

(2006) 11 JH CK 0046

Jharkhand High Court

Case No: WPC No. 4833 of 2006

Md. Qaiseruzzaman

APPELLANT

Vs

Mashhood Alam

RESPONDENT

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**Date of Decision:** Nov. 22, 2006**Acts Referred:**

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 15, 15(1), 15(2)

**Citation:** (2007) 1 JCR 409**Hon'ble Judges:** M.Y. Eqbal, J**Bench:** Single Bench**Advocate:** Ananda Sen, for the Appellant; Jawahar Prasad, for the Respondent**Final Decision:** Allowed

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### Judgement

M.Y. Eqbal, J.

Heard the parties.

2. The plaintiff-respondent filed suit for eviction impleading two defendants, first defendant, as a tenant and the second defendant as sub-tenant, alleging, inter alia, that defendant No. 1 inducted as a tenant who in turn, sub-let the said premises to defendant No. 2. Defendant No. 1 filed written statement denying and disputing the relationship of landlord and tenant. It was stated by defendant No. 1 that plaintiff is not the owner of the building, which is a Wakf Property and he was never inducted as tenant. Defendant No. 2 also filed written statement denying the relationship of landlord and tenant and also allegation of subletting.

3. During pendency of the suit an order u/s 15 of the B.B.C. Act was passed directing defendant No. 1 to deposit rent. As the defendant No. 1 did not comply the order, his defence against ejectment was struck off. Thereafter, hearing of the suit was proceeded and the plaintiff examined witnesses. However, petitioner was not allowed to cross-examine the witnesses. The court below, by order dated 20.5.2006, held that petitioner cannot be permitted to cross-examine the witnesses. The said

order is impugned in this application.

4. I have heard Mr. Ananda Sen, learned Counsel appearing for the petitioner and Mr. Jawahar Prasad, learned Counsel for the respondent.

5. From perusal of the impugned order, it appears that the court below held that once defence of the defendant is struck off for non compliance of the order passed u/s 15 of the Act they have no right to cross-examine the witnesses. In my view, the court below has not correctly appreciated the provisions of Section 15 of the B.B.C. Act. Section 15 of the said Act reads as under:

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 an order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both before (or 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).

6. From plain reading of the aforesaid provisions, it is manifestly clear that for non-compliance of the direction for deposit of rent, the defence of the defendant against ejectment shall be struck off. In other words, the defendant shall be put in such a position as if he had not defended the claim as qua tenant.

7. The Supreme Court in the case of [Modula India Vs. Kamakshya Singh Deo](#), , while considering similar provision of law under the West Bengal Premises Tenancy Act observed:"

We agree that full effect should be given to the words that defence against ejectment is struck off. But does this really deprive the defendant tenant of further

participation in the case in any manner? While it is true that, in a broad sense, the right of defence takes in within its canvass, all aspects including the demolition of the plaintiff's case by the cross-examination of his witnesses, it would be equally correct to say that the cross-examination of the plaintiffs witnesses really constitutes finishing touch, which completes the plaintiff's case. It is a well-established proposition that no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiffs witnesses cannot constitute the plaintiff's evidence in the evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Looked at from this point of view it should be possible to take the view that, though the defence of the tenant has been struck out, there is nothing in law to preclude him from demonstrating to the Court that the plaintiff's witnesses are not speaking the truth or that the evidence put forward by the plaintiff is not sufficient to fulfill the terms of the statute.

To us it appears that the basic principle that where a plaintiff comes to the Court he must even in a case where no defendant appears. It will at once be clear that to say that the Court can only do this by looking the plaintiff's evidence and pleadings supplemented by such questions as the Court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the Court under a great handicap in discovering the truth or otherwise of the plaintiff's statements. For after all, the Court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the Court in pointing out defects, weaknesses, errors and inconsistencies of the plaintiff's case.

We, therefore, think that the defendant should be allowed his right of cross-examination and arguments. But we are equally clear that this right should be subject to certain important safeguards. The first of these is that the defendant cannot be allowed to lead his own evidence. None of the observations or decision cited have gone to the extent of suggesting that, in spite of the fact that the defence has been struck off, the defendant can adduce evidence of his own or try to substantiate his own case.

8. Besides the above, there are catena of decisions of the Patna High Court holding that in case once defendant's defence is struck off, he will not be entitled to contest the suit qua tenant. Reference may be made to the decision rendered in the case of *Sri Sachidanand Singh v. Smt. Tarawati Mishrain and Ors.* 1992) PLJR 195.

9. In the instant case, direction for deposit of rent was given against defendant No. 1. Defendant No. 2 who is the petitioner here disputed the title of the plaintiff and denied relationship of landlord and tenant, in my view, the court below ought to

have allowed the petitioner to cross-examine the plaintiff's witnesses. The impugned order, therefore, cannot be sustained in law.

10. For the aforesaid reasons, this writ application is allowed and the impugned order is set aside.