

Dr. Afzal Ali Alias Dr. Afzaal Ali Vs Krishna Mohan Prasad

Court: Patna High Court

Date of Decision: Sept. 22, 2022

Acts Referred: Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 " Section 14, 15, 16, 19

Hon'ble Judges: Anil Kumar Sinha, J

Bench: Single Bench

Advocate: Syed Arshad Alam, Anjum Perveen, Ajay Kumar Sinha

Final Decision: Dismissed

Judgement

1. Defendant/tenant is the petitioner in this case who has challenged the order dated 28.08.2017 passed by learned Munsif 1st, Patna in an Eviction

Suit bearing No. 147/2015 filed by respondent/plaintiff whereby the petitioner has been directed to pay arrears of rent @ Rs. 2000/- per month from

August 2015 within fifteen days from the date of the order and also to pay current rent @ Rs. 2000/- per month.

2. The impugned order dated 28.08.2017 has been passed under Section 15 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982

(hereinafter referred to as the Act). A shop premise situated at Rama Bhawan at Ashok Raj Patha, Patna College, Main Gate, Patna having an area

of 120 Sq. Ft. bearing Holding No. 40(Old) and 19(New) was leased out for a fixed period of five years in favour of the petitioner/tenant by

Respondent/Landlord having the period of lease between 1st December 2010 to 30th November, 2015 on a monthly rental of Rs. 2000/- per month.

The respondent/plaintiff filed a suit for a eviction against the defendant/petitioner in respect of shop/Katra described in Schedule-1 of the plaint on the

ground of expiration of terms of lease as well as on the ground of personal necessity. The petitioner/defendant stopped payment of rent w.e.f. August

2015 and the defendant has stated in the written statement that the last paid monthly rent was Rs. 2662/-.

3. A petition under Section 15 of the Act was filed by the respondent/plaintiff with a prayer to direct the defendant/petitioner to pay the current as well

as arrears of rent which fallen due from August, 2015.

4. Learned counsel for the petitioner submits that plaintiff/respondent has leased out the suit premises to the defendant for a period of five years with

a condition that the lease can further be extended for a further period of five years. A sum of Rs. 40,000/- (Forty thousand) was paid by the petitioner

to the respondent as advance, as such, the petitioner/defendant has paid rent up to the month of March, 2016. He further submits that when eviction

suit is filed on the ground of personal necessity and expiration of lease under Section 14 of the Act, the court cannot direct for payment of arrears of

rent under Section 15 of the Act.

5. In support of his argument, learned counsel for the petitioner relies particularly upon paras 3 and 4 of a judgment passed by this Court in the case of

Dr. Jagdish Chandra Pal v. Smt. Shiva Kumari Devi as report in 1997(2) BLJ 485 .

6. On the other hand, learned senior counsel appearing for the respondent submits that the relationship of landlord and tenant between the parties is

admitted and the rate of last paid rent @ Rs. 2000/- per month is also not in dispute and insofar as advance of Rs. 40,000/- (Forty thousand) paid by

the petitioner to the respondent is concerned, the learned trial court has disbelieved the same on the ground that the petitioner/defendant did not

produce any document in support of his claim of advance payment.

7. Learned counsel submits that there is no infirmity and illegality in the order impugned directing the petitioner to pay the arrears of rent as well as

current rent under Section 15 of the Act. In support of his argument, he relies upon the judgment of this Court passed in the case of Uday Narain

Tewary v. Gauri Shankar Jalan as reported in 1998(2) BLJ 516 whereby in paragraphs 5, 6 and 7, it has been held as follows:-

“5. Before appreciating the rival contentions of the parties, it would be useful to look into the provision of Section 15 of the said Act which reads as

under:

15. Deposit of rent by tenants in suits for ejectments. - (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 an order to deposit of rent, both of before and 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 next following months 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 tenants 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).

6. From bare perusal of the aforesaid provisions, it is abundantly clear that this section provides that when the tenant contests the suit for recovery of

possession as regards claim for ejectment then the landlord may move an application for payment of month to month rent. On such application being

filed, the Court after hearing the parties make an order to deposit the rent month to month and the arrears of rent. Later part of this section also very

specifically provides that if the tenant fails to deposit arrears of rent or month to month rent within the period fixed, the defence of the defendant-

tenant against ejectment shall be struck off and the tenant shall be placed in the same position as if he had not defended the claim to ejectment. I have,

therefore, no doubt in my mind that the application under Section 15 of the said Act is maintainable only in such a case the plaintiff-landlord seeks

decree for eviction and recovery of possession and in that suit the defendant contests the claim of his ejectment. Such an application is not

maintainable and no order can be passed for deposit of arrears of rent and/or current rent in a suit brought by the landlord seeking a decree for arrears

of rent only.

7. In the instant case, it transpires from the order dated 20.7.1996 passed by the Court below in Money Suit No. 80 of 1985, a copy of which has been

annexed as Annexure-4 to the revision application, that the plaintiff-landlord besides the aforesaid money suit also filed a suit seeking a decree for

eviction being Eviction Suit No. 6 of 1984 which was dismissed for non-prosecution. After dismissal of the eviction suit, the plaintiff filed an application

in Money Suit No. 80 of 1985 seeking amendment of the plaint by converting the said money suit into an eviction suit. The plaintiff-Opposite party No.

1 further prayed for adding relief for a decree of eviction on the ground of default. The said petition was rejected by the Court below in terms of the

aforesaid order dated 20.7.1996. The Court below held that the eviction suit was dismissed on 4.8.1988 and after lapse of so many years, the

amendment petition was filed seeking to change the nature of the suit which could not be allowed. From the aforesaid order dated 20.7.1996 it is,

therefore, clear that Money Suit No. 80 of 1985 is a simple suit for recovery of possession. In my opinion, therefore, the order dated 2.9.1996 passed

by the Court below under Section 15 of the said Act directing the defendant-petitioner to deposit the arrears of rent is itself illegal and wholly without

jurisdiction. Such order which is wholly without jurisdiction cannot have any legal effect. Consequently, if any illegal order which has no legal effect is

not complied then there shall be no punitive effect of such order for its non-compliance. It is rather surprising that although the Court below was

conscious of the position that the suit was only for recovery of arrears of rent, even then the Court passed the impugned order striking off the defence

of the defendant- petitioner as against ejectment and deprived the petitioner from cross- examining the witnesses. In my opinion, the Court below has

committed serious error of law in passing such order. Even assuming that for non-compliance of the order dated 2.9.1996 the Court below had

jurisdiction to struck off the defence, the said order shall have no legal effect. Since the suit is not for recovery of possession, neither the plaintiff is

required to lead evidence in proof of the existence of the grounds for eviction nor the defendant- tenant is required to lead evidence in support of his

case against ejectment. The Court below has further committed serious illegality in depriving the defendant from cross-examining the plaintiff's

witnesses. The impugned order therefore, cannot be sustained in law.

8. He further relies upon a Full Bench judgment of this Court passed in the case of Priyavarte Mehta v. Amrendu Banerjee reported in 1996 (1)PLJR

732 wherein under paragraphs 25 to 28, it has been held as follows:-

“25. The expression "subject to law of limitation does not cover the arrears of rent occurring during the pendency of the suit. If the aforesaid

expression is also interpreted to include the arrears of rent during the pendency of the suit that would frustrate the object and purpose of Section 15 of

the Act. The right of the landlord to file an application arises only after the tenant appears and contest the suit for ejectment, before that he cannot file

an application. An unscrupulous tenant will evade the appearance for a time beyond the period of limitation as a result of which the landlords claim

with regard to arrears of rent during the pendency of the suit beyond the period of three years will be barred. Thus, the landlord's right to get arrears

of rent even during the pendency of the suit will be frustrated by the act of the tenant. Non-fixing a time for filing an application under Section 15 also

indicates that so far as arrears of rent during the pendency of the suit is concerned, the legislature never intended that same should be subjected to law

of limitation. The order for payment of rent during the pendency of the suit for any period even beyond the period of limitation if found due is neither

unjust nor oppressive to the tenant, as he is required to pay the same in lieu of his occupation of the building during the pendency of the suit. The law

laid down by this Court in the case of Ramnandan Sharma (FB) (supra) that the claim for arrears of rent during the pendency of the suit is not

circumscribed by law of limitation still holds the field and the addition of the aforesaid expression has not made any change with regard to the said law.

There is nothing in Section 15 of the Act to show that legislature intended to unsettle the law on this point. If the legislature wanted to make the

arrears of rent accruing during the pendency of the suit also subject to law of limitation then it could have expressed its intention by saying that the

period of limitation for arrears of rent be counted with from the date of application or from the date of passing of the order. Absence of this provision

clearly indicates that legislature never intended to bring within the sweep of limitation the arrears of rent after the institution of the suit.

26. This Court in the case of Dwarika Pd. Kapri (supra), held that the period of limitation with regard to arrears of rent should be calculated with

reference to the date of filing of the application under' Section 15 of the Act and the period may include the period before and after the institution of

the suit. In other words, this Court held that the period of limitation from the date of application is to be counted with regard to the arrears of rent

whether accrued before or after the institution of the suit. For the reasons stated above, in the preceding paragraph, I am of the view that the said

decision does not lay down the correct law. The view taken in the said case will defeat the purpose or the object of the provision. There is no rationale

to count the period -of limitation, from the date of filing the application.

27. In the case of Jiwan Kumar Sarkar 1988 PLJR 532 (supra) which has been relied upon by the respondent, this Court held that the period of

limitation for claiming arrears of rent under Section 15 of the Act is not applicable in a suit where arrears of rent is claimed in the suit itself. This Court

took the said view on the ground that when a suit is instituted claiming particular relief then the limitation for the said relief remains suspended during

the pendency of the suit. This view is also not correct for the reason that no distinction can be made between the suit of one nature or the other for

the purpose of deciding the period of limitation under Section 15 of the Act. Section 15 of the Act applies to the suit filed for eviction on all the

grounds. It does not make any difference as to the nature of the suit. Even in a case where no rent is claimed in the suit, an order for payment of

arrears of rent as well as current and future rent can be passed under Section 15 of the Act. In such a situation, no different period of limitation can

be applied with regard to suits founded on different grounds. The said decision also does not lay down the correct law.

28. Thus, after having considered the past history of the legislation, mischief in the previous legislation, the intention of the legislature in adding the

aforesaid expressions in Section 15, the purpose and object of the provision, I hold that Section 15 of the Act empowers the Court to pass an order for

arrears of rent even prior to the institution of the suit for a period not barred by limitation as well as for arrears of rent and rent by month to month

during the pendency of the suit. The expression ""subject to law of limitation"" applies only with regard to claim of arrears of rent prior to the institution

of suit. The claim for arrears of rent during the pendency of the suit is not controlled or circumscribed by period of limitation. I may add here that

while construing the provision, I have not lost sight of the fact that the primary object of the Act is the protection of the tenant. The view taken by me

does not defeat the said object as it does not cause injustice to the tenant, on the other hand, it effectuates the purpose of Section 15 of the Act.

9. The Full Bench of this Court in the case of Priyavarte (supra) has held that Section 15 of the Act applies to the suit filed for eviction on all the

grounds and it does not make any difference as to the nature of the suit. Even in a case where no arrears of rent is claimed in the suit, an order for

payment of arrears of rent as well as current and future rent can be passed under Section 15 of the Act. The Full Bench further holds that Section 15

of the Act empowers the Court to pass an order for arrears of rent even prior to the institution of the suit for a period not barred by limitation as well

as for arrears of rent and rent by month to month during the pendency of the suit. The claim for arrears of rent during the pendency of the suit is not

controlled or circumscribed by period of limitation. The judgment rendered by Full Bench has been approved by the Hon'ble Supreme Court under

para-7 of its judgment passed in the case of Bindeshwary Choudhary v. Ajay Kumar as reported in (1997) 4 SCC 708 which is as follows:-

7. The Act as the preamble shows is an Act to regulate the letting of buildings and the rent of such buildings and to prevent unreasonable eviction of

tenants therefrom. The purpose of the Act is to avoid hardship to the tenants due to paucity of accommodation and also save them from exploitation

by the landlords charging premium and higher rents (See Sections 3-8) . At the same time a duty is cast on the tenant to pay rent to the landlord

regularly so long he is entitled to protection from ejection under the Act except on the grounds specified thereunder. One of the essential elements

of lease is rent payable by the tenant to the landlord. Under Section 19 of the Act when a landlord refuses to accept any rent lawfully payable to him

by a tenant in respect of any building, the tenant may remit such rent and continue to remit any subsequent rent which becomes due in respect of such

building, by postal money order to the landlord. At this stage we may also refer Section 16 of the Act which requires deposit of rent as determined by

the Controller during the pendency of appeal or revision. Under this Section the appellate or revisional authority may require the tenant to pay the rent

at the rate fixed by the Controller month to month by the fifteenth day of the following month, together with arrears, if any. Section 16 does not talk of

arrears arising only during the pendency of the proceedings. In the present case before us we do not find that there is any ambiguity in the language of

Section 15. Under this section the Court can require the tenant to pay all the arrears of rent even for the period prior to the institution of the suit

subject to the law of limitation. It is the duty of the tenant to pay rent regularly to the landlord when he is enjoying the security of tenure under the rent

restrictions laws. Considering the whole aspect of the matter, we are of the view that when the expression ""subject to law of limitation"" has been used

in Section 15 it applies to the recovery of arrears of rent as on the date of institution of suit. The Full Bench of the Patna High Court in Priyavarta

Mehta's case has taken a correct view of the matter. We find it difficult to appreciate the reasoning advanced by the Division Bench in the case of

Ratan Lal Nai (supra) holding that Section 15 suffers from the vice of arbitrariness and is ultra vires the powers of the State Legislature.

10. In view of the discussions held on facts as well as on law and taking into consideration the statutory provision prescribed under Section 15 of the

Act and the fact that the relationship of tenant and landlord between the parties is not in dispute and the last rent paid, accordingly, I come to the

conclusion that the learned trial court has rightly passed the impugned order directing the petitioner to pay the arrears of rent as well as current rent.

The impugned order does not suffer from any jurisdictional error or material irregularity requiring interference by this Court.

11. Accordingly, this application is dismissed.

CIVIL MISCELLANEOUS JURISDICTION No. 633 of 2018

12. Petitioner/tenant has challenged the order dated 16.03.2018 passed by Munsif 1st, Patna in Eviction Suit No. 147/2015 whereby learned trial court

has struck off the defense of the petitioner on failure of the petitioner to deposit the arrears of rent within fifteen days of the date of order and the

current rent month to month by fifteenth day of next following month.

13. The learned trial court by its order dated 28.08.2017 had directed the petitioner to pay the arrears of rent @ 2000/- per month from August, 2015

within fifteen days from the date of order and also to pay current rent @ 2000/- per month by the 15th day of the next following month. The petitioner

failed to deposit the arrears of rent as well as current rent as directed by the trial court. Accordingly, plaintiff/respondent on 04.12.2017 filed a petition

stating therein that vide order dated 28.08.2017, the trial court directed the petitioner to pay arrears as well as current rent within the stipulated time

under Section 15 of the Act but the petitioner intentionally and deliberately did not comply with the said order and as such, a prayer was made to strike

off the defence of the petitioner against ejectment. The learned trial court by the impugned order has come to the conclusion that despite the specific

direction given under Section 15 of the Act to pay the arrears of rent within 15 days as well as current rent vide order dated 28.08.2017, the petitioner

failed to deposit the arrears as well as current rent and accordingly, ordered that the defence of the petitioner against ejectment shall be struck off.

14. Learned counsel for the petitioner made identical submissions as advanced by him in the aforesaid case bearing Civil Misc. No. 1141/2018, and

simultaneously submitted that the petitioner is ready to deposit the arrears of rent in eight easy installments and shall also deposit the current rent as

directed by the learned trial court. He next submits that a sympathetic view may be taken in this regard by this Court and the petitioner may be

allowed to deposit the arrears of rent in installments.

15. I have heard learned counsel for the parties. It transpires that the order for payment of arrears of rent and the current rent was passed on

28.08.2017. The statutory time prescribed under Section 15 of the Act to pay the arrears of rent and the current rent is fifteen days. Despite specific

direction of the trial court to the petitioner to pay the arrears of rent and the current rent within 15 days from the date of order dated 28.08.2017, the

petitioner miserably failed to deposit the rent amount within time and also did not show his bona fide by filing his application in this regard before the

trial court for extension of time within a period of fifteen days.

16. When the respondent/plaintiff filed a petition before the concerned court on 04.12.2017 contending that despite the order for payment of arrears of

rent and current rent, the petitioner has not paid the rent and his defense against ejectment be struck off, the petitioner came out with a plea of

payment of rent in installments. The petitioner challenged the main order dated 28.08.2017 passed under Section 15 of the Act for payment of arrears

of rent as well as current rent by another petition and contested the same on merit which got dismissed by this Court.

17. From perusal of the later part of Section 15 of the Act, it appears that this Section specifically provides that if the tenant fails to deposit arrears of

rent or month to month rent within the period fixed, the defence of the defendant-tenant against ejectment shall be struck off and the tenant shall be

placed in the same position as if he had not defended the claim of ejectment.

18. Taking into consideration the conduct of the petitioner of not depositing the arrears of rent as well as current rent within time and the statutory

requirement of payment to be made within fifteen days from the date of order, I do not find any jurisdictional error in the impugned order requiring

interference by this Court. Accordingly, this application stands dismissed.