

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.753 of 2016

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1. Sunil Kumar Das S/o Late Krishna Chandra Das, Resident of Mohalla- Bhagat Singh Chowk, Narain Das Road, P.S.- Kotwali, District- Munger.

.... Appellant/s

Versus

1. Parmanand Yadav @ Paro Yadav S/o Late Chamru Pd. Yadav @ Chamaklall Yadav Resident of Village- Toufir, P.S.- Muffasil, District- Munger, at present residing at Mohalla- Mirzapur, P.S.- Kasim Bazar, District- Munger, Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. J.K. Verma, Adv. Mr. Sumeet Kumar Singh, Adv. Mr. Abhishek Anand, Adv. Mr. Anjani Kumar, Adv.
For the Respondent/s	:	Mr. Kumar Laliteshwar Pd. Singh, Adv. Mr. Bipin Bihari Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 01-11-2017

Aggrieved by an order, dated 23.07.2016, passed by learned Civil Judge (JD) II, Munger in Eviction Suit No. 2 of 2016, arising out of CIS (Eviction) No. 3 of 2016, whereby the court below has dismissed the suit filed by the petitioner/plaintiff, the present application under Article 227 of the Constitution of India has been filed. The suit has been dismissed by the impugned order, mainly on three grounds:- firstly, the plaint did not disclose proper description of the suit property; Secondly, it does not disclose cause of action; and thirdly, the suit by the plaintiff could not be maintained against the employee of the plaintiff for his eviction



under Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (*hereinafter referred to as "B.B.C. Act"*), who was provided such accommodation by the plaintiff as an employer of the defendant/respondent.

I have heard learned counsel appearing on behalf of the petitioner and learned counsel representing respondent.

At the very outset, learned counsel, appearing for the respondent, has raised preliminary objection over maintainability of this application filed under Article 227 of the Constitution of India, on the ground that against dismissal of the suit, remedy of the petitioner lies in appeal under Section 96 of the Code of Civil Procedure (*hereinafter referred to as "C.P.C."*). He has relied on a decision of Hon'ble Supreme Court in the case of ***Rishabh Chand Jain & Anr. Vs. Ginesh Chandra Jain*** reported in ***2016(3) PLJR (SC)114*** with particular reference to paragraphs 14, 15 and 16. According to him, since the impugned order is a decree within the meaning of Section 2(2) of the C.P.C., appeal under Section 96 of the C.P.C. being the remedy, this application under Article 227 of the Constitution of India deserves to be dismissed as is not maintainable.

Mr. J. K. Verma, learned counsel appearing on behalf of petitioner, on the other hand, has relied on a decision of Division



Bench of this Court reported in **1996(1) PLJR 494** and has submitted that the said order cannot be termed as decree, since there is no formal expression of an adjudication, conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit. He has submitted that the impugned order cannot be said to be an order, under Order 7 Rule 11 of the C.P.C., of rejection of the plaint as barred by law. He has submitted that, as a matter of fact, the court below has committed jurisdictional error while holding that the suit cannot be maintained, there being absence of relationship of landlord and tenant, completely overlooking the provision under Section 11(a) of the B.B.C. Act.

Learned counsel for the petitioner has also submitted that the court below has wrongly construed the plaint and has erroneously held the suit for eviction as not maintainable on the ground of description of the property in the schedule of the plaint having been given as land without building. He has submitted that the court below ought to have taken into account the entire pleadings of the plaint including the statement made in paragraph 11 therein, which gives description of two rooms, which were given to the defendant by the plaintiff for his accommodation during his employment. He has relied on decisions of this Court in the case of ***Hindustan Petroleum Corporation Ltd. & Anr. Vs. Rajeshwar***



Prasad reported in ***2007(3) PLJR 582*** and in the case of ***Shri Binay Kumar Maheshwari Vs. Fanindra Prasad Mishra*** reported in ***2000(2) PLJR 865*** in support of his submission.

What I notice, from the impugned order, is that the court below got carried over by the relationship of the plaintiff and the defendant, of an employer and employee, for which the accommodation was admittedly made available by the plaintiff in favour of the defendant.

Following portion of the impugned order is indicative of the legal perception of the court below while passing the impugned judgment and order:-

“Strangely the plaintiff had sought adjudication and declaration that the defendant was employee of the plaintiff and he had left the service hence, he is liable to be evicted. Whereas the BBC Act does not recognizes (sic) such a ground for eviction either in Section 11. Indeed the suit property as described in the schedule-I of the plaint shows that the property is land of an area 64 Decimal and 7 Kari. Plaintiff had not disclosed the description of the house but of the entire land.”

Learned counsel, for the petitioner, has rightly pointed out Section 11(a) of the B.B.C. Act as direct answer to this controversy which clearly lays down that a tenant in possession of any building shall be liable to eviction on the grounds, *inter alia*,



that he is employee of the landlord and occupying the building as an employee, on his ceasing to be in such employment. For better clarity, Section 11(1) of the B.B.C. Act is being reproduced hereinbelow:

“Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following ground:-

“(a) for breach of the conditions of the tenancy, or for sub-letting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment.”

(emphasis mine)

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There being specific provision under Section 11(1) of the B.B.C. Act as noticed above, the court below could not have dismissed the suit on the said ground.



Secondly, on the ground of non-disclosure of the description of the suit property in the Schedule of the plaint, since it did not refer to any building, the court below has taken that as an additional ground for dismissing the suit. Learned counsel for the petitioner is right in his submission that there is description of the building in paragraph 11 of the plaint. Only because the building, as stated in paragraph 11 of the plaint, standing on the suit property and description of the suit property has been given in the schedule, it could not be said that there is no proper description of the suit property. He appears to be right in his submission particularly in the background of the fact that the plaintiff had filed an application seeking amendment in the plaint to the extent it related to description of the suit property in the schedule.

In my view, such could not have been the ground for dismissal of the suit at the very threshold.

Coming to the plea of maintainability of this application, learned counsel for the petitioner appears to be right in his submission that the order of dismissal cannot be said to be a decree within the meaning of Schedule 2 of the C.P.C. in absence of determination of the rights of the parties. Apparently, the court below has dismissed the suit on wrong legal presumption that the defendant could not be treated to be a tenant and, therefore, not liable



for eviction under the provisions of Section 11 of the B.B.C. Act. Legal position is apparently otherwise, as is evident from the language of Section 11(a) of the B.B.C. Act itself. The order, which is impugned, cannot be said to be an order rejecting the plaint under Order 7 Rule 11 of the C.P.C. The plea has been taken on behalf of the defendant that the order being final in nature, the petitioner has alternative remedy of revision under Section 115 of the C.P.C.

I do not find any force in the submission made on behalf of the defendant in view of the proviso to Section 115 of the C.P.C., which reads thus:

“115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:—

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of



the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.”

In my view, the impugned order suffers from jurisdictional error and needs interference in exercise of power under Article 227 of the Constitution of India.

The order, dated 23.07.2016, is, accordingly, set aside. The matter is remanded back to the court below for adjudication, on the application filed on behalf of the defendant, on which the impugned order has been passed, in the light of observations made hereinabove and proceed further.

This application stands allowed but without any costs.

(Chakradhari Sharan Singh, J.)

Rakhi

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	16.11.2017
Transmission Date	

