

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3939 of 2014

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Neeraj Chandhariyavi

.... Petitioner/s

Versus

Lata Gupta

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 19-01-2016 1. Heard the learned counsel, Mr. Ranjeet Tiwary, for the petitioner and the learned counsel, Mr. Arjun Kumar, for the respondent.

2. By the impugned order dated 12.11.2013, the learned Subordinate Judge VIth, Patna passed in Eviction Suit No.12 of 2009 rejected the application filed by the defendant tenant petitioner to deposit the arrears of rent in installment.

3. It appears that the aforesaid suit for eviction was filed by the plaintiff respondent against the petitioners on the ground of default in the year 2009. It was the case of the plaintiff that the defendant tenant has not paid rent since April, 2007. During the pendency of the suit, an application under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 was filed for direction to the defendant to pay the arrears of rent from April,



2007 at the rate of Rs.2800/- per month. After hearing both the parties, the learned Court below by the order dated 09.01.2013 held that the defendant is tenant and monthly rent is Rs.2800/- and the defendant has not paid money since April, 2007 and accordingly directed the petitioner to deposit the arrears of rent within 15 days and also directed the petitioner to deposit current and future rent at the rate of Rs.2800/-. The petitioners did not challenge the said order. Thereafter, by the order dated 05.03.2013, the defence of the petitioner was struck off. Thereafter, the application was filed by the petitioner on 03.05.2015 seeking permission of the Court to deposit the arrears of rent in installment on the ground that now he is in a position to deposit the arrears of rent and the said application was not pressed and accordingly, it was dismissed then the petitioner filed application for recall of the said order which was again dismissed and this order is challenged in this writ application.

4. The learned counsel for the petitioner submitted that the petitioner is ready to deposit the arrears of rent in installment, therefore, the installment may be fixed and the order striking out the defence of the petitioner be set aside.

5. On the other hand, the learned counsel for the plaintiff



respondent submitted that earlier the eviction suit was heard ex-parte because in spite of notice, the defendant did not appear. The Judgment was passed in favour of the plaintiff. Subsequently, the defendant appeared and filed an application for setting aside the ex-parte Judgment and Decree. The same was recalled and thereafter the suit revived. In this suit, the petitioner filed application under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982. The Court below on the basis of the materials available on record recorded a clear finding that there is relationship of landlord and tenant between the parties and that the defendant has not paid rent at the rate of Rs.2800/- per month since April, 2007 and then directed the petitioner to deposit the same. Till today also to show bonafide, the petitioner has not either paid or deposit the amount in the Court below and in fact he is purchasing time before the Court by filing different application and thereby delaying the disposal of the suit.

6. Perused the order passed by the Court below. Admittedly, the petitioner has not paid single farthing towards rent since April, 2007 as directed by the Court below. The application was filed in the year 2013 and the order for payment was passed also in the year 2013. Till then also, the monthly rent was not paid. No reason was assigned by the petitioner as to why he was

not paying the rent and as to why he was even not complying the order passed by the Court under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982. Considering these aspects of the matter, the Court below has rejected application for fixing installment.

7. In view of the above facts that the petitioner is not complying the order since long and in view of the fact that admittedly he is defaulter and has not paid the rent since April, 2007, the petitioner cannot be permitted to invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India.

8. The Hon'ble Supreme Court in the *Shalini Shyam Shetty vs. Rajendra Shankar Patil 2010 (8) SCC 329* has held that **'the jurisdiction under Article 227 is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. A proceeding under Article 227 can never be governed under the Original Side Rules of the High Court. In certain cases where there is infringement of Fundamental Right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in case where the High**

Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a mater of right.’

9. Here, in this present case, in view of the conduct of the petitioner, there is no question of exercise of supervisory jurisdiction under Article 227 of the Constitution of India arises, particularly when the Order passed by the Court below is within the four corners of the statute and accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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