

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.160 of 2014

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Naresh Kumar Agarwal son of Late Din Dayal Agarwal, partner of M/S India Sales and M/S Mica Sales, situated in Exhibition Road, P.S. Gandhi Maidan, District Patna, resident of Mohalla Exhibition Road, P.S. Gandhi Maidan, District Patna

... .. Appellant/s

Versus

1. Syed Ataur Rahman @ Syed Atur Rahman and Anr. son of Late Lutfur Rahman resident of Mohalla Exhibition Road, P.S.- Gandhi Maidan, District- Patna
2. Ajay Kumar Agrawal, son of Late Din Dayal Agarwal, partner of M/S India Sales and M/S Mica Sales, situated in Exhibition Road, P.S. Gandhi Maidan, District Patna, resident of Mohalla Exhibition Road, P.S. Gandhi Maidan, District Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Manish Kumar No.2, Advocate

For the Respondent/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Sunil Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

The present First Appeal has been preferred impugning the Judgment and Decree dated 21.06.2014 and 01.07.2014, respectively passed by Shri. Krishna Pratap Singh Ld. Sub Judge-III, Patna in Eviction Suit No. 114 of 2011.

2. The Eviction Suit, bearing No. 114 of 2011 was



filed by the Respondent No.1 herein on 30.11.2011, before the Trial Court for eviction of the Defendants one of whom is Appellant and another is Respondent No.2, from the suit premises on the ground of default of paying rent as well as arrear. Recovery of Rs. 55,000/-, which was due as rent, was also sought for.

3. The case of the Plaintiff-Respondent No.1 as per the plaint is that the Plaintiff is the owner and landlord of the suit premises and the Defendant-Appellant and Defendant-Respondent No.2 were inducted as tenants since 21.08.1985 as per lease deed dated 21.08.1985 for a period of 10 years which expired on 31.12.1994. After expiry of the lease dated 21.08.1985, the Plaintiff-Defendants executed a fresh deed on 07.01.1995 by mutual consent on fresh terms and conditions. As per the terms of the agreement, the rate of rent from the 1st of January, 1995 to 31st of December, 2000 was @ Rs. 5160/- per month and from 1st of January, 2000 to 31st of December, 2009, the rate of rent was @ Rs. 10,000/- per month. It is further averred that during the subsistence of this lease agreement, the Plaintiff executed two deeds of lease agreement on the same terms and conditions on the request of the Defendants, and the name of partner firms M/s Mica Sales and M/s India Sales were



mentioned in the lease agreement of the premises and the total rent @ Rs. 10,000/- was payable within 7 days of each month. As per further averment, after expiry of lease-deed, Plaintiff requested the Defendants to vacate the premises under tenancy but the Defendants did not vacate the premises and sent a legal notice to the Plaintiff on 26.12.2009 through advocate Shri. Mukesh Kumar Modi and directed to execute lease-deed for a period of 10 years and also threatened to take necessary legal action. As per further averment, after receipt of the legal notice, Plaintiff sent reply on 13.01.2010 and requested to execute a fresh lease-deed on fresh terms and conditions. However, he was ready to give the tenanted premises at the rate of Rs. 45 per Square feet as prevailing in the locality for a period of maximum three years, otherwise the Defendants were required to hand over the physical vacant possession of the premises to the Plaintiff. However, the Defendants did not reply. Hence the Plaintiff sent a legal notice on 16.04.2010 and requested the Defendants to vacate the said premises. But Defendants neither vacated the premises nor paid any amount of rent to the Plaintiff as demanded in the legal notice. It is further averred that the Plaintiff filed a case before the House Controller, Patna Sadar bearing BBC Case No. 57 of 2010 on 15.06.2010 for fixation of



fair rent. The House Controller after hearing both the parties fixed fair rent at the rate of Rs. 30 per Square feet for the total area of 2580 Square feet which comes to Rs. 77400/- (Seventy Seven Thousand and Four Hundred Rupees) per month from the date of filing of the petition i.e. 15.06.2010. The Defendants defaulted to pay the rent since January, 2010 till date. As per further averment, the dues of rent from January 2010 to 14th of June 2010 at the rate of Rs. 10,000/- per month comes to Rs. 55,000/- (Fifty Five Thousand) and after 14th of June, 2010, the rate of was fixed at Rs. 77,400/- per month by the House Controller in BBC Case No. 57 of 2010 vide Order dated 16.04.2011 till the date of filing of the suit. As per further averment, the plaintiff made several demands after expiry of the lease for vacating the suit premises on the ground of breach of terms of tenancy and default of payment of rent, but the defendants had not vacated the suit premises. Hence, the Eviction Suit was filed.

4. On notice, Defendant No.1, who is the Appellant herein appeared and filed his written statement. However, Defendant No. 2, who is Respondent No.2 herein has been proceeded *ex parte* by the Trial Court. The Defendant No.2, in his written statement, took preliminary objection that suit as



framed is not maintainable. It is barred under the principles of estoppel, waiver and acquiescence and also barred by law of limitation. It was also claimed that suit is filed with *mala fide* intention, concealing relevant material facts. It is also claimed that plaintiff has no cause of action to file the suit and no ground as alleged is available to the plaintiff for eviction of suit premises under Section 11 of the BBC Act. However, the answering Defendant has admitted that he is a *bona fide* tenant and he is very fair to pay rent to the Plaintiff and he has paid all the rents up to date.

5. The answering Defendant has further pleaded that the Plaintiff or his father since the date of Tenancy i.e from the year 1985 always used to collect rent as per his own convenience. The defendant never doubted the conduct of the plaintiff and always used to give rent amount to the plaintiff or his agent without demanding any receipt. These Defendants paid rent to the Plaintiff hand by hand without any suspect till the month of December, 2009. Thereafter, when the Defendant received notice of BBC Case No. 57 of 2010, he approached the Plaintiff and asked him to give rent receipt and on refusal of the same on the part of the Plaintiff, the Defendant started tendering the rent through demand draft under registered



covered since the month of January, 2010 and was regularly sending the rent to the Plaintiff through demand draft under registered cover. Hence, the Defendant has not defaulted to pay rent. It is further pleaded that after expiry of the lease, the Plaintiff never requested the Defendant to vacate the premises. In fact, he entered into negotiation with the Defendant for fresh renewal of the lease-deed and during negotiation, he became ready to renew the lease-deed for further period of ten years on monthly rental at the rate of Rs. 5600/- per month. However, the Plaintiff did not act as per the understanding. Hence, the Defendant served legal notice dated 26.12.2009 upon the Plaintiff, but the Plaintiff by his reply notice dated 13.01.2010 took a contrary stand and demanded exorbitant rate of rent which was not acceptable to the Defendant. However, the Defendant has not disputed the claim of the Plaintiff regarding fixation of rent in BBC Case No. 57 of 2010 in his presence by the House Controller.

6. On the basis of pleadings of the parties, the following issues were framed :

- I. Is the suit as framed maintainable ?
- II. Has the plaintiff got valid cause of action for the suit ?
- III. Is the suit barred by principle of estoppel, waiver and



acquiescence ?

IV) Is the suit barred by non-joinder of necessary parties ?

V) Whether there is any relationship of landlord and tenant in between the plaintiff and defendants ?

VI) Whether the defendants have defaulted in payment of monthly rent of the suit premises and the plaintiff is entitled to the decree of eviction of the suit premises on the ground of default in payment of rent ?

VII) Is the plaintiff entitled to get a decree for Rs. 55,000/- as arrears of rent ?

VIII) Whether the plaintiff is entitled to a decree of eviction as prayed for ?

IX. To what other relief or reliefs if any the plaintiff is entitled to ?

7. During trial, the Plaintiff has examined altogether three witnesses:

1. **P.W .- 1** - Syed Ataur Rehman, who is plaintiff himself,
2. **P.W .- 2** - Sanjay Kumar Singh,
3. **P.W .- 3** - Abinash Kumar.

8. The Plaintiff has also got the following documents exhibited :

1. **Ext .- 1** – Lease Deed
2. **Ext- 1A** – Signature of Lessor
3. **Ext - 1B and 1C** – Signatures of Lessee



4. **Ext - 2-** is also lease deed.

5. **Ext – 2A** – Signature of Lessor

6. **Ext – 2B and 2C** – Signatures of Lessee

9. Defendant No. 1 examined altogether following
seven witnesses :

1. **D.W .- 1** - Sri Bidya Niwas

2. **D.W-2-** Sri Vivek Kumar

3. **D.W .- 3** - Satendra Narayan

4. **D.W .- 4** - Sri Raj Kumar ,

5. **D.W .- 5** - Binay Kumar Singh,

6. **D.W .- 6** - Sri Anil Kumar

7. **D.W .- 7** - Naresh Kumar Agrawal

10. The Defendant no. 1 has also got the following
documents exhibited :

1. **Ext .- A, A1 and A2-** Photo copy of original agreement
deeds.

2. **Ext .- B and B/1** - Notices

3. **Ext.-C to C/15** – envelopes

4. **Ext .- D to D/ 19-** Banker's Cheques,

5. **Ext .- E to E/ 27-** Original Cheques (with objection)

6. **Ext .- F to F/ 37** - Registry slips

11. After considering the material on record and
submissions advanced by both the parties, the Trial Court held
that the suit was maintainable and the Plaintiff had got valid



cause of action to file the suit. Issue no. 3 and 4 were not pressed by the parties at the time of hearing as per the impugned judgment. It was further found by the Ld. Trial Court that admittedly there was relationship of landlord and tenant between the Plaintiff and the Defendant. It was further found that lease agreement was executed by both the parties on 21.08.1985 for a fixed period of ten years which expired on 31.12.1994 and after expiry of the lease-deed dated 21.08.1985, the Plaintiff and Defendant executed a fresh deed of lease on 07.01.1995 by mutual consent on fresh terms and conditions. After expiry of the lease, the Plaintiff requested the Defendant to vacate the suit premises but the Defendant did not vacate the same and sent legal notice to the Plaintiff on 26.12.2009 requesting the Plaintiff to execute a fresh deed of lease for a further period of ten years. After receiving the said notice, the Plaintiff sent reply on 13.10.2010 requesting the Defendant to execute fresh lease on fresh terms i.e at the rate of Rs. 45 per Square Feet as monthly rent or otherwise vacate the premises, but the Defendant did not respond. The Plaintiff again sent fresh legal notice to the Defendant on 16.04.2010 to the effect that if the Defendant is not agreeable to execute fresh lease-deed, they should vacate the suit premises. It was also found by Ld. Trial



Court that the Plaintiff also filed BBC Case No. 57 of 2010 before Ld. House Controller and the House Controller fixed the fair rent at the rate of Rs. 30 per Square Feet per month for the total area of 2580 Square Feet, but the Defendant did not pay rent according to the Order of Ld. House Controller nor executed any fresh deed of lease. Instead, the Defendant sent Rs. 6,000/- as monthly rent through cheque to the Plaintiff after expiry of the deed of lease. It was also found by the Ld. Trial Court that the Defendants were tendering the rent of the suit premises through Bankers' Cheque till date. It was also further found that there is nothing on record to prove that the rent as fixed by House Controller was tendered by the Defendant to the Plaintiff. It was also found by Ld. Trial Court that admittedly the rent fixed by House Controller vide Order dated 15.06.2010 is not stayed and hence, the Defendants were liable to pay the rent to the plaintiff at the rate of Rs. 77,400/- per month but admittedly, the Defendants have not tendered the said rent to the Plaintiff. Hence, the Defendants have clearly defaulted to pay the rent and hence, they are liable to be vacated from the suit premises and pay the arrears of rent. Hence, Ld. Trial Court decreed the suit on contest with cost in favour of the Plaintiff directing the Defendants to vacate the suit premises and



handover the vacant possession of the same to the Plaintiff within 90 days from the date of passing of the Judgment, failing which the same would be vacated and handed over to the Plaintiff through the process of the Court at the cost of the Defendants. The Defendants were also directed to pay arrears of rent.

12. Heard both the parties at length.

13. Ld. Counsel for the Appellant submits that admittedly up to December, 2009, there is no arrear of any rent and since the month of January, 2010, the Appellant was tendering the rent to the Respondent-Plaintiff through Demand Draft/cheques under registered cover, because the Plaintiff-Respondent No.1, despite demand of the Appellant, was not issuing receipt against the payment of the rent. He refers to **Ext.-C to C/15** – envelopes, **Ext .- D to D/ 19-** Banker's Cheques, **Ext .- E to E/ 27-** Original Cheques (with objection), **Ext .- F to F/ 37** - Registry slips, as per which the Appellant was tendering rent through Bankers' cheque/cheques @ Rs. 11,200/- per month. As per terms of the lease agreement, there was stipulation that rent is payable either in cash or through Bank Draft or through Account Payee Cheque. However,



admittedly, the Appellant was not tendering rent to the Respondent-Plaintiff at the rate of Rs. 77,400/- per month as fixed by the House Controller. But, he submits that he was not tendering the rent at the rate fixed by the House controller because he had preferred an appeal against the order of House controller dated 16.04.2011, whereby rent has been fixed at the rate of Rs. 77,400/- with effect from 15.06.2010. But, admittedly there is no stay of the order of the House Controller dated 16.04.2011 by the Appellate Authority. But, he submits that after filing of Appeal against the order of House Controller, the order of the House Controller automatically gets stayed. However, he has not filed any case law or referred to any statutory provision in support of his submission that the order of the House Controller dated 16.04.2011 gets automatically stayed during pendency of the appeal without any specific order by the Appellate Court to this effect.

14. Per contra, Ld. Counsel for the Respondent No.1/Plaintiff submits that the Appellant has not tendered the rent as claimed. He further submits that, even if it is presumed that the Appellant has tendered the rent, the same is not as per the rate fixed by the House controller, even in the absence of any stay of the order of the House Controller fixing the fair rent.



As such, admittedly there is default on the part of the Appellant to pay the payable rent. Therefore, the Appellant is liable to be evicted from the suit premises and to pay arrears of the rent. As such, there is no illegality or infirmity in the impugned judgment and the Appeal is liable to be dismissed with cost.

15. In view of the aforesaid facts and circumstances of the case and submissions advanced on behalf of both the parties, single point arises for determination by this Court, which is as follows:

i) Whether the Appellant has defaulted to pay the rent payable to Respondent No.1 /Plaintiff and Appellant is liable to pay arrears of rent ?

16. Now, let us consider the point formulated for determination.

17. Ld. Trial Court has discussed the evidence of all the witnesses of the Plaintiff and Defendants in detail and has rightly come to the conclusion that the Appellant/Defendant has defaulted to pay the rent. Even if, the claimed tender of rent at the rate of Rs. 11,200/- per month by the Appellant since January, 2010 is accepted, the Appellant/Defendant still commits default to pay the rent as payable to the plaintiff, in



view of fixation of fair rent by the House Controller vide order dated 16.04.2011, whereby fair rent was fixed at the rate of Rs. 77,400/- per month with effect from 15.06.2010. Admittedly there was no stay of the said order of the House Controller by the Appellate Authority. There is no substance in the submission of Ld. Counsel for the Appellant that there would be automatic stay of the order dated 16.04.2011 passed by House Controller when the order was challenged before the Appellate Authority under Section 24 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982, even for want of any specific order of the Appellate Authority to this effect.

18. Hence, the Appellant is liable to be evicted from the suit premises under Section 11(d) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 and pay the arrears of the rent at the rate of Rs.10,000/- since January, 2010 to 14th of June, 2010 and at the rate of Rs. 77,400/- per month since 15.06.2010 till date, subject to adjustment of any amount paid by the Appellant to the Respondent No. 1 towards rent for the relevant period.

19. As such, there is no merit in the present appeal warranting any interference in the impugned judgment. The



Appeal is dismissed, accordingly, upholding the impugned judgment. However, both the parties shall bear their own cost.

Let the decree be drawn accordingly.

(Jitendra Kumar, J)

Amrendra/chandan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2023
Transmission Date	NA

