

# COURT OF MUSIF, PATNA CITY

Title Eviction Suit No. 19 of 2017

C.I.S. No. 24/17

## ORDER

**08.11.2019.**

Attendance has been filed on behalf of both sides. Today the case record has been produced for passing order on the petition filed on behalf of the plaintiff dated 12.07.2019 and petition filed on behalf of the defendant dated 01.08.2019 and a rejoinder filed on behalf of the defendant dated 01.08.2019.

Learned counsel for the plaintiff while moving his petition has argued that the plaintiff has brought the present suit for getting the decree of eviction against the defendant in respect of the shop *katra* as mentioned in the schedule of the plaint. He also has stated that the Court vide order dated 26.04.2019 on the petition filed on behalf of the plaintiff under Section 15 of BBC Act dated 12.07.2018 directed the defendant to deposit the monthly rent of shop *katra* at a rate of 1,450/- since the date of institution of the suit as well as the current rent. He, further, has stated that the defendant intentionally has not complied the direction of the Court in pursuance of the order dated 26.04.2019 and the prescribed mandatory period of 15 days has already been elapsed on 11.05.2019 and make a prayer before the Court to struck off the defense of the defendant on the basis of submissions made above. On the other hand, learned counsel for the defendant while moving his rejoinder has stated that the defendant has been inducted as a tenant in the suit premises in the year 2007 and the deed of *kirayanama* was prepared between the parties which has duly be signed by both of the parties. He, further, has stated that a petition under Section 15 of BBC Act with a prayer to direct the defendant to deposit the arrears of rent and current rent has been filed by the plaintiff and, accordingly, order has been passed to deposit the rent since the date of institution of the present suit within the stipulated period of law but the same has yet not been deposited. After that, a petition has been filed by the plaintiff praying thereon that the defense of the defendant be struck off. He also has stated that at the time of passing order of Section 15 of BBC Act, the Court has unfortunately, forget to look the copy of the diary whether the plaintiff has received rent from the defendant and that excess amount must be adjusted in the rent and there is no arrears of rent dues come out. He also has stated that order passed under Section 15 of BBC Act is fit for modification and make a prayer to reject the petition. He, further, while moving his petition dated 01.08.2019 has stated that the Court has passed the order to deposit arrear of current rent on 26.04.2019 and that should be deposited within 15 days since the date of the order. He also has stated that due to old age of the defendant, the order has not been complied and the petitioner is now ready to deposit the amount and a prayer has been made to allow him to deposit the same.

Heard and perused the case record. I find that the case has been instituted by the plaintiff for decree of eviction against the defendant as well as for arrears of the rent. I, further, find that all the grounds which has been placed by the defendant and its

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rejoinder with respect to the arrears of rent has already been discussed by the Court in order dated 26.04.2019. I also find that in that particular order, the defendant is directed to deposit the arrears of the rent within the time as prescribed by law with the observation that as far as arrears of rent before the institution of the suit is concerned, the same is a matter of trial and will be decided after evidences from the both sides. I also find that despite the order of the Court no rent has been deposited and the fact has also been accepted by the defendant in Para-8 of its rejoinder. I, further, find that although it has been stated by the defendant that a modification in the order dated 26.04.2019 is needed, no review petition in this respect has yet been filed by the defendant and now a separate petition has been filed with a prayer to allow him to deposit the rent. In my opinion, it has already been directed by the Court to deposit the rent and arrears of the rent vide order dated 26.04.2019. So, there is no question of further giving such order to deposit the rent. Further, the direction of the court has yet not been complied and the same has also been accepted by the defendant in Para-8 of his petition, despite the fact that the order is of the date of 26.04.2019 and a long time has been elapsed. Hence, seeing all the facts and circumstances of the case as well as the conduct of the defendant and the mandatory provision of Section 15(2) of BBC Act, the petition filed on behalf of the plaintiff is allowed and the defense of the defendant is hereby struck off. Put up on 12.12.2019 for further proceeding.

Dictated

Munsif, Patna City.