

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1093 of 2016**

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Dilip Kumar Singh

.... Appellant/s

Versus

Pandey Girija Shankar Prasad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dineshwar Prasad Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 15-11-2016

Heard learned Senior counsel Dr. Uma Shankar Prasad, for the petitioner.

Perused the impugned order dated 10.8.2016, passed by the learned Sub Judge-VIII, Patna in Title Eviction Suit No. 97 of 2013 whereby the learned court below has allowed the amendment application filed by the plaintiff-respondent to the effect that during the pendency of the suit by order dated 11.02.2015 the rent controller has raised the monthly rent of Rs. 3,000/- to 12,500 per month and accordingly the plaintiff further prayed for the arrears of rent retrospectively.

According to learned senior counsel this order allowing amendment is illegal order because more than 5/8% rent could not have been enhanced by the rent controller. The plaintiff-respondents are not entitled to the rent enhanced by the rent controller but the court below without considering all these aspect of the matter only on the ground of subsequent development has

allowed the amendment application. As per the learned senior counsel the plaintiff is not entitled to receive the rent retrospectively particularly when in the plaint the plaintiff has admitted that the petitioner is tenant on a monthly rent of Rs. 3,000/-

Learned senior counsel for the petitioner admitted the fact that still issues have not been framed in the suit. So far as the submission of the learned senior counsel that the order passed by the controller is illegal as more than 5/8 % could not have been enhanced is concerned it may be mentioned here that the order of the controller is not before this court nor the defendant can challenge the order of the controller in the present suit. For that the petitioner has to file appeal according to the provision of BBC Act. It is stated that the appeal had already been filed which has been dismissed for default.

The learned senior counsel is not in a position to say as to whether any restoration application has been filed or not. More over this question raised by the petitioner is purely question of merit likewise the second question raised by the petitioner is also pure question of merit i.e. as to whether the plaintiff is entitled for the rent as enhanced by the rent controller retrospectively or not. At this stage, this question can not be decided by the court below. At this stage while considering the

amendment application the merit of the amendment cannot be gone into.

The Hon'ble Supreme Court in the case Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. Reported in 2006(4) S.C.C. 385 has held that while considering whether the application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment likewise it should not record any finding on the merit of the amendment and the merits of the amendment sought to be incorporated by way of amendment or not to be adjudged at the stage of allowing the prayer for amendment. This view has again be reiterated by the Supreme court in the case of **Lakha Ram Sharma Vs. Balar Marketing Private Limited 2008(17) S.C.C 671.**

In view of the above, factual position that issues have not even been framed in my opinion it is a pre trial amendment and in view of the settled principle of law laid down by the court below I do not find any reason to interfere with the impugned order.

Thus, this Civil Misc. is dismissed.

siddharth/-

(Mungeshwar Sahoo, J)

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