

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4407 OF 2002

HARUN RASHID

Appellant (s)

VERSUS

NATHUN MAHTO & ORS.

Respondent(s)

(With appln(s) for early hearing)

Date: 14/07/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr S.B. Sanyal, Sr. Adv.
Mr. Ranjan Mukherjee, Adv.
Mr. S. Bhowmick, Adv.
Mr. S.C. Ghosh, Adv.

For Respondent(s)

Mr. P.S. Mishra, Sr. Adv.
Mr. D.K. Pandey, Adv.
Mr. Upendra Mishra, Adv.
Mr. Tathagat Harsh Vardhan, Adv.
Mr. S. Chandra Shekhar, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed
order.

(Neetu Khajuria)
Sr.P.A.

(R.K. Sharma)
Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4407 OF 2002

HARUN RASHID

APPELLANT

VERSUS

NATHUN MAHTO & ORS.

RESPONDENTS

O R D E R

This is a tenant's appeal against the decree of
eviction.

The suit premises is a shop in the town of Bihar Sharif, where the appellant was carrying on his business in hardware. The landlord-respondent No.1 sought his eviction taking the plea that his two sons (Respondent Nos. 2 and 3) after completing their education are sitting unemployed. They wanted to set up their own business and the suit premises was quite suitable for starting their business in iron rods, angles, cement etc. The Trial Court on the basis of the evidence adduced before it found and held that the plea of personal requirement taken by the landlord was genuine, bona fide and honest. Yet, applying the proviso to Clause (c)(2) of Section 11(1) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982, (in short 'The Bihar Act'), the Court held that the needs of the landlord would be served by partial

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eviction of the appellant. He directed in detail how the suit premises was to be partitioned and half portion of it would continue to be retained in the appellant's tenancy on proportionately reduced rent. Against the judgment and decree passed by the Trial Court, the landlord preferred an appeal and the appellant joined him with a cross objection. Before the Appellate Court, not only the landlord, but the appellant equally assailed the decree of partial eviction. In paragraph 9 of the cross objection, the appellant pleaded as follows :-

" For that the learned lower court ought to have held that the defendant-respondent has his business of Hardware and he located in holding in question is in the northern side the length from east to west is greater than the southern portion and long pipes etc., he has kept but in the southern side pipes cannot and could not be kept, and so the partial eviction will frustrated the entire business of the defendant-respondent and as a matter of fact the entire business will be flotted, so a decree for partial eviction is not helpful to any parties."

The Appellate Court in its judgment has also noted that the respondent took a categorical stand that the partial eviction would not satisfy his needs. In those circumstances, the Appellate Court found and held that the decree of partial eviction made by the Trial Court was unsustainable. However, the plea of personal need taken by the landlord having been established, the Appellate Court set aside the decree of partial eviction passed by the Trial Court and directed for the complete and full eviction of the appellant from the suit premises.

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The appellant's second appeal before the High Court was dismissed in limine, as High Court did not find any substantial question of law involved in the matter.

Mr. S.B. Sanjal, learned senior counsel started his arguments before us by referring to proviso to Clause (c) (2) of Section 11(1) of the Bihar Act and submitted that the decree of eviction was unsustainable as the matter was not considered from the point of view of partial eviction.

It is seen above that the Trial Court had given the appellant a decree of partial eviction which he spurned before the Appellate Court. Having once not accepted the decree of partial eviction made in his favour, he cannot be allowed to turn around and now seek a consideration of partial eviction. We cannot allow the appellant even to raise this plea.

Mr. Sanjal, next contended that in course of the proceedings before the Trial Court the respondent's son had made an offer that in case the appellant vacates the suit premises, he would give him on rent an adjoining/adjacent shop.

Mr. Sanjal further stated that a shop by the side of the suit premises was vacant even now and that

could be given to him in lieu of the suit shop. We
are not impressed by this submission at all. In the
first place, the offer was not in as simple terms as it
is sought to be presented before us. Secondly and
more importantly, offer was made in the early part of

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1990s and at that time the appellant did not accept and
vacate the suit premises voluntarily and having dragged
the other side to a long litigation and now faced with
the eviction proceedings. He cannot accept the offer
made to him sixteen years ago.

Mr. Sanyal lastly submitted that the appellant
had paid to the respondents Rs.25,000/- (Rupees twenty
five thousand only), which was in breach of mandatory
provision of the Section 3 of the Bihar Act and unless
money was paid to him, no decree of eviction be made
against him. This plea also has no legs to stand
inasmuch as the Appellate Court found and held that the
payment of money was not part of any tenancy
arrangement.

We find no merit in the appeal. It is,
accordingly, dismissed with costs quantified at
Rs.5,000/- (Rupees five thousand only)

.....J.
(AFTAB ALAM)

.....J.
(R.M. LODHA)

New Delhi,
July 14, 2010