

RITA LAL
v.
RAJ KUMAR SINGH

SEPTEMBER 13, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 :

Ss. 14(4) and (5)—Eviction of tenant on grounds of bona fide requirement and arrears of rent—Summary procedure—Tenant seeking leave to defend denying landlord-tenant relationship—Trial court refused the leave and decreed the suit—High Court in revision holding that a triable issue within the meaning of sub-sections (4) and (5) of s.14 did arise and leave to defend deserved to be granted to tenant—Held, there is a very clear admission made by the tenant of the title of the landlord in his deposition in an earlier suit—Tenant has not furnished any explanation for his signatures on every page of rent note—Tenant having been inducted by landlord so long as he remains in possession, he cannot deny the title of his landlord in view of the rule of estoppel contained in s. 116 of Evidence Act—On facts, the tenant is raising a plea which he is estopped from raising and, therefore, the plea raised by him seeking leave to defend does not amount to raising a triable issue—High Court, in exercise of revisional jurisdiction, ought not to have interfered with the well considered and reasoned order of trial court—Evidence Act—S.116—Estoppel—Revisional jurisdiction of High Court.

Vashu Deo v. Balkishan, [2002] 2 SCC 50, relied on

Charan Dass Duggal v. Brahma Nand, [1983] 1 SCC 301; Md. Fahimuddin v. Godhan Pd. Singh, (1992) 2 PLJR 352 and Bijoy Kumar Singh v. The State of Bihar & Ors., (1992) 1 PLJR 123, referred to

S.14(5)—Triable issue—Raising a triable issue, as sub-section (5) of s. 14 suggests, is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction—If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue then the Court is justified in refusing the leave to defend—A defence, which is practically moonshine, sham or illusory cannot be held to be raising a triable

A *issue—Else the whole purpose behind enacting a provision for granting leave to defend, and not permitting a contest unless leave was granted, would stand defeated.*

CIVIL APPELLATE JURISDICTION. Civil Appeal No. 5837 of 2002.

B From the Judgment and Order dated 21.8.2001 of the Jharkhand at Ranchi High Court in C.R.No. 268 of 2001.

Dhruv Mehta for M/s K.L.Mehta & Co, for the Appellant. S.B. Upadhyay for the Respondent.

C The following Order of the Court was delivered :

Leave granted.

D The appellant, a widow and having undergone a kidney transplant, initiated an eviction petition under Section 14 of the Bihar Buildings (Lease Rent and Eviction) Control Act, 1982 (hereinafter “the Act”, for short). According to the appellant, the respondent an employee of the appellant, was inducted into possession of the premises under an agreement of lease dated 10th February, 1997. The grounds on which eviction is sought for are more than one and include the genuine requirement of the premises for landlord’s self occupation and the respondent being a defaulter in payment of rent.

F The respondent-tenant sought for leave to defend under sub- section (4) of Section 14 of the Act denying the landlord-tenant relationship and submitting that the suit property was owned by one R.N. Chakraborty, whose title on his death had devolved upon his son, Dr. Rajat Chakraborty and from the latter the respondent had purchased the property under registered deed of sale dated 24th February, 1998. It was submitted that as there was no landlord-tenant relationship between the parties, the respondent was not liable to pay rent and certainly not liable to be evicted. In the submission of the respondent, the pleading raised a triable issue and, therefore, leave to defend ought to have been granted.

G The learned Trial Court having taken into consideration the pleadings of the parties, the contents of the affidavits and the supporting documents formed an opinion that the pleas raised by the respondent-tenant were false and frivolous and wholly unsustainable in law and hence no *prima facie* case was made out worth consideration for granting leave to defend. Leave to

defend was, therefore, refused. Feeling aggrieved by the order of the Trial Court, the tenant preferred a revision in the High Court which revision has been allowed by the learned Single Judge forming an opinion that a triable issue within the meaning of sub-sections (4) and (5) of Section 14 of the Act did arise on the pleadings of the parties and, therefore, the leave to defend deserves to be granted to the respondent-tenant.

The pleadings, affidavits and the documents available on record go to show that the respondent was an employee under the appellant. On 10th day of February, 1997, an agreement to lease was executed between the parties. Though the execution thereof is disputed but what is not disputed are the signatures of the respondent-tenant on each of the pages of the agreement on which the agreement is inscribed. In the year 1993, a title suit was filed by this very appellant against Rajat Chakraborty and therein this very respondent had appeared as a witness for the plaintiff. He was examined on oath on 29th June, 1994 the Court of Munsif, Hazaribag. In his deposition he has traced the source of title of the plaintiff therein (i.e. the appellant herein) narrating the chain of sale deeds by successive owners of the property including the last one of the year 1998 whereby the property was purchased by the appellant herein from one Sanjay Kumar Sinha, the then owner of the property. The land having been purchased, the respondent went on to depose, the appellant constructed two houses on the land surrounded by the boundary wall. The respondent very clearly stated that the defendant (that is Rajat Chakraborty) had no title or interest in the property and the suit had to be filed by the plaintiff (i.e. the appellant herein) because Rajat Chakraborty and other defendants were trying to take forcible possession of the property.

There is a very clear admission made by the respondent of the title of the appellant in his deposition made on oath in judicial proceedings. Not a word he has stated on the pleadings showing how and under what circumstances the statement came to be made and how does the respondent wriggle out of a clear admission made in his deposition? So also the respondent does not furnish any explanation worth being considered, muchless accepted, as to how his signatures appear at more than one places, that is, on every page of the rent note dated 10th February, 1997 he cannot escape the consequences flowing from execution of rent note. The tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act. Recently in *Vashu Deo v. Balkishan*, [2002] 2 SCC 50, we had an occasion to sum up the law as to estoppel of tenant and as to

A eviction by title paramount and we have held:

“The rule of estoppel between landlord and tenant enacted in Section 116 of the Evidence Act has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy, (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord, and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant, The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case.”

“.....the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title-holder”

The trial court rightly formed the opinion that no triable issue was raised.

The learned counsel for the respondent has placed reliance on the law laid down by this Court in the case of *Charan Daas Duggal v. Brahma Nand*, [1983] 1 SCC 30 and two decisions of Patna High Court in *Md. Fahimuddin v. Godhan Pd. Singh*, (1992) 2 PLJR 352 and *Bijoy Kumar Singh v. The State of Bihar & Ors.*, (1992) 1 PLJR 123. There can be no quarrel with the proposition laid down in these decided cases relied on by the learned counsel for the respondent. The law is settled that if the tenant has made out a *prima facie* case raising such pleas that a triable issue would emerge then that would be sufficient to grant leave. The case law cited at the Bar itself goes to show that even at that stage the Trial Court is not precluded from forming an opinion whether on the material available on record, a triable issue, that is, issue worth being tried arises or not. Raising a triable issue, as sub-section (5) of Section 14 suggests is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction. If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue than the Court is justified in refusing the leave to defend. A defence, which is practically moonshine, sham or illusory cannot be held to be raising a triable issue. Else the whole purpose behind enacting a provision for granting leave to defend, and not permitting a contest unless leave was granted, would stand defeated.

In the facts and circumstance of the case, noticed hereinabove, it is clear that the defendant is raising a plea which he is estopped from raising and, therefore, the plea raised by him in his affidavit seeking leave to defend does not amount to raising a triable issue. In our opinion, the High Court, in exercise of revisional jurisdiction, ought not to have interfered with the well considered and reasoned order of the Trial Court. A

For the foregoing reasons, the appeal is allowed. The impugned order of the High Court is set aside and that of the Trial Court restored. The respondent shall pay the costs incurred by the appellant B

R.P.

Appeal allowed. C