

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.795 OF 2001@@
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Pushpa Devi & Anr. Appellant (s)

VERSUS

Binod Kumar Gupta & Anr. Respondent (s)

Date : 20/11/2001 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s) Mr. S.B. Sanyal, Sr. adv.
Ms. Manita Verma, adv.
Mr. Akhilesh Kumar Pandey, adv.

For Respondent (s) Mr. Amitesh Kumar, adv.
Mr. Lakshmi Raman Singh, adv.

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

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.SP2

The appeal is disposed of in terms of the signed
order. No order as to costs.

.SP1

(Neena Verma)
Court Master

(Radha Rani Bhatia)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.795 OF 2001@@

Pushpa Devi & Anr. Appellants

Versus

Binod Kumar Gupta & Anr. Respondents

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

The appellants filed a suit for ejection of the respondents on a ground allegedly available under Clause (c) of sub-section (1) of Section 11 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter 'the Act', for short). According to the averments made in the plaint filed by the appellants, it was a part of the building which was held on tenancy by the respondents. According to the respondents, the subject matter of tenancy was not a building as defined in Clause (b) of Section 2 of the Act but a piece of land whereon the respondents had raised a structure and using the same as a shop. Inasmuch as ejection of the tenant-respondents was sought for on the ground of reasonable and in good faith requirement by landlord, the suit was tried by special procedure prescribed ..2/-

: 2 :

by Section 14 of the Act. The Trial Court found the appellants owner of the suit premises held by the respondents on tenancy and the respondents liable to be evicted under Section 11(1)(c) of the Act.

The tenant-respondents preferred a revision under sub-section 8 of Section 14 of the Act. The High Court formed an opinion that the bone of contention between the parties, i.e., whether the subject matter of lease was a vacant land or a building, was not satisfactorily disposed of by the Trial Court and, therefore, the finding arrived at 'could not be said to be conclusive'. The High Court deemed it proper, in the interest of justice, to remand the case to the Trial Court for decision afresh and in accordance with law. The High Court also allowed the parties a liberty of adducing further evidence. Feeling aggrieved by the order of remand, the landlords have filed this appeal by special leave.

It is submitted by the learned counsel for the appellants that there was no prayer for remand made, nor any leave of adducing additional evidence sought for, by any of the parties and, therefore, there was no justification for the High Court to have set aside the order of the Trial ...3/-

: 3 :

Court allowing liberty to the parties for adducing further evidence and thereafter deciding the matter afresh. It is

submitted by the learned counsel for the appellants that the High Court should have decided the revision on the material available before it, and in the exercise of limited jurisdiction of revision, the High Court would not have found any reason to upset and reverse the findings of fact arrived at by the Trial Court while disposing of the suit before it in accordance with the practice and procedure of a Court of Small Causes.

We find merit in the submission that the remand was unwarranted. When both the parties were prepared to argue the matter on the material available and have the issues raised before the High Court decided thereon, the High Court ought not to have remanded the matter affording the parties an opportunity of adducing further evidence which none of them was seeking.

In as much we find the order of remand uncalled for, the impugned order of the High Court is set aside. The High Court has not recorded any finding of its own on any of the points at issue arising for decision in the case. We deem
...4/-

: 4 :

it proper to send the matter back to the High Court for deciding the revision in accordance with law.

The impugned order dated 20th December, 1999 is set aside. The revision shall stand restored on the file of the High Court. The High Court shall, after affording the parties an opportunity of hearing, decide the revision in accordance with law on the material available before it.

In view of the time that has already been lost, the High Court would do well to take up the revision for expeditious hearing and decision.

The appeal is disposed of accordingly. No order as to costs.

.SP1

.....J.
(R.C. LAHOTI)

New Delhi,
November 20, 2001.

.....J.
(BRIJESH KUMAR)