
(2004) 11 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4931 of 2004

Badri Prasad Agarwalla and Others APPELLANT
Vs
Rabindra Nath Keshri RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 15
Limitation Act, 1963 — Article 137

Citation : (2005) 2 JCR 152

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Manjul Prasad and J.K. Pasari, for the Appellant; R.N. Sahay and Rajesh Lala, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—Aggrieved by the order dated 8.9.2004 passed in Title (Eviction) No. 274 of 1980 by which the Sub-Judge II, Dhanbad has struck off the defence of the defendants; this writ application has been filed by the petitioners for quashing the said order dated 8.8.2004. By the impugned order, the Court below has taken notice of an alleged default in payment of rent of the month of December, 1989 after about 15 years, on the sudden rise of the plaintiff from his deep slumber over the issue. The suit is being seriously fought out since the year 1980, i.e. for more than two decades and the same has ultimately reached to the final stage, after the direction of this Court to dispose of the suit expeditiously.

2. The plaintiff, at this stage, has swung into an action taking up the said sale controversy of the year 1989 which has culminated into the impugned order of striking off the defence of the defendants, disarming them completely in the legal battle, without considering the rigour suffered by the defendants during the decades" long voyage of the litigation, apart from other legal considerations. Much is not required to be said on the pedantic approach adopted by the Court below in the context of the petition and suffice is to say that the Court below has

not taken into consideration the negligence and the laches on the part of the plaintiff in not raising the objection for the alleged default which was said to have been committed in the month of December, 1989, Although Section 15 of the Bihar Building (L.R. & E.) Act, gives the power to the Court, inter alia, to order deposit of rent month by month during the pendency of "the suit and on failure of compliance of the same, to strike off defence against ejectment and for that, no time limit is prescribed, yet the nature of the provision being the penal, the same should have been strictly construed. From reading the section it appears that on failure of the deposit of the arrears of rent within 15 days of the date of order or the rent at such rate for any month after 15 days of the next following month, the Court shall order the defence against ejectment to be struck off and the tenant to be placed in the same position as if he had not defended the claim of the ejectment, but the provision cannot be interpreted unreasonably for giving a sad surprise to the defendant and to render him helpless and remediless at a juncture of the finality of the litigation on the ground that the decades ago he had committed a default, after allowing him to defend himself through the years in the long protracted legal proceeding. The section cannot be construed as giving an endless rope, to use the same at any point of time for giving a fatal blow to the defence of the defendant for his age old lapse. It will be against all fairness and reasonableness that for the alleged default on the part of the tenant, his defence would be struck off after 14-15 years. In this case default was of some days which was also sufficiently explained stating that the delay was not intentional rather the defendant was prevented from depositing the rent of December, 1989, due to strike of non-gazetted officers. The plaintiff maintained a deliberate silence on the said default. He rather raised a ground of the alleged default in payment of rent of the month of October, 2000 onwards praying for striking off the defence for the default. That petition after hearing was rejected by the trial Court. A writ application challenging the said order was also filed in this Court which was disposed of with a direction to expedite the hearing of the suit without disturbing the order of the Court below. Even in that application, raising a ground of subsequent default, the earlier alleged default of December, 1989 was not highlighted and pressed. In that view, the principle of waiver comes into play estopping the plaintiff from taking the ground of the earlier default of December, 1989.

3. The respondent has appeared through the learned counsel Mr. R.N. Sahai and Mr. Rajesh Lala. The respondent has also filed affidavit in opposition, contesting the writ petition. According to the learned counsel for the respondent, there is no period prescribed for taking any penal action and as such, there is no question of limitation in filing the said petition. According to learned counsel, the Court in cases of such default should act suo motu and the respondent was not obliged to file any application for the same. However, the learned counsel failed to convince me as to what should be the limitation for filing such application, if an order has been passed on an application.

4. It is a debatable point as to what should be the time-limit for taking a penal

action in such cases of default of the tenant for not paying the rent within the prescribed period. It is not necessary to go into that detail in view of the other grounds available to the petitioners. However, this can be observed that if any action has to be taken or has been taken on an application, that application must be subject to the period of limitation as prescribed under Article 137 of the Limitation Act as there is no specific period of limitation prescribed by the statute for the same.

5. Considering the submission of the learned counsel appearing for the parties and materials on record, I am of the opinion that the impugned order of the learned Court below striking off the defence of the defendants at this stage, for the alleged default of about 15 years ago, is not at all reasonable, proper and sound and the same is liable to be annulled. Accordingly, the impugned order dated 8.9.2004 is quashed.

This application is allowed.