CASE NO.:
Appeal (civil) 157 of 1999

PETITIONER:
CHANDRIKA PRASAD (D) THR. LRS. & ANR.

Vs.

RESPONDENT:
UMESH KUMAR VERMA & ORS.

DATE OF JUDGMENT: 07/11/2001

BENCH:
R.P. Sethi & S.N. Phukan

JUDGMENT:

Phukan, J.

This appeal by special leave is from the order of the learned Single Judge of the High Court of Judicature at Patna in Civil Revision No.231 of 1997. The High Court allowed the application filed under Section 14(8) of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short the Act) by setting aside the order of eviction dated 10.01.1997 passed by the Munsif 1st, Begusarai in Title (Eviction) Suit No.15 of 1995.

The appellants-landlords filed a suit for eviction of the respondents-tenants from the suit premises under Section 11(1)(c) of the Act i.e. on the ground that the suit premises was reasonably and in good faith required by the landlords for use and occupation.

The appellant No.1, since deceased was the father of the appellant No.2. The eviction suit was filed by both the above two appellants and during the pendency of the civil revision before the High Court, the appellant No.1 died and the name of his wife was substituted. The appellant No.2 has two daughters and the eldest daughter was married to Dr. Sanjeev Kumar Singh and has no son. The ground for eviction was that the suit premises was required for starting a clinic for the said son-in-law of the appellant No.2, who has been living with his father-in-law since his marriage in 1992. It was alleged that the son-in-law was unemployed though he was a medical graduate and registered as a Medical Practitioner. The suit was filed against three tenants out of which two tenants agreed to vacate the suit premises and only the defendant No.3, Umesh Chandra Verma, who is respondent No.1 in this appeal, contested the suit after obtaining leave to defend. The contesting respondent No.1 pleaded that son-in-law of the appellant No.2 being a post graduate student in Surgery was residing in the hostel and further contended that the said son-in-law has his own house wherein he could set up the proposed clinic. It was denied that the landlord was in bonafide need of the suit premises. Further case of the respondent No.1 was that since his business flourished very much the appellant asked for enhanced rent to which he refused and, therefore, he was asked to vacate the suit premises.

The Trial Court after scrutinising the evidence on record

held that the suit premises was genuinely and bonafide required by the landlord and accordingly ordered eviction. The High Court inter alia held that it was only a desire of the appellant No.2 to open a clinic in the ground floor of the suit premises for his son-in-law and, therefore, held that the landlords did not require the suit premises reasonably and in good faith for occupation of the son-in-law. The High Court also came to the finding that as the premises owned by father of the son-in-law was lying vacant and in the absence of any positive evidence that the said building was not suitable for a clinic, the order of eviction was not sustainable.

The main contention raised on behalf of the appellant is that by exercising powers under proviso to sub-section (8) of Section 14 of the Act, the High Court by the impugned order reversed the finding of the Trial Court by re-appreciating the evidence on record which is not permissible under the law.

Section 14 is a special procedure for disposal of cases for eviction on ground of bonafide requirement. This summary procedure for recovery of possession of any premises is available on the ground specified in clause (c) or clause (e) of sub-section (1) of Section 11 of the Act. We are concerned in the case in hand with clause (c) which is a ground for passing decree for eviction where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit building is held by the landlord. Sub-section (8) of Section 14 is quoted below:

14(8). No appeal or second appeal shall lie against an order for the recovery of possession of any premises made in accordance with procedure specified in this section:

Provided that on an application being made within sixty days of the date of the order of eviction the High Court may for the purpose of satisfying itself that an order under the section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

In a revision petition filed under proviso to above sub-section (8) of Section 14 of the Act, the High Court has to satisfy itself as to whether the order of eviction passed under Section 14 of the Act was in accordance with law. The scope of the revisional jurisdiction depends on the language of the statute. Though, revisional jurisdiction is only a part of the appellate jurisdiction, it cannot be equated with that of a full-fledged appeal.

An identical provision contain in proviso to Section 25B of the Delhi Rent Control Act, 1958 came up for consideration of this Court in Shiv Sarup Gupta versus Dr. Mahesh Chand Gupta [1999 (6) SCC 222]. The Court held that the exercise of revisional jurisdiction by the High Court under this proviso is for the purpose of satisfying if an order made by the Controller is according to law. The Court further held that the revisional jurisdiction exercisable under the said proviso is not so limited as is under Section 115 CPC nor so wide as that of an appellate court and the High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. The court further held that the High Court, however, is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law and for that limited purpose may enter into reappraisal of evidence for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have

reached on the material available.

In the light of above ratio let us now examine whether by the impugned judgment the High Court has exceeded its jurisdiction by setting aside the order of Trial Court.

The High Court has recorded a finding that there is no pleading that the son-in-law after completing studies is sitting idle or unemployed and has no place other than the suit premises where he could start his clinic. This finding is contrary to the record inasmuch as in the application for eviction it was specifically stated that the said son-in-law, who was a registered medical practitioner was unemployed and the suit premises was required for starting a clinic for him. The Trial Court has recorded a categorical finding that the son-in-law who has obtained MBBS degree is a registered medical practitioner and has started his medical practice two days in a week in one room of the part of the suit premises, which was vacated by one of the tenants. This finding of the Trial Court was based on evidence on record but was not noticed by the High Court. Regarding the house belonging to the father of the son-in-law of the appellant, the High Court recorded a finding that the said house was lying vacant and no positive evidence was adduced to show that it was not suitable for medical practice. Relying on the evidence of the son-in-law, PW-2, the Trial Court has recorded a clear finding that the said house was away from the main road and was not suitable. It has come out from the evidence of PW-2 and one of the witnesses for the respondent-tenant that the suit premises being situated by the side of main road where there are many clinics of other doctors, is better suitable place in comparison with the house of the father of the son-in-law for starting a clinic. The High Court also did not take into consideration this finding of the Trial Court, which is based on evidence on record. The finding of the High Court that it is a mere desire of the appellant to open a clinic in the suit premises is not acceptable as the son-in-law has already started practice in one room of the suit premises.

We are, therefore, of the opinion that the High Court not only overlooked the findings of the Trial Court which were based on evidence but treated the revision petition as an appeal and did not test the order of the Trial Court on the touchstone of whether it is according to law. The finding of the High Court is erroneous and accordingly we hold that the impugned judgment is not sustainable in law.

We, therefore, find merit in the present appeal and accordingly allow it by setting aside the impugned judgment of the High Court and restoring the judgment of the Trial Court. Cost on the parties. However, as the respondent-tenant is residing in the suit premises since June, 1992, to meet the ends of justice and make alternative arrangement, we grant him time to vacate the suit premises by 31st December, 2002 subject to filing of usual undertaking within four weeks from today.

.J
[R. P. Sethi]

J
[S. N. Phukan]

November 07, 2001.

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