

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7394 of 2015

=====

Gorakh Mahto

.... Petitioner/s

Versus

Jitendra Narain

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Atif Inam

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 20-06-2016

The tenant has filed this application under Article 227 of the Constitution of India against the order dated 02.03.2015 passed by Sub Judge I, Begusarai in Title Eviction Suit No.215 of 2010 whereby the petitioner was directed to pay the arrears of rent amounting to Rs.78,545 within 30 days from the date of the order.

The learned senior counsel, Mr. Raghiv Ahsan appearing on behalf of the petitioner submitted that under Section 15, only the rent last paid is to be deposited by the tenant. According to the learned counsel, the tenant is depositing the last paid rent at the rate of Rs.2,783 per month. Therefore, the Court has no jurisdiction to pass the impugned order directing the petitioner to pay the enhanced rent as agreed between the parties in the agreement.

On the contrary, the learned counsel, Mr. Mrigank Mauli for the plaintiff-respondent submitted that although the Court



below had directed the petitioner to deposit Rs.3,061 per month arrears and current rent as also the future rent by terms of order dated 04.11.2011, the petitioner never complied the said order and in fact, his defence has already been struck off. The learned counsel further submitted that there is clear stipulation in the agreement itself that the petitioner will pay the enhanced rate of rent each year and a chart is there in the agreement showing what rent is to be paid from which month and which year and accordingly, the Court below has rightly rejected to pay the rent agreed between the parties.

Perused the order passed by the Court below. It appears that the Court below has not taken into consideration the provision as contained in Section 15 of the B.B.C. Act. According to Section 15 of the B.B.C. Act, the Court has the jurisdiction to direct the tenant to deposit the rent at which it was last paid. Admittedly, it is not the case of any party that Rs.4,482 is the last paid rent by the tenant. From perusal of Annexure 2 which is the order dated 04.11.2011, it appears that earlier the Court below has directed the tenant-petitioner to deposit Rs.3,061 per month as rent, arrear and current rent as also future rent.

In such circumstances, the Court below has passed the impugned order dated 02.03.2015 which is contrary to the

provision as contained under Section 15 of the B.B.C. Act. As such, the order impugned is set aside and the application filed by the plaintiff is rejected.

However, it is made clear that the amount of rent at which the plaintiff will be entitled to realize from the tenant will be decided at the time of disposal of the suit.

Accordingly, this writ application is allowed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--