

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.134 of 2013

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1. BIBI RABIA KHATOON @ RABEYA KHATOON wife of Md. Zafrullah.
2. Md. Zafrullah son of Late Md. Khalilur Rehman both resident of Bhagwan Mahabir Path, Mohalla, P.O. and P.S.- Tatarpur, District- Bhagalpur (Decree Holder)

.... Petitioner/s

Versus

1. M/S LAXMI NARAYAN SITA RAM, through its Proprietor Sitaram Sah, Situated at Holding No. 7, Sardhari, Lal Lane , Mohalla- Hariyapatti, Sujaganj, P.S.- Kotwali, District- Bhagalpur. (Judgment Debtor).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-05-2016

Heard Mr. Ajay Kumar Singh, learned counsel appearing on behalf of the petitioners.

2. The dismissal of the execution case by the executing court below which was filed by the petitioner for execution of the order passed in the proceeding for fixation of rent by the House Controller has been challenged in this revision application.

3. The facts noticeable in the present context are that the order was passed by the house controller under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'BBC Act') fixing the quantum of the fair rent of the premises in occupation of the opposite parties. It



appears that the order passed by the house controller was affirmed by the appellate authority. Thereafter the Execution Case No. 12 of 2000 was filed by the petitioner for executing the order passed by the house controller in view of the provision as postulated under Section 23 of the BBC Act. However, the tenant-opposite party raised an objection to the maintainability of the execution case in view of the decision of this Court in the case of **Sunil Kumar Gami vs Jogendra Mahto 2012(2) PLJR 659**, contending that the order passed by the House Controller would not be executable. By the impugned order the learned court below has upheld the objection raised by the opposite party and dismissed the Execution Case No. 12 of 2000.

4. Mr. Singh, learned counsel appearing for the petitioners has submitted that the decision in the case of Sunil Kumar Gami (supra), is not attracted in the present case as the facts are distinguishable and on the basis of which it can be said that the order passed by the house controller in the present case is executable as decree as provided under Section 23 of the BBC Act.

5. During the course of submission, this Court has not been persuaded to find any fact on the basis of which the law as stands expounded by the Bench of this Court in the case of Sunil Kumar Gami (supra) can be said to be not applicable. The reference



to Section 16 of the BBC Act on behalf of the petitioners is also misconceived as the said provision only envisages an order in the nature of an interim order for payment of rent as fixed by the house controller during the pendency of the appeal and does not provide any additional jurisdiction on the appellate authority or the revisional authority to determine the arrears of rent and pass an order on that basis. The learned court below has applied the correct principle of law and has rightly dismissed the execution case as not maintainable.

6. This Court does not find any error of jurisdiction or material irregularity committed by the learned court below in passing the impugned order.

7. This revision application is accordingly dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	24.05.2016
Transmission Date	N.A.