

Krishna Chandra Mandal Vs. Smt. Mandavi Devi and anr.

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Court : Patna

Decided On : Jul-18-1995

Judge : B.L. Yadav, J.

Acts : [Constitution of India](#) - Article 141; Bihar Buildings (Lease, Rent and Eviction) Control Act, 1983 - Sections 11

Appeal No. : Appeal From Appellate Decree No. 381 of 1990

Appellant : Krishna Chandra Mandal

Respondent : Smt. Mandavi Devi and anr.

Advocate for Def. : Anish Chandra Sinha, Adv.

Advocate for Pet/Ap. : S.C. Bhosh and Rajni Kant Jha, Adv.

Disposition : Appeal dismissed

Judgement :

B.L. Yadav, J.

1. This is a defendant's tenant's Second Appeal in a suit for eviction, as the building is reasonably and in good faith required by the landlord, and for arrears of rent. The suit under Section 11 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (compendious 'the Act') was filed by the plaintiffs respondents

with the averment that the plaintiffs required the accommodation for personal necessity. In fact the accommodation in dispute was let out to the defendant-appellant on a monthly rental of Rs. 125 / - with the understanding that the rent would be paid at the end of every month and in case of non-payment of rent for two consecutive months, the defendant would be treated to be defaulter and will be liable to pay interest at the rate of Re. 1/- per cent per month on the arrears of the amount of rent. The rent was paid only till 1-2-1985 and thereafter the defendant became defaulter. It was said in paragraph 9 of the plaint that the plaintiffs required the building in question reasonably and in good faith for bona fide requirement for their own occupation, as their relations are unemployed and they want to do some business in the suit accommodation.

2. The suit was contested by the defendant-appellant denying the allegations made in the plaint and showing that there was no arrears of rent, but as regards the averment made in paragraph 9 of the plaint indicating bona fide requirement, there was no reply in the written statement except the general denial.

3. Both parties led evidence and after appreciating the same the trial Court decreed the suit for ejectment primarily on the ground of bona fide requirement in good faith. The defendant-appellant preferred First Appeal and the same was dismissed. This is how the defendant-appellant has approached this Court in Second Appeal.

4. The learned counsel for the appellant contended that the purpose of the building for use of the landlord was not indicated, nor it was specified as to how the building was required by the plaintiffs reasonably and in good faith. Just a bald statement was made that their relations are unemployed and they want to start business in the accommodation. But this was not sufficient. The Courts below have not considered the effect of the proviso to Section 11 of the Act, to the effect as to whether partial eviction can satisfy the bona fide requirement of the landlord. The substantial question of law are involved in this Second (sic) Reliance was placed in J.C. Roy v. Halwant Sahay (sic) B.L.J. 463) Ramesh Chandra Agrawal v. Bhushan Ram (sic) LJR 1188) Bidi Zubaida Khatoon v. Raj Kumar Khaitan (1994 (2) Pat LJR 466) and Nasirul Haque v. Jitendra Nath Dey (AIR 1984 SC 1799).

5. Learned counsel for the respondents, on the other hand, refuted the submission made by the learned counsel for the appellant and urged that whether the building in question reasonably and in good faith was required by the land-lord or not is a question of fact. Both the Courts below have consistently held after considering the evidence on record that the building was required by the land-lord reasonably and in good faith for their own accommodation. But the details of reasonable requirement or personal necessity were not indicated in the plaint or in the written statement. There was no evidence led by the defendant-appellant. It was not the case of appellant nor there was any evidence on record to show that the requirement of the plaintiffs-respondent can be satisfied by partial eviction. No issue was framed in the trial Court nor that point was pressed in the First Appellate Court. In the Second Appeal

before this Court this point was argued in the Rejoinder Arguments, after conclusion of the arguments of the respondents. Reliance was placed on *Brij Sundar Kapoor v. 1st Additional District Judge* (AIR 1989 SC 572) and *Star .* (1988 Pat LJR 391).

6. Having given my thoughtful consideration to the submissions of both sides, there are two points for determination. First is whether the requirement of the landlord was bona fide and whether the Courts below have considered the effect of the Proviso to Section 11 of the Act.

7. As regards the first point about bona fide requirement, no details of the bona fide requirement have been given in the plaint. In paragraph 9 of the plaint just a bald statement about bona fide requirement for starting business by the relations was made. That was denied in the written statement. The question is can that be taken to be sufficient so as to hold that the need of the landlord was genuine. The learned counsel for the appellant contended that in the absence of details of bona fide requirement, just a bald statement was not sufficient to decree the suit. Reliance was placed by the learned counsel for the appellant on *Bibi Zudbaida Khatoon v. Raj Kumar Khaitan* (1994 (2) Pat LJR 466) (*supra*) where it was observed by this Court that the details of bona fide requirement of necessity must be indicated in the plaint and there must be positive evidence to support it. Unless

this was specified, the need cannot be held to be genuine. To the same effect there are other cases relied upon by the learned counsel for the appellant. But this view of this Court has been overruled in *Raj Kumar Khaitan v. Bibi Zubaida Khatoon* (AIR 1995 SC 576), where their Lordships of the Apex Court have held under paragraphs 3 and 4 of the judgment as follows :--

'3. It is clear from the averments made in the above quoted paragraphs that the plaintiffs averred that there was no other means of livelihood with them and as such they wanted to set up their own business in the premises in dispute. The High Court, however, came to the conclusion that apart from above quoted pleadings it was necessary to plead the matter of the business which the appellants-plaintiffs

wanted to start in the premises, We are of the view that the High Court fell into patent error. It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.

4. We, therefore, set aside the impugned judgment of the High Court and restore that of the trial Court.'

8. In the instant case under paragraph 9 of the plaint it was precisely stated that as the relations of the plaintiffs are unemployed, they wanted to set up business in the accommodation in dispute. It was, however, denied in the written statement. But the Courts below have held that the details of the averment or nature of requirement was sufficient and cause for bona fide requirement was sufficient. In the aforesaid observations of the Apex Court it was evident that the nature and details of business was not required to be stated. *Bidi Zubaida Khatoon* (1994 (2) Pat LJR 466) (supra) *J. C. Roy* (supra) and *Ramesh Chandra Agrawal* (sic) (supra) were cases decided by our High Court and relied upon by the learned counsel for the appellant. In such situation whether the view taken by this Court must prevail or that of the Apex Court.

9. Apart from the provisions of Article 141 of the Constitution the dictum, in Assistant Collector, Central Excise v. Dunlop India Ltd. (AIR 1985 SC 330 : (1985) 1 SCC 260) may be noticed :--

'In the hierarchical system of Courts 'which exists in our country', it is necessary for each lower tier 'including the High Court' to accept loyally the decisions of the higher tiers'. It is inevitable in hierarchical system of Courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted. The better wisdom of the Court below must yield to the higher wisdom of the Court above.....'

10. Apart from modern jurisprudence

and principles of interpretation of the statutes including doctrine of precedent, our Indian Jurisprudence has more effective, intelligent and exhaustive rules of interpretation of statutes and rules of precedents. Thousand years ago, a great Sanskrit poet Kalidas wrote [^]okyfodkfXufe=e~** and propounded the principles interpretation with reference to precedent in law and also old and new system of literary exposition.

[^]iqjk.kfeR;so u lk/kq loZ] u pkfi fof/k&dkO;a

uofeR;o|e~ A lUr% ijh{kUrn~ HktUrs] ew% ij izR;;us; cqf)% AA**The above shlok means that in the matters of literature and law both what has been authoritatively said earlier is not always correct. In the matters of precedents if some principles have been stated earlier that need not be accepted as correct and final, the new and latest precedent or case law has to be considered by persons of eminence or the Court called upon to interpret it, and it is after considerable amount of scrutiny and comparing the same that correct interpretation has to be ascertained. Those who are in the habit of appreciating or relying upon old principles only, are not wise persons, rather they are foolish.

11. In this view of the matter Article 141 of the Constitution postulates that the law declared by the Supreme Court shall be binding on all Courts and Tribunals in the country. In view of the hierarchy of Courts the law declared and the view expressed by the Supreme Court has to be accepted as final and binding. In view of the Sanskrit Shlok, the old view expressed by this Court has to be compared with latest view and after scrutiny the view of the Supreme Court must prevail. Raj Kumar Khaitan's case AIR 1995 SC 576 (supra) is the latest declaration of law and the view expressed and thus the earlier view of this Court in the same case and other cases have been overruled. In my opinion, therefore, the details of business or nature of business need not have been pleaded or stated by the landlord. The submissions of the

learned counsel for the appellant need not be accepted.

12. Reverting to the aspect whether partial eviction would satisfy the requirements of the landlord as is evident by the Proviso added to Section 11 of the Act. The main function of the Proviso is to carve out an exception to main enactment. It cannot normally be so interpreted as to set at naught the main enactment. But the Proviso has to be harmoniously interpreted. It provides that where the Court thinks that the reasonable requirement of the landlord can be substantially satisfied by Partial eviction of the tenant in that event the Court shall pass an order to that effect. It was however, for the landlord to have indicated his choice for that purpose that his requirement can be satisfied by partial eviction of the tenant. But it was not indicated, nor any evidence was led nor the tenant was confronted with the proposal. The moment it was emphasised in rejoinder arguments, by the learned counsel for the tenant-appellant, I asked the learned counsel for landlord, but he stated that partial eviction would not satisfy his requirement.

13. I have profound regards to the dictum of the Apex Court in Nasirul Haque v. Jitendra Nath Dey (AIR 1984 SC 1799) (supra), but in that case the matter was remanded to the trial Court to consider the specific purpose of the proviso and as to whether partial eviction can satisfy the requirement of the landlord. In the instant case this plea was never taken and here in this Second Appeal the learned counsel for the respondents-landlords replied that partial eviction cannot satisfy

the requirements of the landlord. I, accordingly, do not find any substance in the submissions of the learned counsel for the appellant.

14. In view of the discussions made above, I am of the view that this Second Appeal is devoid of merit and the impugned judgment and decree do not require interference. Consequently this appeal fails and the same is dismissed, but without any order as to costs.

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