

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20875 of 2013

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Chandan Keshri Son Of Sri Mohan Prasad Keshri Resident Of Mohalla - Tekari
Road, Purani Godown, P.S. Kotawali, Town & District - Gaya

.... Petitioner/s

Versus

Jugal Prasad Son of Late Kanhai Ram Resident Of Mohalla - Ransharan Das
Lane, Purani Godown, P.S. Kotawali, Town & District - Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhishek, Advocate

For the Respondent/s : Mr. Surendra Kumar Singh, Sr. Advocate
Mr. Praveen Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-09-2018

The petitioner is plaintiff of Eviction Suit No.09 of 2010 pending in the Court of Munsif-Ist, Gaya. He has filed this application for setting aside the order dated 28.05.2013 passed by learned court below whereby and whereunder petition filed by the petitioner under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 was rejected.

2. Heard learned counsel for the petitioner and the respondent.

3. The petitioner (plaintiff) filed the aforesaid Eviction Suit for the eviction of sole respondent from the shop premises on the ground of default in payment of rent. The petitioner filed an application under Section 15 Bihar Building (Lease, Rent & Eviction)



Control Act, 1982 for directing the defendant to pay arrears of rent from the month of February, 2010 till the date at the rate of Rs.1,000/- per month. The defendant filed rejoinder on 04.03.2013 denying the relationship of landlord and tenant. The defendant asserted that he is under tenancy of 'Lord Shivaji' and is regularly paying rent to the Sebait of Lord Shiva and there is no relationship of landlord and tenant between the plaintiff and defendant. The learned court below after hearing both sides dismissed the petition observing that if the plaintiff succeeds in establishing his claim through positive and cogent evidence adduced during trial, he would get the relief.

4. The contention of the learned counsel for the petitioner is that the learned court below has committed error in rejecting the petition filed under Section 15 of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 in view of the fact that the defendant is tenant of the plaintiff.

5. Learned counsel for the respondent on the other hand submits that the learned court below finding the dispute as regards relationship of landlord and tenant between the parties, has rightly kept the matter pending till final adjudication of the suit and so the impugned order does not suffer from any illegality.

6. On perusal of Section Bihar Building (Lease, Rent & Eviction) Control Act, 1982, I find that there is provision for direction



to the defendant for payment of month to month tenant at the rate on which the rent was last paid subject to limitation and also arrears of rent if any after giving opportunity to the parties to be heard. The provision of Section 15(2) Bihar Building (Lease, Rent & Eviction) Control Act, 1982 reads as follows:-

“If in any proceeding referred to in sub-Section-1 there is any dispute as to the person or persons to whom the rent is payable the court may direct the tenant to deposit in Court, the amount payable by him in sub-Section(1) and in such case no person shall be entitled to withdraw the amount in deposit until the court decides the dispute and makes an order for payment of the same.”

7. From the document on record, it appears that this petitioner filed Eviction Suit No.10 of 2005 against another tenant Manorma Das with respect to another shop premises which was decreed against which a Civil Revision No.341 of 2010 was filed by tenant before this Court which after hearing was dismissed as per judgment dated 20.06.2016. This Court after examining the evidence of both the sides held that the revisionist (defendant of Eviction Suit No.10 of 2005) was tenant and he was directed to vacate the suit premises within a period of three months after making payment of entire arrear of rent (if not paid). The present respondent is not claiming his own title over the shop in question but he has raised an issue that he is under tenancy of Lord ‘Shiva’. Thus, I find that the court below has committed error in not disposing of the petition as



per provision of Section 15(2) Bihar Building (Lease, Rent & Eviction) Control Act, 1982.

8. In view of above provision, the impugned order refusing to direct the respondent from making payment of arrears/current rent is not sustainable and is accordingly set aside. This application is allowed and the respondent is directed to deposit the rent in the court at the admitted rate of Rs.505/- per month as admitted by the defendant which shall be withdrawn by the concern party as per direction of the court below. It is however made clear that the observation of this Court would not prejudice the court below in any way in deciding the rate of rent payable by the respondent/defendant.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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