

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.713 of 2022**

=====

Dinesh Prasad @ Dinesh Prasad Modi Son of Devi Saw, Resident of Naya Bazar, Opposite Hazi Market, P.O. and P.S. and District- Lakhisarai.

... .. Petitioner/s

Versus

Shyam Sundar Tibrewal son of Late Bihari Lal Tibrewal, Resident of Naya Bazar, P.Ward Old Hospital Road, P.O. and P.S. and District- Lakhisarai.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Waliur Rahman, Advocate.
Mr. Nishant Kumar Sinha, Advocate.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 18-11-2022 Heard Mr. Waliur Rahman, learned counsel for the petitioner through video conferencing.

The petitioner is a tenant in a shop premises let out in his favour by respondent/plaintiff. The respondent/plaintiff filed an Eviction Suit bearing No. 03 of 2017 against the petitioner on the ground of personal necessity and default in payment of rent. The rent of the suit premises is Rs.2,800/- per month from October, 2013 and earlier the rent was Rs.2,200 per month.

The defendant/petitioner has admitted the relationship of landlord and tenant between him and the plaintiff by filing a written statement and by filing the counter foil of the rent receipts. In paragraphs 21, 22 and 23 of the written statement, the petitioner has admitted that he has paid the rent of the suit premises to the plaintiff. A petition under



Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 was filed by the respondent/plaintiff for a direction to the petitioner/defendant to deposit the arrears of rent as well as current rent. A rejoinder to this petition was filed by the petitioner in which it has been stated that the arrears of rent upto April, 2019 to the tune of Rs.89,600/- is acceptable to the petitioner and the petitioner was willing to pay the said amount in installment including the current rent every month.

In view of the admission by the petitioner to pay the arrears of rent and current rent, the learned Trial Court directed the petitioner by its order dated 24.6.2019 to pay the arrears of rent within 45 days and the current rent month to month. After more than 1 and ½ years of passing of the aforesaid order dated 24.6.2019, the defendant/petitioner filed the petition before the learned Trial Court on 18.2.2021 for measurement of the suit premises claiming that the shop in question is situated upon the land of the PWD and the suit premises is owned by the PWD.

The learned Trial Court vide its order dated 4.3.2021 has struck off the defence of the petitioner under Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 due to failure of the petitioner/tenant to deposit the arrears of rent as well as current rent as per the order dated 24.6.2019.



Learned counsel for the petitioner submits that the suit property/shop does not belong to the plaintiff/respondent and the same is owned by PWD. As such, the impugned order dated 4.3.2021 by which the defence of the petitioner has been struck off, is fit to be set aside.

I have heard learned counsel for the petitioner and have perused the materials available on record. From perusal of the plaint and impugned order, it appears that the tenant/landlord relationship has been admitted by the petitioner in his written statement. He has stated in the written statement that the rent of suit premises has been paid to the plaintiff/respondent and has filed the rent receipt also. The petitioner has also admitted that a sum of Rs.89,600/- is due towards the arrears of rent which the petitioner would pay in installment and, accordingly, the learned Trial Court had granted him 45 days time to pay the arrears of rent as well as current rent by its order dated 24.6.2019. Instead of depositing the arrears of rent and current rent in favour of the plaintiff/respondent, the petitioner came out with a new plea that the plaintiff/respondent is not the owner of the suit premises.



Under Section 116 of the Evidence Act, the tenant cannot dispute the Title of the landlord. However, in the present case the tenant has admitted the relationship of landlord and tenant in his written statement.

From perusal of the statutory provisions under Section 15 of the BBC Act, it is clear that if the tenant fails to deposit arrears of rent and month to month rent within the period fixed, the defence of the defendant/tenant against the ejectment shall be struck off and the tenant shall be placed in the same position as if he had not defended the claim of the ejectment. Despite the specific direction of the learned Trial Court to the petitioner to pay the arrears of rent and the current rent within 45 days from the date of the order i.e. 24.6.2019, the petitioner miserably failed to deposit the rent amount and also did not show his *bona fide* to pay the arrears of rent and the current rent, instead, filed a petition for measurement of the suit premises claiming that the suit premises is owned by PWD and not by the plaintiff/respondent.

Taking into consideration the aforesaid discussion and the statutory provisions and also the conduct of the petitioner of not depositing the arrears of rent as well as current rent within time, in my opinion, the impugned order does not



require any interference by this Court.

Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

S.Ali/-

U			
---	--	--	--

