

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.137 of 2024**

Keshov Prasad Saw Son of Late Kapoor Chand Saw through Rajesh Kumar Saw, son of Keshov Prasad Saw, Attorney and resident of Mohalla Chawartakiya Road, P.O. and P.S. - Sasaram, District- Rohtas at present residing at 92, Dr. Lal Mohan Bhattacharjee Road, P.S.- Entally, District - Kolkata.

... .. Petitioner

Versus

Madhu Devi Daughter of Late Ramendra Prasad Resident of Mohalla- Chawartakiya Road, P.O. and P.S. - Sasaram, District- Rohtas.

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Sourendra Pandey, Advocate Mr. Nalin Vilochan Tiwary, Advocate
For the Respondent/s	:	Mr. Parth Gaurav, Advocate Mr. Aditya Pratap, Advocate Mr. Rahul Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 25-02-2025

Heard the learned counsels for the respective parties.

02. The petitioner is aggrieved by the order dated 18.12.2023 passed in Eviction Suit No. 07 of 2015 by the learned Munsif-I, Sasaram, Rohtas, whereby and whereunder the learned trial court has allowed the application dated 12.12.2023 filed by the respondent for recalling the petitioner's witnesses for cross-examination.

03. Learned counsel for the petitioner submits that the petitioner is the plaintiff and respondent is the defendant before the learned trial court and the petitioner has filed the eviction suit against the defendant/respondent in which, on 27.10.2016, a petition under Section Section 15(1) of the Bihar Buildings



(Lease, Rent and Eviction) Control Act, 1947 (for short 'the BBC Act') has been filed by the petitioner seeking direction to the respondent to deposit the rent of each month and also to pay the arrears of rent and further to strike off the defence of the defendant in case of non-payment of rent. The learned trial court did not pass any order on the said application and rather went on to order that application would be decided on completion of the suit and it was not proper to direct for payment during the midst of the suit and dismissed the petition dated 27.10.2016. Aggrieved by the said order, the petitioner approached this Court in Civil Misc. No. 1034 of 2018, which was allowed vide order dated 31.08.2023 passed by a Co-ordinate Bench and the respondent was directed to deposit the entire amount within 15 days from the date of communication of the order with further direction to the trial court to dispose of the eviction suit within three and half months from the date of order and send a compliance report thereof. Pursuant to the orders of this Court, the court below proceeded ahead and directed the respondent to deposit the entire rent but the respondent did not deposit the same and by order dated 25.09.2023, the defence of the respondent was struck off. Subsequently, on 05.10.2023, 13.10.2023 and 06.11.2023, respectively, two witnesses on



behalf of the petitioner were examined and discharged. Thereafter, on 21.11.2023, the respondent filed an application before the learned trial court for allowing her to deposit the rent without disclosing any amount therein and the said application was rejected. Another application was filed by the respondent on 24.11.2023 stating therein that she was ready to deposit Rs. 18,000/- as arrears of rent. The said application was opposed by the petitioner who pointed out that respondent did not deposit the rent in terms of the orders of this Court passed in Civil Misc. No. 1034 of 2018. Subsequent, on 02.12.2023, the evidence of third witness of the petitioner was recorded. On 12.12.2023, on the request of the petitioner, after closure of evidence on behalf of the petitioner, the respondent was called upon for producing her witnesses. On the same day, i.e., on 12.12.2023, an application was filed on behalf of the respondent praying therein to recall the witnesses of the petitioner for the purposes of their cross-examination. A rejoinder to the said application was filed by the petitioner opposing the contention of the respondent. However, the learned trial court, vide impugned order dated 18.12.2023, allowed the petition dated 12.12.2023 filed by the respondent on deposit of cost of Rs. 400/- per witness.

04. Learned counsel for the petitioner further submits



that the impugned order is completely against the law as after striking off the defence of the respondent, she could not be allowed to cross-examine the witnesses of the petitioner. Learned counsel referring to Section 15 of the BBC Act submits that the provision specifically mentions that 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 witness. Therefore, the impugned order is against the mandate of law as enshrined under the aforesaid provision which enables the landlord to have some respite. Learned counsel further submits that the authority relied on by the learned trial court in the case of ***Bimal Chand Jain Vs. Sri Gopal Agarwal***, reported in ***1982 SCR(1) 124***, is not relevant in the facts of the present case as the said decision was rendered in a case in which Order XV Rule 5 of the Code of Civil Procedure was matter in issue and it has been provided by the Act of UP Government that before striking off the defence, the court may consider any representation made in that behalf by the defendant but there is no comparable provision under the BBC Act. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside.



05. On the other hand, learned counsel appearing on behalf of respondent very fairly submits that Section 15 of the BBC Act makes it clear that if defence of tenant has been struck off, he could not be allowed to cross-examine the witnesses of the otherside. However, the respondent could have been allowed to examine only with regard to facts mentioned in the examination-in-chief and further cross-examination outside the examination-in-chief could not be allowed and to that limited extent, the respondent may be allowed to cross-examine the witnesses.

06. I have given my thoughtful consideration to the rival submission of the parties and the specific provision of law, which is Section 15 of the BBC Act. Section 15 of the BBC Act reads as under:

“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 of 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] [Substituted for 'and' by Act 4 of



1994.] 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 sub-section (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).”

07. The aforesaid provision makes it very clear that if an order is passed directing the tenant to deposit the rent month by month and the arrears of rent and on failure of 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. Further, it provides that 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.

08. Thus, in the light of specific provision, the learned trial court committed error of jurisdiction and passed an order which could not be sustained. As already pointed out by the learned counsel for the petitioner, the authority cited by the learned trial court in the case of *Bimal Chand Jain (supra)* is not applicable in the present facts of the case. Hence, the impugned order dated 18.12.2023 passed by the learned trial court is set aside.

09. Accordingly, the present petition stands allowed.

10. The learned trial court is directed to proceed in the matter keeping in the back of mind the order dated 31.08.2023 passed by the coordinate Bench in Civil Misc. No. 1034 of 2018 for early disposal of the suit.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2025
Transmission Date	NA

