

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.825 of 2018**

1. Raghunath Chaudhary and Ors son of Late Deoki Chaudhary
2. Naresh Kumar Chaudhary
3. Ashok Kumar Chaudhary
Both sons of Raghunath Chaudhary
All resident of Mohalla- Nunphar, Kedarnath Road, Kalyani, P.S.
Muzaffarpur Town, District- Muzaffarpur.

... .. Defendants-petitioners

Versus

1. Mostt. Kamla Devi, widow of Late Chandeshwar Prasad
2. Vinay Kumar
3. Ramesh Kumar
Both sons of Late Chandeshwar Prasad
All resident of Mohalla- Nunphar, Kedarnath Road, Kalyani, P.S.
Muzaffarpur Town, District- Muzaffarpur.

... ..Plaintiff/Opposite parties

Appearance :

For the Petitioner/s	:	Mr.Naresh Chandra Verma, Advocate Mr. Natraj Verma, Advocate
For the Respondent/s	:	Mr.

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

Date : 12-03-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed for quashing the order dated 12.12.2017 passed by learned Munsif East, Muzaffarpur in Eviction Suit No. 3 of 2014 by which the application filed by plaintiffs/opposite parties under Section 15 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (for short 'BBC Act') has been allowed.

3. The facts of the case, in brief, are that Eviction Suit



No.3 of 2014 was filed by the plaintiffs/opposite parties for eviction of defendants/petitioners from a residential house and godown standing over Plot No. 214 K of Mohalla Nunphar Kedarnath Road in Muzaffarpur town on the ground of personal necessity as also for payment of arrears of rent. Their case is that they have personal necessity of suit premises for running business and residential purpose and the defendants are also defaulters as they did not pay rent from May, 2013.

4. The defendants contended that the plaintiffs are not in need of house and they are not defaulters as they had given Rs.3 lakh as advance on 11.12.2012 to the plaintiff no. 1 on a condition that no rent will be charged till the repayment of Rs.3 lakh.

5. During pendency of the suit, the plaintiffs filed an application under Section 15 of the BBC Act on 15.05.2017 for depositing arrears of rent from May, 2013.

6. After hearing the parties, vide impugned order dated 12.12.2017, the learned Munsif East, Muzaffarpur allowed the application filed by the plaintiffs and the defendants were directed to pay arrears of rent from the month of filing of the suit @ Rs.1789/- per month till the month of passing the order within 15 days of passing of the order to the plaintiffs and also



pay the current rent @ Rs.1789/- per month by 15th every succeeding month to the plaintiffs.

7. Learned counsel appearing for the petitioners(defendants) submitted that the learned Munsif has not at all considered the payment of Rs.3 lakh as advance to the plaintiffs(opposite parties) with an agreed condition that till return of Rs.3 lakh, no rent would be charged from the defendants. He has contended that by not considering the aforesaid agreement entered into between the parties, the learned Munsif has committed serious illegality in passing the impugned order. He has further contended that there would be failure of justice if the impugned order is not quashed as the defence of the defendants has been struck out.

8. At this stage, it would be apposite to reproduce Section 15 of the BBC Act hereunder :-

“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 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).”

9. From a reading of the aforesaid provision, it would be manifest that in a suit for recovery of possession of any building, at any stage of the suit, the landlord may move an application for order on the tenant to deposit rent month by month at the rate at which it was last paid and also subject to law of limitation. The question of application of Section 15 of the BBC Act depends upon relationship of the landlord and the tenant.

10. In the present case, defendants do not dispute that they are not the tenants of the plaintiffs. Considering the evidence on record, after hearing the parties, the court below has ordered the defendants to deposit arrears of rent from the month of filing of the suit as also to pay the current rent. There is no pleading that pursuant to the order passed by the court below, arrears of rent was deposited by the defendants. In terms of Section 15 of the BBC Act, a tenant against whom an order has been passed is bound to deposit the amount of arrears of rent within 15 days from the date of the order. If the rent is not deposited within time, the defence of the tenant is liable to be struck off for non-compliance of the statutory provisions of law. If the court below has not accepted the plea of the defendants



that in fact the rent was not in arrear as the defendant has paid Rs.3 lakhs in advance, no illegality can be found with the order impugned.

11. The order passed by the court below is neither perverse nor unsound or irrational.

12. In that view of the matter, I see no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

13. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2019
Transmission Date	

