(2011) 11 PAT CK 0132

Patna High Court

Case No: CWJC No. 11890 of 2011

Professor Dr. Akhauri Madhu Rani Sinha		APPELLANT
	Vs	
Mathura Prasad		RESPONDENT

Date of Decision: Nov. 29, 2011

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 10, 10(1), 10(2), 11, 2
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Citation: AIR 2012 Patna 62 : (2013) 3 PLJR 481

Hon'ble Judges: Samarendra Pratap Singh, J

Bench: Single Bench

Advocate: Manoj Kumar Singh and Bhuneshwar Prasad, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samarendra Pratap Singh, J.
The plaintiff-respondent brought Eviction Suit No. 10 of 2008 against the defendant-petitioner u/s 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, (hereinafter referred to as "the B.B.C. Act") on the ground of default in payment of rent. The petitioner took on rent suit premises situated on second floor of building standing on Plot No. 160, Holding No. 7938, Circle 249, Ward No. 34, in Mohalla-New Punaichak, Boring Canal Road, Patna. The defendant-petitioner alleged that during the pendency of the civil suit, the respondent (plaintiff) disconnected the electric supply. The defendant/petitioner filed an application on 4.5.2011 before the trial court with a prayer to restore electric connection, u/s 10 of the B.B.C. Act.

2. On the other hand, the plaintiff-respondent raised issue of maintainability and jurisdiction of Civil Court to entertain an application for restoration of amenities snapped or withheld by landlord in its objection filed on 10.5.2011. The trial court in its order dated 24.6.2011 impugned in this application accepted the contention of the plaintiff that a Civil Court has no jurisdiction to entertain an application of tenant for restoration of amenities withdrawn or withheld by a landlord, which power is alone vested in Rent Controller u/s 10(2) of the B.B.C. Act to look into such complaint.

3. The petitioner-defendant has challenged the order dated 24.6.2011 mainly on the following grounds. He submits that a Civil Court seized of an eviction suit would be within its jurisdiction to entertain an application for restoration of amenities cut off or withheld by the landlord under its inherent power, not withstanding section 10(2) which authorizes Rent Controller to deal with such situation. She submits that jurisdiction of Civil Court is neither expressly nor implicitly barred u/s 10(2) of B.B.C. Act to try such matter. The power of Civil Court u/s 151 CPC is very wide and plenary. In support of her submissions, the petitioner-defendant has placed reliance upon a decision of a learned single Judge of Jharkhand High Court in the case of Shailendra Narayan Acharya v. Ramesh Kumar Singh, reported in AIR 2001 Jha 5.

4. Before I deal with the submissions of parties on the issue, it would be necessary to notice some of the provisions of the B.B.C. Act and its legislative history in brief.

5. The Bihar Building (Lease, Rent and Eviction) Control Act has been introduced to regulate the letting of the building and the rent of such building and to prevent unreasonable eviction of tenants there from in the State of Bihar. The first of the enactments in the series was Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 repealed vide Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977 which was valid only till 31.3.1981. The 1977 Act was not extended, instead a new Ordinance bearing Ordinance No. 53/82 was promulgated and subsequently enacted which was subsequently passed and enacted as Bihar Building (Lease, Rent and Eviction) Control Act, 1982 after it was duly passed by State Legislature with retrospective effect. The 1982 Act is the latest in the series of the enactments on the subject.

6. The meaning and ambit of the term ''Controller'' and ''Court'' is explained in its definition part u/s 2 of B.B.C. Act which is quoted herein below:-

2(C) "Controller" means in respect of any local areas comprised within the limit of subdivision, the Sub-Divisional Officer Incharge of the Sub-Division, and includes any other officer appointed in this behalf by the State Govt. to perform the functions of Controller under the Act

2(D) "Court" means the court having jurisdiction under the Code of Civil Procedure, 1908 (Act V of 1908), to entertain a suit by landlord against a tenant for recovery of possession of a building in respect of which a suit or application is filed under this Act

7. It would appear from bare perusal of the definition of "Court" that the same has been used in a restrictive term to entertain a suit by a landlord against a tenant for recovery of possession of a building in respect of which a suit or application is filed under this Act. As per definition part, a "Court" under the B.B.C. Act, 1982 has been vested with jurisdiction to entertain an Eviction Suit filed by a land lord against a tenant for recovery of possession u/s 11. The section provides that where a tenant is in possession of any building, he shall not be liable to eviction therefrom, except in execution of a decree passed by the court on one or more of the following grounds, enumerated therein. Thus the ambit and jurisdiction of the court is referable to the extent of exercise of power for eviction of tenants in the circumstances covered u/s 11.

8. The case of the defendant is that a trial court trying an eviction suit can entertain an application against withdrawal of amenities by the landlord u/s 10 of the Act. On the other hand, the plaintiff-respondent submits that section 10 vests power in the Rent Controller to look into such complaints.

9. Section 10(1) prohibits a landlord from cutting or withhold any amenities being enjoyed by a tenant without sufficient cause. Section 10(2) thereof provides that if a landlord without sufficient cause cut off or withdraws any amenity enjoyed by a tenant, the latter can make an application to the Controller for restoring the same. Section 10 is quoted herein below:-

10. Landlord not to interfere with amenities enjoyed by the tenant-(1) No landlord shall, without just or sufficient cause cut-off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in possession of building may, if the landlord has contravened the provision of sub-section (1) make an application to the Controller complaining of such contravention and may restore any of the amenities on his own responsibility, pending consideration of his application by the Controller.

(3) If the Controller on inquiry is satisfied that the landlord has without just or sufficient cause cut-off or withheld any of the amenities enjoyed by the tenant at the time of the commencement of the tenancy or at any time thereafter, he shall-

(i) In case such amenity has already been restored by the tenant, make an order directing the landlord topay to the tenant the cost of such restoration as determined by him within such time as may be specified in the order, and

(ii) In any other case, direct the landlord to restore such amenity at such cost and within such time as may be determined by him and also that in case the landlord fails to do so, the amenity may be restored by the tenant at his own cost and such amount as may be specified in the order may be recovered by the tenant as the cost of the restoration either by adjustment towards the rent payable by him or as if the amount were a debt due to him by the landlord

10. The case of the petitioner-defendant is that against withdrawal or withholding of an amenity by a landlord, an application would be filed before Rent Controller by a tenant for restoration of such amenity or amenities. However, the situation will change, if Eviction Suit is pending in the Civil Court between the parties, in which case, the court would have sufficient jurisdiction to entertain an application for restoration of any of the amenities cut off or withdrawn u/s 10 of the B.B.C. Act.

11. The petitioner in support of her contention has placed strong reliance upon paragraphs 7 and 8 of judgment of learned Single Judge in the case of Shailendra Narayan Acharya, reported in AIR 2001 Jha 5 quoted herein below:

7. Situation however, changes when a suit is pending between the parties with respect to a tenanted premises and a Civil Court is seized of such a suit. Undoubtedly 1982 Act does not exclude jurisdiction of Civil Court in toto, either explicitly or by any necessary implication. On the other hand, Civil Court''s jurisdiction is very much and plainly in existence and can be referable to various provisions of the Act, particularly Section 11 thereof under which a landlord can obtain a decree of eviction against a tenant only by filing a suit against him in a Civil Court. The plenary jurisdiction of Civil Court, therefore, being very much in existence, if during the pendency of a suit between the landlord and tenant feels or finds that an amenity has been snapped or withheld or withdrawn by the landlord, the question which arises for consideration is as to whether he must in such a situation and in the circumstances, invoke Section 10 and approach the Controller and whether because of the applicability of Section 10 of the Act the jurisdiction of a Civil Court already seized of the suit between the parties with respect to the property in question, the said jurisdiction is excluded and ousted. The answer has to be in the negative.

8. The jurisdiction of a Civil Court being plenary in nature, if it is seized of a suit, provisions contained in Section 151 and Order 39. Rules 1 and 2 of the C.P.C. are also attracted. It cannot be said that even though the Civil Court has the jurisdiction to entertain a suit and decide the question raised therein, it cannot entertain any application for any interim relief or entertain any other application for any other purpose. Powers u/s 151, C.P.C. being inherent are applicable and can be invoked and exercisable by a Civil Court with respect to the subject-matter of the suit and similarly power under Order 39, Rules 1 and 2 of the C.P.C. also being applicable can be invoked, applied and exercised with respect to the subject-matter of the suit. Merely because Section 10 also exists in the Act it does not mean that in the aforesaid pending civil suit the Civil Court is totally divested of its jurisdiction to entertain an interlocutory application or an application in the nature where one seeks the grant of any interim relief and therefore, the tenant must be pushed to the forum of Controller by invoking Section 10 of the Act. That could not have been the intention of the Legislature. To that extent, therefore, I have no doubt and hesitation in holding that the power of the Civil Court, being inherent in nature exercisable u/s 151, C.P.C. is saved and cannot be trampled by the existence of Section 10

12. In the case referred to above, the learned Judge was of the view that if no Eviction Suit is pending in between the parties, an application for restoration of amenity withdrawn by landlord would lie before a Rent Controller. But according to the learned Judge, situation would change as a Civil Court seized of an Eviction Suit would have jurisdiction under its inherent power u/s 151 C.P.C. to entertain such an application. The learned Judge further observed that section 10(2) does not in toto, bar a Civil Court trying an Eviction Suit to entertain such an application either by express or necessary implication.

13. With great deference to the learned Judge, I respectfully disagree with the view of his Lordship in case of Shailendra Narayan Acharya, AIR 2001 Jha 5 (supra) that section 10 of the B.B.C. Act, does not bar the jurisdiction of the Civil Court to entertain application for restoration of amenity either explicitly or by necessary implication. The language of section 10(1) of the Act is clear and in unambiguous term that if a landlord without just or sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant, the latter can make an application under sub-section (2) thereof, before the Controller for its restoration. The section in no manner suggests that a Civil Court would also have such power, if it is trying an Eviction Suit under the B.B.C. Act. In other words, the section does not provide nor draws a line that a Civil Court not trying an Eviction Suit under B.B.C. Act would not have jurisdiction to entertain such application for restoration of amenities, but is bestowed with such power u/s 151 CPC, if it is trying an Eviction Suit.

14. Furthermore, the parties did not bring to the notice of the learned Judge section 2(D) of the Act which defines "Court" as the Court having jurisdiction to entertain a suit by landlord against the tenant for recovery of possession of the building in respect of which a suit or application is filed under the Act. The jurisdiction of the Court in section 2(D) is to the extent of entertaining a suit for eviction under circumstances mentioned under the Act i.e. section 11. It does not confer jurisdiction to entertain an application for restoration of amenities, withdrawn or cut off by the landlord u/s 10(1) of the B.B.C. Act.

15. The foremost principles of interpretation of statute is its literal interpretation. If the language of a statute is clear and unambiguous and it advances the purpose for which legislature enacted the law, no other meaning could be added or inferred which is not there in the statute. There is nothing in the statute from which it can be deduced that if a civil suit is pending, the tenant can file such an application for restoration of amenities in the court. On the other hand, where a CPC or any other statute provides for dealing with an issue, the inherent power of a Civil Court cannot be exercised in derogation of such specific provision. However, in the matter with which the CPC or any other statute does not deal with, the court can exercise its inherent power to do justice between the parties which are warranted under the circumstances and which the necessity of the case required.

16. In support of my view, I may gainfully refer to the case of Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, , particularly para-20, which is quoted hereinbelow:

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed u/s 151 of the Code, the Courts have all the necessary powers u/s 151, CPC to make a suitable order to prevent the abuse of the process of Court. Therefore, the Court exercising the power u/s 151, CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentions in the application

17. In case of State of U.P. and Others Vs. Roshan Singh (Dead) by LRs. and Others, , the Hon"ble Apex Court reiterated similar views. Para-7 of judgment is quoted herein below :

7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the CPC does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the CPC dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-ï¿½-vis other statutes

18. I am therefore of the view, that if there are specific provisions in the Code or statute, dealing with a particular topic and they expressly or by necessary implication exhaust the scope of power of the court, the inherent power of the Civil Court cannot be invoked in order to cut across the power conferred by a CPC or other statute. But where there is no specific provision dealing with a situation, a Civil Court under its inherent power u/s 151 C.P.C. can exercise jurisdiction to prevent miscarriage of justice or to do justice between the parties.

19. In view of restrictive meaning given to the term u/s 2(D) of the B.B.C. Act limiting its scope to the extent of entertaining of a Suit for recovery of possession of a building at behest of landlord read with section 10(2) which authorizes a Rent Controller to entertain an application on behalf of tenant for restoration of amenities unjustifiably cut off or withheld by a landlord, a Civil Court is barred from entertaining such application u/s 10(2) of the B.B.C. Act for restoration of such amenities. The trial court namely court of Munsif 2nd, Patna has rightly held that it does not have jurisdiction to entertain an application for restoration of amenities u/s 10(2) of the B.B.C. Act. This writ application is accordingly dismissed, but with no order as to costs.