

(2008) 09 JH CK 0046**Jharkhand High Court****Case No:** None

Tisco Mazdoor Union

APPELLANT

Vs

Tata Iron and Steel Company
Ltd.

RESPONDENT

Date of Decision: Sept. 9, 2008**Citation:** (2008) 4 JCR 531**Hon'ble Judges:** M.Y. Eqbal, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

This appeal is directed against the Judgment 16.10.2007 passed by Additional District Judge. F.T.C. Jamshedpur in title Appeal No. 06 of 1994 whereby he has set aside the judgment passed by Subordinate Judge, Jamshedpur in Title Suit No. 44 of 1990 and remanded the matter back to the trial Court for taking fresh evidence of the witnesses and also taking into consideration the additional documents in order to decide the issue of relationship of landlord and tenant.

2. Plaintiff/respondent, namely, Tata Iron and Steel company filed Eviction Suit No. 44 of 1990 against the defendant/appellant for his eviction from the suit premises. Plaintiffs case is that the suit property which is quarter was let out to the defendant by the plaintiff for suing it as residence of the office bearer of the defendant-Union on monthly rent of Rs. 38.60 paise. It is alleged that the quarter was allotted to the defendant as per the terms of House Permit No. 2060 dated 30.1.1986 and the defendant accepted the terms and conditions of the allotment. It is alleged that defendant defaulted in payment of rent and became liable for eviction. Plaintiff also alleged that the quarter in question requires reasonably and in good faith for accommodation of its employee. The defendant contested the suit by filing written

statement stating inter alia that the suit is not maintainable under the provisions of Bihar Building (Lease, Rent and Eviction) Control Act and is barred by limitation. The defendant also denied the relationship of landlord and tenant and also ownership of the plaintiff. The trial Court framed as many as seven issues and after deciding all the issues, suit was dismissed holding that the suit is not maintainable on the ground, inter alia that power to institute suit was not properly and validly delegated by the plaintiff-Company. The trial Court further held that the plaintiff failed to establish relationship of landlord and tenant. The issue of default and personal necessity were also decided against the plaintiff.

3. Aggrieved by the said judgment and decree, plaintiff-Company preferred appeal being Title Appeal No. 6 of 1994. The Appellate Court after re-appreciation of the entire evidence came to the conclusion that the trial Court has not properly considered the documentary evidence and also not considered oral evidence adduced by the plaintiffs witnesses. The Appellate Court further found that the trial Court has completely misdirected itself in holding that the suit is not maintainable, inasmuch as power to institute suit was not properly delegated to the officer of the company. The Appellate Court also found that the original documents which were in the custody of the defendant/appellant were not produced before the Court. The Appellate Court, therefore, set aside the judgment and decree of the trial Court and remanded the matter back for passing a fresh judgment after considering the evidence in its right perspective and also allowing the plaintiff to adduce evidence.

4. I have heard Mr. Rajesh Lal, learned Counsel appearing for the appellant and Mr. G.M. Mishra, learned Counsel appearing for the respondent.

5. Mr. Rajesh Lal, learned Counsel for the appellant assailed the impugned judgment of the appellate Court mainly on the ground that the appellate Court has committed serious error of law in setting aside the judgment of the trial Court and remanding back the matter for a fresh decision. According to the learned Counsel, the order of remand cannot be passed for the purpose of filling up the lacuna. Learned Counsel relied upon the decision of the Patna High Court in the case of Devji Shivji Vs. Mohanlal Odhabji Thacker and Others, and also the decision of the Supreme Court in the case of State of U.P. v. Manbodhan Lal Shrivastava AIR 1967 SC 912 and in the case of Arjan Singh v. Kartar Singh, (1951) 2 SCR 258 .

6. From perusal of the trial Court judgment, it appears that the trial Court has neither correctly framed the issues nor decided the same by appreciation of evidence. The trial Court has further committed illegality in not giving opportunity to the plaintiff/respondent to adduce their evidence with regard to dispute involved in the suit. The Appellate Court, therefore, for the purpose of adjudication of the matter in controversy between the parties, rightly remanded back the matter to the trial Court for deciding all the issues and for recording specific finding on those issues. The impugned judgment of remand cannot be said to be for the purpose of filling up the lacuna.

7. In my view, therefore, the impugned judgment passed by the Appellate Court needs no interference by this Court.

8. For the aforesaid reasons, there is no merit in this appeal, which is, accordingly, dismissed.