

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3807 of 2015

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Kaushal Kumar

.... Petitioner/s

Versus

Bajaj Foam (P) Ltd.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 15-02-2016

In spite of repeated calls, nobody appeared on behalf of the petitioner.

On 10.02.2016, on the ground of the learned senior counsel, Mr. Chitranjan Sinha adjournment was sought for by the petitioner and the case was fixed for today.

The learned senior counsel, Mr. S. D. Sanjay appearing on behalf of the plaintiff-respondent submitted that this is the tactics of the petitioner to delay the disposal of the eviction suit and, therefore, this writ application may be disposed of on merit instead of dismissing the writ application for default.

According to the learned senior counsel, since under Article 227 of the Constitution of India is discretionary jurisdiction and the High Court has the jurisdiction to supervise the order, if it occasion failure of justice, suo motu, the writ application itself may be disposed of on merit.



In view of the aforesaid submission and in view of the fact that this writ application arises out of eviction suit wherein the application filed by the plaintiff-respondent under Section 15 of the Bihar Building(Lease, Rent & Eviction) Control Act, 1982 has been allowed and the petitioner has been directed to deposit rent at the rate of Rs.35,000 per month, I propose to dispose of this writ application on merit.

Perused the writ application.

The only grievance of the petitioner is that under Section 15 of the B.B.C. Act, the Court should have directed to deposit the last paid rent but the Court below by the impugned order has directed the petitioner-tenant to deposit Rs.35,000 according to the agreement entered into between the parties in which there is a clause which provides that the rent shall be increased in every 5 years. The grievance of the petitioner is that the last paid rent was Rs.25,000 and, therefore, the Court has no jurisdiction to direct to deposit Rs.35,000 per month.

On the contrary, the learned senior counsel, Mr. S.D.Sanjay submitted that it is wrong to say that the monthly rent last paid was Rs.25,000. In fact, in the written statement, the defendant-petitioner himself has admitted to have paid the last rent at the rate of Rs.30,000 per month and he has got no grievance if

the order of the Court below is modified to the said extent.

From perusal of the written statement at paragraph 8 and 15(Annexure 2), it appears that a schedule has been annexed with the written statement i.e. Schedule I from which it appears that the last paid rent was Rs.30,000 for the month of June, 2011 on 27.08.2011. At paragraph 15, it is specifically mentioned by the defendant-petitioner that in fact, the plaintiff is entitled to receive rent at the rate of Rs.30,000 per month only till the duration of pendency for 15 years. In the said paragraph itself, it has been mentioned that “in this connection, it is submitted that a statement showing payment of rent is annexed with the written statement as Schedule-A to show payments made by the defendant.” Now, therefore, in view of this statement made in paragraph 15 read with Schedule A(wrongly typed as Schedule I) annexed with the written statement, it becomes admitted fact now that the last paid rent was Rs.30,000 per month.

In view of the above factual position, the order passed by the Court below is modified to the extent that the defendant-petitioner shall deposit the monthly rent at the rate of Rs.30,000 from the month of June, 2011, as directed by the Court below and not Rs.35,000.

Thus, this writ application is allowed and the order

passed by the Court below is modified to the extent indicated above.

This order shall not prejudice any party in the final decision of the suit regarding the calculation or entitlement of the monthly rent as claimed by the parties. Since it is eviction suit, the Court below shall expedite the matter. Since the order of the Court below is hereby modified, the petitioner is directed to comply the order passed by the Court below within next one month from today.

(Mungeshwar Sahoo, J)

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