(2016) 12 JH CK 0011

JHARKHAND HIGH COURT

Case No: W.P. (C) No. 2808 of 2016

Sumermall Jain		APPELLANT
	Vs	
Smt. Tanushree Dutta		RESPONDENT

Date of Decision: Dec. 1, 2016

Acts Referred:

- Jharkhand Buildings (lease, Rent And Eviction) Control Act, 2000 - Section 11, Section 14

Citation: (2017) 1 AIRJharR 450 : (2017) 1 JCR 708

Hon'ble Judges: Mr. Aparesh Kumar Singh, J.

Bench: Single Bench

Advocate: M/s. Indrajit Sinha and Arpan Mishra, Advocates, for the Respondents; M/s. Rohitashya Roy and Tarun Kr. Mahato, Advocates, for the Petitioners

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. Aparesh Kumar Singh, J. - Heard counsel for the parties.

2. Both the writ petitions involve the same issues and the nature of the order impugned is also the same.

3. Petitioners in both the writ petitions are tenants of the same landlord who is the sole Respondent. The order impugned dated 02.04.2016 passed in Eviction Suit Nos. 26/2006 and 27/2006 have a thread of commonality as the defence of defendant-tenant / petitioners herein, have been struck off by the Learned Court below on the failure to deposit the current and future rent @ Rs. 2500/- per month by the stipulated date 15th of every succeeding month.

4. The Eviction suits are of the year 2006. The chequered history of the litigation is also required to be noticed in some detail hereinafter. It has some bearing on the approach to be adopted in such cases where defendants appear to have mastered

the art of lingering the proceeding of the suit and that too in the nature of eviction suit.

5. Eviction suits were instituted by the Plaintiff/Respondent herein on the grounds of personal necessity and expiry of the period of lease which are to be summarily tried in terms of section 14 of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2000. As the sequence of events during journey of the suit reveals, the first writ petition was filed on behalf of a person who sought impleadment claiming himself to be a real tenant being the brother of the defendant / tenant, on his plea being rejected by the learned Trial Court in both the respective suits. They are WPC No. 4944/2010 and WPC No. 4786/2010. One of the writ petition WPC No. 4944/2010 was withdrawn on 28.05.2011 while the other writ petition WPC No. 4786/2010 is still pending. There was an order for payment of arrears of rent during pendency of the suit in both the cases, on default whereof, the defence of the defendants/tenants was struck off by order dated 17.11.2011 by the learned Trial Court. The said order was the subject matter of challenge in WPC No. 6044/2012 and WPC No. 6034/2012 arising out of Eviction Suit Nos. 26/2006 and 27/2006. By a common judgment and order dated 28.02.2013, this Court was pleased to allow the writ applications directing the learned Court below to conclude the said suits within a period of six months. The suits have remained un-concluded till now. Thereafter, the tenants/petitioners herein again came before this Court in WPC No. 6561/2014 and WPC No. 6562/2014 challenging the rejection of their amendment petition by impugned orders dated 24.07.2014. These writ petitions were later on withdrawn on 21.07.2015 after about seven months of its institution. Two writ petitions being WPC No. 2569/2015 and WPC No. 2570/2015 were again filed by the petitioners herein arising out of the respective eviction title suits, laying challenge to the rejection of the second petition for amendment of their written statement by order dated 20.04.2015. Both the writ petitions were dismissed by this Court vide order dated 22.07.2015 with a direction to the learned Trial Court to conclude the eviction suits expeditiously.

6. In the aforesaid sequence of events, it is now relevant to point out that after the order dated 28.02.2013 passed in WPC No. 6044/2012 and WPC No. 6034/2012, the tenants/petitioners herein again defaulted in payment of arrears of rent in terms of section 15 of the Act of 2000 and direction of the learned Court below consecutively every month starting from January 2014 till December 2014. The arrears amount however were deposited in January 2015 in both the cases. The default in deposit of arrear rent again from January 2015 onwards till February 2016, has been persistent. As a matter of fact, arrear rent was deposited for all these periods for the first time in March 2016. A chart furnished by the Respondent in respect of the delay in depositing the current as well as arrear rent have been furnished along with her counter affidavit in both the writ petitions, which are being extracted hereinafter.

EVICTION SUIT 26/2006-SUMERMALL JAIN

Challans for period Jan, 2014 to Feb. 2016-filed on 8.3.2016

Sl.	Rent for Month	Last dt u/s 15 for Deposit	Form filled up on	Challan Date	Challan No.	Rend deposited on	Delay (no. of days)	Filed on Court on
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	FEB, 16	15.03.16	03/03/16	04/03/16	522	05/03/16	-	08/03/16
2	JAN, 16	15.02.16	,	,	,	,	19	,
3	DEC, 15	15.01.16	,	,	,	,	50	,
4	NOV, 15	15.12.15	,	,	,	,	81	,
5	OCT, 15	15.11.15	,	,	,	,	112	,
6	SEP, 15	15.10.15	,	,	,	,	142	,
7	AUG, 15	15.09.15	,	,	,	,	173	,
8	JUL, 15	15.08.15	,	,	,	,	204	,
9	JUN, 15	15.07.15	,	,	,	,	235	,
10	MAY, 15	15.06.15	,	,	,	,	264	,
11	APR, 15	15.05.15	,	,	,	,	294	,
12	MAR, 15	15.04.15	,	,	,	,	325	,
13	FEB, 15	15.03.15	,	,	,	,	356	,
14	JAN, 15	15.02.15	,	,	,	,	384	,

i) Plaintiff submitted petition for striking off defence on 25.2.2016. ii) One single Challan for period January 2015 to February, 2016 was processed thereafter and rent in lump sum was deposited on 5.3.2016. iii) All 13 nos. challans for deposit of rents for 26 months period from Jan, 2014 to Feb. 2016 were filed in Court on a single day on 8.3.16.								
15	DEC, 14	15.01.15	12/11/14	20.1.15	500 *	31.01.15	16	08/03/16
16	NOV, 14	15.12.14	12/10/14	,	501 *	,	47	,
17	OCT, 14	15.11.14	12/09/14	,	502 *	,	77	,
18	SEP, 14	15.10.14	12/08/14	,	503 *	,	108	,
19	AUG, 14	15.09.14	12/09/14	29.9.14	323	,	138	,
20	JULY, 14	15.08.14	12/08/14	,	319	,	154	,
21	JUN, 14	15.07.14	12/07/14	,	314	,	185	,
22	MAY, 14	15.06.14	12/06/14	,	308	,	215	,
23	APR, 14	15.05.14	12/05/14	3/06/14	99	,	246	,
24	MAR, 14	15.04.14	12/04/14	3/06/14	105	,	276	,
25	FEB, 14	15.03.14	12/03/14	22.3.14	668	06/05/14	52	,
26	JAN, 14	15.02.14	12/02/14	28.2.14	618	07/03/14	20	08/03/16

(i) FEB, 14 -Challan No. taken on 22-March but rent deposited in May, 2014.

(ii) Sept to Dec, 14 ⁄ Challans were processed after petition dated 12.1.2015 was submitted.

(iii) Rents for Mar 14 to Dec, 14 were deposited on 31.01.2016.

(iv) Challans for entire 2014 were not filed in Court in spite of orders.

EVICTION SUIT 27/2006- SANJAY KUMAR JAIN

Challans for period Jan, 2014 to Feb. 2016-filed on 8.3.2016

Sl	Rent for month	Last dt u/s 15 for deposit	Form filled up on	Challan date	Challan no.	Rend deposited on	Delay (no. of days)	Filed on court on
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	FEB, 16	15.03.16	03/03/16	04/03/16	521	05/03/16	-	08/03/16
2	JAN, 16	15.02.16	,	,	,	,	19	,
3	DEC, 15	15.01.16	,	,	,	,	50	,
4	NOV, 15	15.12.15	,	,	,	,	81	,
5	OCT, 15	15.11.15	,	,	,	,	112	,
6	SEP, 15	15.10.15	,	,	,	,	142	,
7	AUG, 15	15.09.15	,	,	,	,	173	,
8	JUL, 15	15.08.15	,	,	,	,	204	,

9	JUN, 15	15.07.15	,	,	,	,	235	,
10	MAY, 15	15.06.15	,	,	,	,	264	,
11	APR, 15	15.05.15	,	,	,	,	294	,
12	MAR, 15	15.04.15	,	,	,	,	325	,
13	FEB, 15	15.03.15	,	,	,	,	356	,
14	JAN, 15	15.02.15	,	,	,	,	384	,
i) Plaintiff submitted petition for striking off defence on 25.2.2016. ii) One single Challan for period January 2015 to February, 2016 was processed thereafter and rent in lump sum was deposited on 5.3.2016. iii) All 13 nos. challans for deposit of rents for 26 months period from Jan, 2014 to Feb. 2016 were filed in Court on a single day on 8.3.16.								
15	DEC, 14	15.01.15	12/11/14	20.1.15	504 *	31.01.15	16	08/03/16
16	NOV, 14	15.12.14	12/10/14	,	505 *	,	47	,
17	OCT, 14	15.11.14	12/09/14	,	506 *	,	77	,
18	SEP, 14	15.10.14	12/08/14	,	507 *	,	108	,
19	AUG, 14	15.09.14	12/09/14	29.9.14	324	,	138	,
20	JULY, 14	15.08.14	12/08/14	,	318	,	154	,
21	JUN, 14	15.07.14	12/07/14	,	313	,	185	,
22	MAY, 14	15.06.14	12/06/14	,	309	,	215	,
23	APR, 14	15.05.14	12/05/14	03/06/14	100	,	246	,

24	MAR, 14	15.04.14	12/04/14	29.9.14	306	,	276	,
25	FEB, 14	15.03.14	12/03/14	22.3.14	667	06/05/14	52	,
26	JAN, 14	15.02.14	12/02/14	28.2.14	617	07/03/14	20	08/03/16
(i) Mar'', 14 -Challan No. was taken in September 2014 along with Challans of May to August'' 14. (ii) Sept to Dec, 14 ⁄ Challans were processed after petition dated 12.1.2015 was submitted. (iii) Rents for Mar 14 to Dec, 14 were deposited on 31.01.2015. (iv) Challans for entire 2014 were not filed in Court in spite of orders.								

7. They do not stand refuted. This occasioned the Landlord to move the Trial Court once again for striking off the defence of the tenant/petitioners. The learned Trial Court found the conduct of the defendants to be procrastinating in nature. The delay in deposit was also not properly explained. The defendants took a puerile plea of fault on the part of Advocates'' Clerk in failing to deposit the arrears of rent within time. Learned Trial Court was also conscious of the background of litigation when earlier also, defence of the tenants were struck off on account of the same fault. Accordingly, the learned Trial Court was persuaded to struck off the defence of the tenants/defendants/petitioners herein.

8. Learned counsel for the petitioners has sought to assail the impugned orders inter-alia on the following grounds. It is submitted that till December 2013, there has not been substantial delay in deposit of the rent by the stipulated date. The suit was instituted on the grounds of personal necessity and on expiry of the lease period. It is not the case of the landlord that there was any default in payment of rent on regular basis during subsistence of the lease. However, default in payment of arrear rent is attributed to the Advocates'' Clerk to whom petitioners claim to have regularly entrusted the task of making the deposit through challan in the authorised Bank. It is submitted that the case is at the stage of argument and petitioners undertake to conclude their argument within two days, if permitted. Evidence has been adduced earlier on their behalf. It is submitted that the provisions of section 15 of the Act of 2000 has been held to be directory in nature by the judgment rendered by the Apex Court in the case of **Manmohan Kaur v. Surya Kant Bhagwandi [(1988) 4 SCC 698]**.

9. Learned counsel for the Respondent landlord has on his part taken pains to show the conduct of the writ petitioners during the proceeding of the suit which have remained pending since 2006 on account of repeated journeys up and down by the tenants to this Court on one or the other pretext and innumerable adjournments on account of the lack of diligence on the part of the tenant. It is submitted that on the previous occasion when defence of the tenants was struck off, this Court was liberal in restoring it by allowing the writ petition WPC No. 6044/2012 and WPC No. 6034/2012 however with a specific direction to the learned Trial Court to conclude the trial within six months. The trial remained inconclusive, the reason being writ large from the order sheet of the proceedings of the Trial Court in both the cases on account of lack of appearance on the part of the tenants or repeated adjournments taken by them without any sufficient cause. Even when the writ petitioners approached this Court in WPC No. 2569/2015 and WPC No. 2570/2015 challenging the refusal of amendment of their written statement, this Court was pleased to dismiss the writ applications with a explicit direction to the learned Trial Court to conclude the trial expeditiously. The order sheet of the Trial Court, if reckoned from 2013 onwards in Eviction Title Suit No. 26/2006, would show that on 36 dates, defendant / tenant was absent and on 63 dates, petitions for time was filed on his behalf. In Eviction Title Suit No. 27/2006, reckoning from the year 2013 onwards i.e. after the learned Trial Court was directed to conclude the trial within six months by judgment dated 28.02.2013 passed in WPC No. 6044/2012 and WPC No. 6034/2012, defendant / tenant was absent on 40 dates while a petition for time was filed on 62 dates. Counsel for the Respondent has prepared a chart containing the dates on which either defendants were absent or petition for time was filed. Certified copy of the order sheet has been produced in support thereof.

10. Instant facts have not been disputed by the petitioners. Learned counsel for the Respondent landlord submits that the conduct of the tenant show complete disregard not only to the mandate of law prescribing summarily trial of the eviction suit, but also to the specific direction passed by this Court in the earlier round of litigation. A sense of despair creeps in a bona fide litigant in such circumstances, unless the conduct of such parties are not deprecated and discouraged by the Court. Learned Trial Court taking note of the aforesaid facts, has discharged its duty within the parameters of law. Therefore, it cannot be said to suffer from any error of law or perversity either. Since there is no error of jurisdiction in exercise of power of the Trial Court in the attendant facts and circumstances of the case, interference under Article 227 of the Constitution of India would be wholly uncalled for. Reliance has been placed on the judgment rendered by the Apex Court in the case of **Gayathri v. M. Girish in Special Leave Petition (CC) No. 14061/2016**. It is submitted that even the affidavit of the petitioners relating to the deposit of arrear rent dated 24.08.2016 in both the cases is incorrect on facts. This Court on 09.11.2016 have categorically directed the petitioners on the objection taken by the Respondent to give specific statement regarding payment of rent under section 15

of the Act of 2000. By the affidavit filed on 21.11.2016 also, it is evident that the petitioners had not deposited the arrear rent till August 2016 except for the month of April 2016, as incorrectly stated in their rejoinder filed on 24.08.2016. Learned counsel for the Respondent has further submitted on instructions that arrear rent from May 2016 till October 2016 have been deposited in one go on 16.11.2016. It is submitted that the petitioners are recalcitrant who should not be encouraged by interfering in such a matter. Trial Court should be allowed to conclude the trial expeditiously.

11. I have considered the submissions of the parties and gone through the relevant materials on record. The facts of the case, undisputed and taken note in the preceding paragraph, would clearly reinforce the view observed in the opening paragraph that the petitioners tenants appear to have endeavoured to master the art of lingering the adjudication of the suit and causing persistent default in obeying the directions not only of the Trial Court, but also of this Court in the previous litigation. The explanation furnished by them is not worthy of acceptance. The litigants i.e. the present tenants cannot be allowed to excuse themselves from the responsibility to honour the specific direction of the Trial Court on the pretext that the Advocates'' Clerk had failed to deposit the arrear rent which remained due not only for one or two months, but consecutively for more than 12 months reckoning from January 2015, if the period prior to that is ignored for the present. If such conduct of the litigants is not discouraged, the whole concept of timely and speedy justice would be rendered otiose in the eye of law. The landlord prosecuting the eviction suit would be left with little faith in justice delivery system if such recalcitrant conduct is not discouraged. Misplaced sympathy and indulgence by the appellate or revisional court or the writ court would only compound the malady further as also has been observed in the judgment rendered by the Apex Court in the case of Gayathri (Supra). The Hon''ble Supreme Court in the case of **Ouseph Mathai and others v. M. Abdul Khadir [(2002) 1 SCC 319]** has referred to the exposition of law, so far as the power of superintendence under Article 227 of Constitution of India by the High Court is concerned and held as follows:

4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave

dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In **Waryam Singh v. Amarnath (AIR 1954 SC 215)** this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in **Nagendra Nath Bora v. Commr. of Hills Division & Appeals(AIR 1958 SC 398)**. In **Babhutmal Raichand Oswal v. Laxmibai R. Tarte : (AIR 1975 SC 1297)** this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in **R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw (All ER at p. 128)** this Court in **Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (AIR 1987 SC 117)** held: (SCC p. 460, para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Telang). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

6. In **Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi** this Court held that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in a dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in **Koyilerian Janaki v. Rent Controller (Munsiff)**.

Reliance may also be placed upon judgment rendered by the Hon''ble Supreme Court in the case of **Radhey Shyam and another v. Chhabi Nath and others**

[(2015) 5 SCC 423]. The anguish expressed by the Apex Court in the case of Gayathri (Supra) on the delay caused on account of dilatory tactic adopted by the parties in adjudication of the civil litigation is apt to be reproduced hereinafter for guidance of the Trial Courts and this Court as well.

"10. In the case at hand, as we have stated herein-before, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertain able in law. But the trial Court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the defendant-petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the plaintiff''s age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to herein-above and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practise. It is because such acts are against the majesty of law.

11. In this context, we may profitable reproduce a passage from **Shiv Cotex v. Tirgun Auto Plast (P) Ltd. (2011 AIR SCW 5789)**. wherein it has been stated that it is said but true, that the litigants seek and the courts grant adjournments at the drop of a hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. The court has further laid down that it is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.

12. In **Noor Mohammed v. Jethanand** commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say:-

"In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the

system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach."

And, again:-

"Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "clean vital" of our system."

13. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake!Arise! Oh Partha" is apt here to be stated for guidance of trial courts."

12. The judgment rendered in the case of Manmohan Kaur (Supra), relied upon by the learned counsel for the petitioners, does not come to aid of the petitioners. The tenants/petitioners have completely failed to explain the reasons for delay or default in depositing the arrear and current rent, as directed by the learned Trial Court. Therefore, the exercise of discretion by the learned Trial Court to strike out its defence, cannot be said to suffer from any error of law or exercise of jurisdiction to interfere in the matter.

13. In view of the aforesaid analysis, this Court does not find any reason to show indulgence to such litigants. The order as such on being examined on merits also cannot be said to suffer from any error of jurisdiction warranting interference under Article 227 of the Constitution of India. Writ petitions are accordingly dismissed.