

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3737 of 2011

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1. M/S Neel Kamal (Retail Gawaliar Suiting Show Room) DNC House Complex, Mohalla - Motijhil, Ward No. - 25, PS + PO Town Munsifi Muzaffarpur East Town And District Muzaffarpur, Through Its Proprietor Subodh Mehta.

2. Subodh Mehata S/O Late Kailash Prasad Mehta, Alleged Proprietor Of M/S Neel Kamal R/O Muhalla Purani Gudari, Bibiganj Lane, PO+PS Town Munsifi Muzaffarpur East, Town And District Muzaffarpur.

.... Defendants/Petitioners

Versus

1. Aditya Kumar Chaterjee S/O Late Dwijendra Nath Chaterjee R/O Muhalla DNC House Complex, Mohalla - Motijhil, Ward No - 25, PS +PO Town Munsifi Muzaffarpur East, Town And District Muzaffarpur. At Present R/O A-10\134. Kadyani, District Nadia, West Bengal, Pin. - 741235.

.... Plaintiff/ Respondent

with

Civil Writ Jurisdiction Case No.19056 of 2010

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1. M/S Neel Kamal (Retail Gawaliar Suiting Show Room) DNC House Complex, Mohalla- Motijhil, Ward No. 25, P.S. + P.O.- Town Munsifi, Muzaffarpur East, Town And District - Muzaffarpur Through Its Proprietor Subodh Mehta

2. Sobodh Mehta S/O Late Kailash Prasad Mehta Alleged Proprietor Of M/S Neel Kamal, R/O Muhalla Purani Gudari, Bibiganj Lane, P.O. + P.S.- Town Munsifi, Muzaffarpur East, Town And Distt.- Muzaffarpur

.... Defendants/ Petitioners

Versus

1. Aditya Kumar Chaterjee S/O Late Dwijendra Nath Chaterjee R/O Muhalla- DNC House Complex, Mohalla- Motijhil, Ward No. 25, P.S. + P.O.- Town Munsifi, Muzaffarpur East, Town And Distt.- Muzaffarpur, At Present R/O A-10/134, Kadyani, Distt.- Nadia, West Bengal, Pin-741235

.... plaintiff/Respondent

with

Civil Writ Jurisdiction Case No.19309 of 2010

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1. M/S Neel Kamal(Retail Gawaliar Suiting Show Room), DNC House Complex Mohalla-Motijhil, Ward No.25, PS+ P.O.Town Munsif Muzaffarpur East, Town And Distt.- Muzaffarpur

2. Subodh Mehta S/O Late Kailash Prasad Mehta Alleged Proprietor Of M/S Neel Kamal R/O Mohalla Purani Gudari, Bibiganj Lane, P.O. +P.S. Town Munsifi Muzaffarpur East, Town And District Muzaffarpur

.... Defendants/Petitioners

Versus

1. Aditya Kumar Chaterjee S/O Late Dwijendra Nath Chaterjee R/O Mohalla DNC House Complex, , Mohalla- Motijhil, Ward No.-25, P.S. +P.O. Town Munsifi Muzaffarpur East, Town And Distt.- Muzaffarpur At Present R/O A-10/134. Kadyani, Distt.- Nadia, West Bengal, Pin.-741235

.... Plaintiff/ Respondent

with

Civil Writ Jurisdiction Case No.14207 of 2011

1. Aditya Kumar Chatterjee S/O Late Dwijendra Nath Chatterjee R/O D.N.C. House Complex, M/H-Motijhil, Ward No.25, P.S. And P.O. Muzaffarpur Town, Distt.-Muzaffarpur.

.... Petitioner

Versus

1. M/S Neel Kamal (Retail Gawalir Suiting Show Room), D.N.C. House Complex, M/H-Motijhil, Ward No.25, P.S. And P.O. Muzaffarpur Town, Distt-Muzaffarpur Through Its Proprietor Sudhir Mehta, S/O Late Kailash Prasad Mehta, R/O M/H-Purani Gudari, Bibiganj Lane, P.S. And P.O. Muzaffarpur Town, Distt.-Muzaffarpur.

.... Respondent

Appearance :

(In CWJC No.3737 of 2011)

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr. Naresh Chandra Verma

(In CWJC No.19056 of 2010)

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr. Naresh Chandra Verma

(In CWJC No.19309 of 2010)

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr. Naresh Chandra Verma

(In CWJC No.14207 of 2011)

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr. Chandra Kant.

**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER**

5 17-08-2015

All the writ petitions have been listed together for consideration and disposal as they arise out of Eviction Suit No 33 of 2005. Petitioners of first three cases are the tenants-defendants whereas the petitioner of CWJC No. 14207 of 2011 is the plaintiff-landlord. With the consent of the parties, all the writ applications have been heard together. The first three applications shall be considered together whereas CWJC No. 14207 of 2011 shall be dealt with separately in this order.

Heard Mr. Chandra Kant counsel for the defendant-tenant and Mr. Naresh Chandra Verma for the plaintiff-landlord.

CWJC No. 3737 of 2011 has been filed challenging the order dated 11.6.2010 (Annexure-5) passed by the learned Munsif, East Muzaffarpur in Eviction Suit no. 33 of 2005 whereby the Court struck off the defence of the petitioner-defendant. The order was passed on a review petition filed by the defendant for review of order dated 18.2.2010 whereby an order was passed under Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for short 'the Act') on finding that the relationship of land lord and tenant between the parties was admitted. The trial Court directed for payment of the upto the date rent at the rate of Rs.190 per month within 15 days and continue to deposit the rent at the said rate for the succeeding months failing which the defence was to be struck off. CWJC No. 19056 of 2010 has been filed for setting aside the said order dated 18.2.2010 (Annexure-4) directing the defendant to pay rent failing which the defence is to be struck off.

CWJC No. 19309 of 2010 has been filed for setting aside the order dated 10.8.2010 (Annexure-7) passed by the trial Court in the same suit refusing to accept the challan for payment of the outstanding dues on account of arrear of rent as directed under order dated 18.2.2010.

The relevant facts for resolution of the controversy

are as follows:-

The plaintiff filed the suit for eviction on the ground of default in payment of rent since February 1996. The defendant did not appear in the proceeding. A paper publication for appearance of the defendant was made on 14.9.2006 whereafter the case was fixed for ex- parte hearing under order dated 03.05.2007. The steps taken by the Court persuaded the defendant to appear in the suit on 05.07.2007 with an application for recall of ex -parte hearing. On such request, the Court recalled the order for ex parte hearing of the suit. On 11.07.2008 written statement was filed. On 18.02.2008, the defendant filed a petition under Order 7 Rule 11 for rejection of the plaint which was considered and rejected on 20.11.2009. On 04.02.2009 an application was filed under Section 15 of the Act by the plaintiff for deposit of rent both arrears and current. The same was considered in presence of both the parties and taking into consideration the rival pleadings the Court allowed the said application and directed for deposit of rent from September 2002 till date within 15 days. Against this order CWJC No. 19056 of 2010 has been filed. As a necessary corollary of the order dated 18.2.2010, the trial court under order dated 11.6.2010 struck off the defence of the defendant finding default on his part. A review petition for reviewing the order dated 18.2.2010 was filed. CWJC Nos. 3737 of 2011 and 19309 of 2010 arise out of the said order.

Contention of the defendants-petitioners is that the order dated 18.2.2010 is bad in law since an application filed by the defendant on 28.1.2010 for holding an enquiry about tenancy was only considered. No opportunity of hearing was given for making submissions on the application of the plaintiff filed under Section 15 of the Act. The review petition filed by the defendant for recall/review of the order dated 28.1.2010 (Annexure 3 to the CWJC No. 19056 of 2010) has also been passed illegally. The Court, at this stage, notices that rejoinder was filed to the recall/review petition by the plaintiff on 07.05.2010. It has been submitted that the order of the trial court refusing to recall/review was passed on 11.6.2010 (Annexure 5 of CWJC No. 3737 of 2011) and immediately thereafter the defendant presented challan on 12.07.2010 for accepting the rent which again was refused illegally and arbitrarily on 10.08.2010 little realizing that there was bonafide delay in doing so on account of pending litigation(s). Mr. Chandra Kant has strenuously argued that the order dated 18.02.2010 having been passed without hearing the parties on the application filed under Section 15 of the Act is arbitrary and illegal. The delay being bonafide, the trial Court ought to have allowed the said application and accepted the challan as the Court has discretion in the matter. He has relied in this regard on **AIR 1989 SC 291 (Manmohan Kaur vs. Surya Kant Bhagwani)** [paragraph nos. 6 and 8].

Per contra, Mr. Verma supported the impugned orders. In his submission, parties were allowed to make submissions on the petition filed by the plaintiff under Section 15 of the Act inasmuch as the relevant pleadings of the parties were also perused. The Court found from the rival pleadings that relationship of landlord and tenant between them was not in dispute. In this regard, he has drawn attention of the Court to paragraph nos. 20 and 31 of the written statement filed by the defendant which is/are extracted hereinbelow:-

“20. That it is again made clear that the unregistered partnership Firm M/S Neel Kamal was inducted tenant and the said Firm paid rent to the plaintiff's father till he was alive. The plaintiff's father had given instructions to the partners of the said firm to pay rent to him on demand, so that he may fulfill his needs as well as needs of his family from the lump-sum amounts which he used to realize from the tenant.

31. That so far the partnership firm is concerned the said firm paid upto date rent to the plaintiff's father who died leaving two sons namely Kanti Chatterjee and Aditya Kumar Chatterjee the plaintiff. It is submitted that in absence of Kanti Chatterjee, his younger brother Aditya Kumar Chatterjee had been collecting rent from the tenant of the suit premises namely the unregistered Firm M/S Neel Kamal, Motijheel, Town Muzaffarpur.”

Further, the defendant in para 32 thereof asserted that the plaintiff never realized the rent regularly nor granted the rent receipt.

The Court is required to make a limited enquiry for

ascertainment of the aforesaid fact before passing an order for deposit of arrears of rent and future rent. It is, therefore, incorrect to submit that no opportunity of hearing was granted. In so far as the application seeking payment of dues and presentation of challan therefore it has been submitted that the delay was not bonafide but intentional. The consequence of the order dated 18.2.2010 was automatic i.e. striking off the defence of the defendant on failure to deposit the arrears of rent and future rent within time granted by the Court. Almost two months thereafter the defendant filed a review petition for review of the said order which was rightly rejected by the trial Court on 11.6.2010. Nearly one month thereafter the defendant approached the trial Court seeking permission to deposit the dues through challan which, in the light of the objection filed by way of rejoinder, was rejected by the trial Court. The delay, on the face of it, is not bonafide. The background of the case becomes relevant. From the very inception the defendant had adopted all available means to harass the plaintiff and delaying the disposal of the suit. Firstly by not appearing in the suit the Court had to resort to the mode of substituted service and thereafter fixed the date for ex- parte hearing. Within two days thereafter the defendant appeared in the suit and filed application for recall the order for ex -parte hearing of the suit which, considering the interest of justice was allowed.

Section 15 of the Act enjoins the Court to pass an

order for deposit of the rent if the Court is satisfied that relationship of landlord and tenant between the parties is not in controversy. Having considered the case of the parties, the Court passed an order for deposit of the arrears /current rent. Relevant pleadings of the parties have been noticed to come to the said conclusion. The order refusing to recall the said order cannot be interfered with if the Court is satisfied that judicial order directing the defendant-tenant to pay/deposit the arrears/current rent has been passed for good and valid reasons. As noticed above, if on appraisal of the pleadings of the parties it is found that the relationship of landlord and tenant is not in controversy the order directing deposit/payment of rent is held to be valid and legal order passed by the trial Court. Consequently, the order dated 11.6.2010 rejecting the petition for review/recall of the order is allowed to sustain.

The next contention of the counsel for the defendant is that the delay in deposit of the rent as per order dated 18.2.2010 was bonafide since a review petition was filed in April, 2010 which, ultimately, was considered and rejected on 11.6.2010. In support of the said contention he has relied on **Manmohan Kaur** (supra). In that case the Apex Court enunciated the broad principle that if the delay or failure to deposit the rent is properly explained then the Court has a discretion to condone/excuses the delay. The factual background in which the said observation was

made by the Apex Court needs particular notice. The trial Court directed the tenant to deposit the arrears of rent and continue to deposit rent month by month in future by 15th day of the month next following. The challan was got passed for two months together on two occasions and the amount was deposited in time. However, due to some inadvertence the rent for the months of November and December, 1986 could not be deposited. This was stated to be under the genuine belief that his son had deposited the same. Such non deposit of current rent had also escaped attention of the landlord. Therefore challan for the subsequent period was passed without any objection. In such circumstance, the Court found that the default or delay in depositing rent for the intervening two months was bonafide and properly explained. True it is that the Court in such matter is not powerless after having passed an order under Section 15 of the Act. In such a situation the ends of justice demand relief being granted. Such proposition of law has been enunciated again by by the Apex Court in the case of **Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta AIR 1985 SC 964**. Reverting to the case at hand, in my view , even applying the aforesaid legal proposition of law the order impugned rejecting acceptance of challan cannot be held to be either illegal or arbitrary. Delay at all levels of the proceedings noticed hereinabove shall be a relevant consideration for the Court to decide whether failure to deposit

the rent as per order of the Court has properly been explained or not. Firstly, the defendant-tenant avoided to appear in the proceeding. A petition under order 7 Rule 11 of the CPC was filed which was rejected on 20.11.2009. After disposal of the said petition, the Court took up the application filed by the plaintiff under section 15 of the Act and an order was passed on 18.2.2010. The defendant did not comply the said order and filed a review petition on 26.4.2010 which again was rejected on 11.6.2010. More than a month thereafter the challan was produced for deposit of the rent as per order dated 18.2.2010. In my view, failure to deposit rent as per order of the Court has not at all been convincingly explained. On the contrary, the delay in doing so, appears to be culpable and malafide. Sincerity on the part of the defendant in complying with the order of the Court is regrettably missing in this case.

In the light of discussions made above, I do not find any infirmity in the orders which have been challenged in these writ petitions. Dismissed.

CWJC No. 14207 of 2011

The writ application is directed against the order dated 09.05.2011 passed by the trial court in the same suit rejecting the petition dated 8.4.2011 of the plaintiff-petitioner and the defendant-tenant has been allowed to cross-examine the witness of the plaintiff and also to lead evidence. The trial Court

took the view in rejecting the petition that in case where the court directs the defence of the defendant to be struck off the same would mean that his defence against his status as tenant are only struck off not the other defence the tenant might have taken in the suit. The right to cross examine a witness and to adduce its own is a valuable right. This falls within the ambit of acknowledged principles of natural justice. The trial court in appreciation of the provisions contained in Section 15 of the Act and the legal principles propounded by the Apex Court held in the impugned order as under:-

“Thus in view of proper construction of section 15 of B.B.C. Act it must be held that while defence of the defendant is struck off the same only mean his defence qua-tenant and not his other defences which it permitted to be raised would enable him to prove his absence of title in respect of the properties and/or absence of relationship of landlord and tenant. In this view of matter this court could not debarred the defendant to cross examine the witnesses.”

Mr. Verma assailing the said order of the trial court has relied on a Division Bench judgment of this court rendered in the case of **Dinesh Nandan Sahay vs. Ram Kripal Singh & Ors. 1996(1) PLJR 234**. Mr. Chandra Kant appearing for the defendant-respondent has conversely relied on a Full Bench judgment of this Court rendered in the case of **Mahabir Ram v. Shiva Shankar Prasad & Ors [1968 PLJR HC 75]** in which the Court while dealing with the Section 11(A) of the Act held in

para 17 thereof as under:-

“17.The next question for consideration is as to whether the petitioner had a right to cross-examine the witnesses of the plaintiffs on the question of title to the house in suit. The moment a defendant in such a suit takes the defence that he is not a tenant of the plaintiff landlord and no relationship of landlord and tenant was ever created, the position is that such a defence is taken by him not in the capacity of a tenant. His defence may be that he himself was the owner of the house or that a third party was an owner, but all the same this defence is not a defence qua tenant of the plaintiff. In such a case even on the striking out of his defence against ejectment he cannot be debarred from cross-examining the plaintiffs’ witnesses on the question of title or adducing his own evidence to prove either his title or that of a third party to the house in question.”

It has been argued by Mr. Chandra Kant that other defence taken by the defendant to oppose the prayer of the plaintiff can always be considered by the Court even after an order striking out the defence is passed under Section 15 of the Act. The defendant would be entitled to cross-examine the witness on these issues/points only and lead evidence. Similar view appears to have been taken by a Division Bench of this Court in the case of **Shri Sachidanand Singh vs. Smt. Tarawati Mishrain & Ors 1992(2)PLJR 195**. On a survey of diverse decisions of the Apex Court and this court including the **Mahabir Ram (Supra)** held as under in para 23:-

“23. I am in respectful agreement with the views expressed in the aforesaid case. The emphasis in this section

is on the words “tenant” and “landlord”. On failure of the tenant to deposit current rent as well as arrears of rent within the time granted by the Court, the court has power to pass an order to strike out the defence against ejectment and further the court shall not allow the tenant to cross-examine the landlord’s witnesses. The true meaning of the words “defence against ejectment” is the defence as the tenant. If there is any other defence against ejectment not in the capacity of tenant but otherwise that would not be struck off on failure of the tenant to deposit the current rent as well as arrears of rent.”

Aforesaid proposition of law is now well established in dealing with the matters arising out of the proceedings taken up under the Act.

Counsel for the respondent has conversely relied on **1996(1) PLJR 234 [Shri Dinesh Nandan Sahay vs. Ram Kripal Singh & Ors.]** wherein this court held that in a case where defence of the tenant is struck off, tenant will be deemed to have no defence against ejectment as tenant. In substance, the defendant of the suit is estopped from questioning the title of the landlord after admitting his/her status as tenant. However, if there is any other defence other than questioning the relationship of landlord and tenant is taken by the tenant the same can be allowed to be proved by adducing evidence and cross-examining the plaintiffs witness which will be limited to those defence/facts only which may or may not have material bearing on the case. The trial court is, therefore, required to be cautious while

permitting the tenant in spite of an order passed under Section 15 of the Act to cross examine the witness of the plaintiff and also in adducing oral evidence.

In the light of the discussions made hereinabove, this Court does not find any illegality and/or material irregularity in the order dated 09.05.2011 passed by the trial Court which has occasioned failure of justice meriting interference.

The writ application fails and is dismissed.

(Kishore Kumar Mandal, J)

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