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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED 15TH DAY OF SEPTEMBER 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.1662/1995

M/s Bata India Limited,  
a Company incorporated under  
the Indian Companies Act,  
with Registered Office at  
30, Shakespeare Sarani,  
Cal-17, P.O.Box No.8913.                      Petitioner

(By Sri T.G. Achar and Associates)

-vs-

H.G.Ramaprasad,  
s/o H.N.Gundu Rao,  
major, Occupation:  
Business, r/o 4th  
Parallel Road,  
Durgigudi,  
Shimoga 577 201.                      Respondent

(By Sri B.V.Acharya, Senior  
Advocate for Sri S.N.Murthy)

This revision petition is filed under Section 115 of the Code of Civil Procedure against the order dated 14.8.95 passed in HRC RP No.68/91 on the file of the Court of the Additional District Judge, Shimoga allowing the revision petition and setting aside the order passed in HRC No.164/82 dated 22.7.1991 by the Additional Munsiff, shimoga.

This revision petition coming on for hearing this day, the court made the following:

ORDER

This is a tenant's petition against the order of the learned District Judge, Shimoga setting aside the order of the learned Munsiff, shimoga ordering him to vacate from the schedule premises.

Petitioner is the tenant, respondent is the landlord. They will be referred to hereinafter as landlord and tenant for convenience.

Landlord herein filed an eviction petition against the petitioner under Section 21 (1) (h) of the Karnataka Rent Control Act (for short 'the Act') in respect of a non-residential premises bearing Municipal No.60/47 measuring 29' x 29' situate at Nehru Road, Shimoga on the ground that the petitioner intends to have a show room and office for displaying the industrial products which he manufactures. Other than the schedule premises he has no other premises. Therefore the same is required reasonably and bonafide for his own use and occupation.

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This petition was resisted by the tenant by filing a detailed statement of objection. The main defence of the tenant was that he was inducted as a tenant under a lease deed dated 16.8.1967 on an agreed rent of Rs.380/-p.m.. the rent was being periodically enhanced. However during the relevant time when the eviction petition was filed the landlord demanded a further enhancement in a sum of Rs.2400/-p.m., and an advance of Rs.10,000/- which when refused by the tenant the landlord has resorted to filing of this eviction petition. Therefore this petition is only a guise to evict him and the landlord really does not require the premises.

On the basis of the pleadings the parties went to trial before the learned Munsiff, shimoga. The landlord examined himself as PW.1 and produced a number of documents to prove that he has set up an industry in the manufacture of certain parts and he is also a sales tax assessee. Similarly the tenant examined one its manager as RW.1 and he has also produced the correspondence between the landlord and the tenant and the lease deed in support of the case.

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The learned Munsiff after enquiry dismissed the eviction petition solely on the ground that the motive of the landlord is only to extract higher rent. The learned Munsiff relied on <sup>some parts</sup> the evidence of the parties to come to such a conclusion.

Aggrieved by the said order the landlord preferred a rent revision before the learned district Judge, Shimoga. The learned District Judge after reappreciation of the entire evidence on record set aside the order of the learned Munsiff. The learned District Judge has held that the evidence of the landlord and the documents produced by him namely Exhibits P.1 to P.13 clearly prove that he has set up an industry in the manufacture of automobile spare parts. His turn over is to the tune of Rs.150 lakhs annually and the desire of such a person to have a show room and a office cannot be held to be unreasonable or lacking any bonafides. The learned Judge has held that having regard to the lease deed the landlord demanded higher rent <sup>because</sup> the tenant had agreed "voluntarily to periodical

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increase. By making such a demand no motive can be attributed to the landlord as demanding any unreasonable or exorbitant rent which would take away the benefits which he has otherwise established in the case. Taking that view the learned District Judge has allowed the eviction petition.

The learned counsel appearing for the petitioner is unable to show how the findings of the learned Judge is perverse or without jurisdiction. However the only submission of the learned counsel is that the motive of the landlord is only to extract higher rent which has been answered by the learned District Judge. I agree with the reasoning of the learned District Judge in this regard. However both the learned District Judge and the learned Munsiff have completely omitted to consider the feasibility of partial eviction. Hence the matter has to be remanded to the file of the learned Munsiff to enquire into the question about the feasibility of partial eviction after permitting the parties to adduce such additional evidence as they may choose in this behalf.

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It is also made clear that the findings of the learned District Judge that the landlord requires the premises reasonably and bonafide for his own use and occupation is upheld so also the finding that the landlord suffers greater hardship in case eviction is refused.

It is now brought to my notice by Sri B.V.Acharya learned counsel appearing for the landlord that in pursuance of the orders of the learned District Judge execution was taken out and the landlord has obtained possession and he is in possession of the same. He has also submitted that the landlord has filed an application dated 5.10.1996 stating that the tenant after surrendering the possession has taken a new shop and he has already started business therein. Per contra the tenant has also made an application dated 4.10.96 stating that even though the landlord has taken possession of the premises he has not occupied the same. The learned Munsiff while considering the question of 'partial eviction' shall also take these facts into consideration while considering the matter.

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With these observations the revision petition is dismissed.

Status quo as on today shall continue untill the learned Munsiff decides the case.

Having regard to the facts of this case, the learned Munsiff is directed to dispose of this matter within four months from the date of receipt of this order.

Petition dismissed.

Sd/-  
JUDGE

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