

**Most. Rukmini Devi and ors. Vs. Ashok Kumar Keshari and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/124578](http://sooperkanoon.com/124578)

**Court :** Patna

**Decided On :** Jul-19-2000

**Judge :** Gurusharan Sharma, J.

**Appeal No. :** A.F.A.D. No. 265 of 1995

**Appellant :** Most. Rukmini Devi and ors.

**Respondent :** Ashok Kumar Keshari and ors.

**Advocate for Pet/Ap. :** Mr. Ashok Kumar Keshri

**Prior history :** Gurusharan Sharma, J. 1. Defendants are appellants. Title (Eviction) Suit No. 106 of 1983 was filed by plaintiffs for eviction of defendants from the suit shop, detailed in Schedule to the plaint, both on the grounds of personal necessity and default in payment of rent. Further relief for recovery of arrears of rent was also sought. 2. According to plaintiffs, plaintiff No. 2 was working as private servant, plaintiffs 3 and 5 were selling betal in rented wooden gumti, and plaintiff No. 4 was d

**Judgement :**

**Gurusharan Sharma, J.**

1. Defendants are appellants. Title (Eviction) Suit No. 106 of 1983 was filed by plaintiffs for eviction of defendants from the suit shop, detailed in Schedule to the

plaint, both on the grounds of personal necessity and default in payment of rent. Further relief for recovery of arrears of rent was also sought.

2. According to plaintiffs, plaintiff No. 2 was working as private servant, plaintiffs 3 and 5 were selling betel in rented wooden gumti, and plaintiff No. 4 was doing small contract works. The suit shop was situated in market and was most suitable place for doing business of grocery and other articles. Plaintiffs' residential house was also too small to accommodate the growing number of family members, so the suit shop was required by plaintiffs for their personal use and occupation.

3. Plaintiffs' further case was that defendants defaulted in payment of rent@ Rs. 14/- per month from October 1978 onward and thereby were also liable to be evicted from the suit shop on the ground of default in payment of rent. However, since arrears of rent beyond three years of the date of filing the suit was barred by limitation, only a sum of Rs. 504/- was claimed for the months December 1980 to November 1983.

4. Defendants contested the suit, inter alia, on the ground that alleged requirement of the suit shop for running business and for residential purpose was not true and correct. Defendants' ancestor was inducted as tenant in the suit shop in the year 1945. In fact, rent was being remitted by the postal money orders regularly every month, as the landlord had been refusing to accept the same on being tendered hand to hand.

5. According to them, rent for October 1978 was remitted on 3.11.1978, which was refused on 7.11.1978. Such remittance had been made repeatedly and regularly, some times even for arrears refused earlier, but the plaintiffs have been refusing to accept the same.

6. The suit premises was near the temple of Lord Shiva in Deoghar, but it was far away from busy market commonly known as Barabazar area. Plaintiffs have been running their business establishments and shops in busy market area. They have got enough space in outer portion of their residential house to start business, if they really intended to do such business. Plaintiff No. 2 was in service of private concern. Plaintiffs 3 and 5 were also engaged in business. Plaintiff No. 4 was a

Government contractor. In their residential house, there was sufficient accommodation for the family members. None of those plaintiffs were sitting idle.

7. Trial Court decreed the suit holding that defendants made default in payment of rent for the months December 1978, May 1980, November 1980, September 1982, November 1982, July 1983 and December 1983 to May 1984 i.e. for more than two months and as such they were liable to be evicted from the suit premises. It was also held that all the five brothers were major and capable of doing independent business. Plaintiffs 445 were doing business in two rented shop rooms and the remaining plaintiffs were virtually sitting idle in absence of suitable space and the suit shop was most suitable for the purpose.

8. Considering the area of the suit shop, on the question of partial eviction, trial Court held, on the basis of evidence on record, that plaintiffs' requirement could not be fulfilled on partial eviction and they required the entire premises reasonably and in good faith. A decree for arrears of rent of Rs. 504/- was granted. It was also held that plaintiffs were entitled to get future rent of the suit premises till recovery of possession from the defendants.

9. Defendants preferred Title Appeal No. 39 of 1994, which was disposed of by the impugned judgment and decree dated 5.9.1995. Trial Court's finding in respect of plaintiffs' personal necessity of the suit premises was reversed and it was held that plaintiffs 2 to 6 were engaged in business and none of them was sitting idle. So there was no genuine and valid necessity for the suit shop. It was found that defendants were regularly tendering rent and in fact, Ex. E/2 together with Ext. C/2 indicated that rent for December 1978 was tendered. Ext. E/19 together with Exts. C/22 and C/23 indicated that rent for the month of May 1980 was tendered. Exts. E/25 and C/30 indicated that rent for the month of November, 1980 was tendered. Ext. C/51 indicated that rent was tendered for the month of September 1982. Exts. E/48 and C/52 indicated that rent for the month November 1982 was tendered. Exts. E/56 and C/54 related to tender of rent for July 1983. The aforesaid postal receipt were marked Ext. E series. However, it was held that defendants failed to prove tender of rent for the months December 1983 to May 1984, which itself was default for more than two months and they were liable to be evicted for non-

payment of rent for the aforesaid period.

10. A cross-objection, challenging findings of the Court of appeal below regarding plaintiffs' failure to establish default in payment of rent prior to filing of the suit as well as negating their personal requirement of the suit shop was filed by plaintiffs-respondents, which was also admitted to be heard in this appeal.

11. Mr. Tarakant Jha, Senior Counsel for the appellant, submitted that neither there was any pleading for non-payment of rent from December 1983 onward, nor any such issue was framed in the suit, nor the plaint was subsequently amended for that purpose nor the parties adduced evidence in that regard. For that purpose unless, the plaint was amended, additional written statement was filed and thereafter, evidence was adduced by parties there was no occasion for the Courts below to hold that defendants defaulted in payment of rent for the period from December 1983 to May 1984. Only at the stage of argument in the trial Court, this plea was taken and defendants were not given any opportunity to adduce evidence in this regard. In the aforesaid circumstance, eviction decree against defendants for default in payment of rent for the period December 1983 to May 1984 i.e. during pendency of the suit was illegal and fit to be set aside and plaintiffs' suit was fit to be dismissed.

12. Mr. Ashok Kumar Keshri, Counsel for plaintiffs-respondents, on the other hand, submitted that the Court of appeal below committed an error in holding that defendants were not defaulter in payment of rent during the period from December 1980 to November 1983 and that the plaintiffs failed to prove their reasonable and bona fide requirement for the suit shop. The Court of appeal below was not justified in negating the plaintiffs' case in respect of personal requirement simply on the basis that none of the plaintiffs was sitting idle. The learned District Judge failed to consider that in spite of having a most suitable shop for running their own business, the plaintiffs were compelled to do business in rented premises. In such circumstances, the trial Court's finding ought to have been affirmed and the title appeal should have been dismissed.

13. Mr. Jha placed reliance on a decision of this Court in *Sheolal v. Anantdeo Mishra* 1986 BLJ 596, for the proposition that a Rule of fair play required

opportunity to the parties to adduce evidence and prove their case in accordance with law even on the cost of detaining the Court from proceeding on the ex parte allegations of the other party made in course of hearing of the suit.

14. It is not in dispute that the question in respect of non-payment of rent during pendency of the suit, i.e., during period December 1983 to May, 1984 was raised at the stage of argument in the suit and no opportunity was given to the defendants to adduce evidence in their defence. The defendants' claim is that likewise earlier period up to November 1983 they continued remitting rent by postal money orders for the afore said period (December 1983 to May 1984) also.

15. It appears that during pendency of the appeal, certain papers were filed in respect of remittance of rent for the period December 1983 to May 1984 by postal money orders, which were refused by the landlord, but no petition for admitting those papers as additional evidence in the appeal was filed. In course of hearing of the present appeal, a petition for additional evidence after serving copy thereof on the other side has been filed in this Court and it has been pointed out that those papers are already on the record of the Title Appeal.

16. It is well settled that the Court can and in many cases must take cognizance of events and developments subsequent to the institution of the proceeding. But in doing so, the Court is obliged to see that Rules of fairness to both sides are scrupulously obeyed.

17. It is also well settled on recognized principles that in order to shorten the litigation, to preserve the rights of both, parties and to sub-serve the ends of justice, the Court can and should allow amendment in pleadings in respect of subsequent events and developments and then take into consideration those subsequent developments and adjudicate rights of the parties and grant relief available to them.

18. In the instant case, the plaintiffs could have legally asked the trial Court to allow amendment of the plaint and permit them to take additional ground for defendants' eviction from the suit shop on the ground of non-payment of rent for the period December 1983 to May 1984 also. However, it was not done and all on

a sudden in course of argument allegation of non-payment of rent for the aforesaid period was made. No doubt, default in payment of rent during pendency of eviction suit may be a cause for action and the landlord may use that cause to evict the defendants-tenants, but the defendants as tenants have to be granted the right to meet the allegation that they have fallen in arrears and thus became defaulter. Opportunity for that can be provided, if there is any application to amend the plaint, whereupon the landlord can ask for a decree on the basis of new cause. An opportunity to the defendants-tenants to come forward with their return and lead evidence must be given for the new cause and only then the Court can proceed to find whether any cause had been available to the landlord or not.

19. Since, in the instant case, in my opinion, the factum of default can legitimately be contested by the tenants on the ground that he continued remitting rent by postal money orders for the period in question also, it will not be fair to allow the landlord to raise such question. I, therefore, set aside the findings recorded by both the Courts below that defendants were defaulters in payment of rent for the period December 1983 to May 1984.

20. The first point raised in the cross-objection relates to finding of the Court of appeal below that there was no default in payment of rent till November 1983. I find that this finding of fact was recorded on the basis of the money order coupons, acknowledgment and postal receipts (Exts. C series, D series and E series), which established that the defendants regularly remitted for the aforesaid period to the plaintiffs by postal money orders and those were refused. Hence, there is no reason for this Court to interfere with this finding.

21. The second point raised in the cross-objection relates to finding of the Court of appeal below that plaintiffs' failed to prove their bona fide and reasonable requirement of the suit shop. In this regard, it was established on the basis of evidence on record that the suit shop was located in market near Lord Shiva temple and was most suitable sight for the plaintiffs to do business therein. It was also established that some of the plaintiffs were doing business in rented premises where there was always danger for being evicted under the Bihar Buildings (Lease, Rent & Eviction) Control Act. May be that small area of the suit shop was

not sufficient to accommodate all the plaintiffs intending to do business, but at least some of them can utilise it for their purpose.

22. Mr. Jha, in course of argument, submitted that it has come in evidence that portions of own house of the plaintiffs has become available to them for doing business, if they so intended and there is nothing on record to show that the said space was not suitable for running business by them. Here, I find that in case some space in the residential house of the plaintiffs had become available to them during pendency of the suit, this fact was also required to be brought into pleadings by way of amendment in written statement so that necessary evidence might have been adduced in this regard, but it was not done in the present case. The plaintiffs were required to answer whether the said space in their residential house was suitable for their intended business only if there was such allegation made in the written statement of the defendants.

23. In my opinion, in absence of any pleading in respect of alleged subsequent, development that two shops in the residential house of the plaintiffs had fallen vacant during pendency of the suit, the Court of appeal below erred in holding that plaintiffs failed to prove that those vacant shops were not suitable for them.

24. It is not in dispute that inspite of having their own shop suitable for the purpose, some of the plaintiffs were compelled to do business in rented premises, as it was occupied by tenant. Hence, in the facts and circumstances of the case and on the basis of materials on record, in my view, the trial Court was right in holding that plaintiffs proved their reasonable and bona fide requirement for the suit shop and partial eviction of the defendants therefrom could not have fulfilled their requirement.

25. I, therefore, set aside the finding of the Court of appeal below in respect of personal necessity of the plaintiffs and confirmed the finding of the trial Court in this regard. Consequently, the suit is decreed under Section 11(1)(c) of the said Act.

26. This appeal is disposed of accordingly. However, there shall be no order as to costs.

