
(2013) 10 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (C) No. 137 of 2013

Santosh Prasad and Others

APPELLANT

Vs

Narbadeshwar Prasad Singh and Brajeshwar Prasad Singh

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 JH CK 0034

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Manjul Prasad, for the Appellant; Rahul Gupta and Mr. Radha Krishan Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing the order dated 03.12.2012 passed by Sub Judge-1, Palamau at Daltonganj in Eviction Case No. 01 of 2009 whereby and whereunder the defence of petitioners has been struck off and his application for filing the additional written statement was also dismissed. By the same order, the learned court below had allowed the plaintiffs' application for withdrawal of the amount which the petitioners have deposited. It appears that the learned court below has passed an order u/s 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, (hereinafter referred as BBC Act) and directed the petitioners to deposit Rs. 1,02,000/- at a time towards the arrear of rent. The petitioner was further directed to deposit current rent @ Rs. 3000/- per month and also directed to pay future rent @ Rs. 3000/- on 15th of each month.

2. It appears that against the said order, petitioners filed a writ application in this Court bearing WPC No. 5093 of 2010 which was withdrawn on 19.11.2011. It is relevant to mention that during the pendency of writ application, order dated 23.07.2010 passed by the learned court below has not been stayed. It appears that after withdrawal of the case, petitioners had not complied the aforesaid order dated 23.07.2010. Thus on the application of plaintiffs/respondents,

learned court below on 09.04.2012 directed the petitioners to comply the order otherwise necessary order will be passed. Thereafter on 27.04.2012, petitioners deposited Rs. 10,000/- towards the arrear of rent, which is part compliance of order dated 23.07.2010. Thereafter on 11.05.2012, petitioners deposited Rs. 92,000/- towards the arrear of rent, then on 23.06.2012 Rs. 96,000/- deposited towards the current rent. It is stated that thereafter petitioners are paying future rent as per the direction by the learned trial court. The learned court below by order dated 03.12.2012 struck off the defence of petitioners on the ground that the petitioners deposited the rent after the expiry of stipulated period without giving proper explanation. The learned court below further rejected the application for filing of additional written statement. The learned court below further directed the plaintiffs/respondents to withdraw the amount deposited by the petitioners towards the rent.

3. Sri Manjul Prasad, appearing for the petitioners submits that petitioner properly explained the delay as to why the amount not deposited within the time stipulated. He submits that just after passing of the impugned order, petitioners had gone for the treatment of his ailing mother. Thereafter he went to his native village and remain there because of flood in different rivers. He further submits that thereafter the petitioners has filed writ application in this court against the order dated 23.07.2010 which was ultimately withdrawn on 19.11.2011. Thereafter in compliance of order of the court below dated 09.04.2012, petitioners deposited part of the amount on 27.04.2012, 15.05.2012 and on 23.06.2012. Accordingly, Sri Prasad submits that petitioners have given proper explanation for delay in depositing the amount. Thus, he submits that the judgment of this Court reported in 2004 (3) JLJR 300 and Kamla Prasad Gupta Vs. Arun Kumar Ojha has no application in this case.

4. Sri Rahul Gupta, learned counsel appearing for the respondents submits that there is no illegality in the impugned order. He submits that it is within the knowledge of petitioners that the writ application has been withdrawn on 19.11.2011, but in spite of that they had not complied the order dated 23.07.2010. He further submits that even after passing of the order on 09.04.2012, petitioners had not complied the order within 15 days as stipulated in section 15 of BBC Act. He further submits that even after 15 days, petitioners had not fully complied the order till 23.06.2012. He further submits that for such delay, no explanation given by the petitioners. Under the said circumstances, the learned court below rightly relied upon the aforesaid judgments reported in 2004 (3) JLJR 300 and Kamla Prasad Gupta Vs. Arun Kumar Ojha and struck off the defence of the petitioners.

5. Having heard the submissions, I have gone through the record of the case. It is admitted that writ application filed by the petitioners against the order dated 23.07.2010 was withdrawn on 19.11.2011. But in spite of same they have not deposited the amount as order by the learned court below. It further appears that on 09.04.2012 when this fact was brought to the notice of learned court

below by the plaintiff, the learned court below directed the petitioners to comply the order dated 23.07.2010, but in spite of that, petitioners have not complied the same within fifteen days from 09.04.2012. No explanation given for the same. It further appears that thereafter petitioners had partly complied the order on 27.04.2012, 11.05.2012 and 23.06.2012, though there is no order of the learned court below to make said payment in installment.

6. Under the aforesaid circumstances, I find that the petitioners have not given any explanation for the aforesaid delay. Since the order dated 23.07.2010 was complied after the expiry of statutory period, and no explanation given for the said delay, I am of the view that the learned court below had rightly struck off the defence of petitioners. I further find that the learned court below had rightly refused to grant leave to the petitioner for filing of additional written statement because his defence has already been struck off. Under the aforesaid facts and circumstances, I find no merit in this writ application. Accordingly, the same is dismissed.