. From the discussions made hereinbefore, it is clear that the defendant-petitioner himself was a tenant in respect of both the tenant-premises.

21. As noticed hereinbefore that the cause of action for institution of the suit by the plaintiffs as against the defendant is common; the defendant-petitioner in relation to both the tenanted premises is having a common interest as he is a tenant of the plaintiffs in respect of both the premises.

22. In terms of Order 2, Rule 3 of the Code, a plaintiff is entitled to unite in the same suit several causes of action against the same defendant or even jointly.

23. The question of a suit becoming bad for misjoinder of cause of action arises where different plaintiffs claimed different reliefs against a set of defendants or different defendants.

However, it is well known that whence two or more plaintiffs are jointly interested in two or more causes of action against the same defendant, they can join all the causes of action in the same suit.

It is not the case of the defendant that the interest amongst the plaintiffs inter se are conflicting or antagonistic one. However, in the instant case, even that plea is not available to the defendant in view of the fact that, as indicated hereinbefore, the cause of action for filing the suit is common i.e. bona fide personal requirement of the plaintiffs in respect of both the tenanted premises.

24. In view of the fact that prior to the institution of a suit in terms of the provisions of the said Act the tenancy is not required to be terminated, it cannot even be said that as the two tenancies were required to be terminated severally and thus there were separate causes of action for institution of suit by the plaintiffs. However, as indicated hereinbefore, even in such a situation the suit will not fail on the ground of multifariousness in view of Order 2, Rule 3 of the Code.

25. From the discussions made hereinbefore, it is clear that the first contention raised on behalf of the petitioner must fail.

26. Re: Question (b)

Sub-section (2) of Section 69 of the Partnership Act reads as follows :--

"No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as Partners in the firm."

27. Mr. Singh, the learned counsel appearing on behalf of the petitioner, submitted that as a tenancy can be created by reason of an agreement entered into by and between the landlord and tenant, the right to evict a tenant also flows from the said contract.

The learned counsel, in this connection, has placed strong reliance upon *Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others*, and submitted that Section 69 of the Partnership Act is a mandatory one. The learned counsel in this connection has also placed strong reliance upon para 21 of the said judgment, which is as follows:--

"A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the Partnership Act, In the instant, case, Seth Suganchand had to admit in unmistakable terms that the firm "Sethiya and Co." was not registered under the

Indian Partnership Act. It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya and Co. which was an unregistered firm. That being so, the suit was undoubtedly a suit for the benefit and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus the suit was clearly hit by Section 69 of the Partnership Act and was not maintainable."

28. The learned counsel has further placed reliance upon *Bharat Sarvodaya Mills Co. Ltd. Vs. Mohatta Brothers*, and submitted on the basis thereof that the bar created u/s 69(2) of the Partnership Act applies to both types of suits i.e. suits by the firm as well as suits on behalf of the firm.

The learned counsel further drew my attention to a decision of the Calcutta High Court in *M/s. Gorakhnath Champalal Pandey's case* 1970 C WN 269) (*supra*) as also a decision of the Madras High Court in *Saifuddin Hussainibhoy Siamwala and Others Vs. The Burma Cycle Trading Co., .*

On the basis of the aforementioned decisions, the learned counsel submitted that the bar created u/s 69(2) of the Partnership Act also extends to a suit under building control legislations enacted by the States and such a suit will not be maintainable if the same is filed by an unregistered firm.

29. No exception can be taken of the ratio enunciated by the Supreme Court and the Gujarat High Court in the aforementioned cases; but in the instant case the point that arises for consideration is as to whether a suit for eviction filed by a landlord is a suit to enforce a right arising under a contract or not ?

30. A bar created u/s 69(2) of the Partnership Act is a penal in nature. The said provision is harsh one in so far as it indirectly creates a legal disability in an unregistered firm to maintain a suit.

31. It is now well known that registration of a firm in terms of the provisions of the Partnership Act is optional; but as for the purpose of the suits, the provisions contained in Section 69 of the Partnership Act are mandatory in nature, there cannot be any doubt that it works out as an indirect compulsion for registration. Section 69 of the Partnership Act compels a firm to be registered at the pain of disability to institute a suit; whereas under the English Law a firm is compelled to be registered at the pain of penalty.

32. Whatever be the consequences in view of the fact that the disability inflicted Section 69, of the Partnership. Act being mandatory in nature there is no escape therefrom once a case squarely falls within the provisions thereof; Thus, in my opinion, the said provisions should be construed very strictly.

33. There cannot be any doubt that initiation of a tenancy arises out of a contract. The terms, conditions and/ or covenants of a tenancy are also outcome of contract; But assuming that a contract does not contain any covenant of

termination of tenancy and consequent eviction of a tenant from the tenanted premises; would that mean that a tenant can| never be evicted ?

The answer to the aforementioned question posed must be rendered in negative.

34. The right of a landlord to determine a tenancy arises under a statute namely, Transfer of Property Act. In a case covered by the building control legislation such as the said Act, in view of the decisions of the Supreme Court even such tenancies need not be terminated by serving a notice u/s 106 of the Transfer of Property Act. It, therefore, follows that a right to file suit by a landlord against a tenant arises as soon as one or the other factors enumerated in various clauses of Sub-section (1) of Section 11 of the said Act are attracted.

35. It is true that inception of a tenancy is originated by an agreement. However, Bihar Buildings (Lease, Rent and Eviction) Control Act and the relevant provisions contained in Transfer of Property Act superimpose such an agreement. Thus many rights and liabilities, which are creature of statutes may not be the respective contractual rights and liabilities of the parties under an agreement.

36. The contract of monthly tenancy could be determined by service of, a valid notice in terms of Section 106 of the Transfer, of Property Act. Upon determination of such an agreement a tenant is contractually bound to deliver up to the landlord, peaceable and vacant possession of the tenanted premises. If he fails to do so, a suit may be instituted but for the period after determination of the tenancy, the tenant does not occupy the premises as a tenant but as a trespasser. Upon a valid determination of such tenancy a tenant is not liable to pay contractual rent but a landlord may recover such damages from the tenant as may be found to be reasonable. In such a case, a landlord suing the erstwhile tenant would not do so in order to enforce a contract of tenancy but would do so to recover the property from a trespasser. If this be the position in law, in my opinion, a right of a landlord to file a suit for recovery of tenanted premises cannot be said to be a suit to enforce an agreement. However, a different situation would arise in case the relationship of parties are governed by the said Act, in terms whereof by reason of a statutory intervention, a tenant remains a tenant despite termination of tenancy and continues to be so unless he is evicted in terms of a decree for eviction passed by a competent Court of law.

In terms of the provisions of the suit Act a person, who is owner of a building with whom a contract of tenancy was entered into is not the only landlord but a person, who collects rent in respect of the said premises is also a landlord. Thus if an unregistered firm with whom a contract of tenancy was entered into by and between it and the tenant, authorises a person to realise rent, in such an event the person realising rent would also be the "landlord" and would thus be entitled to file a suit for eviction.

However, in such an event, an agreement (agent) of the landlord although is also a landlord within the meaning of the provisions of the said Act will not be entitled to file a suit for eviction on the ground of his own personal necessity as

contemplated u/s 11(1)(c) of the said Act.

37. Viewed thus an agent of a landlord would also be entitled to file a suit for eviction and even if he is an agent of an unregistered firm, a suit will be maintainable. Thus the position in law would be incongruous i.e. an agent of landlord would be entitled to maintain a suit but a landlord himself will not be so entitled only because if happens to be an unregistered firm.

38. Judging thus the case, a suit for eviction is maintainable by an unregistered firm as such a suit will not be a suit to enforce an agreement but a right therefore accrues to a landlord by reason of the provisions of a statute.

39. In *Raj Kumar Prasad Vs. Uchit Narain Singh*, a Full Bench of this Court held as follows (at p. 246 of AIR) :--

"The Rent Act sets up a complete machinery for the rights and obligations of the landlord and the tenants, and being a self-contained Act in the matter to which it is applicable the principles of *specialia generali-bus derogant* must be held to apply, and there is no scope for invoking the provisions of notice for determination of tenancy u/s 106 of the T.P. Act. If a default has occurred within the meaning of Section 11 of the Rent Act, the tenancy stands determined by force of the statute itself and the further requirement of any notice u/s 106 of the T.P. Act is irrelevant if not redundant. I am reinforced in this view by a recent decision of the Supreme Court in the case of *V. Dhanapal Chettiar Vs. Yesodai Ammal*, . This Court has previously insisted u/s 106 of the T.P. Act in view of the earlier Full Bench decision in the case of *Niranjan Pal and Another Vs. Chaitanyalal Ghosh and Another*, . That decision has since been overruled by the Supreme Court in the case of *V. Dhanapal* (supra).

40. It was also stated in the said case (at p. 246 of AIR):--

"The initial induction of a tenant may be by a contract or may be statutory. That is of no consequence. Once the Rent Act is applicable to his case, he shall continue to remain a tenant within the meaning of the Rent Act until he is evicted by the process of execution of a decree of a competent Court. If that be so, even if the default occurs within the meaning of Section 11(1)(d) and he forfeits for all practical purposes his right to remain a tenant, by legal fiction he continues to remain a statutory tenant. That is the cumulative effect of the provisions of Section 2(f) read with Section 11(1) of the Rent Act. It goes without saying that in law he remains a tenant, he is liable to pay rent and the landlord is obliged to accept rent from time to time.

41. In the said case it has further been held as follows (at pp. 247-248 of AIR):

"There is no forfeiture, as stated above, in the eye of law because even if the lease is determined under the T.P. Act, the tenant continues to be a statutory tenantWhere Rent Acts are in force acceptance of rent may be attributable to the statutory tenancy continues so long as there is no decree for eviction which is to be executed the landlord has no option but to accept the rent from

the statutory tenant. In such cases there cannot be said to be any relinquishment by the landlord of a legal right or abandonment of his cause of action. If he continues to remain a landlord by statutory fiction and the defaulter tenant continues to be a tenant by such fiction, the jural relationship between the parties continues so long as the decree for eviction is not executed. The statutory landlord in such cases has no option but to receive the rent from his tenant who has already forfeited his right to continue as a tenant by force of law."

42. It may be mentioned here that *V. Dhanapal Chettiar Vs. Yesodai Ammal*, has been followed by the Supreme Court in *Krishnadeo Narayan Aggarwal v. Ram Krishna Rai* 1983 PLJR 15: AIR 1982 SC 783 (1).

43. The Full Bench decision is thus an authority for the proposition that after a cause of action of a suit for eviction arises, the tenant becomes a statutory tenant and the landlord a statutory landlord.

44. Section 11 of the said Act overrides all agreement. Similarly Section 13 thereof provides that A suit which, inter alia, is filed on the ground of personal necessity as envisaged u/s 11(1)(c) of the said Act, the procedure, notwithstanding anything contained in any law for the time being in force, as contemplated u/s 14 thereof shall apply. In my opinion, right of a landlord to file a suit for eviction against his tenant is a statutory right.

True it is, the tenancy is subject to an agreement but such agreement itself is subject to the provisions of the said Act.

45. There cannot be any doubt that the said Act is a beneficial legislation and was enacted for protecting the interest of the tenant, but the same, in my opinion, should not be construed to the extent that a suit for eviction cannot be filed by a landlord.

46. A right to file a suit for eviction vested in a landlord is not a contractual right and such right, by necessary implication arises in terms of the provisions of the said Act.

47. Further, it is now well known that a partnership firm whether registered under the Indian Partnership Act or not is not a juristic person.

It is further well known that a suit filed by the partners along with the partnership firm does not attract the provisions of Order 30, Rule 1 of the Code.

48. In *Bharat Sarvodaya Mills Co. Ltd.*'s case (AIR 1969 Guj 178) (supra) upon which the learned counsel for the petitioner himself has placed reliance, it has clearly been held that a firm has no legal entity and it is collective term for the partners, who have entered into partnership with one another.

Similar is the view taken in *M.S. Pearl Sound Engineer Vs. Pooran Chand and Others*, .

In Halsbury's Law of England, 4th Edition, Vol. 34 in paragraph 5 it has been

stated :--

"Firm name is not the name of a corporation but the short name of the partners themselves."

49. In this connection reference may be made to Lindley on Partnership 15 Edition at page 34 where the learned author stated the law that partnership is called collectively a firm.

50. In this connection, reference may also be made to Section 4 of the Indian Partnership Act, which reads as follows:--

"Definition of "partnership", "partner", "firm" and "firm name":-- "partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name".

51. In this view of the matter, in my opinion, there is no doubt that a partnership firm is not a juristic person and conceptually it is different from an incorporated company. Only in a case of a limited partnership as envisaged under Limited Partnership Act, 1907 of England, a partner may have a limited liability in respect of the liabilities of a firm; but the said concept of limited partnership is not prevalent in our country.

52. In Saifuddin Hussainibhoy Siamwala and Others Vs. The Burma Cycle Trading Co., , the Madras High Court proceeded on that basis that the premises in question was owned by a unregistered firm. In the said case the suit was dismissed, inter alia, on the ground that two persons, who are partners of an unregistered firm were not carrying on any business and thus their requirement cannot be said to be a bona fide requirement within the meaning of Section 10(3) (a)(iii) of Madras Building (Lease and Rent) Control Act.

53. In Chhotelal Pyarelal, The Partnership Firm and Others Vs. Shikarchand, the Supreme Court has held as follows (at p. 1571 of AIR):--

"Now, there can be no doubt that since the CPC does not apply to proceedings under the HRC Order, no application for eviction can be maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the provisions of Order 30 of the CPC that a firm can sue and be sued in its own name without the partners being impleaded eo nomine. It is, therefore, clear that the firm of M/s. Chhotelal Pharelal could not be sued in the firm name by the respondent in so far as the application for eviction under the HRC Order was concerned. But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any

stage of the proceedings. There can be no doubt that the partners of the firm are before the Court though in a wrong name."

54. In the instant case, evidently the partners, who are owners of the properties have also been impleaded as plaintiffs in the suit. P.W. 3 categorically stated in para 1 of his deposition that the suit premises belong to them meaning thereby the partners of the plaintiff No. 1-firm. Further the defendant-petitioner himself categorically stated in his evidence that K.K. Chandra and his brothers are owners in respect of the properties.

55. In paragraph 9 of his deposition the defendant-petitioner stated that the suit house does not belong to the partnership firm but belongs to Kalyan Chandra and his family.

56. As would be indicated hereinafter, it will appear that the properties in question belong to the plaintiffs Nos. 2 to 5 and/or their respective predecessor-in-interest.

57. For the reasons stated hereinbefore, with utmost respect to the learned Judges I am unable to subscribe the views taken by the Madras High Court in Saifuddin Hussainibhoy Siamwala and Others Vs. The Burma Cycle Trading Co., and by the Calcutta High Court in M/s. Gorakhnath Champalal Pandey's case C WN 269 (supra).

58. Thus taking into consideration all aspects of the matter, there cannot be any doubt that the plaintiffs Nos. 2 to 5 being owners in respect of the properties in question although are carrying on business under the name and style of the plaintiff No. 1, would be entitled to get a decree for eviction of the premises in question, although the plaintiff No. 1 is a firm not registered under the Partnership Act.

59. Re: Question No. (e).

True it is, as contended by Mr. Shreenath Singh, the learned counsel appearing on behalf of the petitioners that there is no concept of a "sister concern" under the Partnership Act; but term "sister concern" must be construed in the light as is understood in common parlance and/or in the world of trade and commerce.

60. In para 2 of the plaint the plaintiff stated as follows :--

"That the plaintiff is a group of concerns namely Chandra Industrial Corporation (I) and Electrical and Machinery which deal in manufacturing, contract and distribution business in Eastern India."

61. It also stands admitted that head offices of all the three firms including that of plaintiff No. 1 and M/s. Electrical and Machinery are situated in Chandra Bhawan itself.

62. The plaintiffs have produced a large number of correspondence passed between the plaintiff on the one hand the defendant-petitioner on the other

hand. In the said letters the plaintiffs have all along been insisting the defendant-petitioner to vacate the tenanted premises as they are in need thereof for the purpose of their "sister concern" M/s. Electrical and Machinery.

63. In Exts. 3/I and 3/J i.e. the two letters addressed by the defendant-petitioner to the plaintiffs, no denial of the plaintiffs-assertion of bona fide requirement has been made but therein the petitioner merely wanted some time to find out an alternative accommodation.

64. The plaintiffs have further produced Income Tax assessment orders of M/s. Electrical and Machinery for the year ending 30-6-1984 as also the Income Tax assessment orders of the Income Tax Department in respect of M/s. Charidra Brothers for the year ending 31-12-1979 and other documents. The said assessment orders were marked as Ext. 4 series.

65. From the said assessment order, it appears that M/s. Chandra Brothers consist of the partners namely, P.S. Chandra having 22.5% share; A. Chandra having 22.5% share; P.K. Chandra having 17.5% share; K. K. Chandra having 17.5% share and E. Chandra having 20% share.

Whereas M/s. Electrical and Machinery comprises of the following partners:--

P.K. Chandra having 15% share; K.K. Chandra having 20% share and Smt. Sheila Chandra having 15% share.

Similarly, M/ s. Chandra Industrial Corpn. (India) consists of the following partners:--

P. S. Chandra having 15% share; A. Chandra having 10% share; P. K. Chandra having 10% share; K. Chandra having 15% share; B. Chandra having 20% share and S. Chandra having 30% share.

66. Kalyan Chandra, one of the plaintiffs, who examined himself as P.W. 3 categorically stated that the suit holding No. 93 belongs to them. He further stated that besides Chandra Brothers they have two other firms namely, Chandra Industrial Corporation and Electrical and Machinery.

67. As noticed hereinbefore, in the application for amendment of the plaint it was clearly stated by the plaintiffs that the plaintiffs Nos. 2 to 5 are the present partners of the plaintiff No. 1-firm.

68. From the aforementioned facts it appears that Smt. Sheila Chandra was inducted in the said partnership firm as a partner after the death of her husband, Partha Sartha Chandra. It is further evident that the plaintiffs Nos. 2 to 4 are own brothers.

69. Thus, there cannot be any doubt that the plaintiffs Nos. 2 to 5, who are owners and/or in any event co-owners of the building in question being also the partners of M/s. Electrical and Machinery, the requirement of M/s. Electrical and Machinery must be held to be for the purpose of their personal occupation as

contemplated u/s 11(1)(c) of the said Act. This, as the plaintiffs Nos. 2 to 5 are partners in both the firms, and further in view of the fact that the properties admittedly belong to them, the necessity of the partners of one firm must be held to be their own personal necessity even if they intend to carry on business in the suit premises an the name of another (sic).

70. As has been held hereinbefore, the partners are the legal owners of the properties and not the partnership firm, there cannot be any doubt that when the necessity of all the partners exist in respect of the suit premises, which they require for the purpose of another firm of which also they are partners, in my opinion, there cannot be any doubt that the cause of action so far as personal necessity of the plaintiffs are concerned comes within the purview of Section 11(1)(c) of the said Act.

71. In the result, there is no merit in this application, which is accordingly dismissed; but in the circumstances of the case without any order as to costs.