

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6125 of 2016

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Sri Brajesh Kumar Singh Son of Late Thakur Birendra Kumar Singh Resident of
M.I.G. 92, Gayatri Niwas, Housing Board, Laheriasarai, P.S. Bahadurpur, District -
Darbhanga

.... Petitioner.

Versus

Dr. Bharat Kumar Singh Son of Late Dr. Nagendra Narayan Sinha Resident of
Mohalla - Bakarganj, P.S. Laheriasarai, District - Darbhanga

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 14-06-2016

V.Nath, J.

Heard Mr. Jagannath Singh, learned counsel

appearing on behalf of the petitioner.

The present application under Article 227 of the
Constitution of India has been filed by the petitioner aggrieved by
the order passed by the learned court below under Section 15 of the
Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982
directing the petitioner to deposit the rent @ Rs. 1000/- per month
from the date of institution of the suit.

The learned counsel for the petitioner has further
submitted that by order dated 28.05.2016 the learned court below
has struck off the defence of the defendant in view of the non-
compliance of the direction for deposit of the rent by the impugned

order.

The contention on behalf of the petitioner is that the petitioner is not a tenant of the suit premises under the plaintiff and the wife of the petitioner is a share holder in the suit premises by way of inheritance and for determining the said purpose a Partition Suit No.377/2013 has been filed which is still pending. It has been canvassed that the learned court below ought to have considered the fact of pendency of the said partition suit and ought to have amalgamated the present suit after converting into a regular title suit in view of the complicated question of title involved therein with the said partition suit. It has also been submitted that the learned court below has committed error in passing the impugned order only on the basis of presumption as there was no evidence regarding the last rent paid.

After considering the submissions and the materials on record, it is manifest that the eviction suit has been filed against the petitioner seeking his eviction from the suit premises. The learned court below has taken into notice the Kiraynama said to have been executed by the petitioner in favour of the father of the plaintiff with regard to the suit premises wherein there was also an agreement that the rent would be enhanced @ Rs.12.5% per month. The plaintiff has also adduced in evidence a



compromise decree passed in earlier partition suit to show that the suit premises has been allotted in the share of the plaintiff. During the course of submission, the learned counsel for the petitioner has not denied the existence of Kiraynama in between the father of the plaintiff and the petitioner but has submitted that the said document was only a ferzy and showee document in order to impress/attract other tenants in the building. The factum of the earlier compromise decree in the year 1970 produced by the plaintiff has also not been denied.

The learned court below after considering the aforesaid facts and circumstances has come to the conclusion that the defendant is liable to pay the rent of the suit premises @ Rs.1000/- per month from the date of institution of the suit. However, the learned court below has further directed, in the fitness of things, that the plaintiff would not be entitled to withdraw the said amount and the issue of withdrawal of the said amount shall be decided at the time of final adjudication of the suit.

In this backdrop, this Court does not find that the order passed by the learned court below is perverse or unreasonable in any manner as it is also not prejudicial to the interest of the defendant. This Court, therefore, is not inclined to interfere with the impugned order.

The application is, accordingly, dismissed.

The learned counsel for the petitioner, however, has submitted that by later order dated 28.05.2016 the defence of defendant-petitioner has been struck off for non-compliance of the said order. It has been submitted that the petitioner under the bonafide impression that the present application has been filed and is pending for disposal, did not deposit the aforesaid amount.

After considering the submissions in this regard, this Court grants liberty to the petitioner to file appropriate petition before the learned court below for recall of the order dated 28.05.2016 and if such petition is filed the learned court below shall dispose it of on its own merit in accordance with law without being prejudiced by this order.

(V. Nath, J)

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