

IN THE HIGH COURT OF JUDICATURE AT PATNA

Babli Devi

vs.

Suresh Ram and ors.

Civil Miscellaneous Jurisdiction No. 54 of 2021

06 May 2025

(Hon'ble Mr. Justice Arun Kumar Jha)

Issue for Consideration

- Whether the appeal against the decree passed under Section 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 was maintainable before the first appellate court?
- Whether addition of a relief regarding rent arrears by amendment changed the nature of the eviction suit originally filed solely on the ground of personal necessity?
- Whether the Civil Miscellaneous Petition under Article 227 of the Constitution was maintainable against a judgment and decree that was appealable in law?

Headnotes

No doubt, initially the Eviction Suit was filed on the ground of personal necessity under Section 11 (1) (c) of the Act, but once the petitioner introduced another relief by way of amendment, the suit did not continue as a suit only on the ground of personal necessity and was taken out of the ambit of Section 11 (1) (c) of the Act. Hence, the final order passed would be appealable under Section 14 (1) of the Act. (Para 26)

Section 15 of the Act envisages filing of a petition during the pendency of the suit for deposit of rent but the same is not the case here. The rent was claimed by making amendment in the main petition and the relief was sought that defendant be directed to pay the due rent till eviction suit with interest. (Para 28)

It cannot be said that the prayer was made for directing the defendant/tenant to deposit rent month by month at the rate of last paid. Therefore, the relief could not be considered to be a relief under Section 15 of the Act and the relief was sought in the main petition itself. By introducing this relief in her main petition, the petitioner's case was taken out of the purview of Section 11 (1) (c) of the Act and it was not a suit simpliciter filed on the ground of personal necessity and seeking relief of eviction on the said ground. (Para 30)

Once it has been held that the present civil miscellaneous petition is not maintainable, all the points and issues raised against the judgment and

decree of the first appellate court need no consideration by this Court. (Para 31)

Case Law Cited

Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675; Waryam Singh v. Amarnath, AIR 1954 SC 215; Madina Begum v. Shiv Murti Prasad Pandey, AIR 2016 SC 3554; H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 2431; B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530; Ram Tahal Modi v. Ratan Lal, 1988 PLJR 950; Dinesh Kumar Purbey v. Mahesh Kumar Poddar, 1991 (1) PLJR 650; Kalawati Tripathi v. Damayanti Devi, AIR 1993 Patna 1; N.P. Tripathi v. Dayamanti Devi, 1987 PLJR 724; Priyavarte Mehta v. Amrendu Banerjee, 1996 (1) PLJR 732; Md. Jainul Ansari v. Md. Khalil, 1990 (2) PLJR 378; Sri Manindra Chandra Dey & Brothers vs. Smt. Gita Sen & Others (73 Calcutta Weekly Notes 856); AIR 1939 Lahore 49

List of Acts

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (Sections 11(1)(c), 14(1), 14(8), 15); Transfer of Property Act, 1882 (Section 109) ; Constitution of India (Article 227); Code of Civil Procedure, 1908 (Order VI Rule 17, Section 96, Section 115)

List of Keywords

Eviction Suit ; Personal Necessity; Amendment of Plaint; Arrears of Rent; Appellate Jurisdiction; Section 14(8) Bar; Maintainability of Petition; Article 227; Attornment Not Necessary; Transfer of Tenancy

Case Arising From

Order dated 05.06.2020 passed in Eviction Appeal No. 2 of 2019 by Additional District Judge-I, Hilsa, Nalanda, arising out of judgment and decree dated 10.05.2019 and 17.05.2019 respectively in Eviction Suit No. 6 of 2013.

Appearances for Parties

For the Petitioner: Mr. J.S. Arora, Sr. Advocate; Mr. Rakesh Kumar, Advocate; Mr. Manoj Kumar, Advocate

For the Respondents: Mr. Shashi Shekhar Dvivedi, Sr. Advocate; Mr. Rewti Kant Raman, Advocate; Mr. Parth Gaurav, Advocate; Mr. Govind Rah Shahi, Advocate

Headnotes prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.54 of 2021**

Babli Devi, wife of Praveen Kumar, Resident of Mohalla- Durga Asthan,
Police Station- Hilsa, District- Nalanda

... .. Petitioner/s

Versus

- 1. Suresh Ram, Son of Late Birje Ram,
 - 2. Amit Kumar, Son of Suresh Ram,
 - 3. Pratik Kumar, Son of Suresh Ram,
- All are residents of Mohalla- Durga Asthan, Police Station- Hilsa, District- Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Senior Advocate Mr. Rakesh Kumar, Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Shashi Shekhar Dvivedi, Senior Advocate Mr. Rewti Kant Raman, Advocate Mr. Parth Gaurav, Advocate Mr. Govind Rah Shahi, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 06-05-2025

The present petition has been filed by the petitioner under Article 227 of the Constitution of India seeking following reliefs :

“(i) For quashing the Judgment/Decree dated 05.06.2020, passed in Eviction Appeal No. 2 of 2019 by the Court of Learned Additional District Judge-1, Hilsa, whereby the said appeal preferred against the Judgment/Decree dated 10.05.2019, passed in Eviction Suit No. 6 of 2013 by the Court of Learned Additional Munsif, Hilsa (Nalanda) has been allowed and by setting aside the said judgment and decree the suit in question has been dismissed, though



under Section 18 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control act, 1982 the Appellate Court lacked jurisdiction to hear the said appeal and the only remedy for respondent was to prefer revision application before this Court.

(ii) Also for any other appropriate relief (s) to which the petitioner is found to be entitled either in the eye of law or on the facts and circumstances of the case”.

2. Briefly stated the facts of the case, as it appears from the record. are that one Satya Prakash Arya owned and possessed a piece of land with a house constructed thereon appertaining to Plot Nos. 1960 and 1961 in Tauzi No. 12233 and Khata No. 426 in Thana No. 177, having an area of 1.1055 decimals situated at Durga Asthan, Hilsa within the district of Nalanda. At the ground floor of the said house, there is a shop of 9 feet x 9 feet in which the respondent was inducted as a tenant under joint tenancy. The plaintiff/petitioner purchased the said property from the erstwhile owner through a registered deed of sale dated 21.12.2010. The plaintiff/petitioner claimed that respondents, just prior to the purchase of the property, vacated the suit premises. But taking undue advantage of absence of the petitioner, the respondents again entered into the suit premises. On the other hand, the respondents claimed that they never vacated the said premises and they continued in it as tenant.



The petitioner filed Land Dispute Case No. 10 of 2011-12 and vide order dated 27.07.2011, an order of removal of respondents was passed. The respondents preferred Land Dispute Appeal No. 103 of 2011 before the learned Commissioner against the said order dated 27.07.2011, which was dismissed. Thereafter, the respondents preferred CWJC No. 4351 of 2012 against the order of learned Commissioner. The said writ petition was allowed and the matter was remitted back to the learned Commissioner. The said order of the writ Court was confirmed vide order dated 29.07.2013 passed in LPA No. 401 of 2012. The learned Commissioner finally heard the matter and allowed it in favour of the respondents vide order dated 06.08.2013 with some observation. In these facts and circumstances, the petitioner filed two eviction suits, vide Eviction Suit No. 6/2013 for eviction of the respondents from the suit premises on the ground of personal necessity under Section 11 (1) (c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act) and Eviction Suit No. 7/2013 for a decree of eviction on the ground of default.

It further transpires that the learned trial court stayed the further proceedings of Eviction Suit No. 7/2013 by applying



the provisions of Section 10 of the Code of Civil Procedure (hereinafter referred to as the Code) and continued with Eviction Suit No. 6/2013 which was on the ground of personal necessity.

Thereafter, it appears that the plaintiff/petitioner sought for amendment in the plaint of Eviction Suit No. 6/2013 which was allowed and Relief No. A (1) was added that the defendant be directed to pay the due rent till eviction of the suit property and interest and Schedule 2 was added comprising in its contents the details of due rent to be paid by the defendant to the plaintiff, i.e., rent due since January 2011 till eviction of the suit land with interest at the rate of Rs. 450/-per month. Eviction Suit No.6/2013 was decreed and the respondents were directed to vacate the suit premises within sixty days from the date of order. However, respondents filed an appeal before the court of learned Additional District Judge-1, Hilsa, Nalanda vide Eviction Appeal No. 2 of 2019 and the said appeal was allowed vide judgment dated 05.06.2020 by setting aside the judgment dated 10.05.2019 and decree dated 17.05.2019 passed in Eviction Suit No. 6/2013. The instant civil miscellaneous petition has been filed against the judgment and decree of the Eviction Appeal No. 2/2019 on the ground that the learned



appellate court lacks jurisdiction to hear the said appeal and remedy for the respondents was to prefer revision before this Court.

3. Mr. J.S. Arora, learned senior counsel appearing on behalf of the petitioner submitted that since the decree in Eviction Suit No. 6/2013 has been passed under Section 11 (1) (c) of the Act, the only recourse available to the respondents was to challenge the said judgment and decree of eviction passed by the learned trial court before this Court by filing a revision petition under Section 14 (8) of the Act. Thus, learned first appellate court proceeded with the hearing of the appeal in an illegal manner and it was suffering from inherent lack of jurisdiction and it illegally assumed jurisdiction which was never vested with it in view of bar created by the provision of Section 14 (8) of the Act. Therefore, the judgment and decree of the Eviction Appeal No. 2/2019 is out-rightly illegal, null and void.

4. Mr. Arora further submitted that even after amendment, the eviction suit remained a suit for eviction on the ground of personal necessity as only amendment was made seeking arrears of rent and no ground of default was taken. Therefore, learned appellate court ought to have examined the



issue when the petitioner made objection regarding maintainability of the appeal in question and for non-consideration of this material aspect, the impugned judgment and decree is perverse.

5. Mr. Arora further submitted that even one of the issues framed by the learned trial court with regard to default of payment of rent was without jurisdiction as no such averment was made in the Eviction Suit No. 6/2013 and no such relief of eviction on the ground of default of rent was sought by the plaintiff/petitioner.

6. Mr. Arora further submitted that the Section 14 of the Act provides that if the suit is only on the ground of personal necessity [Section 11 (1) (c)] or expiry of lease [Section 11 (1) (e)], then no appeal would lie as provided under Section 14 (8) of the Act, but it nowhere speaks that relief with regard to arrears of rent could not be claimed. The suit before the learned trial court was only on the ground of personal necessity and no other ground was pleaded, hence, Section 14 (8) of the Act is very much applicable. The provision of Section 15 of the Act and remedy thereunder would also apply to all suits filed on all grounds including the ground of personal necessity.



7. Mr. Arora further submitted that even on merits, the impugned judgment and decree are not sustainable. The learned appellate court did not decide all points formulated for determination in the form of issues and referred to a number of decisions of Hon'ble Supreme Court in this regard.

8. Mr. Arora referred to the decision of Hon'ble Supreme Court in the case of *Madina Begum and another vs. Shiv Murti Prasad Pandey*, reported in *AIR 2016 SC 3554*, wherein the Hon'ble Supreme Court held that the order of High Court only considering the issue of limitation and not considering other issues in appeal was not permissible. The Hon'ble Supreme Court further held that as they do not agree with the view taken by the High Court on the issue of limitation, there was no option but to set aside the view expressed by the High Court and remanded the matter to the High Court to decide the remaining issues in the first appeal filed under Section 96 of the Code of Civil Procedure.

9. Mr. Arora further referred to the decision of the Hon'ble Supreme Court in the case of *H.K.N. Swami vs. Irshad Basith (dead) by LRs.* reported in *(2005) 10 SCC 243* wherein the Hon'ble Supreme Court held that the first appeal has to be decided on facts as well as on law. In the first appeal, parties



have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Finding the order of the High Court cryptic and without reasons, appeal was allowed and judgment of the High Court was set aside and matter was remitted back to the High Court to decide it afresh.

10. Mr. Arora further referred to the decision of the Hon'ble Supreme Court in the case of ***B.V. Nagesh and another vs. H.V. Sreenivasa Murthy***, reported in ***(2010) 13 SCC 530*** wherein the Hon'ble Supreme Court held that the judgment of the appellate court must reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The Hon'ble Supreme Court further held that the first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.

11. Thus, Mr. Arora submitted that the learned first appellate court, merely saying that after the decision of Issue No. 1 that there is no relationship of landlord and tenant



between the plaintiff and the defendants, without assigning any reasons, decided all other issues against the plaintiffs, which is completely perverse order.

12. Mr. Arora further submitted that the learned first appellate court completely erred on the point while deciding that there was no relationship of landlord and tenant between the plaintiff and defendants as it failed to appreciate that there had been admission on the part of the respondent in his deposition that Satya Prakash Arya was earlier owner of the property and he transferred the same by registered deed of sale and the respondent continued as tenant under the said tenancy uninterruptedly. This fact is also supported by the finding of the learned Commissioner of Patna Division in Land Dispute Redressal Appeal No. 103/2011 vide order dated 23.07.2013/06.08.2013 wherein the learned Commissioner reached the finding that the appellants/respondents herein were tenants in the disputed property and it was not proved that they forcibly entered into the suit property and thus, the learned Commissioner held that it was not a case of land dispute rather it is dispute between the landlord and tenant.

13. Mr. Arora further submitted that even on merits if the relationship of landlord and tenant was not admitted by the



respondents herein, then by fiction of law, the said relationship exists between the parties. It is well settled law that if admitted landlord has lawfully transferred the property, then the purchaser shall automatically become landlord of the tenant in the suit property and no attornment of the tenant would be needed. On this aspect of the matter, Mr. Arora referred to a number of decisions of this Court. The Hon'ble Division Bench of this Court in the case of ***Ram Tahal Modi vs. Ratan Lal*** reported in ***1988 PLJR 950*** held that in terms of Section 109 of the T.P Act, the transferees-plaintiffs came to possess all the rights of the transferors-lessors with regard to the suit properties. Another case, which has been referred by Mr. Arora, is the case of ***Dinesh Kumar Purbey vs. Mahesh Kumar Poddar***, reported in ***1991 (1) PLJR 650*** wherein considering the question whether upon transfer of interest, attornment by the tenant is necessary or *sine qua non* in order to constitute a landlord-tenant relationship between the parties, learned Single Judge referred to the Division Bench judgment of the Calcutta High Court in the case of ***Sri Manindra Chandra Dey & Brothers vs. Smt. Gita Sen & Others*** (73 Calcutta Weekly Notes 856) wherein criticizing the contention that the tenant does not become the tenant of the transferee so long as he does



not attorn to the transferee as his new landlord by paying rent to such a one amicably, or so long as he is not forced to pay rent to such a one by a decree of the court and held that such extravagant proposition was not warranted as it would throw the transferee landlord at the mercy of a sitting tenant and it writes off the positive and plain enactment in Section 109 of the Transfer of Property Act, 1882. The learned Single Judge quoted the observation made by the Hon'ble Division Bench of Calcutta High Court wherein it has been held "the relationship of landlord and tenant is there between the lessee and the lessor's assignee. And still the necessity of a fresh attornment, which means acknowledgment by the lessee of the lessor's assignee as his landlord. It looks like acknowledging then the fact that sun rises on the east". Reference has also been made to *AIR 1939 Lahore 49* wherein it was held "A fresh attornment by the lessee to the lessor's assignee is not necessary under the Transfer of Property Act". Thus, learned single Judge came to the conclusion that attornment is not a necessary condition to create landlord tenant relationship between the parties. It has no bearing whatsoever in cases of eviction on the ground of personal necessity. The transfer takes place with all incidents of right, title and interest of the lessor and the transferee is entitled



to sue the existing tenant on the ground of personal necessity even if the tenant has not attorned to his tenancy under him. Further reference has been made on the decision of the Division Bench of this Court in the case of ***Smt. Kalawati Tripathi and others vs. Smt. Damayanti Devi and another*** reported in ***AIR 1993 Patna 1*** wherein the Hon'ble Division Bench of this Court held that the attornment by lessee to the assignee of lessor is not necessary for creating a subsisting tenancy, by referring to the decisions of ***Dault Ram*** (supra) and ***Dinesh Kumar Purbey*** (supra).

14. Mr. Arora further submitted that the respondents claiming possession on the basis of filing a suit for Specific Performance of Contract Act to enforce an agreement to sale cannot be sustained as such plea is a mere ruse to deny the claim of eviction of the plaintiff. Admittedly, the respondents were tenants of the vendor of the plaintiff and after transfer of the suit property by the erstwhile owner in favour of the plaintiff, respondents cannot forestall the claim of the eviction on the ground that they have filed a suit for specific performance of contract. Mr. Arora, thereafter, referred to the decision of Hon'ble Division Bench of this Court in the case of ***Dr. N.P Tripathi vs. Smt. Dayamanti Devi and another***, reported in



1987 PLJR 724 wherein the Hon'ble Division Bench held that the petitioners making claim in an eviction suit for their possession on the basis of filing of suit for specific performance of contract and saying that after execution of the alleged deed for sale, he continued to remain in possession not qua tenant but *de hors* the tenancy for his own right as a transferee is not permissible under the law.

15. Mr. Arora further referred to the decision of Full Bench of this Court in the case of ***Priyavarte Mehta vs. Amrendu Banerjee***, reported in **1996 (1) PLJR 732** on the point that Section 15 of the Act provides that when the tenant contests the eviction suit filed by the landlord, the landlord can then file an application under Section 15 of the Act for issue of direction by the court to tenant asking him to deposit arrears of rent subject to law of limitation and Section 15 applies to eviction suit filed on any ground for eviction contemplated under Section 11.

16. Mr. Arora further referred to another decision of the Full Bench of this Court in the case of ***Md. Jainul Ansari & Ors. v. Md. Khalil***, reported in **1990 (2) PLJR 378** regarding applicability and scope of Section 14 (8) of the Act.

17. Thus, Mr. Arora submitted that the whole



proceeding before the learned first appellate court was without jurisdiction and even on merits, the judgment and decree of the learned first appellate court could not be sustained and both needs to be set aside.

18. Mr. S.S. Dvivedi, learned senior counsel appearing on behalf of the respondents at the outset submitted that the appeal was maintainable before the learned first appellate court for the simple reason that once the plaintiff/petitioner amended the plaint filed under Section 11 (1) (c) of the Act seeking eviction on the ground of personal necessity, after the addition of further relief, the suit did not remain a suit filed on the ground of personal necessity. Therefore, it came out of purview of Section 14 (8) of the Act.

19. Mr. Dvivedi further submitted that it is not proper to say that the learned first appellate court proceeded in the matter in illegal manner as the petitioner never challenged the jurisdiction of the appellate court and only when the petitioner lost the appeal, he has been raising this point as she has already submitted to the jurisdiction of the court. Mr. Dvivedi further submitted that there has been never any admission of relationship of landlord and tenant by the respondents. The respondent no. 1 has all along been claiming that on 21.04.2010,



Satya Prakash Arya executed the agreement for sale and, thereafter, permitted the tenant to remain in the suit premises as proposed owner and since the sale deed was not executed within the stipulated period, Title Suit No. 73/2010 has been instituted by the respondents and there has been no relationship of landlord and tenant between the petitioner and the respondents.

20. Mr. Dvivedi further submitted that so far as challenge to the learned appellate court's judgment and decree on the ground that all issues were not considered and disposed of by the reasoned order, the same is immaterial for the reason that once the learned first appellate court came to the finding that there existed no relationship of landlord and the tenant, there was no need to decide any issue because those issues were with regard to personal necessity, default of rent etc.

21. Mr. Dvivedi further submitted that after bringing amendment the nature of the suit changed and referred to first paragraph of judgment of learned trial court and also referred to second last page first prayer and further relief granted. Mr. Dvivedi vehemently contended that the claim of the learned senior counsel appearing on behalf of the petitioner regarding additional relief being sought under Section 15 of the Act is not sustainable as no petition was filed during the pendency of the



suit under Section 15 of the Act and the relief was sought in the main suit itself. Moreover, there could be no application of Section 15 of the Act and the nature of relief makes the suit of the plaintiff/petitioner a money suit. Mr. Dvivedi stressed that petition under Section 11 (1) (c) of the Act needs to be unadulterated for application of Section 14 (8) of the Act and mixing the relief of claim of arrears of rent took the eviction suit out of the ambit of Section 11 (1) (c) and thus, the judgment and decree of the learned trial court became appealable. Further, civil miscellaneous petition against the appeal would not be maintainable as no revision would lie under the un-amended provision of Section 115 of the Code as revision would lie only against those orders against which there is no appeal.

22. Mr. Dvivedi further submitted that in fact the present proceeding under Article 227 of the Constitution of India is not maintainable against the judgment and decree of the learned first appellate court. Once it is found that appeal is maintainable, only a second appeal would lie against the judgment and decree of the learned first appellate court and all issues raised in the civil miscellaneous petition would be subject matter of the second appeal. Only the court hearing the second appeal is competent to decide all issues and not this Court



exercising the jurisdiction under Article 227 of the Constitution of India.

23. Thus, Mr. Dvivedi submitted that there is no error in the proceeding which took place before the learned first appellate court and even the judgment and decree are not assailable before this Court in a proceeding under Article 227 of the Constitution of India on any ground and hence, the present civil miscellaneous petition is without any merit and the same be dismissed.

24. By way of reply, Mr. Arora submitted that the powers under Article 227 of the Constitution of India are unfettered and referred to the decision of the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty and another vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329 wherein referring to the case of *Surya Dev Rai vs. Ram Chander Rai* reported in (2003) 6 SCC 675, the Hon'ble Supreme Court held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a



manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Mr. Arora further referred to the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *Waryam Singh and another vs. Amarnath and another* reported in *AIR 1954 SC 215* wherein the Hon'ble Supreme Court observed that the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the courts and tribunals subordinate to it "within the bounds of their authority". Thus, Mr. Arora submitted that the Court has got ample powers under Article 227 to set aside the order which has been passed without jurisdiction by a subordinate courts.

25. I have given my anxious consideration to the rival submission of the parties and perused the record.

26. At the outset, the objection has been raised on behalf of the respondents that the present petition is not maintainable as the petitioner has filed the present civil miscellaneous petition against the order passed by the learned Additional District Judge-I, Hilsa in Eviction Appeal No. 2/2019 and against the judgment and decree of the first appellate court, only a second appeal could be preferred. Though it has been



vehemently contended on behalf of the petitioner that the learned first appellate court has no jurisdiction to hear the matter in appeal as the Eviction Suit No. 06/2013 has been filed on the ground of personal necessity under Section 11 (1) (c) of the Act and, therefore, only revision was maintainable under Section 14 (8) of the Act. I am afraid this is not the correct appreciation of facts and law. No doubt, initially the Eviction Suit No. 06/2013 was filed on the ground of personal necessity under Section 11 (1) (c) of the Act, but once the petitioner introduced another relief by way of amendment, the suit did not continue as a suit only on the ground of personal necessity and was taken out of the ambit of Section 11 (1) (c) of the Act. Hence, the final order passed would be appealable under Section 14 (1) of the Act

27. Section 11 (1) (c) of the Act puts stringent condition for the tenant and the tenant is required to seek leave to defend. If the suit is filed on the ground of personal necessity, mixing of relief would take the suit out of the purview of Section 11 (1) (c) of the Act and, for this reason, the order would be an appealable order and not a revisable order. So, it has been rightly contended by Mr. Dvivedi that a petition under Section 11 (1) (c) of the Act needs to be unadulterated and no relief other than on the ground of personal necessity could be



claimed.

28. So far as submission of Mr. Arora that additional relief was sought under Section 15 of the Act is concerned, the same is without any merit being contrary to the facts on record. Section 15 of the Act envisages filing of a petition during the pendency of the suit for deposit of rent but the same is not the case here. The rent was claimed by making amendment in the main petition and the relief was sought that defendant be directed to pay the due rent till eviction suit with interest.

29. Section 15 of the Act reads as under :

“15. Deposit of rent by tenants in suits for ejectment.—(1) If, in a suit for recovery of possession of any building the tenant contests the suit as regards claim for ejectment, landlord may move an application at any stage of the suit for order on the tenant to deposit rent month by month at a rate at which it was last paid and also subject to the law to limitation, the arrears of rent, if any, and the Court after giving opportunity to the parties to be heard, may make any order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both before or after the institution of the suit if any and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of order or the rent at such rate for any month by the fifteenth day of the next following month; the Court shall order the defence against ejectment to be struck off and the tenant to be



placed in the same position as if he had not defended the claim to ejectment and further the Court shall not allow the tenant to cross-examine the landlord's witnesses.

(2) If in any proceeding referred to in sub-section (1) there is any dispute as to the person or persons to whom the rent is payable the Court may direct the tenant to deposit in Court the amount payable by him under sub-section (1) and in such case no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.

(3) If the Court is satisfied that any dispute referred to in sub-section (2) has been raised by a tenant for reasons which are false or frivolous the Court may order the defence against the eviction to be struck off and proceed with the hearing of the suit as laid down in sub-section (1)".

30. Now it cannot be said that the prayer was made for directing the defendant/tenant to deposit rent month by month at the rate of last paid. Therefore, whatever may be the submission of the learned senior counsel for the petitioner, the relief could not be considered to be a relief under Section 15 of the Act and the relief was sought in the main petition itself. By introducing this relief in her main petition, the petitioner's case was taken out of the purview of Section 11 (1) (c) of the Act and it was not a suit simpliciter filed on the ground of personal necessity and



seeking relief of eviction on the said ground.

31. For the aforesaid reasons, the present civil miscellaneous petition is not maintainable when there is specific provision making the impugned judgment and decree appealable. Once it has been held that the present civil miscellaneous petition is not maintainable, all the points and issues raised against the judgment and decree of the first appellate court need no consideration by this Court.

32. Another contention by the learned senior counsel appearing on behalf of the petitioner about the powers of this Court under Article 227 of the Constitution of India referring to the decisions of *Shalini Shyam Shetta* (supra), *Surya Dev Rai* (supra) and *Waryam Singh* (supra) are misplaced for the reasons that the power under Article 227 of the Constitution of India is an extra-ordinary power and has been conferred upon this Court only to keep the courts and tribunals subordinate to it within the bounds of their authority and not for correcting mere errors as has been held in the case of *Waryam Singh* (supra). So, this power is to be exercised most sparingly and only in appropriate cases. Evidently, the petitioner has failed to make out a case for exercise of power under Article 227 of the Constitution of India. Though a long list of authorities have been cited on behalf of the



petitioner, however, they are simply not applicable to the facts of the case and none of these authorities supports the claim of the petitioner that power under Article 227 of the Constitution of India can be applied even when statutory appeal is provided under the law.

33. Therefore, in the light of the discussions made hereinbefore, I do not find the present petition is maintainable and, hence, the same is dismissed.

34. However, the petitioner is at liberty to have recourse of law in appropriate proceeding.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	20.03.2025
Uploading Date	07.05.2025
Transmission Date	NA

