IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.217 of 2005

Against the judgment and decree dated 31.05.2005 passed by Sub- Judge-IV, Gaya in Money Suit No.07 of 2004/46 of 2002.

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Shailendra Kumar & Ors.
.... Plaintiffs-Appellants
Versus
The State of Bihar through the Collector, Gaya & Ors.
.... Defendants-Respondents
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Appearance :
For the Appellants : Mr. Anjani Kumar Singh, Advocate.
For the Respondents : Mr. Anil Kumar Upadhyaya, S.C. 2
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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 28-03-2017

The sole plaintiff, Lalita Devi (since deceased and substituted) had filed this first appeal against the judgment and decree dated 31.05.2005 passed by the learned Sub-Judge-IV, Gaya in Money Suit No.07 of 2004/46 of 2002 whereby the plaintiff's money suit was dismissed.

2. The plaintiff-appellant filed the aforesaid money suit praying for realization of Rs.3,96,324.00 as arrears of rent payable by defendants-respondents according to the rent fixed by the Rent Controller under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (hereinafter referred to as B.B.C. Act).

3. According to the plaintiff the suit premises was let out to the Consolidation Department, Government of Bihar for running

office of the said department on monthly rent of Rs.300/- in the year 1984-85. Dindayal Prasad had let out the premises, who was the father-in-law of the plaintiff, Smt. Lalita Devi. After the death of father-in-law, there was partition between the three sons of Dindayal and the suit premises fell in the share of husband of the plaintiff. However, husband of the plaintiff also died on 05.05.1990. Subsequently she filed rent fixation case before the Controller in the year 1998 being Rent Fixation Case No.01 of 1998-99. The Rent Controller called for a report from Anchal Adhikari. Anchal Adhikari after due enquiry reported to the Controller on 14.10.1998 recommending enhancement of rent and accordingly the Rent Controller, Tekari by order dated 15.07.1999 enhanced the rent to Rs.2,942.16 per month retrospectively from the month of January, 1990. Since the defendant had already paid Rs.300/- per month, the monthly rent due is Rs.2,642.16 which is payable from the month of January, 1990 till the month of July, 2002 which comes to Rs.3,96,324/-. The defendant no.4 refused to pay the rent on 06.08.2002, therefore, after notice under Section 80 CPC the suit was filed.

4. Although the learned G.P. appeared in the suit in the court below but no written statement was filed. However, Ext.A and Ext.B were filed by the defendants showing the fact that they have already vacated the suit premises.

5. The learned trial court on the basis of the aforesaid facts and pleadings proceeded to pass the judgment under Order 8 Rule 10 CPC.

6. The learned court below after hearing the parties found that the tenanted premises has been vacated by the defendants-respondents on 27.03.2003 and possession was accepted by the plaintiff. The learned court below also found that the order passed by the Rent Controller is not according to law and, therefore, the order of the Controller cannot be given effect to and, hence, dismissed the plaintiff's money suit.

7. The learned counsel for the appellants submitted that the learned court below wrongly held that the order of the Controller cannot be enforced. According to the learned counsel, the order of the Controller is within the jurisdiction of the Controller, which is still there and, therefore, the plaintiffs-appellants are entitled to receive the rent at the rate at which it was fixed by Rent Controller. The learned counsel further submitted that admittedly in spite of the rent fixation the defendants were only paying Rs.300/- per month and, therefore, the plaintiff has filed the suit claiming the arrears only. The court below approached the case in wrong angle and did not consider the fact that there is no contrary evidence or facts placed by the defendants-respondents. In such circumstances, the court below should have decreed the plaintiff's suit. According to the learned

counsel, the learned trial court has wrongly not placed reliance on Ext.5, the order passed by the Controller, particularly when there was no dispute raised by the State authorities.

8. On the other hand, the learned State Counsel for the respondents submitted that the plaintiff's suit itself is barred by law of limitation. Further the order as contained in Ext.5 is patently illegal as is based on report of Anchal Adhikari. The Controller has not himself exercised his jurisdiction, therefore, the learned trial court has rightly held that the order is illegal. The order has been passed in 1999 and the rent has been enhanced retrospectively from the Month of January, 1990 although the rent fixation case was filed in the year 1998.

9. In view of the above contentions of the parties the only point arises for consideration in this first appeal is as to whether the plaintiffs-appellants are entitled for realization of arrears of rent as claimed by them from January, 1990 till the month of July, 2002 and whether the impugned judgment and decree are sustainable in the eye of law.

10. The plaintiff has filed this simple money suit for realization of the arrears of rent from the month of January, 1990 and the claim is based on Ext.5. It is admitted fact that Ext.5 has been passed by Rent Controller on 15.07.1999 on the basis of the report of Anchal Adhikari. Except this Ext.5, there is no other basis for the claim put forth by the plaintiff. It is admitted fact that the defendants

have vacated the suit premises on 27.03.2003, which is evident from Ext.A. Ext.B supports the case that eight month's rent was paid by the defendant to the plaintiff at the rate of Rs.300/- per month on 15.03.2003.

11. It is the case of the plaintiff that the House Controller called for a report from Anchal Adhikari, Paraiya and Anchal Adhikari after due enquiry recommended enhancement of rent by letter dated 14.10.1998.

12. Proviso to clause (c) of Section 8 of the B.B.C. Act provides that the Rent Controller on being satisfied that the rent of a building is low shall fix the rent of the building at a figure which shall not be less than the average monthly rent actually paid for the same or similar accommodation by any tenant over the period of twelve months preceding the first day of December, 1980, increased by not more than 25% of the average monthly rent so received by the landlord.

13. In view of this provision the duty has been cast on the Controller to determine fair rent and while determining the fair rent what matters to be considered by the Rent Controller has been mentioned. In Ext.5 this procedure has not been followed at all. It appears that the power, which should have been exercised by the Controller, was delegated by the Controller to the Anchal Adhikari. Anchal Adhikari enquired into the matter and recommended

enhancement of rent. It is not the case of the plaintiffs-appellants that Anchal Adhikari examined witnesses or documentary evidences in presence of the State authorities and then recorded any finding regarding the fair rent. It appears that only on the recommendation of Anchal Adhikari, the Controller passed the order, Ext.5 which is contrary to law. Therefore, the learned trial court has rightly held that the order which is contrary to law is illegal order. In view of my above discussion I also find that the order, Ext. 5 is illegal order. Accordingly, the finding of the trial court on this point is hereby confirmed.

14. It appears that this Ext.5 is dated 15.07.1999. The rent fixation case was filed in the year 1998. However, the Rent Controller fixed the fair rent retrospectively from the month of January, 1990. Now it becomes clear that the rent was fixed retrospectively that too more than prior to eight years from filing of the application for fixation of rent. It is not the case of the plaintiff that the plaintiff prayed for fixation of rent from the month of January, 1990.

15. Further according to this Ext.5, arrears become due from the date of the order i.e. 15.07.1999. Article 52 of the Limitation Act provides that the period for filing suit for arrears of rent is three years from the date when the arrears become due. The suit has been filed on 14.11.2002. The limitation of three years will be completed on 14.07.2002. Therefore, the money suit should have been filed

within this date but it has been filed on 14.11.2002. Thus, the suit itself is barred by law of limitation. Section 3 of the Limitation Act provides that every suit shall be dismissed, if it is filed after the prescribed period although limitation has not been set up as a defence. Therefore, in the present case, from the averment made in the plaint itself it is evident that the money suit filed by the plaintiff is barred by law of limitation. Therefore, in view of Section 3 of the Limitation Act although the defendants-respondents have not raised the point of limitation as defence, the suit should have been dismissed on this score alone or the plaint should have been rejected under Order 7 Rule 11 (d) CPC. In view of my above discussion I also find that the plaintiff's suit is barred by law of limitation.

16. In the result, I find no merit in this first appeal. Accordingly, this first appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	22.02.2017
Uploading Date	28.03.2017
Transmission Date	