

Md. Ehsam Rasul Vs Munni Devi

Court: PATNA HIGH COURT

Date of Decision: May 6, 2016

Acts Referred: Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 " Section 14(8)

Citation: (2016) 3 BBCJ 264 : (2016) 4 PLJR 20

Hon'ble Judges: Mr. V. Nath, J.

Bench: Single Bench

Advocate: Mr. K.N. Choubey, Senior Advocate, Mr. Ambuj Nayan Choubey, Mr. Ashok Kumar Garg and Mr. Akhilesh Kumar Pandey, Advocates, for the Petitioners; Mr. S.S. Dwivedi, Senior Advocate, Mr. Ranjan Kumar Dubey and Mr. Rai Saurav Nath, Advocates, for the Opposite

Final Decision: Dismissed

Judgement

V. Nath, J. (Oral)"Heard Mr. K.N. Choubey, learned senior counsel appearing on behalf of the petitioner and Mr. S.S. Dwivedi, learned senior

counsel appearing on behalf of the opposite party.

2. This revision application has been filed under Section 14(8) of the Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter referred to

in short the B.B.C. Act) against the judgment and decree dated 01.08.2013 passed by learned Munsif 1st, Gaya by which the learned court below

has decreed the suit for eviction. At the outset, it would be pertinent to mention that there is no dispute regarding the relationship of landlord and

tenant in between the plaintiff and the defendant. The suit premises as described in the plaint is a shop in the ground floor of the building of the

plaintiff. The plaintiff filed the suit for eviction of the defendant on the ground of personal necessity for establishing her son in business after

completion of his studies. It has been averred in the plaint that Vivek Kumar the son of the plaintiff is a student of the Bachelor of B.B.M. Course

in 3rd year in Gaya College, Gaya. In the written statement, defendant denied the need of the plaintiff for establishing her son in business on the

ground that generally after completion of the course of B.B.M., a student is desirous to complete the course of M.B.A and thereafter to make

attempt for ensuring a job in any company or bank, and there is no prospect in the town like Gaya for a person to start a business after the

completion of the B.B.M. course. It has also been pleaded that in the building where the suit shop is situate is a three storied building and the entire

first floor is vacant which is suitable for business. It has also been pleaded that the plaintiff has got two other houses in Tekari Road and Mohalla -

Sarai, Gaya and therefore her need is only a pretence and not bona fide.

3. After considering the pleadings of the parties and the evidence adduced on their behalf, the learned court below has returned the finding on the

issue of personal necessity in favour of the plaintiff and has passed the impugned judgment and decree granting the decree for eviction as prayed.

4. Mr. Choubey, learned senior counsel appearing on behalf of the petitioner has submitted that the learned court below has not properly

considered the evidence adduced on behalf of the parties and has wrongly come to the conclusion that the need of the plaintiff for the suit premises

as pleaded is bona fide and reasonable. The learned senior counsel has placed the deposition of the P.W.2 (plaintiff), P.W.3 (son of the plaintiff)

and also the deposition of P.W.4 who is a friend of the son of the plaintiff and has laid particular emphasis on the deposition of the friend of the son

of the plaintiff to elaborate his submissions. It has also been argued that the plaintiff has no unfettered right to claim eviction when the other

premises are admittedly lying vacant. The learned senior counsel has also contended that the learned court below has not taken into notice the

subsequent event that the son of the plaintiff, for establishing whom the suit has been filed, has been doing business in Delhi and therefore the need

has vanished. The learned senior counsel has relied upon the decision by the apex court in the case of Ansuyaben Kantilal Bhatt v. Rashiklal

Manilal Shah, (1997)5 SCC 457.

5. Mr. Dwivedi, learned senior counsel appearing on behalf of the opposite party has submitted that the learned court below has recorded the

findings on the basis of appreciation of evidence and therefore those findings cannot be said to be perverse or unreasonable in any manner and it is

also not the case of the petitioner that those findings have stemmed out of non-consideration of evidence or based upon surmises and conjectures.

It has been contended that even the defendant has not pleaded in his written statement that the son of the plaintiff has been doing business in Delhi

and reliance upon the deposition of P.W.4 is completely misplaced as the said P.W.4 Mahesh Kumar in paragraph - 6 has referred to the another

son of the plaintiff doing business in Delhi which fact becomes apparent after going through the deposition in entirety where there is no reference to

the son of the plaintiff namely Vivek Kumar whom the plaintiff intends to establish in business. It has also been submitted that none of the witnesses

of the defendants have stated the fact that the son of the plaintiff is doing business in Delhi and to the contrary they have vaguely stated that the son

of the plaintiff is in service but no cogent evidence in that regard has been adduced by the defendant. It has been emphatically submitted that the

revisional jurisdiction of this Court under Section 14(8) of the B.B.C. Act is limited to the extent to find as to whether the order for eviction is in

accordance with law and the re-appreciation of evidence for the purpose of evaluating a finding of fact is clearly alien to the limited jurisdiction

conferred upon the Court by the said provision.

6. After considering the submissions and the perusal of the impugned judgment, this Court finds that the learned court below after elaborate

scrutiny of the material evidence on record has arrived at the conclusion that the plaintiff's need for the suit premises is bona fide and reasonable.

The plea of the defendant-tenant that the other portion (first floor) of the building is suitable for business or the plaintiff has got other houses cannot

be sufficient to discard the personal necessity of the plaintiff for the suit premises as it is not for the tenant to dictate the manner in which the need of

the landlord can be fulfilled. The submission with regard to the deposition of P.W.4 is also misconceived as after reading the entire deposition, it

becomes demonstrably clear that the P.W.4 is not referring to Vivek Kumar the son of the plaintiff rather to the brother of Vivek Kumar (another

son of the plaintiff) who has been holding business in Delhi. The tenor of the deposition does not support the interpretation sought to be imputed on

behalf of the defendant/petitioner.

7. The constitution bench in the case of Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, 2014 (9) SCALE 657 has clearly

underlined the limitation of the revisional jurisdiction under Rent Control Acts holding that the revisional court in such a case cannot become "a

second court of first appeal".

8. This Court finds that the findings recorded by the learned court below are in accordance with law and therefore no interference is warranted in

revisional jurisdiction under Section 14(8) of the B.B.C. Act in the impugned judgment and order of eviction.

9. The revision application is, accordingly, dismissed.