
(2000) 11 JH CK 0010
In the Jharkhand High Court
Case No : Civil Revision No. 149 of 2000 (R)

Sailendra Narayan Acharya	Vs	APPELLANT
Ramesh Kumar Singh		RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 10, 11, 2
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 151, 9

Citation : AIR 2001 Jhar 5 : (2001) 49 BLJR 418

Hon'ble Judges : Vinod Kumar Gupta, Acting C.J.

Bench : Single Bench

Advocate : Anand Sen, for the Appellant;

Final Decision : Dismissed

Judgement

Vinod Kumar Gupta, A.C.J.

1. The only ground on which the order passed by the learned Court below is under challenge in this petition filed u/s 115 of the Code of Civil Procedure, relates to the applicability, ambit and scope of Section 10 of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

2. It is urged by the learned Advocate appearing for the petitioner that because u/s 10 (supra) the Controller alone has power and jurisdiction to entertain an application for restoration of an amenity snapped by the landlord, it is not open to a Civil Court to entertain an application for any such purpose and to grant relief to an aggrieved tenant. It is also urged by the learned counsel appearing for the petitioner that it is only after an enquiry and recording of satisfaction with respect to the snapping of the amenity can an order be made for the restoration thereof and since, in the present case, no enquiry has been made, the order passed by the Court below is bad in the eye of law.

2. The facts in brief are that a civil suit in terms of Section 11 of 1982 Act, was filed by the petitioner-plaintiff against the respondent-defendant in the Civil

Court for eviction of respondent-defendant from the suit premises. It is undisputed that it was during the pendency of the said suit that at the instance, and on the instructions of the petitioner-plaintiff the supply of power to the respondent's flat from Diesel Generator set (D.G. set) installed in the building was disconnected by the Society administering the building allegedly on the ground that the respondent-defendant had not been paying the service/maintenance charges with respect thereto. Since apparently this amenity was snapped during the pendency of the suit, the respondent approached the Civil Court, where the suit has been pending for a year, in terms of Section 151 of the CPC for restoration of this amenity and on such application the Civil Court passed the impugned order directing the Society to restore the power supply from the D.G. set to the flat of the respondent.

4. Section 10 of the 1982 Act, reads thus :--

"10. Landlord not to interfere with amenities enjoyed by the tenant.--(1) No landlord shall, without just or sufficient cause cut-off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in possession of building may, if the landlord has contravened the provision of Sub-section (i) make an application to the Controller complaining of such contravention and may restore any of the amenities on his own responsibility, pending consideration of his application by the Controller.

(3) If the Controller on inquiry is satisfied that the landlord has without just or sufficient cause cut-off or withheld any of the amenities enjoyed by the tenant at the time of the commencement of the tenancy or at any time thereafter, he shall-

(i) In case such amenity has already been restored by the tenant, make an order directing the landlord to pay to the tenant, the cost of such restoration as determined by him within such time as may be specified in the order; and

(ii) In any other case, direct the landlord to restore such amenity at such cost and within such time as may be determined by him and also that in case the landlord fails to do so, the amenity may be restored by the tenant at his own cost and such amount as may be specified in the order may be recovered by the tenant as the cost of the restoration either by adjustment towards the rent payable by him or as if the amount were a debt due to him by the landlord."

5. The Controller has been defined in Section 2(c) of the Act and the Court has been defined in Section 2(d) of the Act. These two clauses read as under :--

Section 2(c) "Controller" means in respect of any local areas comprised within the limit of sub-division, the Sub-divisional Officer Incharge of the Sub-division, and includes any other officer appointed in this behalf by the State Government to perform the functions of a Controller under this Act.

Section 2(d) "Court" means the Court having jurisdiction under the Code of Civil Procedure, 1908 (Act V of 1908), to entertain a suit by a landlord against a

tenant for recovery of possession of building in respect of which a suit or application is filed under this Act.

6. Undoubtedly, as per the broad principle emanating from Section 9 of the CPC, a Civil Court can be divested of its jurisdiction either by a Statute expressly debarring such jurisdiction or otherwise by necessary implication, the ouster of jurisdiction of a Civil Court can be inferred. Mr. Anand Sen's argument is that by a reading of Section 10 (supra) the ouster of a Civil Court's jurisdiction can easily be inferred by necessary implication and because jurisdiction of Civil Court is ousted by a plain reading of Section 10, the learned Court below was not empowered in entertaining the application of the defendant- respondent and in granting relief of restoration of electric supply to him. On first impression the argument appears to be attractive and one can take a view that Section 10 may tantamount to the divesting of the jurisdiction of the Civil Court but when one goes deeper into the matter one finds that the scope and application of Section 10, independently may relate to a matter in which the parties are not already in litigation in a suit before a Civil Court. For instance, if no lis is pending between the parties in a Civil Court in the form of a suit filed by either of them and if an aggrieved tenant feels that an amenity has been snapped, the only course open to him undoubtedly is to take recourse to Section 10 of the Act and to approach the Controller for such relief as may be deemed available to him. Undoubtedly that is the clear and unambiguous interpretation one can put on the scope of Section 10 and on the face of the clear language employed therein, it must be said that an aggrieved tenant cannot avail of any other remedy nor can be approach any other forum, except by invoking Section 10 of the Act and approaching the Controller for appropriate relief. But that is in normal circumstances.

7. Situation however, changes when a suit is pending between the parties with respect to a tenanted premises and a Civil Court is seized of such a suit. Undoubtedly 1982 Act does not exclude jurisdiction of Civil Court in toto, either explicitly or by any necessary implication. On the other hand, Civil Court's jurisdiction is very much and plainly in existence and can be referable to various provisions of the Act, particularly Section 11 thereof under which a landlord can obtain a decree of eviction against a tenant only by filing a suit against him in a Civil Court. The plenary jurisdiction of Civil Court, therefore, being very much in existence, if during the pendency of a suit between the landlord and tenant with respect to a tenanted premises the tenant feels or finds that an amenity has been snapped or withheld or withdrawn by the landlord, the question which arises for consideration is as to whether he must in such a situation and in the circumstances, invoke Section 10 and approach the Controller and whether because of the applicability of Section 10 of the Act, the jurisdiction of a Civil Court already seized of the suit between the parties with respect to the property in question, the said jurisdiction is excluded and ousted. The answer has to be in the negative.

8. The jurisdiction of a Civil Court being plenary in nature, if it is seized of a suit, provisions contained in Section 151 and Order XXXIX, Rules 1 and 2 of the CPC are also attracted. It cannot be said that even though the Civil Court has the jurisdiction to entertain a suit and decide the questions raised therein, it cannot entertain any application for any interim relief or entertain any other application for any other purpose. Powers u/s 151, CPC being inherent are applicable and can be invoked and exercisable by a Civil Court with respect to the - subject-matter of the suit and similarly power under Order XXXIX, Rules 1 and 2 of the CPC also being applicable can be invoked, applied and exercised with respect to the subject-matter of the suit. Merely because Section 10 also exists in the Act it does not mean that in the aforesaid pending civil suit the Civil Court is totally divested of its jurisdiction to entertain an interlocutory application or an application in the nature where one seeks the grant of any interim relief and therefore, the tenant must be pushed to the forum of Controller by invoking Section 10 of the Act. That could not have been the intention of the Legislature. To that extent, therefore, I have no doubt and hesitation in holding that the power of the Civil Court, being inherent in nature exercisable u/s 151, CPC is saved and cannot be trampled by the existence of Section 10 (supra).

9. On the question of holding of enquiry similarly I have to say that holding of the enquiry is an ingredient of Section 10. If Section 10, in turn, is independent of the inherent power of the Court, ingredients thereof in turn, cannot be ipso facto made applicable to a proceeding before a Civil Court either u/s 151 or under Order XXXIX, Rules 1 and 2 of the CPC. What is contained in Section 10 is for Section 10, itself. That cannot be lifted bodily from Section 10 and implanted in Section 151 or Order XXXIX, Rules 1 and 2 of the CPC. This, however, does not mean at all that a Civil Court while exercising jurisdiction u/s 151 or Order XXXIX, Rules 1 and 2 of the CPC can be permitted or allowed to act arbitrarily, subjectively or without any rational or objectivity.

10. Viewed thus, from the impugned order it clearly appears and emerges that the Civil Court acted rationally, objectively and fairly by directing restoration of electric supply from D.G. set to the flat of the respondent because the plaintiff-petitioner acted illegally in instructing the Society to cut-off the electric supply and Society also acted improperly in doing so. The defendant-respondent being a tenant and an occupier of the flat independently is always under an obligation to conform, and adhere to the rules and regulations of the Society and whenever so required and demanded of, to pay all service and maintenance charges. But that is between the occupier and Society. If ever, at any time, the Society feels that the occupier is not paying the periodical maintenance or service charges or it is, in a manner, a defaulter in accordance with the rules and regulations of the Society, it is at liberty to disconnect the supply. In that background, therefore, nothing else was required to be enquired into by the Court below and in the facts and circumstances of the case, it was justified in passing the impugned order. No interference is called for.

11. The revision petition is dismissed in limine but without any order as to costs.
12. Revision petition dismissed.