

(2011) 03 PAT CK 0113
In the Patna High Court
Case No : C.W.J.C. No. 9853 of 2010

Om Prakash Mandal

APPELLANT

Vs

Shyam Sundar Tibrewal and Others

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Citation : (2011) 03 PAT CK 0113

Judgement

S.N. Hussain, J.—This writ petition has been filed by the sole Defendant-Petitioner challenging order dated 21.5.2010 passed in Eviction Suit No. 2 of 2008 by which Munsif, Lakhisarai allowed the application of the sole Plaintiff-Respondent No. 1 filed u/s 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as "the Act" for the sake of brevity) and directed the Defendant-Petitioner to deposit in Nazarat the entire arrears of rent at the rate of Rs. 1100.00 per month from the date of filing of the suit in February, 2008, within fifteen days from the date of said order and also to go on depositing the current rent by 15th of each month in the Nazarat at the same rate.

2. It is not in dispute that Eviction Suit No. 2 of 2008 was filed by Respondent No. 1 for eviction of the Petitioner from the suit premises, namely a pucca building with two rooms with Verandah situated at Naya Bazar, Lakhisarai, on the ground of personal necessity of the Plaintiff under the provision of Section 14 of the Act. The Defendant-Petitioner filed his written statement contesting the claim of Plaintiff-Respondent and stating that father of the Defendant took the suit premises on rent from one Chhedi Lal who died leaving behind his widow Parwati Devi who received rent through his son-in-law Hari Om Lath. Hence, he claimed that the Plaintiff was neither the owner of the suit nor was the landlord and as such there is No. question of any bona fide personal necessity/ requirement of the Plaintiff and the suit was not maintainable.

3. In the said suit, the Plaintiff filed an application u/s 15 of the Act for a direction to the Defendant to deposit arrears of rent till date as well as current

rent. Against the said application, the Defendant filed a rejoinder reiterating his claim made in his written statement and asserting that the suit and the application were frivolous as the Plaintiff had No. right to collect rent from the Defendant. The Trial Court after considering the arguments of the parties allowed the application of the Plaintiff filed u/s 15 of the Act and directed the Defendant to deposit the entire arrears of rent from the date of institution of the suit till the date of order at the rate of Rs. 1100.00 per month in one lump sum in the Nazarat within fifteen days from the said order and to go on depositing current rent at the same rate by 15th of each month in the Nazarat.

4. The said order has been challenged by the Defendant-Petitioner in the instant writ petition raising two points. The first point taken by the Petitioner is that the Plaintiff-Respondent is not the owner of the suit premises and at the most he can be held to be Rent Collector and, hence No. suit for eviction on the ground of his personal necessity can be legally maintainable and if the suit is not maintainable then any such application filed therein can not be legally entertained. In this connection, he relies upon a decision of the Apex Court in case of M.M. Quasim Vs. Manohar Lal Sharma and others, as well as a decision of this High Court in case of Bharat Petroleum Corporation Ltd. and Another Vs. Smt. Raj Kumari Devi and Others The second point raised by Learned Counsel for the Petitioner is that admittedly last rent paid by the Defendant was Rs. 400.00 per month, whereas on the basis of subsequent fixation of rent by the House Controller at the rate of Rs. 1100.00 per month No. rent was ever paid by the Defendant to the owner or to the Plaintiff, hence for the purposes of Section 15 of the Act, the Defendant can be legally directed only to pay at the rate of last paid rent, i.e. Rs. 400.00 per month and not at the rate of Rs. 1100.00 per month which was never paid. In this connection, he relies upon a Full Bench decision of this High Court in case of N.M. Verma Vs. Upendra Narain Singh, as well as a decision of a Division Bench of this High Court in case of Anisur Rahman and Another Vs. Sardar Jogender Singh @ Jogendra Singh Hence, it is submitted on behalf of the Defendant-Petitioner that the impugned order is bad in law on both the aforesaid counts and is fit to be set aside.

5. On the other hand, Learned Counsel for the Plaintiff-Respondent has stated that the suit was filed by him as he was a co-sharer of the entire property, including the suit premises, and No. partition had ever taken place and in that capacity the Defendant-Petitioner was paying rent to him which is apparent from the rent receipt (Annexure-A). Hence, he argued that in that capacity he was fully entitled to file the suit for eviction of the Defendant on the ground of Plaintiff's personal necessity and accordingly the suit as well as the application filed therein were fully maintainable. Against the second point taken by the Defendant-Petitioner, Learned Counsel for the Plaintiff-Respondent stated that the Defendant was the tenant of the Plaintiff and had not paid any rent since the filing of the suit. He further stated that before the filing of the eviction suit House Control Case No. 5H of 2002 was filed by the Plaintiff for fixation of fair rent in which an inquiry was made and after hearing both the parties House Controller-

cum-Sub-Divisional Officer, Lakhisarai vide his order dated 14.12.2007 (Annexure-B) fixed Rs. 1100.00 per month as the fair rent of the premises. He further claimed that Defendant in his show-cause dated 25.8.2007 (Annexure-C) in the aforesaid House Control case clearly admitted the relationship of landlord and tenant between the parties and the said order of the House Controller had attained finality before the filing of the instant eviction suit on 10.2.2008. Hence, Learned Counsel for the Plaintiff-Respondent stated that the impugned order of the Trial Court was legal and justified.

6. After considering the points raised by Learned Counsel for the parties and after perusing the materials on record, it becomes quite clear that there is No. dispute that the Defendant is the tenant of the suit premises and had been paying rent to the Plaintiff but during pendency of the suit defaulted in payment of rent. The specific claim of the Plaintiff is that he is a co-sharer of the entire properties and No. partition had taken place between the co-sharers and hence he is entitled to file a suit for eviction of the Defendant on the ground of his personal necessity, whereas the Defendant had claimed that Plaintiff was merely a Rent Collector and not the owner of the suit premises. This question cannot be properly decided in this case and it has to be considered and decided by the Trial Court at the time of final hearing of the eviction suit after considering the respective pleadings and evidence of the parties as well as relevant provisions of law, including the decision of the Supreme Court in case of M.M. Quasim (supra) and the decision of this High Court in case of Bharat Petroleum Corporation Ltd. (supra). Hence at this stage this Court refrains from giving any finding with respect thereto. However, the fact remains that the Defendant-Petitioner admittedly being tenant cannot be legally allowed to remain in the suit premises free of cost without payment of any rent. Hence, the court below was quite justified in directing the Defendant to deposit the arrears of rent as well as the current rent in the Nazarat so that it may be paid in accordance with the final decision in the suit.

7. So far the question of last paid rent is concerned it is admitted and proved that Defendant had lastly paid rent to the Plaintiff in one lump sum from January, 1997 to December, 1999 at the rate of Rs. 400.00 per month for which receipt dated 20.2.2007 (Annexure-A) was issued by the Plaintiff countersigned by the Defendant and thereafter Defendant stopped payment of rent. It is also not in dispute that in the year 2002, House Control Case No. 5H of 2002 was filed by the Plaintiff-Respondent for fixation of fair rent in which a detailed inquiry was made and after hearing both the parties, the House Controller-cum-Sub-Divisional Officer, Lakhisarai fixed the rent of the suit premises at the rate of Rs. 1100.00 per month by a detailed and well considered order dated 14.12.2007 (Annexure-B). However, there is nothing to show that the Defendant paid any rent to the Plaintiff after the said order at the fair rent fixed.

8. On the question of last paid rent, divergent views were taken in many decisions, including the Full Bench decision of this High Court in case of Mahabir

Ram Vs. Shiva Shanker Prasad and Others, as well as various decisions of this High Court, e.g. in case of Manoranjan Nath Patra Vs. Kashi Prasad Sah and Another, in case of Sashadhar Das v. Harihar Prasad, reported in 1973 B.B.C.J. 401; and in case of S.M. Khalil and Another Vs. Akhauri Sitaram and Another, and hence the said matter was finally considered by a Full Bench consisting of five Hon'ble Judges of this Court in case of N.M. Verma v. Upendra Narain Singh, and the law was finally settled vide order of the Full Bench dated 19.5.1977, reported in N.M. Verma Vs. Upendra Narain Singh, in which it was held that the provision for deposit of rent by the tenant in suit (earlier Section 11A now Section 15 of the Act) has been provided to achieve maintenance of status quo with regard to payment, of rent and No. substantial rights were being dealt with and hence the last paid rent as provided in the said Section should be construed in its strict term, i.e. actual payment tendered or remitted by the Defendant to the Plaintiff and not the fair rent fixed by the House Controller which was never paid. This view had been followed by a Division Bench of this Court in case of Anisur Rahman (supra).

9. So far reliance placed by the Plaintiff-Respondent on a decision of this Court in case of Narain Prasad v. Smt. Shobha Singh and Ors., reported in 1979 B.L.J.R. 517 is concerned, No. doubt last paid rent was fixed in the said case as the rent fixed by the Rent Controller, but in that case, the Defendant had lastly remitted rent by money order to the Plaintiff at the rate fixed by the House Controller. Hence, when the Defendant himself admitted the rent fixed by the House Controller and sent it by money order to the Plaintiff, it automatically became last paid rent. This is not the matter in the instant case where No. rent at the rate fixed by the House Controller was ever remitted by the Defendant-Petitioner through money order to the Plaintiff, hence I am afraid that the said case law is not applicable to the facts and circumstances of this case. Thus, it is quite apparent that the Trial Court erred in fixing the rent to be deposited at Rs. 1100.00 per month as fixed by the House Controller although the rent which was last paid by the Defendant was Rs. 400.00 per month as is apparent from the admitted claim of the parties and materials on record.

10. Considering the aforesaid facts and circumstances as well as the respective claims of the parties and the materials on record and the settled principles of law, this writ petition is disposed of with the only modification in the impugned order dated 21.5.2010 (Annexure-1) passed by the Munsif, Lakhisarai in Eviction Suit No. 2 of 2008 that the last paid rent would be Rs. 400.00 per month and not Rs. 1100.00 per month and the Defendant-Petitioner must deposit the entire arrears of rent from February, 2008 up to March, 2011 totally amounting to Rs. 15,200.00 in the Nazarat by 15th of April, 2011 positively and should go on depositing current rent in the Nazarat at the same rate by 15th of the next succeeding month, for example the rent of April, 2011 must be deposited by 15th of May, 2011 in the Nazarat and so on. In case of failure of the Defendant to comply any of the aforesaid directions of this Court, his defence against ejectment shall be struck-off and he shall be placed in the same position as if he

had not defended the claim of ejectment and the Trial Court shall not allow the Defendant to cross-examine the witnesses of the Plaintiff-landlord.