

CIVIL APPEAL NO... OF 2002@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCC
(Arising out of S.L.P.(C) No. 3430 of 2001)

Dwarika Lal & Anr.

Appellant (s)

versus

Smt. Kalindi Devi

Respondent (s)

with C.A.No...../2002 @ SLP(C)No. 12827/2001@@
AA

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

Heard learned counsel for the parties.
Leave granted.

The appellants in CA..../2002 @ SLP(C)No. 3430/2001 are the landlords of the premises in disputes whereas the appellant in CA..../2002 @ SLP(C)No. 12827/2001 is the tenant of the premises. The landlord filed a suit for eviction of the tenant from the premises in dispute which consists of Schedule A, B and C property for their bona fide need of setting up of a jewellery business. The tenant filed a written statement wherein he denied the need of the landlord. However, the trial Court decreed the Suit and directed for eviction of the tenant. The tenant, thereafter, preferred a revision petition before the High Court of Jharkhand. After hearing the matter, the High Court found that under proviso to Section 11(1)(c) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 it was mandatory on the part of the trial Court to have considered the question of partial ejection of the tenant from the premises in dispute after having found that the need of the landlord is bona fide. However, the High Court took up that exercise upon itself and in that process directed that Schedule A property will continue in the tenancy of the tenant and Schedule B and C property shall be released in favour of the landlord. Consequently, the revision petition was decided in the aforesaid terms. It is against the said judgment, both the landlord and tenant have filed separate appeals in this Court.

We are in total agreement with the argument raised on behalf of the landlord that the question so far as the partial ejection is concerned, the same ought to have been considered by the trial Court itself and not by the revisional Court. In the present case, the trial court after having found the need of the landlord bona fide and genuine, it was further incumbent upon it to have considered the question as regards the partial ejection of the tenant from the premises in dispute. In that view of the matter, both the appeals deserve to be allowed.

For the aforesaid reasons, the order and judgment under challenge is set aside. The matter is sent back to the trial court to consider the case under proviso to Section 11(1)(c) of the Act. The appeals are allowed. There shall be no order as to costs.

.SP1

.....J
(V.N. Khare)

New Delhi,
February 01, 2002.

.....J
(Ashok Bhan)