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Arbind Kumar Tiwari Vs. Mahadeb Sen

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SooperKanoon Citation : sooperkanoon.com/516274

Court : Jharkhand

Decided On : Mar-18-2008

Reported in : [2008(2)JCR429(Jhr)]

Judge : D.G.R. Patnaik, J.

Appellant : Arbind Kumar Tiwari

Respondent : Mahadeb Sen

Disposition : Appeal dismissed

Judgement :
ORDER

D.G.R. Patnaik, J.

1. Heard learned Counsel for the appellant and the learned Counsel for the respondent. The suit was filed by the plaintiff-respondent for eviction of the appellant/defendant on the ground of default as well as on the ground of personal necessity. The trial Court as also the lower appellate Court have discussed the evidences on the basis of facts revealed that the defendant has defaulted in payment of rent for more than two months and likewise the ground of personal necessity of the suit premises has been adequately made out. Finding on the issue of partial eviction has also been recorded in the judgment of the trial Court, which has been confirmed by the lower appellate Court.

2. Learned Counsel for the appellant would try to raise a few questions of law stating that the plaintiff had accepted, rent for the month of November 2003 and, therefore, it has to be deemed that he has waived his right to seek eviction on the ground of default for non-payment of rent for the previous months. This issue in my opinion is no more res integra, since it is a settled principle of law under the Bihar Buildings (Lease, Rent and Eviction), Control Act that once a defaulter is always a defaulter and merely acceptance of rent of subsequent months in itself will not be deemed or implied as waiver of the landlord's right to seek eviction on the ground of default of rent for more than two months, unless expressly accepted.

3. Learned Counsel for the respondent intervenes to clarify that an observation have been recorded by the trial Court on the basis of the evidence adduced by the plaintiff that the rent, which was accepted by the plaintiff, was for the month of December 2002 and not for the month of November 2003 though such payment was given by the defendant in the month of November 2003. I do not find any substantial question of law involved in this appeal. Accordingly, this appeal is dismissed.

I.A. No. 2681 of 2007

4. I.A. No. 2681 of 2007 has been filed by the appellant with a prayer for stay of the execution proceedings. The stay petition (LA. No 2681 of 2008) is also dismissed in view of the dismissal of this appeal. However, learned Counsel for the appellant prays at this juncture to consider the fact that the appellant's minor children are studying in School and a reasonable period of a least three months' be given to the appellant to vacate the suit premises and deliver vacant possession of the same to the respondent.

5. Learned Counsel for the respondent agrees to the above proposition. In such view of the matter, the appellant is directed to vacate the suit premises and hand over vacant possession of the same to the respondent-plaintiff positively by 30th of June. 2008.

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