

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20102 of 2011

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Durgesh Kumar Gupta son of Late Vanarsi Prasad Haluai Resident Of Mohalla-
Hanuman Fatak, Post Office- Buxar, Police Station- Buxar Town, District- Buxar.

.... Defendant / Appellant / Petitioner/s
Versus

Haridwar Prasad Kumhar son of Late Nagina Prasad Kumhar Resident Of
Mohalla- Kumhar Toli, Post Office- Buxar, Police Station- Buxar Town, District-
Buxar,

.... Plaintiff / Respondent/Respondent

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate

Mr. Anil Kumar Roy, Advocate

For the Respondent/s : Mr. Ashok Kumar , Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 24-08-2015

Heard Sri Jitendra Prasad Singh, learned counsel, who was
assisted by Sri Anil Kumar Roy, learned counsel for the petitioner
(tenant) and Sri Ashok Kumar, learned counsel who has appeared on
behalf of the sole respondent (landlord).

The petitioner, invoking writ jurisdiction of this court, has
prayed for setting aside an order dated 27.8.2010 passed by learned
District Judge, Buxar, in Title Appeal No. 2 of 2009, by which he
has dismissed the Appeal on the ground that it was not maintainable.

Short fact of the case is that the respondent/ landlord had
filed a Suit for eviction of the petitioner from the Suit premises on the
ground of personal necessity as well as default in payment of rent.
Before the court below issues were framed on both the points i.e. on



the ground of personal necessity as well as on the ground of default in payment of rent and finally, on both the counts, Suit was decreed in favour of the respondent/ landlord. By judgment and order dated 27.11.2008 the Suit was allowed and it was decreed on both the counts. Aggrieved with the impugned judgment and decree passed by the learned Munsif II, Buxar in Title (Eviction) Suit No. 7 of 2004, the tenant /petitioner preferred an Appeal vide Title Appeal No. 2 of 2009. However, the learned Appellate Court on objection being raised by the respondent/ landlord considered that the Appeal was barred under Section 14(8) of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as the “Act”). Aggrieved with the order dated 27.8.2010 of the Appellate Court, the petitioner/ tenant has approached this court assailing the impugned order.

Learned counsel for the petitioner submits that since the Suit was decreed on both the counts i.e. on the ground of personal necessity as well as on the ground of default in payment of rent, proper remedy available to the petitioner was to file a regular Appeal before the court below which he had filed. He submits that only in a case in which Suit is decreed in view of Section 11(C) & (e) of the Act, summary procedure is followed and right of Appeal is taken away and instead of Appeal, Revision will lie. However, in the present case same restriction may not be available, and as such, it

has been prayed to set aside the order of the Appellate Court and remit back the matter to the Appellate Court to decide the Appeal on its merit.

Learned counsel for the respondent emphasizes that Suit has been decreed mainly on the ground of personal necessity. Of course, while deciding Suit ground of default in payment of rent was also considered and decided in favour of the respondent, but only on this ground alone the petitioner may not be allowed to circumvent the provisions contained in Section 14(8) of the Act.

Besides hearing learned counsel for the parties, I have also perused the materials available on record.

Fact remains that in the Eviction Suit the landlord had made specific pleading for eviction on two grounds i.e. on the ground of personal necessity as well as default in payment of rent.

On perusal of the order of the learned Munsif it is evident that issues on both the points were framed by the learned court below and both the issues have been decided in favour of the landlord. Meaning thereby, that Suit has not only been decreed on the ground of personal necessity, rather Suit was decreed on the ground of default in payment of rent also. Once a Suit is decreed on a ground other than the ground mentioned in Section 11(C) & (e) of the Act, obviously regular procedure will be followed and right of Appeal

may not be taken away in the garb of availability of restriction under Section 14(8) of the Act.

In view of the facts and circumstances, the impugned order is set aside. The matter is remitted back to the Appellate Court to decide the Appeal on its own merit.

The writ petition stands allowed.

Keeping in view the fact that one of the grounds of eviction was personal necessity, it is desirable to direct the court below to finally decide the Appeal preferably within a period of four months from the date of receipt / production of a copy of this order.

It goes without saying that the petitioner / tenant will render full assistance to the court below in proper adjudication, failure to which, the Appellate Court will be at liberty to decide even in absence of the tenant, but Appeal must be decided within four months.

(Rakesh Kumar, J)

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