

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13445 of 2011

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Md.Hasnain S/o Late Hasiruddin R/o Mohalla- Bari
Khanjarpur, P.S.- Barari, P.O.- Khanjarpur, Distt.-
Bhagalpur

..... (Defendant 1st party) Petitioner
Versus

1. Md.Maksood Khan S/o Late Abdul Rashid Khan R/o
Mohalla- Tilkamanjhi, Police Line Road, P.S.-
Tilkamanjhi, P.O. and Distt.- Bhagalpur

..... (Plaintiff) Respondent 1st set

2. Md. Khalil S/O Md. Jhari R/O Mohalla- Bari
Khanjarpur, P.O.- Khanjarpur, P.S.- Barari, Distt.-
Bhagalpur

..... (Defendant 2nd party) Respondent 2nd party

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Appearance :

For the Petitioner/s : Mr. Bimlendu Mishra
For the Respondent/s : Mr. Md. Najmul Hoda

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5. 04-08-2015 Heard Sri Bimlendu Mishra, learned
counsel for the petitioner and Md. Najmul Hoda,
learned counsel, who has appeared on behalf of
respondent no. 1.

The defendant-petitioner has approached
this Court invoking its writ jurisdiction under
Article 227 of the Constitution of India with a
prayer to quash an order dated 23-04-2011 passed
by the learned Additional Munsif, Bhagalpur (in
short 'Addl. Munsif') in Title Eviction Suit No.
6 of 2007. By the said order, learned Addl.
Munsif had dismissed the petition dated



21-01-2011 filed by the petitioner with a prayer to allowing him to deposit entire rent under the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'BBC Act') and further prayer was made for allowing him to contest the suit by cross-examining the witnesses of the plaintiff.

Short fact of the case is that the plaintiff-respondent no. 1 had filed a suit for eviction, vide Title Eviction Suit No. 6 of 2007 in the court of 2nd Munsif, Bhagalpur on the ground of default in payment of rent as well as breach of terms of tenancy. In the suit, after appearance of the defendant-petitioner, a petition was filed by the plaintiff-Respondent No. 1 at belated stage on 22-05-2008 with a prayer to direct the defendant-petitioner to pay arrear of rent from the month of July, 2007 @ Rs. 300/- per month and for payment of month-to-month rent during the pendency of the suit and in case of non-deposit, the defendant-petitioner may be placed in the position as he has no defence to claim the ejectment. The petition filed by the plaintiff-respondent no. 1 was



allowed by the learned court below on 14-09-2009 with a direction to pay the arrear rent and current rent. The order indicates that the petition filed by the plaintiff-respondent no. 1 was allowed. Meaning thereby that in case of non-deposit of rent, in terms of the order, the defence of the petitioner-defendant was struck off. From the order dated 17-09-2010, it is further evident that the learned court below had recorded that due to non-deposit of the rent, in view of the earlier order, defence of the defendant-petitioner had already been struck off. Thereafter, on number of dates, the case was taken up and witnesses of the plaintiff-respondent no. 1 were examined. Thereafter, a petition was filed by the defendant-petitioner for allowing him to deposit the rent and also allowing to cross-examine the witnesses. The prayer has been rejected by order dated 23-04-2011, which has been assailed in the present writ petition.

Sri Bimlendu Mishra, learned counsel for the petitioner has argued that earlier defence was not struck off and as such, the

petitioner was entitled to make a prayer for deposit of arrear rent as well as current rent and he was also entitled to cross-examine the witnesses.

Learned counsel for the respondent no. 1 has opposed the prayer of the petitioner.

Besides hearing, I have also perused the materials available on record. On perusal of the order dated 14-09-2009, the Court is satisfied that once the petition filed by the plaintiff-respondent no. 1 was allowed, wherein, a prayer was made for directing the defendant-petitioner to pay arrear rent as well as current rent with a condition that failure to deposit the rent, the defence may be struck off and even thereafter, the defendant-petitioner did not deposit the rent, automatically his defence was struck off. Thereafter, on number of dates, the case proceeded and witnesses from the plaintiff side were examined and as such, at much belated stage, the prayer of petitioner for allowing him to deposit the rent was not sustainable in the eye of law and the learned court below has rightly rejected the same by its order dated

23-04-2011. The order impugned requires no interference.

The writ petition stands dismissed.

Keeping in view the fact that the suit is pending since long, while dismissing the writ petition it is desirable to direct the court below to proceed with the case expeditiously so that the case may come to its logical end without unnecessary delay.

(Rakesh Kumar, J.)

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