

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18329 of 2014

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Neeraj Kumar Khemka son of Pradeep Kumar Khemka resident of Mohalla -
Basant Market, Marwari Bazar, P.S. Samastipur (Town), District - Samastipur

.... Petitioner/s

Versus

Kailash Kumar Jhunjhunwala son of Parmeshwar Lal Jhunjhunwala resident of
Mohalla - Bangali Tola, Ward No. 20, P.S. and District - Samastipur, Proprietor of
Ganesh Pharma at Marwari Bazar, Ward No. 15, P.S. & District - Samastipur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6431 of 2016

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Neeraj Kumar Khemka Son of Pradeep Kumar Khemka, resident of mohalla-
Basant Market, Marwari Bazar, P.S. Samastipur (Town), District- Samastipur.

.... Petitioner/s

Versus

Kailash Kumar Jhunjhunwala son of Parmeshwar Lal Jhunjhunwala, Resident of
mohalla-Bangali Tola, Ward No. 20, P.S. and District- Samastipur, Proprietor of
Ganesh Pharma at Marwari bazar, Ward no. 15, P.S. & District- Samastipur.

.... Respondent/s

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Appearance : (In both cases)

For the Petitioner : Mr. J.S. Arora, Sr. Advocate

Mr. Manoj Kumar, Advocate

Mr. Gaurav Pratap, Advocate

Ms. Aishwarya Shree, Advocate

For the Respondent : Mr. Shashi Shekhar Dwivedi, Sr. Advocate

Mr. Parth Gaurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-08-2018

Parties to the above two writ applications are common.

Petitioner of both writ applications is respondent in Eviction Appeal

No. 05 of 2012 pending before the learned court below. CWJC No.

18329 of 2014 has been filed for quashing the order dated



16.01.2014 whereby and whereunder the learned Ad-hoc Additional District Judge stayed the proceeding of Execution Case No. 05 of 2012 and CWJC No.6431 of 2016 has been filed to quash the order dated 19.02.2010 whereby and whereunder petition of the petitioner filed under section 15 of Bihar Building (Lease, Rent and Eviction) Control Act was partly allowed and the respondent-tenant was directed to deposit arrears of rent from November 2016 till the passing of the order at the rate of Rs.2,500/- per month and current rent by 10th of next month in the court.

2. Heard learned counsels for the petitioner as well as the respondent.

3. Petitioner before this Court filed Eviction Suit No.3 of 2007 for eviction of the respondent-tenant from the suit premises on the ground of personnel necessity and default in making payment of rent. The suit was decreed in favour of the petitioner vide judgment/decreed dated 26.02.2012 passed by the learned Sub-Judge VI, Samastipur. The petitioner filed Execution Case No.05 of 2012 of executing the said decree. The respondent-tenant filed Eviction Appeal No. 05 of 2012 against the said judgment and a petition on 22.02.2013 to stay the proceeding of Execution Case No.05 of 2012 under Order XLI Rule 5 of CPC and the execution proceeding was stayed till the disposal of Eviction Appeal No. 05 of 2012. During



the pendency of said appeal, the petitioner landlord filed a petition on 14.02.2015 under section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 for a direction to the respondent-tenant to make payment of rent at the prevailing rate in the locality for the similar type of accommodation. The petitioner annexed a copy of a registered deed of lease dated 10.04.2012 and referred ruling reported in a case of M/s Aatma Ram Properties (P) Ltd. Vs Federal Motors Private Limited 2001 (1) PLJR (SC) 320 and 2005 (1) PLJR (SC)250 in support of his contention.

4. The learned counsel for the petitioner submitted that the court below while staying the further proceeding of execution case did not consider the statutory obligation cast upon the court under Order XLI Rule 5 of CPC. The court below did not consider the fact that the eviction suit was decreed and the tenant was required to pay rent to continue in the premises under lease. The court below stayed the further proceeding in a routine manner without directing the respondent-tenant to pay rent at the rate of prevailing rate in the locality. It has been further submitted that the court below did not consider the lease deed dated 10.04.2012 for deciding prevailing rate of rent in the locality which relate to another shop premises in the same market. The said premises was given on lease at the rate of Rs.35/- per sq. ft. and at such rate the total rent



for the premises in question would be at Rs.20825/- per month and so the petitioner landlord is entitled to rent at the rate of Rs.20825/- from 27.09.2012 till eviction of defendant.

5. The learned counsel for the respondent, on the other hand, submitted that the petitioner landlord has started claiming rent at the rate of prevailing market rate for the first time after disposal of said petition which is beyond the scope of Section 15 of Bihar Building (Lease, Rent and Eviction) Control Act. The court below has rightly directed the respondent-tenant to pay rent at the admitted rate which was being paid by the respondent-tenant and so both the writ applications deserve to be dismissed.

6. After hearing both sides and considering the document on record, I find that the petitioner is claiming rent according to present market rate, at the rate of Rs.35/- per sq. ft. In support of his contention he has annexed a registered deed of lease dated 10.04.2012 which was executed during the pendency of the appeal. The respondent in his rejoinder submitted before the court below has asserted that the premises in question is old and as per agreement Exts. A and D, the payable rent has already been determined in between the parties and so the claim of petitioner landlord is barred by principle of estoppel. The petitioner has neither filed copy of plaint nor copy of judgment to establish the fact that



the present shop premises is at par to the premises leased out to another tenant in the same locality under registered lease deed dated 10.04.2012. The parties to the said lease are stranger having no concern with the parties to the eviction appeal. On perusal of the said lease deed it appears the same was executed by Ram Sakhi Devi in favour of Suresh Kumar Modi for a period of 15 years. The total area under lease is described as 1000 sq. ft. on the ground floor facing road and as per agreement rent has to be increased at the rate of 10% per month on every three years on prevailing rent. There is nothing on record to show the terms and conditions of lease between the parties with respect to premises in question. According to petitioner the suit premises was let out by the grand mother of the petitioner. The petitioner inherited the said premises as per will executed by his grand mother who died on 30.03.2007. This petitioner having been in need of suit premises has filed the eviction suit. The petitioner has not filed the copy of plaint, or judgment or agreement Ext. A and D to show the terms and conditions of tenancy between the parties.

7. In this regard, I would like to refer ruling reported in **1992 (2) PLJR 822** (Anisur Rahman and another Vs. Sardar Jogender Singh @ Jogendra Singh) wherein this court had earlier held that under Section 15 of Bihar Building (Lease, Rent and



Eviction) Control Act the tenant has to deposit last paid rent and not the fare rent. In the case in hand, there is nothing on record except the lease deed of a stranger to show rate of rent at the rate of Rs.35/- per sq.feet.

8. In view of above facts, I find that the learned court below considering the contractual rent between the parties, has rightly directed the respondent-tenant to pay rent at the admitted rate of rent i.e. Rs.2500/- per month. It has not been disputed that after direction of learned court below the respondent-tenant has defaulted in making payment of rent.

9. In view of above discussions, I do not find any merit in these writ applications and accordingly both are dismissed. While dismissing the writ applications I direct the court below to expedite the hearing and dispose of the appeal in accordance with law within a period of six months from the date of receipt/production of this order before the court below.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.09.2018
Transmission Date	

