

क्रमांक
का का साथ
और तारिख

0 563

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई कार्रवाई
के बारे में टिप्पणी, तारिख
के साथ

1

2

3

18
05.05.2021

IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI

J.B.C Appeal No.- 7 R 15/2019-20

Muslim Ansari Son of Late Murtza Ansari

R/o – C/o Md Yasuf, Arvindo Nagar, P.S. Doranda, District Ranchi
.....Appellant

-Versus-

Brigadier Ravi Kumar Son of Late C.S. Prasad

R/o Neelam Complex, Doranda, Ranchi Respondent

ORDER

Present appeal has been preferred against the order dated 05.07.2019 passed by the Learned House Rent Controller – Cum – Sub- Divisional Officer, Sadar, Ranchi in JBC Case No.-114/2016, wherein and where under the learned House Rent Controller directed the present appellant to evict from the premises in question namely Neelam Apartment, being Shop No.-FF 3 standing upon the land appertaining to Khata No.-218, Plot No.-310, Holding No.-70 under Ward No.-26 (Old)/46 (New) situated at Doranda, Ranchi after holding the impugned proceeding maintainable U/s 19 (1) (e) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011.

The fact giving rise to present appeal within nutshell is that, the present respondent preferred the impugned JBC Case No.-114/2016 before the Learned House Rent Controller – Cum – Sub-Divisional Officer, Sadar, Ranchi claiming a decree for eviction of the present appellant from the premises in question namely Neelam Apartment, being Shop No.-FF 3 standing upon the land appertaining to Khata No.-218, Plot No.-310, Holding No.-70 under Ward No.-26 (Old)/46 (New) situated at Doranda, Ranchi on the ground envisaged under Section 19 (1) (e) of the JBC Act, 2011



क्रमांक और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कृपा के बारे में टिप्पणी, तारीख के साथ
1	2	3

praying inter-alia that the present appellant is liable to vacate and deliver vacant possession of the suit premises to the present respondent on the ground of expiry of the period of lease, as the lease deed executed in favour of the present appellant has already expired on 30.09.2016.

On the basis of pleading of both the parties, following issues was framed by the learned courts below:-

- I. Whether the suit as framed maintainable?
- II. Has the Plaintiff valid cause of action for the suit?
- III. Is there any relationship of landlord and tenant between Plaintiff and Defendant?
- IV. Whether the suit property is the lease hold Government Estate?
- V. Whether the suit property is Government property?
- VI. Whether the Plaintiff/Petitioner is the Lessee of the Government with respect to the suit properties for a period of 30 years?
- VII. Whether the suit is barred by section 3 of J.B.C. Act?
- VIII. Whether the state is necessary party?
- IX. Is the Defendant liable to be evicted from the suit premises from the expiry of lease?

The learned courts below vide impugned order dated 05.07.2019 directed the present appellant to evict from the aforementioned premises in question after decided all the aforesaid issues in favour of the present respondent.

Heard both the parties, According to the Leaned Advocate appearing on behalf of the appellant:-



क्र. सं० तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3

The Plaintiff/Respondent has filed the J.B.C. Case No. - 114 of 2016 against the Defendant/Appellant in the court of Sub Divisional Magistrate cum House Rent Controller, Sadar, Ranchi claiming a decree for eviction of the Defendant/Appellant from the premises in the suit. The Defendant/Appellant requested the Plaintiff/Respondent for re-fixation of rent with respect of the premises in question after the expiry of the lease period. The present respondent, instead of re-fixing the rent, filed the impugned application U/ 19 (1) (e) R/w Section 21 of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 without prior notice to the present appellant. The impugned proceeding initiated under section 19(1)(e) of the Act of 2011 is not maintainable because the claim of Plaintiff/Respondent does not come within the exception of section 19 of the Act. The Plaintiff/Respondent offered the Defendant/Appellant to enter into a registered lease deed with effect from 01.09.2007 and under the terms and conditions mentioned in the agreement itself it is mentioned that the Lease shall be renewed on the desire of the Defendant/Appellant.

In the year 2007 when the agreement was entered into the Defendant/Appellant paid Rs. 1,000/- per month as rent. From the year 2010 he paid Rs. 1,500/- as rent and from 2013, he paid Rs. 2,000/- as rent and from 01.10.2016 i.e., on completion of three years, he went to give rent to the Plaintiff/Respondent Rs. 2,500/- per month. The Plaintiff/Respondent thereafter started demanding the lease rent at the rate of Rs. 15,000/- per month. Prior to 01.10.2016 the Defendant/Appellant humbly requested Plaintiff/Respondent to fix the rent a fresh as per terms of lease on market value as other shops Owners are paying much less amount than the Defendant/Appellant, even than the Plaintiff/Respondent did not agree. Having no alternative, the Defendant/Appellant sent legal notice to the Plaintiff/Respondent on 28.11.2016 to enter into agreement or move an application by either of the parties before



स का सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई का के बारे में टिप्पणी, ता के साथ
1	2	3

:

the Rent Controller for fixation of rent, but the Plaintiff/Respondent filed the impugned proceeding before the Learned Courts below. The application filed before the learned courts below by Plaintiff/Respondent is itself not maintainable in the eye of law, because the Defendant/Appellant has not violated any terms and conditions envisaged in the lease deed. Section 19 (1) (e) of the Act does not apply because deed was not for the fixed and final terms rather it was renewable. It is settled law that, Section 19 of the Act applies in a case when the Defendant/Appellant does not agree for fixing standard rent as per section 11 and 12 of the Act.

The Plaintiff/Respondent has suppressed the fact that suit property is lease hold property allotted only for residential purpose. The Plaintiff/Respondent does not have valid cause of action for filing the suit because the Defendant/Appellant had requested, approached and also sent legal notice to the Plaintiff/Respondent to renew the lease agreement. At Para 50 and 57 of the deposition, the Plaintiff/ Respondent himself in his cross examination has stated that the son of Defendant/Appellant has made agreement of telephonic conversation regarding renewal of lease agreement. The Defendant/ Appellant has also sent legal notice to the Plaintiff/Respondent which is admitted in Para 43 of the cross examination of Plaintiff/Respondent, but the Plaintiff/Respondent did not replied to same.

The suit is also bad for non-compliance of the provisions laid under Section 105 and 108 of the Transfer of the Property Act, in view of the fact that the Plaintiff/Respondent without sending any legal notice to the Defendant/Appellant to evict from the suit premises, has directly filed the eviction suit which is not maintainable.

The Learned Court below has wrongly decided the Issue No.- 6, whether the Plaintiff/respondent is the Lessee of the Government with respect of suit property in favour



क्र.सं. र. तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3

Plaintiff/Respondent, in view of the fact that the suit property is the Leasehold Government Estate and the suit is not maintainable under section 3 of Jharkhand Building (Lease, rent and Eviction) Control Act, 2011. That in Para 23, 24, 25, 28, 32, 57 and 66 of cross examination of Plaintiff/Respondent himself stated that the suit property is leasehold property, allotted to him by Government vide Lease Deed dated 06.10.1986. As such the eviction suit filed under section 3 of the Act is not maintainable and eviction suit is liable to be rejected/dismissed on this ground alone.

The learned court below has also wrongly decided the Issue no. (ix), Whether the Defendant/Appellant liable to be evicted from the suit premises from the expiry of the lease in view of the fact that, the Defendant/Appellant has vigorously tried to renew the lease deed which would be evident from the Para 43 and 50 of cross examination of Plaintiff/Respondent himself, through the legal notice sent Defendant/Appellant to Plaintiff/Respondent through registered post, the rent of the premises in question sent through money order by the Defendant/Appellant after expiry of the lease period (exhibit E to E/10), but the Plaintiff/Respondent did not paid any attention to the same and filed by the impugned proceeding.

On the hand, according to the Learned Advocate appearing on behalf of the respondents:-

The present appellant was inducted as a fixed term lessee with respect to one pucca shop room being shop no, FF-3, comprising an area of 250 square feet being portion of R.S. Plot No.- 310 under Khata No.- 218 corresponding to portion of Municipal Holding No.-70 within Ward No.28 of the Ranchi Municipal Corporation situated at Neelam Complex, Bazar Mohalla, Doranda, P.S. Doranda, District-Ranchi for a fixed period of 9 (nine) years commencing from 1st of September, 2007 and ending on 30th of September, 2016 on a rent of Rs.1000/- only per month subject to enhancement of rent by Rs. 500/- per month after expiry of every three years. The terms and conditions of the lease were mentioned in the registered deed of lease dated 12.9.2007 executed by the present respondent as Lessor and the present appellant as lessee. The said period of lease expired on 30th

4

आदेश का सं०
और तारीख

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई व
के बारे में टिप्पणी, ता.
के साथ

1

2

3

September 2016, but the appellant did not exercise option for further renewal of the lease. Thus the present appellant became liable to vacate and hand over the vacant possession the premises in question to the present respondent.

The learned court below has framed altogether nine issues. Issue nos. (i) to (iii) were decided in favour of the plaintiff and against the defendant. It was held that the suit as framed is maintainable. The plaintiff has valid cause of action for the suit. There is existence of relationship of landlord and tenant between the plaintiff on the one hand and the defendant on the other hand.

Issue nos. (iv) to (viii) were dealt with together and the same were also decided in favour of the plaintiff. It was held that the petition filed by the defendant on 16.08.2017 and 06.09.2017 was filed challenging the jurisdiction of the learned court below to entertain and decide the suit. It was claimed that there is no relationship of landlord and tenant between the plaintiff and the defendant. The petition filed by the defendant was rejected vide order dated 05.01.2018 passed by the learned court below, holding that there exist relationship of landlord and tenant between the plaintiff on the one hand and the defendant on the other hand.

The learned courts below while deciding Issue No.- (ix) has held that the defendant is liable to be evicted from the suit premises on the expiry of the period of lease. From oral and documentary evidence brought on record, it is an admitted fact that the plaintiff being owner and landlord leased out the suit premises to the defendant on fixed term lease by virtue of registered deed of lease dated 12.09.2007 i.e. exhibit 1 and D. According to the term of registered deed of lease the lease was required to be renewed on fresh terms and conditions and on prevailing market rate of rent, but defendant did not get the deed of lease renewed. According to the provision contained in Section 19(1)(e) of the Jharkhand Buildings (Lease, Rent and Eviction Control) Act, 2011 if a person has been inducted as a fixed term lessee and the period of lease has expired, he is liable to be evicted on the ground of expiry of the period of lease.

Heard both the parties. On perusal of material available on



क्र. सं. तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3


record, I find that, the learned courts below has passed the impugned order dated 05.07.2018 under Section 19 (1) (e) of the Jharkhand Building (Lease, Rent and Eviction Control) Act, 2011. The special procedure for disposal of the cases U/s 19 (1) (c) or (e) has been provided under Section 21 of the Act of 2011. As per Section 21 of the Act of 2011, - "Every suit by a landlord for the recovery of possession of any premises on the ground specified in clause (c) or (e) of sub-section (1) of section 19 shall be dealt with in accordance with the procedure specified in this section" Sub-Section 8 of Section 21, provides that - "No appeal or second appeal shall lie against an order for the recovery of possession of any building made in accordance with the procedure specified in this section Provided that on an application being made within sixty days of the date of the order of eviction, the High Court may for the purpose of satisfying itself that an order under this section is according to law, call for the records of the case and pass such order in respect thereof as it thinks fit."

For the reasons aforementioned, I find that, as per provisions laid under Sub-Section 8 of Section 21 of the Act of 2011, the instant appeal preferred against the order of eviction passed under the grounds envisaged in Section 19 (1) (e) of the Act of 2011 is not maintainable. Hence without delving into merit, of the case this appeal is dismissed.

Communicate this order to the Learned House Rent Controller - Cum - Sub-Divisional Officer, Sadar, Ranchi for information and necessary action.

Dictated and Corrected by


05/3/21
Deputy Commissioner
Ranchi.


05/3/21
Deputy Commissioner
Ranchi.

;