

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.446 of 2019**

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

... ..Defendant-Petitioner

Versus

Shailendra Chowdhry S/o Dr. Kiran Shankar Chowdhry, Resident of Mohalla-Gopaljee Lane, Sariyaganj, P.S., Town and Distt.- Muzaffarpur

... .. Plaintiff-Respondent

Appearance :

For the Appellant/s	:	Mr.Abhay Kumar Thakur, Advocate
For the Respondent/s	:	Mr.Ramesh Kumar Agrawal, Advocate
	:	Mr. Ravi Bhaskar, Advocate

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

Date : 02-08-2019

Heard Mr. Abhay Kumar Thakur, learned counsel for the petitioner and Mr. Ramesh Kumar Agrawal, learned counsel for the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the defendant-petitioner for quashing the order dated 01.12.2018 passed by the learned Sub-Judge-1 (East), Muzaffarpur in Eviction Suit No.27 of 2014 whereby the learned Sub-Judge has allowed the application dated 04.10.2018 of the plaintiff- respondent and accordingly directed the defendant-petitioner to pay arrears of rent since



December, 2011 to April, 2016.

3. Mr. Abhay Kumar Thakur, learned counsel appearing for the petitioner submitted that the court below has erred in law in passing the impugned order mechanically without application of judicial mind. It has exercised its jurisdiction not vested in it and has failed to exercise jurisdiction so vested in it in law. He has further contended that the impugned order, if allowed to continue, would serious cause prejudice and irreparable loss to the petitioner.

4. On the other hand, Mr. Ramesh Kumar Agrawal, learned counsel appearing for the plaintiff- respondent submitted that the order impugned, passed by the court below, is fully justified. The same was passed in compliance of the order dated 17.09.2018 passed by this Court in Civil Miscellaneous Jurisdiction Case No.1351 of 2016. He has further contended that the order impugned is neither without jurisdiction nor perverse. Hence, the same does not require any interference by this Court.

5. The facts of the case, in brief, are that an eviction suit was filed by the plaintiff- respondent in the Court of Sub-Judge-1 (East), Muzaffarpur, for eviction of the defendant-petitioner from schedule-1 premises on the ground of



default and breach of terms of tenancy. It was prayed that the defendant be directed to hand over the vacant possession of schedule-1 premises within the time fixed by the court failing which the plaintiff be put in possession over the premises in question through process of the court and for other reliefs.

6. The defendant-petitioner appeared in the case and filed his application seeking leave to contest, which was allowed whereafter he filed his written statement on 23.11.2015.

7. Subsequently, the plaintiff-respondent filed an application on 19.01.2016 under Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'BBC Act, 1982') for making payment of arrears of rent both before and after the institution of the suit.

8. Having heard the parties, the learned Sub-Judge-1 (East), Muzaffarpur, vide order dated 02.05.2016, allowed the application of the plaintiff- respondent and directed the defendant-petitioner to pay monthly rent from the month of May, 2016 and current rent from June, 2016 on or before the 15th day of every month from June, 2016 and with regard to arrears of rent, the court ordered that the same shall be decided at the time of final hearing of the suit.



9. Being aggrieved by the order dated 02.05.2016 passed by the learned Sub-Judge, the plaintiff-respondent preferred civil miscellaneous application before this Court vide Civil Miscellaneous Jurisdiction Case No. 1351 of 2016. The said application was allowed by this Court vide order dated 17.09.2018.

10. The operative part of the aforesaid order dated 17.09.2018 passed by this Court in Civil Miscellaneous No. 1351 of 2016 reads as under:-

Having considered the submission and on perusal of the order, I find that the suit was instituted on 12.12.2014. The petitioner filed petition under Section 15 of the Act for direction to the respondent/tenant for payment of arrears of rent as well as current rent. Section 15 of the Act vests power in the court to direct the tenant to pay current rent as well as arrears of rent for the period prior to institution of the suit provided the same is not barred by law of limitation but the court has directed the tenant to pay the current rent since May, 2016 only. **Therefore, I find that the learned Sub-Judge has committed jurisdictional error by not passing order on the payment of arrears of rent as well as rent after institution of the suit.**



Accordingly, that part of order which keeps the claim of the petitioner for payment of arrears of rent prior to institution of the suit and till May, 2016 pending is set aside and the learned Sub-Judge is directed to pass order afresh in accordance with law within two months from the date of receipt of this order after hearing both the parties. Accordingly, this Civil Misc. petition is allowed." (emphasis mine)

11. The defendant-petitioner did not challenge the aforesaid order passed by this Court before the Apex Court. Hence, the order dated 17.09.2018 passed in Civil Miscellaneous No.1351 of 2016 attained finality.

12. In view of the nature of the aforesaid order dated 17.09.2018 passed by this Court, the learned Sub-Judge was required to pass order afresh in respect of the claim of the petitioner for payment of arrears of rent prior to institution of the suit and till May, 2016.

13. It would be evident from the pleadings of the defendant-petitioner that after the matter was remanded back to the Court of Sub-Judge for passing order afresh, both the parties were heard and, thereafter, the learned Sub-Judge has passed the



order impugned whereby he has directed the petitioner to pay arrears of rent as fixed and admitted by both the parties since December, 2011 upto April, 2016.

14. As far as legality of the order impugned is concerned, it would be pertinent to note that Section 15(1) of the BBC Act, 1982 vests power in the court to order for payment of current rent as well as arrears of rent subject to law of limitation. Initially, while passing the order on 02.05.2016, the learned Sub-Judge did not pass any order on the claim of the plaintiff- respondent for payment of arrears of rent. When that part of the order passed by the learned Sub-Judge was set aside and the matter was remanded back for passing the order afresh, the court below rectified its mistake committed earlier and has directed the defendant-petitioner to pay arrears of rent also.

15. In this regard it would be relevant to note that in the matter of *Priyavarte Mehta vs. Amrendu Banerjee* since reported in 1996(1) PLJR 732 the ambit and scope of Section 15 of the BBC Act come up for consideration before a Full Bench of this Court. The Full Bench, while upholding the validity of Section 15 held as under:-

"17. The Act has been enacted to protect the tenant from unreasonable eviction. However, certain provisions have



been incorporated for the benefit of the landlord. Section 15 is one of such provision which entitles the landlord to claim arrears of rent as well as current and future rent during the pendency of the suit for ejectment. The legislature has enacted the said provision to give some relief to the landlord. A tenant cannot be evicted unless a decree for eviction is passed against him on any of the grounds mentioned under Section 11 of the Act. The disposal of cases takes long time and if the tenant is allowed to continue in possession without paying lawfully recoverable arrears of rent and current rent then the same will cause hardship and prejudice to the landlord. To meet such situation the provision has been made under the Act in regard to deposit of rent, so that the tenant may not go on fighting litigation without payment of rent. The order for payment of arrears of rent prior to the institution of the suit is not passed in a mechanical manner and on the other hand the Court after giving an opportunity of hearing to the landlord and the tenant passes an order. In my view, the said provision cannot be attacked or challenged on the ground of unreasonableness or arbitrariness.

18. A Division Bench of this Court in the case of *Dwarika Pd. Kapri* (AIR 1988 Pat 317) (supra) has held that Section 15



empowers the Court to order for the tenant to deposit the arrears of rent even for the period prior to the institution of the suit subject to law of limitation and the said view taken by the Division Bench, in my view, is a correct one. In *Ratanlal Nai's case* (AIR 1990 Pat 107) (supra), this Court declared the said provision ultra vires only on the ground that on a prima facie determination a direction to pay the arrears of rent before institution of the suit will be unfair and arbitrary as the Act has got the provisions to get such arrears of rent realised by a petition u/s. 15 of the Act recovered from the landlord. If the said reasoning will be treated to be a ground for declaring the provision of Section 15 of the Act ultra vires with regard to arrears of rent prior to the institution of the suit then in that situation the provision in the said section for payment of arrears of rent after institution of the suit, current rent and future rent shall be also arbitrary and ultra vires, as there is no provision under the Act for recovery of the aforesaid amounts from the landlord after disposal of the suit in favour of the tenant."

16. In view of the ratio laid down by the Full Bench of this Court, the argument advanced by the learned counsel for the defendant-petitioner that the learned Sub-Judge



has committed jurisdictional error in passing the order impugned cannot be sustained. In other words, the right of the landlord to claim arrears as well as current rent cannot be disputed.

17. Since the order impugned is neither without jurisdiction nor perverse rather the same is in compliance of the order passed by this Court in Civil Miscellaneous Case No. 1351 of 2016, no interference by this Court is warranted.

18. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
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