
(2011) 04 PAT CK 0210
In the Patna High Court
Case No : First Appeal No. 289 of 2007

Bihar State Electricity Board and Others	APPELLANT
Vs	
Ram Ayodhya Singh	RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 16, 23, 8

Citation : (2011) 59 BLJR 1140 : (2011) 3 PLJR 137

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The Defendants have challenged the impugned judgment and decree dated 09.04.2007 passed by Sri Murlidhar, 6th Subordinate Judge, Bhojpur, Ara in Money Suit No. 15 of 2000 decreeing the Plaintiff's suit.

2. The Plaintiff filed the aforesaid suit for recovery of arrear amount from the Appellants alleging that the Plaintiff's double-storied building has 20 rooms, godown and other necessary facilities, the details of which has been described in Schedule-A of the plaint. The Plaintiff's father had given on rent to the Appellants. Father of the Plaintiff died in 1985 and since then, the Plaintiff is "karta" and in the capacity of "karta", he was realizing Rs. 95 as rent per month from the Appellants. Later on, the Plaintiff filed an application before the Defendant No. 4 on 04.09.1985 for increasing the rent to Rs. 5000 per month. The Defendant No. 4 referred the said application to the Defendant No. 3. The Defendant No. 3 in term by letter No. 2634 dated 11.12.1986 wrote to S.D.O-cum-House Controller, Ara for fixation of fair rent. The House Controller after observing all formalities required under the law fixed the fair rent with effect from 11.12.1986 and informed the Defendant No. 2. Appeal was filed being Appeal No. 4 of 1987 before the Collector, Ara which was dismissed on 08.10.1997. Against the said order, the Appellants filed Revision No. 24 of 1998-99 before the Commissioner, Patna Division. After hearing both the parties

on 17.03.1999, the Revision was rejected and the Appellants were directed to pay the arrear of fair rent immediately to the Plaintiff. In this way, the Defendants-Appellants are liable to pay the arrears of rent at the rate of Rs. 3,000 fixed by the House Controller from 11.12.1986 to 31.08.2000. The Plaintiff served Advocate notice on the Defendants and the Defendants assured the Plaintiff to pay the arrears of rent but they never paid. On 12.08.2000, a letter was sent to the Plaintiff's Advocate informing that the Defendants have vacated the house premises on 31.08.2000 but still today, they have not vacated the suit premises. Therefore, the Plaintiff claimed Rs. 4,94,000 as arrears of fair rent and filed the suit.

3. On being noticed, the Defendants-Appellants appeared and filed a contesting written statement alleging that the Plaintiff never repaired the suit premises. The application for fixation of fair rent was not filed by the Plaintiff and the House Controller wrongly increased the rent Rs. 95 to Rs. 3,000 against the provision of Section 8 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. According to Section 8, at a time the rent cannot be increased for more than 25%. The Plaintiff's claim is time barred and, therefore, he is not entitled to receive the arrears of rent. On the basis of the aforesaid pleadings of the parties, the learned Court below framed the following issues:

I. Is the suit maintainable?

II. Is the Plaintiff is entitled to file the suit?

III. Is the suit is time barred, waiver, estoppel and acquiescence?

IV. Is the Plaintiff is entitled to get Rs. 4,94,000 as arrears of rent from the Defendants at the rate of 11% per annum.

V. Is the Plaintiff is entitled to any other reliefs?

4. After trial, the learned Court below found that the Defendants-Appellants are liable to pay the arrears of rent from 11.12.1986 and because the Defendants-Appellants are intentionally not paying the said amount, the Plaintiff is in great loss, so, the Plaintiff is also entitled for interest. The learned Court below also found that the suit is not barred by law of limitation and decreed the Plaintiff's suit.

5. The learned Counsel, Mr. Vinay Kirti Singh appearing on behalf of the Defendants-Appellants submitted that the impugned judgment and decree are unsustainable in the eye of law because the Appellants have been directed to pay the arrears of rent from 11.12.1986 which the learned Court below has no jurisdiction because it is time barred. The learned Court below could not have decreed the recovery of money prior to three years from the date of institution of the suit. According to the learned Counsel, the order passed by the Commissioner is executable and, therefore, the Plaintiff-Respondent should have filed execution case for realizing the amount and in that case, no interest could have been paid by the Executing Court. The sum and substance of the argument

is that if the suit is Money Suit, then the decree could not have been passed for recovery of the amount from three years before the date of institution of the suit and if it is for recovery of arrears of rent, the Plaintiff should have filed Execution Case. On these grounds, the learned Counsel submitted that the impugned judgment and decree are liable to be set aside.

6. On the other hand, the learned Counsel, Mr. Binod Kumar Singh appearing on behalf of the Respondent submitted that being the Government Undertaking, they are not expected to act like an ordinary litigant. According to the learned Counsel, the intention of the Appellants was only to harass the Plaintiff and, therefore, intentionally did not pay the arrears of rent in spite of direction by the House Controller by the Appellate Court and by the Revisional Court and manage to pool the matter for such a long period and, therefore, the Plaintiff sustained much monetary loss. In such view of the matter, the Plaintiff was entitled for compensation and interest also and, therefore, the suit was filed. The learned Counsel further submitted that the suit is not barred and, therefore, the Appellants cannot dictate the Plaintiff as to what course the Plaintiff should have adopted for realizing the amount. The learned Counsel further submitted that the learned Court below has rightly found that the suit is not barred because litigation was going on between the parties and finally the order was passed by the Commissioner on 17.03.1999 and the suit has been filed in the year 2000 i.e. within three years from the date of order. Moreover, the Appellants themselves lingered the matter and now taking point of limitation. On these grounds, the learned Counsel submitted that the appeal is liable to be dismissed with exemplary cost.

7. In view of the above submissions of the parties, the points arise for consideration in this appeal is "whether the Plaintiff-Respondent is entitled to recover the arrears of rent with interest as claimed by him" and "whether the impugned judgment and decree are sustainable in the eye of law"?

8. Admittedly, in this case, the fair rent has been fixed by the House Controller at Rs. 3,000 per month w.e.f. 11.12.1986. The Appellants filed appeal which was dismissed on 08.10.1997 and the Revision filed by the Appellants was dismissed by Commissioner on 17.03.1999. It is also admitted that against the order of Commissioner, no steps were taken by the Defendants-Appellants challenging the said order and, therefore, it became final. In view of the above facts, it is established that the Defendants-Appellants are liable to pay the amount determined by the House Controller which was confirmed by the Commissioner in Revision No. 24 of 1998 by terms of order dated 17.03.1999. There is clear direction in the said order of the Revisional Court to pay the arrears of rent but the Appellants did not pay the same. The orders have been produced by the Plaintiff. The facts and materials are admitted by the parties and only question of law has been raised by the parties, so it is not necessary to discuss the evidences in this question as the appeal can be disposed of on question of law only.

9. The learned Counsel for the Appellants submitted that the order passed by the Controller and Commissioner should have been executed u/s 23 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

10. It may be mentioned here that the said direction has been given u/s 16 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The learned Counsel on this point relied upon 1999 (1) P.L.J.R. 362(Md. Khaliqz Zaman v. Shri H.C. Joshi) and Full Bench decision of this Court reported in 1989 P.L.J.R. 1141(Dr. Sachidanand Sinha v. The Collector, Patna and Ors.). So far this submission of the learned Counsel is concerned, there is no dispute about the legal position. However, it may be mentioned here that it is for the Plaintiff to choose the forum for executing the order of the Controller and the Commissioner u/s 23 or to file a regular suit. The suit for recovery of the money which the tenant is liable to pay is not barred under any law. In this present case, according to the Defendants, they have already vacated the suit premises and according to the orders of the Controller and the Revisional Authority, the Plaintiff was entitled for the recovery of the said amount and, therefore, he filed the suit claiming the said relief for recovery of the amount. He paid the Court fee on the value of the suit. The learned Counsel for the Appellants is unable to show me any provision of law which bars the suit. He is unable to show me any provision which precludes the jurisdiction of the Civil Court to entertain the Money Suit. Therefore, in this case, it cannot be said that the Plaintiff had the only option to file the execution case and he could not have filed regular Money Suit. In the present case, the Plaintiff is claiming also compensation and interest on the amount which is payable by the Appellants. So far this relief is concerned, it could not have been granted by the Executing Court. Therefore, the Plaintiff was not bound to execute the order u/s 23 of the Bihar Buildings (Lease, Rent and Eviction) Control Act particularly when he is claiming further relief for compensation and interest.

11. In view of the above facts and circumstances of the case, I find no force in the submission of the learned Counsel for the Appellants. It is admitted fact that the Appellants are liable to pay the amount determined by the Controller confirmed by the Commissioner.

12. The learned Counsel for the Appellants next submitted that the suit is barred by law of limitation. So far this submission is concerned also, I find no force because there was litigation between the parties since 1986 to 1999 about the amount of rent which was finalized only after passing the order by the Commissioner in Revisional jurisdiction which became final in the year 1999 and, therefore, the right to sue accrued on the date of rejection of the Revisional application filed by the Defendants-Appellants and, therefore, when no action was taken by them challenging the Revisional order, the Plaintiff has filed the present suit in the year 2000. Therefore, it cannot be said that the suit is barred by law of limitation.

13. The learned Counsel for the Appellants submitted that it is a simplicitor

Money Suit and, therefore, the amount three years prior to institution of the suit could not have been directed to be paid. As stated above, the period of limitation was under suspension during the litigation between the parties from 1986 to 1999. I, therefore, find that the suit is not barred by law of limitation.

14. In view of my above findings, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed with cost of Rs. 10,000 to be paid by the Appellants. The Respondent is entitled to recover the cost from the Appellants.