

(1972) 06 PAT CK 0001

In the Patna High Court

Case No : Civil Revision No. 1614 of 1968

The Managing Committee and Others

APPELLANT

Vs

Tripurary Charan Palit and Others

RESPONDENT

Date of Decision : 27-06-1972

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11A
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Limitation Act, 1963 — Article 52

Citation : AIR 1973 Patna 60

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : Prabha Shanker Misra, Jagdish Prasad Ganesh Prasad Singh, Vishwambhar Upadhyaya and Rajindra Prasad Singh, for the Appellant; S.C. Ghose, S.P. Mukherji and A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—This is an application in revision by the defendants and is directed from the order dated 23-11-1968 of the Court below, whereby it has directed the petitioners to deposit arrears of rent from August, 1965 at the rate of Rupees 237/50 within 15 days of the date of the order. They were further directed to pay subsequent rent month by month by the 15th day of the following month, failing which their defence as against ejection was to be struck out. When this revision was admitted on 5-12-1968, further proceedings in the title suit were stayed. If I were to take a very strict view of the matter, the petitioners will find themselves in default. The operation of the order under revision was not stayed, what was stayed was the further proceedings. Strictly speaking, therefore, the petitioners could be held to be in default for non-compliance with the order of the court below. But then justice requires that such a technically strict view should not be taken and I shall, therefore, while finally dismissing the civil revision, as it has to be dismissed for the reasons to be stated hereinafter, substitute the said order by a new order,

2. The petitioners resisted the claim of the plaintiff opposite parties u/s 11-A of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1947 (hereinafter to be called the Act) on several grounds. They were all overruled by the learned Subordinate Judge, and a direction as stated above, was given to the petitioners. At the time of the hearing of the civil revision application, only two points have been pressed and no other point has been urged. The said points are as follows-

(i) That since no claim of arrears of rent was made in the plaint instituted in the suit, an application u/s 11-A of the Act was not maintainable.

(ii) That in any view of the matter no direction u/s 11-A could be made for deposit of arrears of rent for a period which was beyond three years of the date of the filing of the application.

3. In my opinion, there is no substance in either of the points. The maintainability of an application u/s 11-A of the Act, is not dependent upon the making of a claim for arrears of rent in the suit. Obviously, such an application, even on the argument advanced on behalf of the Petitioners, would lie for a direction to the contesting defendants for deposit of current rent and future rent. The question is, is there anything in the wordings of Section 11-A of the Act to debar the plaintiffs from tiling an application for claiming arrears of rent in respect of the period prior to the institution of the suit because they have not made any such claim in the suit? In this connection Mr. Prabha Shanker Mishra learned Counsel for the petitioners, made reference to Order 2. Rule 2 of the Code of Civil Procedure. In my opinion, the filing of an application u/s 11-A of the Act is not hit by the provision of Sub-rule (2) of Rule 2 of Order 2, Civil P.C. because the said sub-rule debars the filing of a subsequent suit. The word used in that sub-rule is "sue". It does not debar the filing of an application in the same suit. The conditions which are necessary to be fulfilled for the filing of an application u/s 11-A, according to the said provision are only the following-

(i) That the suit should be for recovery of possession of any building by a landlord against the tenant.

(ii) That the tenant must contest the suit as regards claim for ejectment.

If these two conditions are fulfilled as they were fulfilled in this case, then the application u/s 11-A is maintainable. And, the section does not further require that the claim for arrears of rent must have been made in the suit for recovery of possession of the building.

4. The question of limitation has been considered by me in two earlier cases reported in *Rishab Sunder Das v. Dr. Raghubar Daval* 1960 BLJR 607) and *Bholanath Tewari v. Kuer Rup Narain Singh Trust* 1967 BLJR 397. Even in regard to the claim for arrears being barred in the suit. I have held that the Section 11-A application would be maintainable. It is plain, therefore, that the application could not be held to be not maintainable in regard to a period beyond three years of the date of the filing of the application if as I have held, it could be held

to be maintainable in regard to the period beyond three years of the filing of the suit. The application was filed on 31-10-1968 and the direction to pay the arrears of rent has been from August, 1965. According to the submission put forward on behalf of the petitioners, the claim for August, September and October, 1965 was barred. But I do not think it was so. I have elaborately considered the point in the two cases referred to above and especially in the latter one.

5. For the reasons stated above. I hold that the order of the Court below is correct. But since the time for deposit of arrears of rent as also the current and future rent has already expired, I substitute the said order by the following order.

I direct the petitioners to deposit arrears of rent from August, 1965 to June, 1972 -- that is to say for the period of eightythree months at the rate of Rupees 287/50 " (the total of arrears comes to Rs. 23,862/50) in the Court below on or before the 31st of August, 1972. On their failure to do so, their defence as against ejectment shall be liable to be struck out by the Court below. The petitioners are further directed to deposit future rent starting from the month of July, 1972 onwards by the 15th day of the following month at the said rate of Rs. 287/50. In other words, the petitioners are directed to deposit the sum of Rs. 287/50 the rent for the month of July, 1972 -- in the Court below by the 15th of August, 1972 rent for the month of August, 1972 by the 15th of September, 1972 and so on till the disposal of the suit. On their failure to deposit rent for any one month, their defence as against ejectment shall be liable to be struck out by the Court below.

6. The civil revision is accordingly dismissed subject to the modification made above but there will be no order as to cost.