

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1388 of 2018**

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Trilochan Singh @ Trilochan Singh Hanspal, S/o Late Jogendra Singh Panjabi, Resident of Mohalla-Bhikhna Pahari More, P.O.-Bankipur, P.S.-Pirbahore, District-Patna.

... .. Petitioner/s

Versus

1. Sadan Prasad, S/o Late Nand Kishore Prasad @ Nandkeshwar Prasad, Resident of Mohalla-Nayatola, P.S.-Kadam Kuan, District-Patna.
2. Anil Ghosh @ Pintu, S/o Late Yadhu Ghosh, Resident of Pintu Hotal, Mohalla-Bhikhna Pahari Mor, P.O.-Bankipur, P.S.-Pirbahore, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 16-05-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of Constitution of India against the order dated 17.02.2018 passed in Eviction Suit No. 109 of 2015, by learned Sub-Judge 1st, Patna, whereby and whereunder the learned court below allowed the petition filed by the plaintiff / respondent no. 1 under Section 15 of the Bihar Building (Lease, rent and eviction) Control Act, 1982 (hereinafter referred to as “the BBC Act”).

3. The plaintiff/respondent no. 1 filed eviction suit no. 109 of 2015 under Section 9 CPC read with Section 11 (a) (c) and (d) of BBC Act. The case of the plaintiff is that father of the plaintiff/ respondent no. 1 had purchased the land and house



through sale deed dated 16.03.1973 and on his death in June, 2005, plaintiff being one of his son and co-owner filed the eviction suit. The father of the petitioner was tenant and on his death petitioner made oral agreement with plaintiff for new tenancy for residence in May, 1996 on monthly rent of Rs. 155 in addition to municipal tax and electric charges but the petitioner never paid the rent and hence breached the terms of tenancy.

4. It is claimed by the petitioner that his father was inducted as tenant in *parti* piece of land by original landlord through a *sada* mortgage deed on 02.12.1955 for the purpose of running a timber business at the monthly rent of Rs. 55/- and as per the agreement father of petitioner had constructed his office and godown on his own cost over the said lease land and making payment of monthly rent and corporation tax in accordance with the said agreement. The father of petitioner had also executed registered *kirayanama* vide *kabuliyat* deed dated 08.11.1960 in favour of original landlord for a period of three years and thereafter there was no fresh agreement but the father of petitioner and thereafter this petitioner continued in occupation.

5. During the pendency of the eviction suit the



plaintiff/respondent no. 1 filed a petition under Section 15 of the BBC Act on 15.11.2016 for direction to the petitioner to make payment of arrears as well as current rent.

6. It is claimed by the petitioner that father of plaintiff namely *Nandkeshwar Prasad* after purchase of suit land, had filed Title Eviction Suit No. 169 of 1973 against father of petitioner for eviction from the suit premises in which it was concluded that father of this petitioner has been inducted as tenant in a *parti* piece of land and the provisions of BBC Act is not applicable. However, the petitioner failed to bring the said order on record to substantiate his claim.

7. Learned counsel for the petitioner in support of his contention place reliance on the judgment of this court in the case of **Anant Prasad Sah @ Anant Kumar Gupta Vs. Devendra Nath Gupta** reported in **1993 (2) PLJR 77** wherein it was held that the provisions contained in Section 2(b) of the Act, by no means, a *parti* land bounded with walls will be included in the definition of building and the suit was not maintainable.

8. For fixation of rent the plaintiff filed BBC Case No. 24 of 2014 under Section 5 and 8 of BBC Act, before House Controller-cum-Sub-Divisional Officer, Patna Town and in ex-



parte proceeding the fair rent was fixed as Rs. 39,620/- per month (i.e. Rs. 5100 for rent of Hotel namely New Pintu Hotel, rent of house Rs. 20,520 and rent of parking area Rs. 14,000 per month) with effect from 20.03.2014 of the lease hold premises.

9. It is admitted by the petitioner that shaw mill was closed and father of petitioner constructed a shop in front of suit land which was being used for running Hotel.

10. Learned counsel for the petitioner has submitted that the learned court below has committed jurisdictional error by considering the petition under the provision of BBC Act ignoring that father of petitioner and now this petitioner has been inducted over a *parti* piece of land and the provision of BBC Act will not apply and the same had been earlier held by the competent court of law. Further, he has submitted that the learned court below failed to appreciate that the petition is not maintainable and the eviction suit has been filed suppressing the true facts and by making false statements which is liable to be rejected. He has further submitted that plaintiff/ respondent no. 1 may seek appropriate remedy under the Transfer of Property Act, if so advised.

11. On the other hand, learned counsel for the respondent no. 1 has submitted that there is relationship of



landlord and tenant between the plaintiff and defendant. Further he has submitted that there is building existed on the suit premises, therefore, the provision of the BBC Act is applicable. In support of his contention, he has placed reliance on the judgment in the case of **Binay Kumar Maheshwari vs. Fanindra Prasad Mishra 2000 (2) PLJR 865, Hindustan Petroleum Corporation Ltd. vs. Rajeshwar Prasad, 2007 (2) BLJR 2979** and Judgment dated 09.01.2018 passed by this Court in **Shivanand Sah vs. Jyotish Kumar Bhagat & Anr. (Civil Misc. Jurisdiction No. 970 of 2016)**. Further, he has submitted that the learned court below rightly passed the impugned order which is a reasoned order considering the facts and circumstances of the case and submission of learned counsel made on behalf of the parties, the same needs no interference by this Court and the present Miscellaneous Application is liable to be set aside.

12. From perusal of Section 15 of the BBC Act, it is clear that if in a suit for eviction the tenant contest the suit as regards his ejection, the landlord may move an application for an order on the tenant to deposit current rent as also arrears of rent. The court, before passing the order, shall give an opportunity to the parties to be heard and prima facie record a



finding as regards existence of relationship of landlord and tenant between the parties.

13. 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 BBC Act.

14. The questions may have to be gone into finally at the time of trial, but that would not bar to a tentative determination of the question of relationship of landlord and tenant at the earlier stage when the provisions of Section 15 of the BBC Act are resorted to by the landlord.

15. Having heard the learned counsel for the parties and on perusal of materials on record and the impugned order, it appears that house rent controller, Patna Sadar has fixed current fair rent dues against the petitioner of the tenancy house at the rate of Rs. 39,620/- per month from 20.09.2016 to the plaintiff/respondent no. 1 and despite demanded by the plaintiff, the petitioner has not paid arrear of rent.

16. It also appears that the father of plaintiff had purchased the suit land and the structure and construction upon



it and the plaintiff after death of his father became one of the co-owner.

17. Having considered the aforesaid facts and circumstances, I do not find any merit in this Civil Misc. Application. The impugned order is a reasoned order and no case is made out by the petitioner for interference by this court in its supervisory jurisdiction under Article 227 of the Constitution of India.

18. This Civil Misc. Application is, accordingly, dismissed.

19. Before parting with this order, I must clarify that while disposing of the suit the Court below shall not be influenced by any of the observation made in this order.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	16.03.2023
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