

(1986) 34 BLJR 649 : (1986) PLJR 1035**Patna High Court****Case No:** Civil Revision No. 1520 of 1985

Sitaram Chaudhary

APPELLANT

Vs

(Smt.) Bhagwati Devi
and AnotherRESPONDENT

Date of Decision: Dec. 11, 1985**Acts Referred:**

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 14, 14(4), 14(5)

Citation: (1986) 34 BLJR 649 : (1986) PLJR 1035**Hon'ble Judges:** Birendra Prasad Sinha, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Birendra Prasad Sinha, J.

This civil revision application is directed against the order dated 29-8-1985 passed in Eviction Suit No. 36 of 1984 by the 1st Munsif, Darbhanga decreeing the suit of the plaintiff u/s 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act). Notices were issued to the opposite parties in the admission matter and the opposite parties have appeared through Mr. Chunni Lal, Advocate Heard Mr. Shreenath Singh for the petitioner and Mr. Chunni Lal for the opposite parties and this application is being disposed of at the admission stage.

2. The plaintiff-opposite parties had filed the suit for eviction on the ground of personal necessity. According to the plaintiff's case the plaintiff along with her three sons are at present residing in a rented house. The two sons of the plaintiff are running their wholesale business in a rented house in Mohalla Gullobara and her third son Anil Kumar Daruka has to be settled in some other business as he is sitting idle. The defendant-petitioner has his own house in Mohalla Saudagar and has also a shop in the market-yard Shivdhara. An affidavit was filed u/s 14 of the Act by the defendant-petitioner for grant of leave to contest the suit. Section 14 of the Act lays down a special procedure

for disposal of cases of eviction on the ground of bonafide requirement. Sub-sections (4), (5) and (6) of Section 14, which are relevant for the purpose of this case read as follows:

(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 later 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 so 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.

3. The matter was taken up by the Court below and after considering the facts and circumstances of the case it refused to grant leave to the defendant-petitioner to contest the suit as in its opinion the plaintiff requires the suit premises for personal use reasonably and in good faith. The court below has directed the defendant-petitioner to vacate the suit premises within a month.

4. Mr. Shreenath Singh learned Counsel appearing on behalf of the petitioner has submitted that the court below has not taken into consideration some of the statements made on behalf of the defendant-petitioner in his affidavit and has, therefore, erred in refusing to grant leave to the defendant-petitioner. Annexure-1 to this Civil revision application is the copy of the affidavit filed on behalf of the defendant-petitioner before the court below for leave to contest the suit. It was stated in this affidavit that late Narain Prasad Daruka who was the owner of the land on which the building occupied by the defendant-petitioner stands, leased out the said Parti land to the defendant-petitioner on a monthly rent of Rs. 50/-sometimes in 1959 and in 1960 the defendant-petitioner constructed a godown of tin and Khapraposh shed over a portion of the said Parti land with the consent of late Shree Narain Prasad Daruka and a municipal holding No. 101 was created. Later on by mutual agreement rent of the premises was enhanced to Rs. 300/- per month from July, 1984. It has been stated in the said affidavit that the plaintiffs do not require the premises as the same is not fit for any business by the plaintiffs. Relying upon a decision of the Supreme Court in [Precision Steel and Engineering Works](#)

[and Another Vs. Prem Deva Niranjana Deva Tayal](#), learned Counsel submitted that as soon as these facts were disclosed in the affidavit the court below had no option but to grant leave to the defendant to contest the suit. Learned Counsel submitted that as soon as the affidavit discloses certain facts as would disentitle the landlord from obtaining an order for recovery of possession, leave should be granted. According to Mr. Singh the court is not to record a finding on the disputed question of facts in preference to one set of affidavit against other set of affidavit. It is true that the Court has to confine itself only to the averments made in the affidavit and reply, if any, but leave shall be granted only if the affidavit filed by the tenant discloses such facts as would disentitled the landlord from recovery of possession. If the argument of Mr. Singh is accepted, even if a frivolous or irrelevant plea is raised by the tenant the Court must necessarily grant leave to him. That surely cannot be the intention of the legislature. It was by experience that it was realised that case of such nature in which the landlords wanted to evict their tenants purely for personal necessity were dragged on for decades and that was why this summary procedure has been provided for. Even in the case of Precision Steel and Engineering Works (Supra) it was observed by the Supreme Court that the Court, while examining the question whether there was a proper case for granting leave to contest the suit has to confine itself "to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession." In my opinion, the tenant must make out a prima facie case in his affidavit as would disentitle the landlord from obtaining an order for eviction. He is not required to prove the case at that stage but must make out a possible and prima facie defense. In an earlier decision by the Supreme Court in [Kewal Singh Vs. Smt. Lajwanti](#), considering a similar provision it was observed that--

Even though a summary procedure has been evolved the tenant has been afforded full opportunity to defend the application provided he can disclose good grounds for negative the case of landlord. No litigant has a right to protract the legal proceedings by taking frivolous, irrelevant or uncalled for pleas. This is what the section seeks to prevent.

It was further observed that--

the rights of the tenants are sufficiently protected. For instance, if the tenant presents a plausible defense the plaintiff can be non-suited if the defense is accepted. The tenant, however, cannot claim a legal right to take all sorts of frivolous, baseless or irrelevant pleas which alone the statute bars. We have already indicated that summary procedure relates only a particular ground on the basis of which the landlord can seek eviction and does not apply to other grounds on which the tenant can be evicted.

5. Considering the facts of this case in the light of the observations made by the Supreme Court in the cases referred to above I find that the court below has not committed any error in refusing to grant leave to the petitioner to contest the suit and has rightly ordered the petitioner's eviction.

6. Mr. Singh strongly pleaded that the land was leased out by the landlord to the petitioner and not the house. He submitted that this fact had not been considered by the Court below at all. I am unable to agree with him. From the petition filed by the petitioner in the court below which is Annexure-1 to this civil revision application it would appear that the building is a municipal holding in the name of the landlord. It is also apparent that rent of Rs. 300/- per month has been agreed to be paid for the premises in question and not for the land. In fact, counterfoil of the receipts had been filed on behalf of the plaintiff before the Court below showing that the rent for the suit premises had been paid by the petitioner to plaintiff No. 2. This itself indicates that it was the suit premises namely, the house which had been let out and not the land. The court below on a consideration of these facts came to the finding that there was relationship of landlord and tenant between the parties to the suit. It is, therefore, not correct to say that the Court did not consider all the pleas which had been raised by the defendant in his application for grant of leave. Such frivolous pleas raised by the defendant did not, in fact, make out any prima facie case and could not disentitle the landlord from evicting the tenant. In fact, there could not be a better case for the refusal of the leave to the petitioner. It is worthwhile mentioning that the plaintiff of this case--the landlord of the premises in question are themselves living in a rented house and doing their business in a rented shop whereas the petitioner owns his house and has also a shop of his own, but still wants to retain the plaintiffs' premises. In my opinion, therefore, the leave to contest the suit was rightly refused and suit has been rightly decreed by the court below. I do not find any merit in this civil revision application, which is, accordingly dismissed but without costs.