
(2004) 11 PAT CK 0060

In the Patna High Court

Case No : Civil Revision No. 1661 of 2002

Shyama Kant Jha and Another

APPELLANT

Vs

Smt. Shakuntala Pandey

RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

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

Citation : (2004) 3 BLJR 2215 : (2004) 4 PLJR 843

Hon'ble Judges : Nagendra Rai, Acting C.J.

Bench : Single Bench

Judgement

Nagendra Rai, A.C.J.

1. The Civil Revision is barred by limitation.
2. After hearing learned counsel for the parties and taking into consideration the averment made in the limitation petition, I find that a good ground has been made out for condonation of delay in filing this revision. Accordingly, the delay in filing this revision is condoned and the limitation petition, thus, stands allowed.
3. The defendant-petitioners have filed the present revision application under the proviso to Section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as "the Act"), challenging the judgment and decree dated 28.8.2002 passed in Title Eviction Suit No. 18 of 1998/3 of 2001, whereby the 4th Subordinate Judge, Patna, has decreed the suit for eviction on the ground of personal necessity and on the expiry of the lease deed in terms of Section 11(1)(c) of the Act.
4. Admittedly, the plaintiff is the owner of the property described in the plaint. It is also an admitted fact that an unregistered lease deed was executed between the plaintiff-opposite party on the one hand and the defendant-petitioners on the other for a period of eleven months, which expired on 15.9.1997 and the period of the lease was not extended further though it was provided in the lease itself. The original plaintiff claimed eviction on the ground of expiry of the term of the

fixed period of lease and on the ground of personal necessity as she was suffering from heart ailment and was under the treatment of the Doctors residing at Rajendra Nagar and Kankarbagh Muhallas, which were nearer to the suit premises. She also required the premises for running an office by her husband, who, after retirement, was enrolled as an Advocate. Later on, when her husband died, an amendment petition was filed, wherein the plaintiff-opposite party claimed eviction on the ground that her only son obtained Master Degree in Business Management and was employed in a private Company. After the death of his father, he has left the job and wants to open a consultancy firm in Patna and the suit premises is the best suited for the said purpose as it is situate in Shrikrishnapuri Muhalla, where a large number of commercial ventures are in existence.

5. The defendant-petitioners resisted the claim on the ground that the tenancy was month to month and not for a fixed period and the plaintiff, taking benefit of her position got their signatures on the document. The lease being an unregistered one cannot be looked into. They also denied the claim of personal need of the plaintiff as has been made in the plaint as well as subsequently brought by way of amendment. It was further stated that the plaintiff has a good house at Asianagar, which is admittedly far away from Shrikrishnapuri and also from the places of the Doctors, who used to treat the plaintiff.

6. Both the parties adduced oral and documentary evidence. The plaintiff examined four witnesses and five documents including the lease deed, whereas, the defendant examined fourteen witnesses and filed documents. The trial Court, having considered the matter, found that the plaintiff has proved both the grounds and the partial eviction would not be possible as required by the proviso to Section 11(1)(c) of the Act and, accordingly, decreed the suit.

7. Learned counsel appearing for the petitioners raised two points. Firstly, he submitted that the plaintiff has another accommodation at Asianagar and as such she cannot claim eviction of the defendants from the suit premises on the ground of personal necessity. This apart, medical facilities are also available in the Muhalla, where the plaintiff is residing and as such need of the plaintiff is not bona fide and reasonable one. He further submitted that even if the ground of personal necessity for eviction is accepted, but the Court below has not considered the question of partial eviction in terms of proviso to Section 11(1)(c) of the Act.

8. Learned counsel for the plaintiff-opposite party combated both the submissions and asserted that the Court below rightly decreed the suit on both the grounds. Muhalla Asianagar is far away from the main town, whereas, the suit premises is situated in the heart of the town and the plaintiff being a heart patient, requires the suit premises reasonably arid bona fide for the said purpose and part of the same will be used by her only son for opening a consultancy firm in view of the qualification acquired by him in that field and as such the requirement is reasonable and in good faith. He further submitted that there are

two rooms in the ground floor and as such partial eviction will not meet the requirement of the plaintiff-opposite party and the trial Court has considered the aforesaid question.

9. This Civil Revision has been filed under the proviso to Section 14(8) of the Act and this Court has to see as to whether the judgment passed by the Court below is according to law or not. No doubt, the power given under this proviso is wider than the power of Civil Revision conferred u/s 115 of the Code, but the said power cannot be equated with the power of appeal where this Court can appraise the evidence merely on the ground that a different view on the facts can be taken in the case. However, to test as to whether judgment/order is according to law or not, it may reappraise the evidence for the purposes to see as to whether the finding is reasonable or unreasonable. In other words, it may appraise the evidence as a reasonable man with objectivity to find out as to whether the conclusion arrived at by the Court below could not have been arrived at by a reasonable man. Similarly, ignoring the material evidence on the record, relying upon inadmissible evidence affecting the finding and proceeding on a wrong premises of law are other grounds to test as to whether the order is according to law or not.

10. So far as the first point raised on behalf of the petitioners is concerned, the evidence given by the plaintiff herself, her son and other witnesses clearly shows that the premises is required for own living of the plaintiff as well as for opening a consultancy firm by her only son, who has the requisite-qualification in the concerned field. Their evidence has been accepted by the Court below.

11. Learned counsel for the defendant-petitioners, during the course of argument, was not able to show that any of the aforesaid grounds existed to upset the finding of the bona fide and reasonable requirement of the plaintiff. Their whole attempt was to reappraise the evidence and to come to a different conclusion, which, as stated above, is not permissible under the provisions referred to above. Thus, no case has been made out to interfere with the finding given by the Court below that the suit premises is required reasonably and in good faith by the plaintiff.

12. So far as the lease deed is concerned, admittedly, that was for a period of eleven months and was not required to be registered. However, ignoring the eviction on the ground of expiry of the period of the lease deed, materials on the record are clear to justify eviction of the defendant-petitioners u/s 11(1)(c) of the Act.

13. So far as the second point is concerned, that is based on the proviso to Section 11(1)(c) of the Act, which runs as follows :-

"11. Eviction of tenants.-(1) Notwithstanding, anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in

execution of a decree passed by the Court on one or more of the following grounds :-

(a) xx xx xx (b) xx xx xx (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 :

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, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of clause (b) of Section 2 and the rent so fixed shall be deemed to be the fair rent fixed u/s 5.

Explanation I.-In this clause the word "landlord" shall not include an agent referred to in clause (f) of Section 2.

Explanation II.-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."

14. The requirement of the aforesaid provision, inter alia, is that a duty is cast on the Court to find out as to what is the reasonable requirement of the plaintiff and as to whether the same will be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue in occupation of the rest and the tenant agrees to such occupation. While exercising the power under the aforesaid provision, the Court has to determine firstly the extent of the premises, then the determine the reasonable requirement of the plaintiff. After these two determinations on the basis of the evidence adduced by the parties, the Court has to consider objectively as to whether the requirement of the plaintiff may be substantially (not fully) satisfied by partial eviction or not.

15. The trial Court in this case has considered the said question of partial eviction in paragraph 20 of the judgment and has held that as the suit premises is very small being a flat of two rooms, no decree of partial eviction can be passed. In my view, this is no consideration in the eye of law in terms of the statutory provision as referred to above and to this extent the submission advanced by the learned counsel appearing on behalf of the defendant-petitioners deserves acceptance.

16. Accordingly, the finding of the trial Court that the plaintiff is entitled to the decree of eviction of the defendant-petitioners from the suit premises on the ground of personal necessity is upheld, but the finding with regard to the partial eviction is set aside and the matter is remitted to the Court below to consider the question of partial eviction in the light of the observations made above.

17. The suit for eviction has remained pending for about six years. In that view of the matter, the trial Court is directed to decide the question of partial eviction

within a period of four months from the date of receipt/production of a copy of this order. If the parties want to lead further evidence on the point of partial eviction, then they will be allowed to do so, but their evidence has to be concluded within a period of three weeks and, thereafter, the matter is to be decided.

18. In the result, this civil revision application is allowed in part, subject to the direction/observation aforementioned.