

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.258 of 2017**

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M/s Gautam Budha Hospital & Research Institute Pvt. Ltd.

.... Appellant/s

Versus

Smt. Shanti Sinha

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahendra Prasad Verma

For the Respondent/s : Mr.

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

- 2 15-02-2017 **1.** Heard the learned counsel for the petitioner and the learned counsel for the respondent.
- 2.** Perused the impugned order dated 04.01.2017 passed by the learned 3rd Addl. District Judge, Bihar Sharif, Nalanda in Eviction Appeal No.1 of 2016 whereby the learned lower appellate Court dismissed the eviction appeal on the ground that eviction appeal is not maintainable in view of the special provision under Section 14 sub Section 8 of the Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter the same shall be referred as 'BBC Act'.)
- 3.** From perusal of the judgment of the trial Court which is Annexure '1' to this Civil Misc. application, it appears that the Court below on the basis of the pleadings framed ten issues including of default as issue No.8. The Court below on the basis



of the evidences and materials available on record clearly recorded a finding at paragraph 7 (ka) to the effect that the petitioner has not paid rent according to law for the month of January, 2006 to April, 2006 and May, August, 2006 and, therefore, he is a defaulter. Thereafter, the other issues have been decided in favour of the plaintiff and has decreed the plaintiff's suit. It appears that the defence of the petitioner was struck off under Section 15 of the BBC Act when the petitioner did not comply the order passed by the Court below directing the petitioner to deposit the rent.

4. The petitioner then filed eviction appeal before the lower appellate Court. The lower appellate Court by the impugned order dismissed the eviction appeal holding that eviction appeal is not maintainable. The petitioner should file revision under Section 14(8) of the BBC Act.

5. The learned counsel for the plaintiff-respondent submitted that the lease also expired in the year 2000 but the petitioner is not vacating the suit premises. The petitioner is also not paying rent from 2006 in spite of the order of the trial Court, therefore, the defence of the petitioner has been struck off. The learned counsel submitted that when the suit for eviction was filed under Section 11(1) (c) and (e), i.e., expiry of lease, the special



procedure as provided under Section 14 of the BBC Act is applicable wherein it is clearly provided that against an eviction order, revision is maintainable under Section 14(8) of the BBC Act.

6. From perusal of the trial Court judgment, it appears that the trial Court never adopted the special procedures. The defendant petitioner never obtained leave to contest the suit as required under Section 14 sub Section 4 of the BBC Act. Rather the Court below proceeded to decide all the issues including the issue of default as provided under Section 11(1)(d) of the BBC Act. Therefore, the suit itself was filed on composite ground including the grounds of personal necessity and default.

7. It is settled principal of law that when the special procedure is adopted by the trial Court then only Section 14(8) will apply but here it is admitted fact which is evident from the trial Court judgment that special procedure was never applied to. The plaintiff respondent never filed application before the trial Court praying for adopting the special procedure because the suit is not on the ground of personal necessity only. Now, therefore, when the suit was filed on composite grounds and not only on the ground of personal necessity and fixed terms tenancy, the special



procedure provided under Section 14 BBC Act is not applicable. The Court below has not at all considered these aspects of the matter. Therefore, the Court below wrongly refused to exercise a jurisdiction vested in it by law by dismissing the eviction appeal on the ground that it is not maintainable. In view of the fact that issues of default have been formulated and the parties also adduced their documentary evidences in support of the same and in view of the fact that on appreciation of evidences, the trial Court recorded clear finding on the question of default, Section 14 of the BBC Act was not maintainable, therefore, regular eviction Appeal under Section 96 of the Code of Civil Procedure was maintainable before the lower appellate Court.

8. Thus, this Civil Misc. application is allowed. The impugned order passed by the lower appellate Court dated 04.01.2017 in Eviction Appeal No.1 of 2016 is hereby set aside. The Eviction Appeal is remanded to the Court below with specific direction to decide the Appeal on merit.

(Mungeshwar Sahoo, J)

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