

Krishna Murari Prasad

Vs

Mitar Singh

Civil Appeal No. 17001 of 1991

(J.S. Verma, S.C. Agarwal, R.C. Pathak JJ)

15.01.1992

JUDGMENT

1. Special leave granted. The respondent brought a suit for eviction of the appellant from the premises comprising of a shop measuring 24" x 22" with a Vernadah attached to it measuring 6" x 22" in which the appellant is carrying his business of running a restaurant. The respondent-landlord claimed eviction on the ground of his bona fide need which was stated to be the need of a son to start a TV shop. This need of the landlord was found proved by the Trial Court and the High Court has affirmed that order in a Civil Revision. Hence this appeal by Special Leave.

2. The proviso to clause (c) of sub-sec. (1) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 lays down that where the Court. thinks that the landlord's reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only and allowing the tenant to continue the occupation of the rest of the premises 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. Obviously, this situation is reached when the landlord has proved his requirement to make out a ground for obtaining eviction of the tenant. In the present case, landlord's requirement having been found proved, the Court had to consider the matter further according to this proviso and an order for eviction from the entire premises could be made only if a decree for partial eviction in the manner provided could not substantially satisfy the landlord's requirement. This aspect has been completely overlooked even by the High Court which on the contrary has stated as under:

"In a case where the suit premises consists of one shop room and the requirement of the plaintiff is to set up a business, a presumption arises that the requirement of the plaintiff will not be substantially met if the defendant is directed to vacate a portion of the suit premises."

3. It is obvious that the High Court proceeded on the basis that a presumption arises that where the premises comprises only of one room, the proviso to clause (c) of sub-sec. (1) of S. 11 of the Act is not attracted since its application is not practicable. Obviously, this assumption is fallacious since it pre-supposes indivisibility of a premises comprised of one room, irrespective of its dimensions and even when the room is big enough to permit division to satisfy the needs of the landlord as well as the tenant. It is a question of fact in each case whether such a partial eviction can be made or not. This enquiry has to be made by the court after reaching the conclusion that the landlord's requirement for occupation of the premises set up by him has been made out. In failing to do so, the

courts below overlooked this statutory requirement.

4. In the first instance, this has got to be done by the Trial Court and, therefore, it would be appropriate to remit the matter to' the Trial Court.

5. The appellant-tenant has already indicated his agreement in this behalf and it is on this basis that the respondent was required by this Court order dated 11-12-1991 to explore the possibility of a negotiated settlement, but on behalf of the respondent it has been stated that the respondent is not agreeable to the suggestion of dividing the premises into two equal halves to be shared between the parties. The matter must, therefore, go back to the Trial Court.

6. Consequently, this appeal is allowed, the impugned judgments of the Trial Court and the High Court ordering eviction from the entire premises are set aside to this extent. The Trial Court shall proceed to examine the matter afresh in the light of the requirement of proviso to clause (c) of sub-section (1) of S. 11 of the Act treating the landlord's need to be proved. It is clarified that the enquiry hereafter by the courts below is limited to this extent, that is, whether the premises can be divided and eviction of the tenant from a part of the premises can substantially satisfy the landlord's need. The parties would be entitled to adduce evidence in the Trial Court for this purpose and to this extent. The Trial Court shall proceed to dispose of the matter as expeditiously as possible. Appeal allowed.

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