

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14363 of 2013**

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1. Md. Shakil.
  2. Md. Sahab Manabi.
  3. Md. Sajid all Sons Of Late Md. Aminuddin all Residents of Mohalla Purabsarai,  
Dilawarpur, Police Station Kotwali, P.O. Munger, District Munger.

.... .... Petitioner/s

Versus

Khiran Prasad @ Sadanand Keshari Son Of Late Dwarika Prasad Resident Of  
Mohalla Purabsarai, (Dilwarpur) Police Station Kotwali, P.O. Munger, District  
Munger.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Harshwardhan Sahay, Adv.

For the Respondent/s : Mr. Pramod Kumar Singh, Adv.

Mr. Rahul Kumar Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 06-12-2016**

Heard learned counsel for the petitioners and learned  
counsel for the respondent.

Questioning the legal sustainability of the impugned order  
by which the learned court below has allowed the prayer of the  
plaintiff-respondent made in the suit under Section 15 of the Bihar  
Buildings (Lease, Rent and Eviction) Control Act (hereinafter to be  
referred to as the 'B.B.C. Act'), the present application under Article  
227 of the Constitution of India has been filed by the tenant-  
defendants.



The matrix of facts demonstrates that the suit has been filed by the plaintiff seeking an eviction decree against the defendants from the suit premises on the ground of personal necessity and default in payment of rent. The defendants in their written statement came out with the case that they were initially inducted in possession over the suit premises as tenant under the plaintiff at the monthly rent of Rs. 600/- but later on the plaintiff agreed to sell the suit premises with the defendants and a memorandum of oral agreement for sale was also executed on 31.08.2014. On this basis, the defendants have contested the prayer of the plaintiff, setting up his possession over the suit premises not as a tenant but in part performance of the said agreement for sale. The defendants have also averred that a suit has been filed against the plaintiff in the year 2011 for specific performance of contract.

During the pendency of the suit, the plaintiff filed a petition under Section 15 of the B.B.C. Act for a direction to the defendants to pay the arrears of rent as well as current rent and the plaintiff claimed the quantum of rent to be Rs. 2000 per month. The defendants, however, resisted the prayer of the plaintiff and also contested the claim of quantum of rent to be Rs. 2000/-. The learned court below, by the impugned order, has allowed the prayer of the plaintiff and directed the tenant-defendants to pay the rent as claimed



by the plaintiff at the rate of Rs. 2000/-.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that the defendant-petitioners have admitted to be in occupation of the suit premises as tenant of the plaintiff on monthly rental of Rs. 600/- till 09.08.2004. However, the case of the defendant-petitioners was that they are now not the tenant of the plaintiff in view of the oral agreement for sale-purchase of the suit premises for which the memorandum of agreement for sale was also prepared on 31.08.2004. There is no case on behalf of the defendant-petitioners that any step was taken by the defendant-petitioners for execution of the sale deed in pursuance to the agreement for sale within the prescribed period of limitation. However, the defendant-petitioners have claimed to have filed T.S. No. 190 of 2011 against the plaintiff for specific performance of the contract. In the background of these facts and according to the well settled principles of law, this Court does not find that the learned court below has committed any illegality in coming to the conclusion that the relationship of landlord and tenant subsists in between the plaintiff and the defendants. However, it does not appear to this Court that the finding recorded by the learned court below with regard to the quantum of rent of Rs. 2000/- per month is supported by any material on record.



Mr. Singh, learned counsel for the plaintiff-respondent, however, has endeavored to persuade this Court that the said quantum of rent is justified in view of the large area and accommodation in the suit premises. This Court, however, refrains from entering into the said question as it involves disputed question of fact.

In the fitness of things, this Court holds that the defendant-tenants would be liable to pay rent at the rate of Rs. 600/- per month and the finding of the learned court below that the rate of rent is 2000/- is, accordingly, set aside as it has been recorded without cogent evidence. The impugned order is modified to the extent that the quantum of rent for the suit premises payable by the defendants to the landlord plaintiff would be Rs. 600/- per month for the purpose of the prayer of the plaintiff under Section 15 B.B.C. Act. The grant of the prayer of the plaintiff as made in the petition dated 28.11.2012 which has been allowed by the learned court below by the impugned order thus stands modified to the extent only that the quantum of arrears of rent or current rent would be calculated and payable only at the rate of Rs. 600/- per month in pursuance to the impugned order Section 15 B.B.C. Act.

In view of the pendency of the T.S. No. 190 of 2011 filed by the defendant-petitioners against the plaintiff and also in view of the facts and circumstances of the case, the amount of arrears of



rent and current rent as directed by the impugned order and modified by the present order would not be withdrawn by the plaintiff till disposal of the said suit and the right of such withdrawal would abide by the result of the suit.

The application is, accordingly, stands allowed to the extent as aforementioned and the impugned order is modified to that extent. It is, however, clarified that this order shall not prejudice the case of either party during the trial of the suit.

**(V. Nath, J)**

Devendra/-

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