
(2011) 07 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 11935 of 2011

Sarita Jhunjhunwala

APPELLANT

Vs

Anjan Trivedi and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0016

Judgement

Mungeshwar Sahoo, J.—Heard the Learned Counsel for the parties. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 31.5.2011 passed by the 2nd Munsif, Bhagalpur in Execution Case No. 6 of 2008 whereby the application filed by this petitioner under Order 21 Rule 97 of the CPC has been dismissed.

2. It appears that the plaintiff-respondent who is landlord had filed Title Suit No. 16 of 1998 against the tenant, Anjana Trivedi. The suit was decreed and against the said decree, she filed Civil Revision No. 1769 of 2009 as the suit was only on the ground of personal necessity, the special procedure as provided u/s 14 of the B.B.C. Act was adopted.

3. Before this Court, undertaking was given by the tenant, Smt. Anjana Trivedi that she will vacate the suit premises by 7th January, 2011. From perusal of the order dated 26.4.2010 passed by this Court in Civil Revision No. 1769 of 2009, it appears that the arrear of rent amounting to Rs. 6,000/- from the month of March, 2008 upto March, 2010 was paid by the tenant to the landlord and the tenant was directed to pay rent till vacation. The relevant portion of the order passed by this Court is quoted hereinbelow:-

The petitioner, as per her undertaking, shall vacate the premises on or before 7th January, 2011 and shall pay rent to. the petitioner at the rate of Rs. 250/- per month till then. The opposite party will not pursue the Execution Case till 9th of January, 2011.

4. In view of the above undertaking, the revision application was disposed of

directing the executing Court to take steps at once for ejectment of the tenant and give delivery of possession of the suit premises after the above date.

5. It appears that after the expiry of period for vacation, i.e., 7.1.2011, the present petitioner filed the objection application under Order 21 Rule 97 C.P.C. claiming that she was inducted by the landlord as tenant from the month of September, 2008 on monthly rent of Rs. 3,000/- which has been disbelieved by the Court below after considering the allegations made by the" petitioner.

6. In view of the fact that the claim of the petitioner has been disbelieved after adjudication as provided under Order 21 Rule 98 read with Rule 101 C.P.C, the impugned order is to be treated as decree as provided under Order 21 Rule 103 of the Code of Civil Procedure. Therefore, this writ application is not maintainable.

7. Accordingly, this writ application is dismissed as not maintainable.

8. In the case of Atma Ram Builders P. Ltd. Vs. A.K. Tuli and Others, the Apex Court has held at paragraphs 3, 4 and 5 as follows:-

3. From a perusal of the above order, it is evident that the tenant had to vacate the premises in question within six months from the date of dismissal of the special leave petitions and to furnish the usual undertaking within six weeks from that date. It is extremely unfortunate that neither an undertaking was furnished nor did the tenant vacate the premises in question on the expiry of six months i.e. 6.4.2011. Instead, frivolous objections were filed in the execution proceedings, and our order was flouted. Hence, these contempt petitions have been filed by the landlord.

4. It is deeply regrettable that in our country often litigations between the landlord and the tenant are fought up to the stage of the Supreme Court and when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this Court. The time has come that this malpractice must now be stopped effectively.

5. After our order dated 6.10.2010, the counsel for the tenant should have advised the tenant to vacate the premises in question like a gentleman before or on the expiry of six months from 6.10.2010 but unfortunately they advised the tenant to put up some other person claiming independent right against the landlord as a sub-tenant and start a fresh round of litigation to remain in possession. In this manner, our order dated 6.10.2010 was totally frustrated.

9. In view of the undertaking given by the tenant, the suit premises should have been vacated on or before 7.1.2011. Instead of vacating the same now, the present petitioner has filed frivolous objection claiming that she is tenant since September, 2008. It may be mentioned here that the rent up to March, 2010 was paid by the tenant. Although, the revision was disposed of on 26.4.2010, considering the undertaking sufficient time was given to the tenant to vacate.

Therefore, it appears that there was no case till then that any other person is in possession of the suit premises as tenant. Had it been the case then rent would not have been paid by the tenant as stated above.

10. From the facts stated above, it becomes clear that when the tenant lost the case upto this Court she started 2nd inning of litigation through this petitioner and thereby flouted the order of this Court. The tenant gave a false undertaking to vacate and obtained sufficient time. The executing Court was directed to take steps at once for ejectment of the tenant and give delivery of possession, if not vacated by tenant but still the order has not been complied with as the petitioner is creating hindrances by raising frivolous grounds. In view of Section 12 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 also, any person in occupation is to be evicted. Here, it appears that due to wrong advise instead of vacating the suit premises by 7th January, 2011, the present petitioner has been set up to claim independent right against the landlord and thereby prima facie flouted the order passed by this Court in civil revision and started fresh round of litigation to remain in possession and this way the order of this Court was totally frustrated.

11. This fact has now come to this Court and, therefore, this Court cannot close the eyes. The facts of the case before Hon"ble Supreme Court is identical to this case. this Court after knowing the above facts cannot allow the petitioner and the original tenant that is petitioner of Civil Revision No. 1769/2009 to go on flouting order of this Court on frivolous and unacceptable grounds only with a view to remain in possession of the suit premises. Therefore, in my opinion, the conduct of the petitioner and the petitioner of Civil Revision are contemptuous. If their action is allowed to stand it will not only lower down the dignity of Courts but also lower down the Majesty of law. The duty of the Court is to uphold dignity of Courts and Majesty of law for proper administration of justice and to insure due compliance with the orders passed by a Court.

12. In view of the above cognizance of the facts are taken suo moto. The office shall register separate M.J.C. case wherein the petitioner of this writ and the petitioner of the Civil Revision mentioned above shall be alleged contemnor opposite party. Issue notice to the opposite parties in ordinary process as well as registered post to show cause as to why a contempt proceeding be not initiated against them for willfully violating order/undertaking given before this Court as stated above. The notice be issued by the office. Notice may also be issued to the petitioner of this writ through the executing Court. Call for a report from the 2nd Munsif, Bhagalpur about reason why the direction of this Court has not been complied with till date. Report must reach within 2 weeks from receipt of a copy of this order. In the notice to the alleged contemnor, a copy of this order and order in C.R. be sent. Rule returnable within one month thereafter.