

(1997) 07 PAT CK 0029
In the Patna High Court
Case No : Civil Revision No. 89 of 1997 (R)

Surajdeo Prasad and Others

APPELLANT

Vs

Rabi Bhushan Prasad and Others

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977 — Section 14

Citation : AIR 1998 Patna 41 : (1998) 46 BLJR 95 : (1997) 2 PLJR 440

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee, R.S. Mazumdar and S.K. Laik, for the Appellant;
P.P.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—After hearing the learned Counsel for the parties and with their consent this application is being disposed of at the admission stage itself.

2. This application in revision is directed against the order dated 26-2-1997 passed by the learned Munsif, Latehar, in Title (Eviction) Suit No. 1 of 1996 whereby the learned Court below refused to grant leave to the defendants-petitioners to contest the suit.

3. The plaintiffs-opposite parties filed the aforesaid suit for eviction of the defendants-petitioners from the suit premises on the ground of bona fide personal requirement as contemplated u/s 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter to be referred to as "the Act" for short).

4. The plaintiffs' case, inter alia, was that they are the owners of the suit premises having been purchased from Ram Prasad Sao and defendant No. 2 was originally inducted as tenant by Ram Prasad Sao in a portion of the house comprising within Plot No. 218 under Khata No. 14 of village Dangar Tola, Garu, P.S. Guru, on a monthly rent of Rs. 100/-. The plaintiffs' further case was that

after the purchase made by the plaintiffs a dispute arose with regard to eviction of the defendants from the suit premises and both the parties nominated and appointed Panchas for just decision of the said dispute of eviction of the defendants and the Panchas have passed the award directing the defendants to pay monthly rent of Rs. 100/-per month from 2-11-1989 to 31-10-1994 and to vacate the said premises and handover to the plaintiffs the vacant possession of the same. But the defendants did not do so. According to the plaintiffs, the possession of the defendants, therefore, became permissive and they are stopped from asserting their right, title and interest over the suit premises.

5. On being summoned and noticed, the petitioners appeared in the suit and filed affidavit seeking leave to contest the suit. It appears that against filing of the affidavit, the plaintiffs-opposite parties filed Civil Revision before this Court challenging the maintainability of the affidavit, but the said Civil Revision was not entertained by this Court.

6. In the affidavit filed by the petitioners, they have claimed that defendants 2 and 3 are the owners in possession of the suit premises by their own right having acquired the same by settlement from Bihar Bhudan Yagya Committee, his further stated that defendant No. 1. Krishnadeo Prasad had no concern at all much less any right, title and interest or possession over the suit premises and his name designedly and purposely added just to create confusion. The defendants in the affidavit denied the relationship of landlord and tenant and pleaded that neither the plaintiffs nor their vendor Ram Prasad Sao was ever the owner or the landlord of the suit premises. The further case in the affidavit is that during the Cadestral Survey in the year 1929, Plot No. 218 under Khata No. 14, i.e., the suit premises was recorded in the name of Sarai uraon and others who were members of Scheduled Tribes. On 6-6-1953 the heirs of recorded tenant donated 12 acres of land of Khata No. 14 under various plots to Bihar Bhudan Yagya Committee, which ultimately vested in the said Committee with effect from the date of the donation u/s 13 of the Bihar Bhudan Yagya Act, 1954.

It is further stated that like other several persons, who were landless, defendants 2 and 3 also occupied portion of the aforesaid plot in the year 1980 and constructed their houses over it and in course of time all the persons who occupied the plots have been recognised by the Committee and document of settlement was issued to all of them. It is further stated in the affidavit that the vendor of the plaintiffs, namely, Ram Prasad Sao had unauthorisedly occupied some area of land of the aforesaid plot No. 218 under Khata No. 14 of village Dhangar Tola, which resulted in a proceeding u/s 71-A of the Chotanagpur Tenancy Act. in which the Special Officer, Daltonganj, in Case No. 22 by his order dated 22-2-1985 rejected the possession of Ram Prasad Sao and directed the Circle Officer concerned not to allow Ram Prasad Sao to forcibly occupy the land again. Aforesaid Ram Prasad Sao was accordingly dispossessed from the land of Plot No. 218 and, therefore, he had no right, title and interest over the land, which was illegally transferred to the plaintiffs.

7. So far the case of the plaintiffs about adjudication of the dispute by the Panchas is concerned, it is pleaded in the affidavit that only the name of defendant No. 1 was mentioned. Defendants Nos. 2 and 3 were never the party to any Panchayati and the so-called award is not binding on them. In the affidavit, defendants-petitioners have taken various other pleas in order to show that the plaintiffs have no right to bring their suit and get an order for eviction against them.

8. The Court below by the impugned order rejected the affidavit of the defendants and refused to grant leave to contest the suit.

9. Mr. M. M. Banerjee, learned Counsel for the petitioners, has assailed the order of the learned Court below as being illegal and wholly without jurisdiction. The learned Counsel submitted that the Court below while disposing of the leave application has entered into the merit of the case of the parties and further that without giving any opportunity to lead evidence the Court below virtually gave a finding on the question of title of the parties in respect of the suit premises. Learned Counsel further submitted that the affidavit filed by the defendants and the facts disclosed therein prima facie shows that the plaintiffs have no right, title and interest over the suit premises and, therefore, the Court below ought to have granted leave to the defendants to contest the suit.

10. On the other hand, Mr. P.P.N. Roy, learned Counsel for the plaintiffs-opposite parties, supported the impugned order by submitting that no illegality has been done by the Court below in passing the said order. According to the learned Counsel, the defence taken by the petitioners in the affidavit are false, frivolous and baseless and, therefore, it was rightly rejected by the impugned order. In support of his contention, learned Counsel relied upon the decision of this Court in *Lallan Kishore Saran v. Tarachand Agarwal* (1984 Punj LJR 432).

11. Before appreciating the rival contentions of the parties, it would be useful to look into the relevant provisions of Section 14 of the Act.

Section 14 of the Act is new Section, which has been introduced for the first time in the year 1982 in the said Act. Sub-section (1) of Section 14 provides that every suit filed by the landlord for recovery of possession of any premises on the ground of personal necessity or on the ground of expiry of the period of lease, shall be dealt with in accordance with the procedure specified in this Section. Sub-sections (2) and (3) provide the manner of service of summons on the defendants. Sub-section (4) provides that the tenants upon whom summon is served is required to file an affidavit seeking leave to contest the suit. Sub-section (5) gives power to the Court to grant leave to the tenant to contest the suit. Sub-section (6) of Section 14 provides that when leave is granted to the tenant to contest the suit, the tenant shall file his written statement or pray to the Court that the affidavit filed by him may be treated as written statement. For better appreciation, Sub-sections (4), (5) and (6) of Section 14 of the Act which are relevant here are quoted hereinbelow :--

"14. Special procedure for disposal of cases for eviction on ground of bona fide requirement-

(4) The tenant on whom summons is duly served whether by ordinary mail or by registered post shall not contest the prayer for eviction from the premises unless he files an affidavit stating the ground on which he seeks to make such contest and obtains leave from the Court as hereinafter provided; and in default of the appearance in pursuance of the summons or his obtaining such leave the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground aforesaid.

(5) The Court shall give to the tenant leave to contest the suit if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for eviction on the grounds specified in clauses (c) and (e) of Sub-section (1) of Section 11.

(6) When leave is granted to the tenant to contest the suit, the latter may, within fifteen days from the date of the order, pray after filing the requisite court-fee, required for a written statement that the affidavit may be treated as the written statement or if he chooses to file a separate written statement he may do so within fifteen days of the grant of leave to contest the suit and if he does not file the written statement within the period he shall not be allowed to do so later. The Court shall thereafter commence the hearing of the suit as early as practicable."

12. As noticed above, this Section has been introduced for the first time in the year 1982. The sole object for introduction of this Section is to provide speedy remedy of eviction where the landlord requires the premises for his bona fide requirement or if the fixed period of lease has expired. Similar provision has been introduced in various other Rent Control legislation of other States. Section 25B of the Delhi Rent Control Act, 1958 is *pari materia* of Section 14 of the said Act. It appears that by introduction of this Section vital departure has been made in the Act with regard to the procedures for trial of Eviction Suits brought under the aforesaid provision of the Act. Section 25B of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as "the Delhi Act") was considered by the Apex Court in the case of Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, and Their Lordships after considering the scope and ambit of the Delhi Act and the effect of the said provision has held as under (at pages 1525-1526 of AIR):--

"Undoubtedly the procedure prescribed in Chapter IIIA of the Act is materially different in that it is more harsh and weighted against the tenant. But should this procedural conundrum change the entire landscape of law? When a landlord approaches Controller u/s 14(I), Proviso (e), is the Court to presume every averment in the petition as unchallengeable and truthful? The consequence of refusal to grant leave must stare in the face of the Controller that the landlord

gets an order of eviction without batting the eyelid. This consequence itself is sufficient to liberally approach the prayer for leave to contest the petition. While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well-defined limits and he cannot get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short circuiting the proceedings need not masquerade as a strict compliance with Sub-section (5) of Section 25B. The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression "the Controller shall give" to the tenant leave to contest if the affidavit filed by the tenant discloses such facts as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if the re-emerges averment of facts which on a trial, if believed, would not suit the landlord leave ought to be granted. Let it be made clear that the statute is not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order, etc. That is not the mould in which the section is cast. The provision indicates a positive approach and not a negative inhibition. When the language of a statute is plain, the principle that legislature speaks its mind in the plainest language has to be given full effect. No canon of construction permits in the name of illusory intendment defeating the plain, unambiguous language expressed to convey the legislative mind. And the legislature had before it Order 37, an analogous provision where leave to defend is to be granted and yet, avoiding the phraseology of the Code of Civil Procedure, namely, "substantial defence" and "vexatious and frivolous defence", the legislature used the plainest language, "facts disclosed in the affidavit of the tenant".

13. The Supreme Court again reiterated this view in the case of Smt. Jamna Devi v. Kude Ram, (1982) 3 SCC 183 , while deciding the question under the provisions of the Delhi Act and held as under (at page 1457 of AIR):--

"It is not suggested that these facts are established but it does appear that in slum area both the landlord and tenant are in small premises. The need had to be judged after evaluating facts established on evidence, her untested affidavit. Was that sufficient to enable the learned Rent Controller to refuse leave? We have no doubt in our mind that these disclosed facts necessitated examination either by cross-examination, evaluation and adjudication. The unilateral declarations have no evidentiary value as such. What is considered improper is converting the stage of granting or of using to grant leave into full fledged trial circumventing the prescribed procedure. Even documents are not properly proved and yet decision is followed thereon. We are, therefore, of the view that there is a case in which leave to contest ought to have been granted."

14. In Om Parkash Saluja Vs. Smt. Saraswati Devi, , the Apex Court again

considered the provision of Section 25B(4) of the Delhi Act and laid down the following proposition of law (at page 1600 of AIR):

"We wish to impress upon the Rent Controller dealing with the matters under Delhi Rent Control Act wherein leave to defend is sought, to be more meticulous while deciding at the initial stage whether leave to defend should be granted or refused, to keep in view some principles laid down by this Court as early as 1958 and since then much water has been flown under Yamuna bridges. At any rate that is not the stage of adjudication of rival contentions on affidavit or unproved documents. The only test is whether affidavit in support of application seeking leave to defend discloses facts which need investigation by evidence and trial. The approach of the Rent Controller in this case is wholly contrary to the legal position. The High Court unfortunately committed the same error."

15. As stated above, similar provision has been introduced in Rent Control Acts, applicable to other States. Section 18-A(4) of the East Punjab Urban Rent Restriction Act is the similar provision where leave is required to be obtained for contesting the eviction suit. The Apex Court while considering the aforesaid Act followed its earlier decision in the case of Precision Steel and Engineering Works (supra) and held that :

"When an application for leave to defend is made by the tenant supported by an affidavit for grant of leave to contest the eviction petition filed by the landlord u/s 13-A of the Act, the Rent Controller is not required to examine the issue from the point of view of the ultimate proof which the tenant may produce but the only thing which the Controller is required to examine is to look into the averments made in the application by the tenant and the affidavit in support thereof to see whether the tenant has made out a case, which, if proved, would disentitle the landlord from claiming the eviction of the tenant from the premises occupied by him in summary proceedings."

16. This Court considered the effect and scope of Section 14 of the Act of 1982 in series of decisions and held that leave should normally be granted to the tenant-defendant to contest the suit. In the case of Md. Fahimuddin v. Godhan Pd. Singh. 1989 PUR 899, it has been held as under:

"It must be borne in mind that provisions for obtaining the leave of the Court to contest the suit had been made to avoid frivolous, baseless or irrelevant plea but if the defence of the tenant are plausible and if accepted may non-suit the plaintiff in such an event, in my opinion the leave to contest the suit should normally be granted,"

17. From perusal of the facts of the instant case it appears that the defendants-petitioners have seriously disputed the title of the plaintiffs and have claimed title in themselves. It further appears that it is the specific case of the defendants that the vendor of the plaintiffs inducted defendant No. 2 as tenant in the suit premises, but in the arbitration paper defendant No. 2 neither signed nor was a party to any such Panchas. The Court below put heavy reliance on the Panchas

paper and held that since the defendants admitted before the Panchas to vacate the premises, defendants do not deserve to contest the suit.

18. From perusal of the impugned order it is evident that instead of finding out a prima facie case on the basis of the affidavits filed by the parties, the Court below entered into the merit of the case. It is also evident that the defence taken by the defendants in the leave petition needs investigation by recording evidence and by holding trial. As noticed above, if it is well-settled that the question of grant of leave should not be) liberally construed so as to enable the landlords to evict the tenants whenever desired under the garb of personal necessities. In the instant case, I am of the opinion that the facts disclosed by the defendants in the affidavit, if proved, would disentitle the plaintiffs from getting the decree for eviction. The Court below has not considered the matter in its right perspective and has been impressed by the decision of the Panchas which has no evidentiary value and is not binding, if it is proved that it was defendant No. 2 who was inducted as tenant by the vendor of the plaintiffs and he was not a party to that arbitration.

19. For the reasons aforesaid, this Civil Revision Application is allowed and the impugned order passed by the Court below is set aside. Consequently the affidavit filed by the defendants- petitioners seeking leave to contest the suit is allowed and the Court below is directed to proceed with the suit in accordance with law.