

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.144 of 2019**

Dayamanti Devi @ Damyanti Devi W/o Bladev Prasad Gupta Permanent Resident of Mohallah -Musallahpur Hatt, Professor colony, Shahganj, P.O Mahendru P.S Sultanganj, Patna District- Patna,PIN 800006.Tenant of Shop no.5(M/s Sai Auto)at Kamla Market, R.K.Bhattacharya Road ,P.S -Gandhi Maidan ,District-Patna 800001

... .. Appellant/s

Versus

Chitranjan Kumar Advocate S/o Late Sharan Sao R/o Kamla Market R.K Bhattacharya Road, P.O G.P.O P.S - Gandhi Maidan District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Arvind Kumar
For the Respondent/s : Mr.Santosh Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 14-03-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 12.10.2018 passed in Eviction Suit No. 83 of 2017 whereby the learned Sub-Judge-XV, Patna has directed the petitioner to deposit arrears of rent at the rate of Rs.2500/- per month from December 2014 till June 2017 and Rs. 15,715/- per month from July 2017 till October 2018 and current month by month rent at the rate of 15,750/- per month by 15th day of each month.

3. Learned counsel appearing on behalf of the petitioner submitted that while passing the impugned order learned Sub-



Judge has erred in observing that the order of the House Controller has attained finality as Appeal No. 15 of 2019, filed by the petitioner, against the order of the House Controller, is still pending before the learned District Collector, Patna. He submitted that the learned court below has failed to appreciate that Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (for short 'BBC Act') is not applicable, as any order for payment of rent during pendency of the suit can be passed only by the Appellate Court of Collector or the Revisional Court of Commissioner and not by virtue of any judicial order. On facts also, he has stated that the court below has erred, as the suit premises is not double storey and as such the measurement shown as 150+150 sq. ft. is erroneous.

4. Per contra, learned counsel appearing for the respondent submitted that the order impugned is totally justified. The Rent Controller-cum-Sub Divisional Officer has determined the rent of the shop in question vide order dated 11.07.2017 on the basis of report submitted by the Executive Magistrate vide Letter No. 113 dated 13.06.2016, who had prepared the report after visiting the site. The petitioner did not challenge the said order before the Appellate Authority within the period prescribed in Section 24 of the BBC Act. The instant application is



misconceived. The learned Sub-Judge has passed the impugned order in an eviction suit and is fully competent to pass such order under Section 15 of the BBC Act.

5. As far as the plea taken by the petitioner regarding measurement of the area of the shop in question is concerned, learned counsel for the respondent has submitted that since the petitioner has not assailed the order passed by the Rent Controller within the stipulated period, the same has attained finality and the court below has rightly allowed the prayer of the petitioner for payment of arrears of rent as determined by the Rent Controller.

6. I have heard learned counsel for the parties and carefully perused the record.

7. On perusal of the record, it would be evident that the Rent Controller-cum-Sub Divisional Officer, Patna Sadar passed the order on 05.08.2017 fixing the rent at the rate of Rs. 60/- per sq. ft. for the ground floor ad-measuring 150 sq. ft. and Rs. 45/- per sq. ft. for the upper floor ad-measuring 150 sq. ft. The said order passed by the Rent Controller dated 11.07.2017 was never challenged by the petitioner before the Appellate Authority prior to the filing of the instant application on 04.02.2019 it would also be evident from the ground no. 2 taken by the petitioner in the present



application wherein he has left the space blank where the following statement has been made:-

“For that the learned court has erred in observing that the order of the House Controller has attained finality as the Appeal no..... is pending before the Appellate Authority i.e the District Magistrate, Patna....”

8. Similarly in Para 6, the petitioner has stated as under:-

“That thereafter being aggrieved by and dissatisfied with the order dated 11.07.2017 the petitioner filed BBC Appeal Case No.....datedu/s 24 of the Act in the Court of the District Magistrate, Patna and the aforesaid appeal is pending before the Appellate Authority for final hearing and adjudication in the matter.”

9. By way of filing a supplementary affidavit on 07.03.2019, the petitioner has stated that Appeal No. 15 of 2019 against the order passed by the Rent Controller filed by the petitioner is still pending for final disposal.

10. On query made by the court as to when the said appeal was filed, learned counsel for the petitioner failed to disclose the date of filing of the appeal. Thus, on the basis of the materials available on record, it appears that the appeal has been



filed by the petitioner before the Appellate Authority belatedly after filing of the instant application before this Court on 04.02.2019.

11. In any view of the matter, at least, when the application was being considered by the learned Sub-Judge in Eviction Suit No. 83 of 2017 on the prayer of the respondent under Section 15 of the BBC Act on 12.10.2018, no appeal was pending before the Appellate Authority. Under such circumstance, if the learned Sub-Judge has observed that the order of the Rent Controller has attained finality, no error can be found with the order impugned.

12. As far as the question raised by the petitioner regarding measurement of the area for which the petitioner has been asked to pay the rent is concerned, learned counsel appearing on behalf of the respondent has rightly submitted that the order has been passed by the Rent Controller on the basis of the report submitted by the Executive Magistrate appointed for the purpose of making a site verification. Thus, on the point of the measurement of the shop also, I do not see any illegality in the finding of the learned Sub-Judge, who has relied upon the order passed by the Rent Controller.



13. At this stage, I would like to refer to Section 15 of the BBC Act, which reads as under:-

“Section 15 - Deposit of rent by tenants in suits for ejectment

(1) If, in a suit for recovery of possession of any building the tenant contests the suit as regards claim for ejectment, landlord may move an application at any stage of the suit for order on the tenant to deposit rent month by month at a rate at which it was last paid and also subject to the law to limitation, the arrears of rent, if any, and the Court after giving opportunity to the parties to be heard, may make any order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both before (Substituted for “and” by Act 4 of 1994.) [or] after the institution of the suit if any and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of order or the rent at such rate for any month by the fifteenth day of the next following month; the Court shall order the defence against ejectment to be struck off and the tenant to be placed in the same position as if he had not defended the claim to ejectment and further the Court shall not allow the tenant to cross-examine the landlord's witnesses.

(2) 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 under 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.

(3) If the Court is satisfied that any dispute referred to in subsection (2) has been raised by a tenant for reasons which are false or frivolous the Court may order the defence against the eviction to be struck off and proceed with the hearing of the suit as laid down in sub-section (1).”

14. From a perusal of the aforesaid provision it is clear that if in a suit for eviction tenant contests, the landlord may move an application for an order on the tenant to deposit current rent as also arrears of rent. However, before passing an order under Section 15 of the BBC Act, the court is required to make a summary investigation and prima facie record a finding regarding existence of relationship of landlord and tenant before directing the defendant to deposit the rent in the manner as provided under Section 15 of the said Act. Hence, the contention advanced on behalf of the respondent that Section 15 of the BBC Act is not applicable is fit to be rejected.

15. In view of the discussions made above, as I do not see any perversity in the order impugned and the order passed by the learned Sub-Judge also does not suffer from any lack of



jurisdiction, I am not inclined to interfere with the order in supervisory jurisdiction under Article 227 of the Constitution of India.

16. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23-03-2019
Transmission Date	

