

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6191 of 2014

=====

1. Sri Pranay Sadhu Khan S/O Late Sushanta Sadhu Khan, Resident of Bhatta Bazar, P.S.- Khajanchi Hat, District- Purnia.

.... Petitioner

Versus

1. Md. Naimuddin, S/O Late Basuruddin,
2. Arsi Uddin, S/O Md. Naimuddin,
Both By Cast Muslim, By Profession Business, Both Resident of Khajanchi Hat Raja Bari, P.S.- K. Hat, P.O. & District- Purnia

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Karn, Advocate

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

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 31-01-2018 The petitioner is plaintiff of Eviction Suit No.01 of 1996 pending in the Court of 2nd Additional Munsif, Purnea. He has filed this application for quashing the order dated 25.11.2013 whereby and whereunder his prayer to strike off the defence of respondents (tenants) was rejected.

2. Heard learned counsel for the petitioner as well as the respondents.

3. The petitioner (plaintiff) filed a petition before the trial court on 25.09.2013 for striking off the defence of respondents (tenants) on account of default in payment of rent by for the month of December 2001, April 2002, May 2002 to August 2002, January 2003 to January 2004. The respondents filed



rejoinder to the said petition on 28.10.2013 denying the allegation made in the petition. The learned counsel for the petitioner submitted that the defendants -tenants have violated the terms and conditions of lease. The defendants in spite of direction of learned court below given on 24.02.1998 have defaulted in making payment of rent and so their defence is liable to be struck off.

4. The learned counsel for the respondents (tenants), on the other hand, submitted that the claim of petitioner itself is barred by law of limitation under the provision of Article 137 of the Limitation Act. The court below considering the mandatory nature of order has refused to strike off the defence in view of the ruling reported in 1999 (3) P.L.J.R. 205. In this regard, the learned counsel for the respondents cited a ruling reported in A.I.R. 1989 Supreme Court 291 wherein the Hon'ble Apex Court has observed that the provisions under the Act regarding striking off the defence cannot be taken to be mandatory provision of law. The court should consider whether the delay in deposit of rent has been reasonably explained or not.

5. In the case, in hand, the petitioner has asserted that the defendants have not deposited rent in time for the period commencing from December, 2001 to January 2004. The plaintiff filed a petition after nine years of alleged default which



according to the respondents is barred by law of limitation. The court below in view of the settled provision of law has condoned the delay and permitted the defendants to deposit rent. The court below in this view of the matter has not committed any illegality in refusing to strike off the defence of the respondents (tenants).

6. In view of settled principles of law I do not find any merit in this application, which is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

U			
---	--	--	--

