

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.141 of 2018

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1. Ravi Ranjan Jaiswal @ Ravi Ranjan Kumar Jaiswal, S/o Late Dinesh Chandra Prasad, Resident of Mohalla, P.O. & P.S.- Ghora Sahan, District-East Champaran, presently resident of M/s Lazeez Restuarant and Legan Banquet Hall, Yogendra Mukherjee Road, Saraiyaganj, P.S., Town & District- Muzaffarpur.

.... Appellant/s

Versus

1. Shailendra Chowdhry, S/o Dr. Kiran Shankar Chowdhary, Resident of Mohalla- Gopaljee Lane, Sariyaganj, P.S. Town & District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

2 09-08-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 16.11.2017 passed in Eviction Suit No. 27 of 2014 by learned Sub Judge-I, Muzaffarpur by which the defence of the petitioner has been struck off on account of non payment of rent on 15th day of every month.

The petitioner is defendant in the Eviction Suit. The petition of the plaintiff under Section 15 of the BBC Act was allowed on 02.05.2016 with a direction to the defendant that the defendant shall deposit the rent before 15th day of every month from June, 2016 but when the rent was not deposited before 15th of every month after June 2016, the plaintiff filed petition to struck



off the defence of the defendant/petitioner and on such the learned Sub Judge-I, Muzaffarpur by the impugned order struck off the defence of the petitioner.

The learned counsel for the petitioner assailed the illegality of the order on the ground that the petitioner never delayed in payment of rent. Petitioner filed challan on 03.08.2016 in the Court for payment of rent for the month of August. Similarly for payment of rent of September challan was submitted on 07.09.2016 and for October on 13.10.2016, for November on 14.11.2016 and for December on 03.12.2016 but the Ministerial staff of the Court did not hand over the challan to the petitioner before 15th of the month and on account of such delay the petitioner could not deposit the amount on or before 15th of every month. Therefore, the order striking off the defence of the petitioner is illegal in as much as there is no fault on the part of the petitioner.

Per contra, Shri R.K. Agarwal, learned counsel appearing on behalf of the respondent, however, made abortive attempt to justify and support the order but having perused the order impugned itself, I find that the petitioner deposited challan in the Court of learned Sub Judge-I much before the 15th day of every month but on account of delay caused by the Ministerial



staff of the Court the challan was handed over to the petitioner after 15th of that month and, therefore, delay was caused in depositing the rent. On such fault of the Ministerial staff of the Court the petitioner can not be held responsible and the vital right of the petitioner to contest the suit can not be taken away by striking off his defence.

Thus, I find that the order is illegal and erroneous. Accordingly, the order dated 16.11.2017 passed in Eviction Suit No. 27 of 2014 is set aside and the Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

BKS/Rajan

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