

(1998) 02 PAT CK 0084

Patna High Court

Case No: Civil Review No. 53 of 1995 (R)

Matadin Agarwal

APPELLANT

Vs

Keshar Mal Agarwal

RESPONDENT

Date of Decision: Feb. 20, 1998

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 14, 14(8)

Citation: (1998) 2 BLJR 1196 : (1998) 2 PLJR 404

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

This review application has been filed by the defendant-petitioner for review of the Judgment dated 27.4.1995 passed by this Court in Civil Revision No. 381 of 1992.

2. This case has a very chequered history. The plaintiff-Opposite party filed Title Suit No. 104 of 1953 for eviction of the defendant-petitioner from the suit premises which is shop room in the ground floor in the building belonging to the plaintiff. The suit was filed on the ground of bona fide personal necessity of the eldest son of Pawan Kumar Agarwal, who was allegedly sitting idle since after the marriage. The suit was contested by the defendant-petitioner on the ground inter alia that there is no bona fide personal need inasmuch as other shops in the same building are fallen vacant. The suit was dismissed in 1985. The plaintiff-Opposite party filed Title Appeal No. 33 of 1985 which was ultimately allowed and the matter came to this Court in Civil Revision No. 37 of 1987 (R) at the instance of defendant-petitioner. However, in view of conflicting interpretation of Section 14 of the Bihar Buildings (lease, Rent and Eviction) Control Act (for short "the aforesaid"), the plaintiff-Opposite party was allowed to file a Civil revision u/s 14(8) of the aforesaid Act against the judgment passed by the trial Court. Accordingly, Civil Revision No. 115 of 1987 was filed and

the same was allowed by this Court in terms of the judgment and order dated 6.2.1990 and the matter was remitted back to the trial Court for giving finding whether the vacant shop exists in the building premises. After the matter was remitted back to the trial Court, several interlocutory applications were filed for appointment of pleader Commissioner, for local inspection and for adducing evidence. Written statement was also amended and the parties led evidence and ultimately the suit was decreed by the trial Court holding that the opposite party requires the shop premises reasonably and in good faith. Against the aforesaid judgment and decree, the petitioner filed Civil Revision No. 381 of 1992 (R). The said Civil revision was ultimately disposed of by this Court in terms of the judgment and order dated 14.8.1992. This Court by the aforesaid judgment and order allowed the Civil revision and remitted the matter to the trial Court for a fresh consideration on the question of partial eviction. Against the said judgment and order, the petitioner moved the Hon'ble Supreme Court by filing SLP (Civil) No. 17644 of 1995. In that Special Leave Petition, the petitioner assailed the judgment and order under review passed in Civil Revision No. 381 of 1992 (R) on the ground that although the judgment and decree of the trial Court was challenged on merit, but this Court without deciding Civil revision on merit remitted the matter to the trial Court only for deciding the question of partial eviction. The Supreme Court disposed of the aforesaid SLP on 16th August, 1995 observing that instead of filing SLP petitioner should have filed review petition before the High Court. Hence this Civil Review Petition.

3. For better appreciation of the order passed by the Apex Court in Special Leave Petition, the relevant portion thereof is quoted hereunder:

From the impugned order it does not appear that the order of eviction was questioned by the appellant on merit. On behalf of the appellant, it was pointed out that the Civil Revision application, shall show that the order had been challenged even on merit. According to us, in that situation the appellant instead of filing a SLP before this Court, should have filed a review application before the High Court. The appellant may file a review application within four weeks from today which shall be disposed of in accordance with law and shall not be dismissed on the ground of limitation.

The appeal is accordingly disposed of. No costs.

4. As noticed above, the parties are in litigating terms since 1983. After several rounds of litigations, the suit was ultimately disposed of in terms of the judgment and decree dated 14.8.1992 by the Additional Munsif, Hazaribagh. The defendant-petitioner has challenged the aforesaid judgment and decree by filing Civil Revision No. 381 of 1992 (R) u/s 14(8) of the aforesaid Act. From perusal of the judgment of the trial Court it appears that both the plaintiff and defendant admitted before the trial Court regarding eviction of part of the shop premises. The trial Court took notice of the fact but held that though both the parties are ready to take half of

the shop premises, partial eviction would not be possible. Paragraph 34 of the trial Court judgment is worth to be quoted herein below:

Lastly, I have to see whether partial eviction is possible? No party has pleaded partial eviction. P.W. 5 Keshar Mull Agrawal has stated breadth of suit shop as 8 feet excluding the two pillars. Hence it shall not be practicable, in my opinion, to divide the suit shop in two parts and thus I find that partial eviction is not possible in this case though both parties have stated that they are ready to take half part only.

5. In the Civil Revision application filed u/s 14(8) of the aforesaid Act although the petitioner has assailed the finding arrived at by the trial Court on all the issues but when the Civil Revision application was heard Mr. Debi Prasad learned Senior Counsel appearing on behalf of the petitioner submitted before this Court that when the plaintiff admitted that he is ready to give half portion of the suit premises to the petitioner-tenant, then it was incumbent upon the trial Court to record a finding on the question of partial eviction. It does not appear from the judgment and order passed in Civil Revision No. 381 of 1992 that the petitioner made any submission on the issue of personal necessity rather the judgment and decree of the trial Court was challenged only on the ground that the trial Court committed error of law in not deciding the question of partial eviction when both parties agreed for part eviction of the suit premises. In the Review petition nowhere it is stated by the petitioner that although the finding on the question of personal necessity was canvassed before this Court and the eviction decree was challenged on merit, but this Court failed to decide the case on merit. On the contrary from paragraph 4 of the Review petition and paragraph 34 of the trial Court judgment it is evident that both parties were agreed to take half portion of the shop premises and only paragraph 34 of the trial Court judgment was assailed before this Court by which the trial Court refused to pass decree for partial eviction.

6. In that view of the matter, I am of the opinion that this Court rightly remitted the matter to the trial Court for giving a fresh consideration on the question of partial eviction. I do not find any error of law or of facts in the judgment and order under Review passed by this Court in Civil Revision No. 381 of 1992 (R). I am further of the view that there is no error apparent on the face of it and the judgment and order is not fit to be reviewed for any other reason.

7. For the reasons aforesaid, there is no merit in this Review petition which is, accordingly, dismissed.