PETITIONER:
RAM PRASAD RAJAK

Vs.

RESPONDENT:
NAND KUMAR & BORS. & ANR.

DATE OF JUDGMENT: 18/08/1998

BENCH:
A.S. ANAND, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN, J.

The appellant is landlord of a shop measuring 6; x 17-1/2' which is occupied by the respondents as tenants. The appellant filed Eviction Suit No. 19/85 under the general law in the Court of District Munsif, Giridih for evicting the respondents on two grounds:-

(i) non-payment of rent and

(ii) bonafide personal requirement.

The suit was dismissed and an appeal by the appellant also failed. He filed a second appeal, during the pendency of which he field the present Eviction Suit No. 35/89 on the file of the District Munsif, Giridih under Section 14 of the Bihar Buildings (Leas, Rent & Eviction ) Control Act, 1982 (for short, 'the Act') on the ground of bonafide requirement for personal occupation. That suit was dismissed by the Trial Court. on appeal, the appellant succeeded and got a decree for eviction against the respondents. Against the said decree, the respondents filed a Civil Revision Petition under Section 14(B) of the Act. When the said Revision Petition was pending the appellant withdrew his Second Appeal filed in the earlier proceedings and got it dismissed. Thereafter, the High Court allowed the Revision Petition filed by the respondents on two grounds, namely:-

(i) the second suit for eviction filed by the appellant was barred by the provisions of Order 2 Rule 2 C.P.C. and

(ii) the appellant's requirement for personal occupation was not bonafide. It is that judgment of the High court which is challenged in this appeal.

2. A preliminary objection has been raised by the respondents at the hearing of the appeal that the appellant's appeal before the District Court against the dismissal of the suit by the Trial Court was not maintainable and consequently the judgment rendered by the Appellate Court in favour of the appellant was invalid. The contention of the respondents is that by virtue of the provisions contained in Sections 13 and 14(8) of the Act, the only remedy available to the appellant against the dismissal of his suit for eviction was an application to the High Court for revision of the order of the Trial Court. In

answer to the said contention, learned counsel for the appellant submits that the question has been discussed and considered in detail by a Full Bench of the Patna High Court in Mohd. Jainul Ansari vs. Khalil 1990 (2) p L. J. R. 378 and that it has been decided by the full Bench that if a suit for eviction ends in dismissal by the Trial Court, the remedy of the landlord is to challenge the same under Section 96 C.P.C. as there is no provision in Section 14 or in the Act prescribing any remedy to the landlord. Learned counsel represented that the said judgment of the Full Bench has not been challenged in this Court and it holds the field.

3. It is the contention of the respondents that the judgment of the full Bench is erroneous as it runs counter to the judgment of this Court in Vinod Kumar Chowdhry vs. SMT. NARAIN Devi Taneja (1980) 2 SCC 120 in which a corresponding provision in the Delhi Rent Control Act, 1958 was considered. According to learned counsel fro the respondents the provisions in the Delhi Rent Control Act and the Bihar Act are pari materia and the judgment of the Supreme Court would govern the question. We are unable to agree.

4. The Full Bench has referred to Vinod Kumar's case and distinguished the same on the footing that the provisions of the two enactments are not parimateria. The Full Bench has also considered the provisions of the two enactments. The reasons given by the Full Bench are appropriate and we agree with the same. We are also of the opinion that the decision of this Court in Vinod Kumar Chowdhry's case will not apply. As we are in agreement with the view expressed by the Full Bench, it is unnecessary for us to consider the question in detail Suffice it to hold that the decision of the Full Bench is correct in law. Hence the preliminary objection raised by learned counsel for the respondents is over-ruled.

5. Learned counsel for the respondents has stated before us that he is not supporting the judgment of the High Court in so far as it holds that the present suit for eviction filed by the appellant is barred by the provisions of Order 2 Rule 2 CPC. Even apart from his statement we find that the cause of action for the second suit is entirely different from the cause of action for the earlier suit and there is no chance of Order 2 Rule 2 barring this suit.

6. We have noticed that the respondents filed a Revision under Section 14(8) of the Act against the judgment of the Appellant Court granting a decree for eviction in favour of the appellant. Obviously that revision was not maintainable as there is no provision in Section 14(8) of the Act for a revision against an Appellate Order. The said sub-section refers only to an order passed by the Trial Court for recovery of possession in favour of the landlord. If the Trial Court dismisses the suit, only remedy of the landlord is to file an appeal under Section 96 CPS. When such an appeal is disposed of by the Appellate Court, the further remedy of the aggrieved party is only under Section 100 CPC and there is no question of reverting back to Section 14(8) of the Act. By no stretch of imagination, the appellate order or decree can be considered to be an order of the trial Court for recovery of possession within the meaning of Section 14(8) of the Act. Hence the revision petition filed by the respondents before the High Court was not maintainable.

7. We find however, the objection as to the maintainability of the revision petition was not taken by the appellant in the High Court. The revision was entertained and allowed by the High Court. In order to meet

the ends of justice we treat the said revision petition as a second appeal under Section 100 CPC and proceed to consider whether the judgment of the High Court is sustainable or not. Once the proceeding in the High Court is treated as a second appeal under Section 100 CPC, the restrictions prescribed in the said Section would come into play. The High Court could and ought to have dealt with the matter as a second appeal and found out whether a substantial question of law arose for consideration. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the second appeal and consider the merits. It has been held by this Court in Panchugopal Barua & Ors. vs. Umesh Chandra Goswami & Ors. J.T. 1997 (2) SC 554 and Kshitish chandra Purkait vs. Santosh Kumar Purkait & Ors. J.T. 1997 (5) SC 202 that existence of a substantial question of law is sine qua non for the exercise of jurisdiction under Section 100 CPC. In both the aforesaid cases, one of us (Dr. Anand, J.) was a party to the Bench and in the former, he spoke for the Bench.

8. That apart, on merits, the only other question relates to the bona fide requirement of the appellant that does not give rise to any substantial question of law. It is entirely a matter to b decided on an appreciation of the evidence. On a perusal of the judgment of the High Court it is evident that it had interfered with a finding of fact arrived at by the Second Additional District Judge, Giridih in the first appeal on an appreciation of the evidence. The High Court made an attempt to re-appreciate the evidence and come to the conclusion that the appellant failed to prove his bona fide requirement. In fact after a scanty discussion of the evidence, the High Court observed, "in this view of the matter I find and hold that the plaintiff miserably failed on factual aspect also to prove his bona fide necessity." The High Court has acted beyond its jurisdiction in appreciating the evidence on record.

9. We have also been taken through the judgment of the Second Additional District Judge rendered in the first appeal against the judgment of the Trial Court. We find that the appellate Court has discussed the evidence threadbare and considered the matter in the proper perspective. The appellate court has considered all the materials on record and nothing has been omitted to be referred. Learned counsel for the respondents has contended that the Appellate Court omitted to consider an admission made by the plaintiff that his need could be satisfied if the adjacent shop occupied by another tenant Harish Chandra Bagga was delivered to him. W do not find any such admission on record. On the other hand, the categoric case of the appellant is that his requirement can be fulfilled only by vacating both the premises occupied by the tenants including the respondents. In so far as Harish Chandra Bagga is concerned it is stated by the appellant that he had earlier undertaken to vacate the shop in his occupation and ultimately handed over possession of the said shop to the appellant on 20.9.97 during the pendency of this appeal. On a perusal of the record we are of the opinion that the finding of fact rendered by the Second Additional District Judge in the first appeal is conclusive and the High Court has exceeded it s jurisdiction in interfering with the said findings.

10. Consequently the Civil Appeal is allowed /and the judgement and order of the High Court of Patna in Civil Revision No. 416 of 1995 (R) is set aside. The judgment and decree for eviction passed by the Second Additional District Judge, Giridih in Eviction Appeal No. 6 of 1990 are restored. There will be no order as to costs.

11. Learned counsel for the respondents prayed for grant of one year time to vacate the premises. Learned counsel for the appellant has agreed to the same after obtaining instructions. In the circumstances, the respondents are granted time to vacated the suit premises till 14.8.199 on condition that the respondents file the usual undertaking in this Court within a period of eight weeks from this date failing which, the benefit of grant of time will not be available to them.