

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.131 of 2016

Prakash Kumar Sinha, son of Late B. Prasad, Resident of Hamidganj, PS Daltonganj, District Palamu, Jharkhand at present residing at House No. 20 (Flat No. I-A) Road No. 1 at New Patliputra Colony, PS Patliputra, Town and District Patna-800013.

.... Defendant/Petitioner

Versus

Hira Lal Sah son of Sri B.N. Sah, Resident of House No. 20 (Flat No. IA) Road No. 1 at new Patliputra colony, PS Patliputra, Town and District Patna-800013.

.... Plaintiff/Opposite Party

Appearance :

For the Petitioner/s : Mr. K.N. Choubey, Mr. Bajarangi Lal and Mr. Ashish Kr Ghosh, Adv

For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, Adv, Mr. Dr. Anand Kumar, Adv and Mr. Bipin Kumar Deo, Adv

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-09-2016

Heard Mr. K.N. Choubey, learned senior counsel appearing on behalf of the petitioners and Mr. Sanjay Kumar Ghosarvey, learned counsel for the respondents.

This revision application has been filed under Section 14(8) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the BBC Act) questioning the legal sustainability of the impugned judgment and decree for eviction dated 31.07.2014 passed in Eviction Suit No. 120 of 2011.

The suit for eviction was filed by the plaintiff-opposite party seeking eviction of the defendant from the suit premises on the ground of personal necessity alone. In the said suit the defendant appeared and filed written statement along with petition dated



17.02.2012 praying for grant of leave to file written statement. However, the said petition was rejected on 29.05.2012 on the ground that the tenant-defendant had not obtained the leave as required under Section 14(4) of the BBC Act by filing affidavit stating the ground for contesting the suit. The said order was assailed by the tenant-defendant before this Court by filing C.W.J.C No. 4892 of 2013. However, this Court by order dated 17.05.2013, which is Annexure-A to the reply filed on behalf of the opposite parties to the interlocutory application (I.A. No. 5391/2016), dismissed the application. It further appears from Annexure-B to the said reply that the defendant-petitioner approached the Apex Court by filing petition for special leave to appeal which was also dismissed. The matter did not end there and the tenant-defendant filed another C.W.J.C No. 10891 of 2014 assailing the subsequent order in the eviction suit refusing to recall the earlier order dated 29.05.2012 refusing leave to the defendant-tenant. This application was also dismissed by order dated 25.07.2014 (Annexure-C). Thereafter, the learned court below has proceeded with the trial of the suit and has passed the impugned judgment and decree directing the defendant to vacate the suit premises.

The provisions as contained in Section 14 of the BBC Act envisage special procedure for trial of the eviction suit filed on

the ground of personal necessity or on expiry of lease or both.

Section 14(4) of the BBC Act reads as follows:-

"The tenant on whom summons is duly served (whether by ordinary mail or by registered post) shall not contest the prayer for eviction from the premises unless he files an affidavit stating the ground on which he seeks to make such contest and obtains leave from the Court as hereinafter provided; and in default of the appearance in pursuance of the summons or his obtaining such leave the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground aforesaid."

The aforesaid provision also came up for consideration before a Bench of this Court in the case of **Santosh Singh vs Ram Chandra Sah 1992(2) PLJR 92**, wherein, the ambit and scope of the said provision has been elaborately explained. As is evincible from the aforesaid provision as well from the decision in Santosh Singh (supra) the default by the tenant in obtaining the leave of the court to contest the suit would lead to admission of the statements made by the landlord in the suit making the landlord entitled for a decree of eviction on the said basis. This legal fiction created by the said provision, therefore, demonstrably debars the tenant-defendant from contesting the suit.

Mr. Choubey, learned senior counsel for the petitioner



has submitted that in the revision application filed under Section 14(8) of the BBC Act, the lower court records are generally called for, which has not been done in the present case. It has also been faintly submitted that the tenant-defendant has been allowed to cross-examine the witnesses on behalf of the plaintiff. However, learned senior counsel has failed to persuade this court to take the view that the admission of the statement of the landlord by the tenant-defendant on the basis of the legal fiction under Section 14(4) of the BBC Act would stand diluted in any manner in this backdrop.

The circumscribed scope of revisional jurisdiction under Rent Control Act has now been well settled by the Constitution Bench decision of the Apex Court in the case of ***Hindustan Petroleum Corporation L.T.D. vs Dilbahar Singh, 2014(9) SCALE 657.***

In view of the dictum of the Apex Court, the revisional court is only to see whether the judgment and order of eviction has been passed according to law. In the present case as the tenant-defendant-petitioner would be deemed to have admitted the statements of the landlord-opposite party, there was absolutely no legal impediment before the court below in passing the judgment and decree for eviction on the grounds as stated in the plaint. Even otherwise also, it transpires from the impugned judgment that the



learned court below has appraised the evidence adduced on behalf of the plaintiff before recording the findings on the material issues pertaining to personal necessity of the plaintiff for the suit premises and partial eviction. The findings have been recorded on the basis of the evidence which were acceptable and could have been relied upon. This Court, therefore, comes to the conclusion that the impugned judgment and decree for eviction has been passed according to law.

In the result, this revision application, sans merit, is accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2016
Transmission Date	