

SMT. JAHEJO DEVI & ORS.

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v.

MOHARAM ALI

DECEMBER 9, 1987.

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

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Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977: S. 12 (1)—Eviction of tenant—Default in payment of rent—Bona fide need of landlord—Concurrent findings of trial and first appellate court in favour of landlord—Whether open to High Court to interfere in second appeal.

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The appellants-landlords, residents of the State of Bihar, carrying on business in Meghalaya, sought eviction of the tenant from their suit shop in Arrah, Bihar on the ground of default in payment of rent as well as on the ground of *bona fide* need, and for arrears of rent under s.12(1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977. Their case was that the tenant had not paid the rent for the period of default and that due to disturbances in Meghalaya their business was completely disturbed and some of the children of the family, who had grown up, were sitting idle. They, therefore, wanted to do their business in the suit shop which was adjacent to their residential house and there was a connecting door.

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The tenant took the plea that he had sent the money-order to their village address, and that there was no evidence to show that there was no other house available to the landlord from which his need could not be met.

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The Trial Court came to the conclusion that the tenant was a defaulter. He had full knowledge about the fact that the landlord and her family members did not reside at the said village. So, even if the rent had been sent that could not be a valid tender. It further found that the case of the landlord about personal necessity was proved. The findings of the trial court were affirmed by the First Appellate Court. These findings were, however, reversed by the High Court in second appeal, which took the view that there was no evidence on record to show that the tenant knew the proper address to which remittance could have been made, and that there was no evidence of disturbances in Meghalaya.

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A Allowing the appeal by special leave,

HELD: 1. It was not open to the High Court in second appeal to interfere with the concurrent findings of facts of the first two courts both on default and *bona fide* need of the landlord. [259D]

B 2. The respondent-tenant was a habitual defaulter. Even after the knowledge of the proper address he had been deliberately remitting the rent to a wrong address. There was, therefore, no valid tender. [256A-B]

C 3. The appellants-landlords have been living and doing business in Meghalaya where there was disturbance and it was difficult for them to have residence there. They allege that they have *bona fide* reasonable need of the suit shop for doing their business, which was adjacent to their residential house in Arrah and there was a connecting door. There were grown up sons doing no business. There was no evidence that there was some vacant premises which the landlord D could conveniently occupy. The first two courts, therefore, in acting on the basis of the reasonable need cannot be said to have committed any such irregularity which could have been interfered with by the High Court in second appeal. [258E-G]

E *M.M. Qasim v. Manohar Lal Sharma and others*, AIR 1981 SC 1113 at page 1121, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3974 of 1987.

F From the Judgment of Order dated 27.2.1987 of the High Court of Patna in S.A. No. 103 of 1983.

Dr. Shankar Ghosh, and A.K. Srivastava for the Appellants.

B.B. Singh for the Respondent.

G The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted and Appeal disposed of as follows:

H This is an appeal against the judgment and order of the High Court of Patna in second appeal, which was in respect of evic-

tion from of a premises at Arrah in Bihar. This is the landlords' appeal. The landlord sued the tenant on the ground of default in payment of rent, as well as on the ground of *bona fide* need and also for arrears of rent. The eviction sought for was by a suit and the learned Trial Judge, the learned Addl. Munsiff decreed the suit on the ground of default in the payment of rent as well as on the ground of *bona fide* need of the landlord. It is not necessary in the view we have taken to set out in detail the grounds and the findings arrived at by the Trial Court. The Trial Court came to the conclusion that the tenant was a defaulter and that the defendant had full knowledge about the fact that the landlord and her family members reside at Meghalaya. The defendant had not paid rent for the period of default i.e. from July 1974 till the date of the suit to the plaintiffs at their address in Meghalaya. It was urged on behalf of the tenant that he sent money order to Sonabarsa address. It was proved that the landlord and her family members do not live at village Sonabarsa. So even if the rent had been sent, as alleged by the defendant the Trial Court found as alleged by the landlord, that could not be a valid tender. Furthermore, the learned Addl. Munsiff found that notice under section 106 of the Transfer of Property Act had been given to the tenant on behalf of the landlord which was dated 12th November, 1977 and it was served on the tenant on 29th November, 1977 which was duly proved. The acknowledgement of receipt of that thing was also proved. In the notice it had been clearly stated that plaintiff No. 3 had been appointed attorney by the owners/plaintiffs for realising arrears of rent and filing suit. It is further admitted by the defendant in his evidence that plaintiff No. 3 resides just by the side of the suit premises on the upper floor. In spite of this the defendant wilfully neglected to pay any rent to plaintiff No. 3 from 29.11.77 to 19.4.78 i.e. the date of the suit. Accordingly, the learned Trial judge discussed the evidence extensively and came to his finding as aforesaid. This finding of the learned Trial judge was affirmed by the learned Subordinate Judge to whom the appeal was taken. The learned Subordinate Judge in his judgment analysed the facts. He noted that the tenant has stated in his written submission that he used to send the rent at Sonabarsa address though he got information about the purchase of the suit land by the respondent after a great delay. After discussing the relevant facts which are more or less the same as discussed by the learned Trial judge the learned Subordinate Judge being the First

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- A Appellate Court came to a conclusion that rent was not paid and he further came to the conclusion that even after the knowledge of the proper address the tenant had deliberately remitted the rent at Sonabarsa address and held that the tender was not valid.
- B Inasmuch as one of the grounds taken in the Second Appeal before the High Court was the finding on this ground. The High Court discussed this aspect of the evidence and reversed the finding. The High Court was of the opinion that the finding that there was default in payment of rent from 29th November, 1977 to 10th April, 1978 was erroneous. The High Court noted that rent had been remitted for these months to Sonabarsa address. The High Court was in error in holding that there was valid tender when in spite of the knowledge that Sonabarsa address was not the address they remitted rent to that place. The High Court further went on to say that there was no evidence on record to show that the defendant knew the proper address. In view of the concurrent findings and in view of the letter of the Attorney on behalf of the landlord this is an erroneous conclusion of the High Court. The High Court, further expressed the view that unless he knew the proper address no remittance could have been made to that address. In our opinion, there was no logic in the finding of the High Court that the defendant was justified guilty in sending rent to Sonabarsa address and there was valid tender. The High Court, therefore was in error in not holding that the respondent was a habitual defaulter. The other ground was the ground of *bona fide* need of the landlord. So far as the *bona fide* need of the landlord was concerned the learned Trial judge discussed the matter and it was admitted that the plaintiff-landlord did business in Meghalaya, Assam, and their occupation was business. The defendant had not produced any document that plaintiffs had another house and land except the suit house. This was an averment and assertion of the landlord. In the premises, the learned Trial Court came to the conclusion that the landlord had got only one house. The suit shop is attached with the Janani Kita of the Plaintiffs, which is the house of the landlord. The case of the landlord was that they were residents of the State of Bihar and due to disturbance in Assam and Meghalaya their business was completely disturbed, and it was not possible for them to do their business there, which was the only source of maintenance of their family members. The Plaintiffs' family and some of the children of the Plaintiffs family had grown up and were sitting idle according to the landlord. Hence the plaintiffs wanted to do their business at Arrah in the suit shop. The suit shop admittedly, it was
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found, was situated on the main road and it was suitable for the business and it was connected with the residential portion of the landlord through a door. Under those circumstances the landlord alleged that she had *bone fide* reasonable need of the suit shop for doing their business. The case of the landlord regarding personal necessity was found to be conclusively proved by several witnesses as noted by the learned Trial judge. The learned Trial judge also found that there was disturbance in Assam and Meghalaya and it was difficult to have residence in another State. This fact according to the learned trial judge was proved by plaintiffs' witnesses. It was also proved by the admission of the Plaintiff No. 9 in paragraph 11 and Plaintiff No. 6 in paragraph 2 in support of the case of the plaintiff regarding personal necessity. On the basis of the aforesaid evidence the learned Trial judge found that the case of the landlord about personal necessity was proved. On the same, this finding was affirmed by the First Appellate Court as follows:

"The second question is whether there is a personal requirement of the suit house by the respondent. In the W.S. vide para-9 the appellant has stated that the plaintiff Nos. 1 and 2 have got a prosperous business in Meghalaya. In his evidence the appellant (D.W. 9 vide para 9) has stated that agitation is going on in Assam and the Assamese are driving out the citizens of other States from Assam. While the arguments in this appeal were being heard the learned counsel for the respondent argued that the condition in Assam has further deteriorated and it has become inhabitable for the residents of other states. He submitted that the judicial notice of this development can be taken of because of this provides strength to the original contention of the plaintiff. He relied on a decision reported in 1981 B.B.C.J. S.C. 165. From the evidence of appellant himself it is clear that the Biharies better say not Assamese are being driven out from Assam. It is fact then definitely the requirement of the suit house by the respondent is reasonable and *bona fide*, because they will definitely require the suit house for their maintenance at Arrah. Moreover the defendant D.W.9 vide para 8 has also admitted that the many persons in the respondent's family have attained majority. Naturally these major members of the family, in the aforesaid background, require for the family a place to settle themselves in business. It has been argued that some other shops of the respondents are vacant, and so the requirement of the suit

- A house is not *bona fide*. What shop is suited best to the interest of the respondent is a prerogative of the landlord and the tenant can't question his choice. Therefore, even if some houses are vacant since the family of the respondent has become large and the members have become major then the requirement of the suit house is *bona fide*
- B and reasonable. I have also gone through the oral evidence adduced from both the sides very carefully and also considered the effect of each of the documents proved by both the sides and their bearing on the merit of the suit."

- As mentioed hereinbefore being aggrieved thereby the appellants went up in Second Appeal before the High Court. The High Court on this aspect was of the view that personal necessity was not proved. According to the High Court the said findings were based on conjectures. The High Court by its reasoning stated that the plaintiffs were not in Assam and there was no such evidence of disturbance or failure in Meghalaya from which it could be proved that people from
- D Bihar could feel apprehensive. The High Court held that there was no evidence of any movement in the State of Meghalaya nor were there any evidence that Biharis had been driven out from that State. Firstly, it appears to us that on the basis of the evidence that the first two courts have acted, it was not open to the High Court to interfere in a matter like this in Second Appeal. Be that as it may the need, it
- E appears, was reasonable. The landlords are not living in Assam. They are living and carrying on their business in Meghalaya. The plaintiffs allege that they have *bona fide* reasonable need of the suit shop for doing their business, which was adjacent to the residential house and there was a connected door. There are grown up sons doing no business. In that view of the matter if the Trial court and
- F the first appellate Court had acted on the basis of the reasonable need, this cannot be said that the courts have committed any such irregularity which could have been interfered with by the High Court in second appeal. In our opinion, the High Court was unjustified in interfering with the concurrent findings of facts. Section 12(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1977
- G provided for partial eviction in certain circumstances.

- Learned counsel for the respondent submitted to us that in this case there was no evidence to show that there was no other house available to the landlord from which the need of the landlord could not be met. He drew our attention to certain observations of this
- H Court in *M.M.Qasim v. Manohar Lal Sharma and others* AIR 1981

SC 1113 at page 1121 to the following effect:

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“When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very *raison d’etre* of the Rent Act.”

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In our opinion these observations do not have any application to this case mainly because in this case there was no evidence that there was some vacant premises which the landlord could conveniently occupy. The occasion to examine this aspect did not arise.

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In our opinion the High Court was in error in upsetting the concurrent findings of facts both on default and *bona fide* need of the landlord and the judgment and order of the High Court of Patna therefore, are set aside. Accordingly, the appeal is allowed in the facts and circumstances of the case. There will be no order as to costs.

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P.S.S.

Appeal allowed.