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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1799 of 2017**

1. Kailash Agrawal, son of Late Ramnivash Agrawal, aged about 45 years, R/o Old Sadar Bazar, P.S. Kotwali, Raigarh, District Raigarh (C.G.)
2. Smt. Dropati Devi Agrawal, W/o Ramnivas Agrawal, R/o Old Sadar Bazar, P.S. Kotwali, Raigarh, District Raigarh (C.G.)

---- **Petitioners**

Versus

1. State Of Chhattisgarh, through the Law and Legislative Affairs Department, Mahanadi Bhawan Mantralaya, New Raipur, Distict Raipur Chhattisgarh.
2. Shyam Sunder Agrawal, S/o Late Harishchandmal Agrawal, Aged About 62 Years R/o Old Sadar Bazar, P. S. Kotwali, Raigarh, District Raigarh Chhattisgarh.
3. Ramkishan Dalmiya S/o Amichand Dalmiya, Occupation Bussiness, R/o Palace Road, Raigarh, District Raigarh Chhattisgarh.

---- **Respondents**

For Petitioners : Shri Amit Sharma, Advocate
 For State : Shri Avinash Singh, Panel Lawyer
 Respondent No.2 : Shri Amrito Das, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Order On Board****Per Thottathil B. Radhakrishnan, Chief Justice****02/08/2017**

1. This writ petition, though captioned as one under Article 226 of the Constitution, is essentially one challenging the decision of the Rent Control Tribunal (for short, '*the Tribunal*').

2. We have heard the learned counsel for the petitioner, the learned counsel for the contesting respondent No.2 and the learned counsel for the State.
3. The respondent No. 2 moved an application before the Rent Control Authority (for short, '*the Authority*') to evict the person in occupation of a building on the allegation that the said person is the tenant of that premises under the respondent No. 2 herein. In that proceeding, the writ petitioner filed an application invoking Order 1 Rule 10 (2) of the Code of Civil Procedure on the premise that he is, truly, the landlord. That application was rejected by the Authority. He filed an appeal before the Tribunal with an application seeking condonation of delay of 30 days. That was dismissed for non-prosecution. Hence this writ petition.
4. The rival contentions as projected by the learned counsel for the petitioner and the contesting respondent tend to suggest that the matter is essentially a claim *inter se* the writ petitioner and respondent No. 2, as to who among them is the landlord in relation to the premises in question. We are clear now in our mind in the summary proceedings under that Act a question relating to title cannot be decided finally. However, when there is a challenge to the title of the applicant in an eviction proceedings, the sustainability or otherwise of that and the impact of such a plea on the maintainability of the application for eviction may be germane for consideration. On the whole we are satisfied the petitioner has shown sufficient cause to set-aside the impugned order passed on default and thereby enabling the

writ petitioner to further prosecute the matter institute by him before the appellate Tribunal, on terms.

5. In the result, this writ petition is allowed, the impugned order of the Tribunal is vacated and it is directed that the petitioner, the respondent No. 2 as well as respondent No. 3 who is arrayed as a tenant shall appear before the Tribunal on the 28th August 2017 so that the learned Tribunal can further proceed with the matter by taking back the appeal of the writ petitioner to file. All this would be conditional on the writ petitioner paying the second respondent through the counsel appearing for him before this Court an amount of Rs. 2500/- within a period of two weeks from today.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge