

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9266 of 2012**

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Prem Chandra Jha

.... .... Petitioner/s

Versus

Surya Kant Jha

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Baidya Nath Thakur

For the Respondent/s : Mr.

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

3      07-08-2017                      (1) Heard the learned counsel, Mr. Baidya Nath Thakur  
  
for the petitioner and the learned counsel, Mr. Sunil Kumar Karn  
  
for the respondent.

(2) The plaintiff-petitioner has filed this application under Article 227 of the Constitution of India for setting aside the order dated 17.08.2011 passed by the learned Munsif I, Darbhanga in Eviction Suit No.7 of 2007 whereby the learned court below rejected the application filed by the plaintiff-petitioner for striking off the defence of the defendant-respondent for non-compliance of the order passed by the Court under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982.

(3) Perused the impugned order passed by the court below. The court below while disposing of the application filed by the petitioner dated 13.05.2011 held that the miscellaneous case will be heard simultaneously with the eviction suit and the result



of the miscellaneous case shall be incorporated in the judgment of the eviction suit.

(4) It appears that eviction suit was filed by the present plaintiff-petitioner against the defendant on the ground of default or personal necessity. During pendency of the suit, application under Section 15 was filed by the plaintiff-petitioner. By terms of order dated 28.11.2008, the learned court below directed the defendant to deposit the arrears of rent amounting to Rs.21,000.

(5) Subsequently, the defendant-respondent filed application for review of the said order alleging that because of decrease in the tenanted areas the rent was reduced from Rs.1,000 to Rs.500 per month. This application was considered and disposed of and finally the court below by order dated 06.02.2010 directed the defendant-respondent to deposit the arrears of rent in the court at the rate of Rs.1,000 for 36 months amounting to Rs.36,000. This order was not complied with by the defendant-respondent, therefore, the plaintiff filed the application on 13.05.2011 praying for striking off the defence of the defendant-respondent as provided under Section 15 of the B.B.C. Act, 1982. The defendant filed application that the defendant-respondent had already paid Rs.45,000 to the plaintiff in presence of the witness. By the impugned order, the court below held that since the



defendant is claiming that he has paid the rent to the plaintiff, the matter should be enquired into separately and it is directed to institute a separate miscellaneous case and so far the plaintiff's application is concerned, the court below disposed of the same and held that the finding of the miscellaneous case will govern the same.

(6) The learned counsel, Mr. Thakur for the petitioner submitted that intentionally the defendant-respondent did not comply the order passed by the court below within the period granted by the Court and with malafide intention review application was filed but after disposing the same, the court below again directed the defendant-respondent to deposit the arrears of rent in the year 2010 but the respondent again with a view to delay the matter, by false affidavit, said that he had paid the amount to the plaintiff. According to the learned counsel, when there is specific direction by the Court to deposit the rent in the Court, there is no question of payment hand to hand arises and, therefore, the defendant with malafide intention got the miscellaneous case instituted when there is no such provision provided under the B.B.C. Act and the court below had no jurisdiction to enquire about the case of the defendant particularly when by the orders of the year 2008 and 2010 the defendant was directed to deposit the



rent in the Court itself. The learned counsel further submitted that this is eviction suit and there is ground of personal necessity also but because of the malafide intention of the defendant this matter about the deposit of rent is being lingered from the year 2008 to 2017 and during this period also, the defendant did not deposit the arrears of rent nor has complied the order passed by the court below.

(7) On the other hand, the learned counsel appearing on behalf of the tenant-respondent submitted that in fact, there was compromise between the plaintiff and defendant and, therefore, because of compromise, the defendant had paid Rs.45,000 in presence of the witnesses. The court below, therefore, has rightly directed that this matter be first enquired into. According to the learned counsel, in the eviction suit, the witnesses are being examined by the defendant after examination of the plaintiff's witnesses and, therefore, at this stage, when the case is going to be disposed of, the order passed by the court below needs no interference in exercise of power under Article 227 of the Constitution of India.

(8) Perused the impugned order. There is no dispute between the parties that in the year 2008, the defendant-petitioner was directed to deposit the arrears of rent for 21 months at the rate



of Rs.1,000 per month in the court below in exercise of power under Section 15 of the B.B.C.Act. There is also no dispute that the defendant-respondent filed application for review in the order and prayed that he is ready to pay the decreased amount of Rs.500 per month as rent. But the court below directed the defendant-respondent to deposit Rs.36,000 in the court below in exercise of power under Section 15 of the B.B.C. Act. It is admitted fact that the defendant did not comply this order. His only defence is that he has paid the amount to the plaintiff. When the direction was to deposit in the Court in the year 2008 and there was dispute between the parties regarding the rate of rent, can it be believed that without there being any document or receipt such a huge amount would have been paid by the defendant to the plaintiff that too contrary to the direction given by the court below. Counter-affidavit has been filed and in the counter-affidavit now the defence has been taken that the current rent are being deposited in the Court. The question is when the current rent is being deposited in the Court why the huge amount i.e. Rs.45,000 was paid hand to hand in cash. There is no explanation as to why any receipt was not granted. Mere defence has been taken by the defendant that the amount has been paid in presence of the witness as there was compromise. This fact is being vehemently opposed by the



plaintiff. There is nothing on record to show that there was any compromise between the parties and that the plaintiff ever received Rs.45,000 from the defendant. It appears that the defendant has been able to drag this petty matter from 2008 to 2017. Therefore, this is one of the examples which shows that in eviction suit how the defendant harasses the plaintiff by filing frivolous, vexatious and malafide applications.

(9) The Hon'ble Supreme Court in **(2011)8 Supreme Court Cases 249(Ramrameshwari Devi and others v. Nirmala Devi and others)** paragraph 52 clause (c) has held that "imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings." In the present case, the respondent has been able to drag the eviction suit for such a long period.

(10) From perusal of the impugned order, it appears that court below did not consider that the direction was passed by the Court to deposit the arrears of rent which was not complied with and, therefore, there was no question of initiating a separate miscellaneous case arises. The court below, therefore, wrongly directed to institute a separate miscellaneous case and further



directed that the miscellaneous case should be heard analogously with the eviction suit. In my opinion, the court below has therefore, wrongly refused to exercise a jurisdiction vested in it by law under Section 15 of the B.B.C. Act and has passed the impugned order in the manner not permitted by law.

(11) Thus, this writ application is allowed. The impugned order is set aside. The defence of the defendant is struck off in view of the provision as contained in Section 15 of the B.B.C. Act. The defendant-respondent is directed to pay cost of Rs.1,000/- to the plaintiff-petitioner within two months from today failing which the plaintiff-petitioner is at liberty to realize the same through the process of the court. It is made clear that if any evidence has been adduced by the defendant, the same shall not be considered by the court below after striking off the defence.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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