



2024:CGHC:48759-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPURWP227 No. 467 of 2023

1. Krishna Kumar Kahaar, S/o Rajkumar Kahaar, Aged About 28 Years
2. Shobha Kumari, D/o Shatrughan Kumar, Aged About 23 Years

Both R/o Bihari Path, New Vighrahpur, Patna, Bihar.

Present Address C/o Ragini Devi Kahaj, W/o Late Raj Kumar Kahar, Ward No.17, Kailash Nagar, Champa District Janjgir-Champa, Chhattisgarh. PIN 495617.

... Petitioners

Versus

1. Dashoda Bai Dhivar W/o Late Bhururam Dhivar, Aged About 70 Years (DOB Wrongly Mentioned 51 Years In The Impugned Order), R/o Kailash Nagar Champa, Tahsil Champa, District Janjgir-Champa, CG.
2. Ram Prasad Bhishm, S/o Late Bhururam Bhishma, Aged About 50 Years R/o Village Kera, Near Chandi Temple, Tehsil Janjgir, Dist.Janjgir-Champa. Chhattisgarh.

... Respondents

For Petitioners : Mr. Pawan Kesharwani, Advocate

For Respondent No.1: Mr. Sumit Singh Rathore, Advocate

For Respondent No.2: Mr. Mayank Goyal, Advocate appears on behalf of
Mr. Rahul Tamaskar, Advocate

Hon'ble Mrs. Justice Rajani Dubey &
Hon'ble Mr. Justice Bibhu Datta Guru

Order on Board

Per Bibhu Datta Guru, J.

11-12-2024

1. Heard learned counsel for the parties.
2. By the present petition under Article 227 of the Constitution of India the petitioners/applicants (landlord) are challenging the order dated 28-4-2023 passed by the Chhattisgarh Rent Control Tribunal, Raipur (henceforth 'the Tribunal) in appeal No.12-A/2023 by which the learned Tribunal has allowed the appeal of the respondent No.1/non-applicant (tenant) and set aside the order dated 12-12-2022 passed by the Rent Control Authority (henceforth 'the Authority')/Sub Divisional Officer (Revenue) by which the Authority has passed the order with regard to eviction of the respondent and further directed to make payment of Rs.28,000/- to the petitioners herein towards arrears of rent.
3. (i) Facts of the matter, shorn of all unnecessary details, are that the petitioners preferred an application under the Chhattisgarh Rent Control Act, 2011 (henceforth 'the Act, 2011') before the Authority/SDO(R), Champa for eviction of the respondents pleading, *inter alia*, that the disputed land bearing khasra No.1507/29 area 0.10 decimal consisting of a house was purchased by the petitioners from the respondent No.2. Thereafter, the said house was given on rent by the petitioner to the respondent No.1 for a monthly rent of Rs.4,000/-, however, the respondent No.1 failed to pay the rent since beginning and was refused to vacate the house in spite of repeated requests made by the petitioner. On the basis of the said facts, the Authority issued notice to the respondent.

(ii) After receipt of the notice, the respondent appeared and denied the contention raised by the petitioner and stated that in absence of any agreement the petitioners' application is not maintainable.

(iii) After hearing the parties, the Authority/SDO (R) passed an order dated 12-12-2022 directing eviction of the respondent and to make payment of Rs.28,000/- towards arrears of rent to the petitioners. Being aggrieved by the said order, the respondent No.1 herein preferred an appeal under Section 13 of the Act, 2011 before the Tribunal.

(iv) The said appeal was allowed by the Tribunal vide the order impugned and set aside the order dated 12-12-2022 passed by the Authority/SDO(R) observing that the procedure as enumerated under the Act, 2011 was not followed by the SDO and the proceedings were drawn in contravention to the provisions of the Act, 2011. At the same time, the Tribunal observed in para 11 of the order impugned that no issues were framed and no evidence was called to prove such issue. The Tribunal also found that though affidavits of two witnesses were taken, but on which date the said affidavits were taken on record that has not been mentioned. It has also been observed that the application has not been moved as per the provisions of the Act, 2011. Even the SDO (R) has acted as the SDO (R), Champa and he has put his signature in the order sheet as the Presiding Officer of SDO (R) by registering a revenue case.

4. Though such findings were recorded by the Tribunal, but it allowed the appeal of the respondent No.1 and set aside the order passed by the Authority/SDO (R). Section 10 of the Act, 2011 speaks about procedure to be followed by Rent Controller(s) and Rent Control Tribunal. From perusal of the aforesaid provision, it is manifest that for the purpose of discharging their functions under this Act the Rent Controller and the Rent Control Tribunal have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit or an appeal.
5. From bare perusal of the record, it is apparent that the Tribunal has rightly observed that albeit affidavits of two witnesses have been produced but there is no entry in the order sheet that on which date the same have been taken on record. Even the Authority failed to frame issues and also failed to provide opportunity to led evidence to the parties to prove the issue framed by the Authority, whereas framing of issue and grant of opportunity to the parties to led evidence to prove the said issue is necessary for decision under the Act, 2011. From the record it is also evident that the Authority has not followed the procedure as enumerated under Section 10 of the Act, 2011 and hence the Tribunal rightly held that the Authority failed to follow the procedure as provided under Section 10.
6. Though there is no illegality or infirmity in the observation made by the Tribunal, but the Tribunal instead of remanding back the matter to the

Authority/SDO (R) for fresh adjudication, set aside the order of the Authority without appreciating the fact that any wrong committed by the Authority/SDO (R) and any procedural defect should not be attributed to a party, who has approached the authority under a particular statute. The Tribunal ought to have remanded back the matter to the Authority/SDO (R) for a fresh decision on the application filed by the petitioner, who is a landlord.

7. In the matter of *Jai Jai Ram Manohar Lal v National Building Material Supply, Gurgaon*¹ the Supreme Court observed that Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure.
8. Further the Supreme Court in the matter of *Uday Shankar Triyar v Ram Kalewar Prasad Singh and Another*², held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.
9. It is trite law that the procedural defect may fall within the purview of irregularity and capable of being cured, but it should not be allowed to defeat the substantive right accrued to the litigant without affording a reasonable opportunity. (See : *Ramnath Exports Private Limited v Vinita Mehta and Another*³).

1 1969 (1) SCC 869

2 (2006) 1 SCC 75

3 (2022) 7 SCC 678

10. In view of the aforesaid facts and circumstances of the case and applying the well settled principles of law to the facts of the present case, the writ petition is disposed of with a direction to the petitioner to file a fresh application under the Act, 2011 before the Rent Control Authority and on filing of such application, the same shall be considered and decided, in accordance with law and on its own merits.
11. It is made clear that this Court has not expressed any opinion on the merits of the case and the Rent Control Authority shall decide the same, without treating any observation made in this order, as opinion on the merits of the case.
12. With the aforesaid observations and directions, the writ petition stands disposed of.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Bibhu Datta Guru)
Judge

Gowri

Head Note

Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice.

प्रक्रिया सम्बन्धी त्रुटियों तथा अनियमितताओं, जिनका समाधान संभव है, को मूल अधिकारों को विफल करने अथवा अन्याय का कारक बनने की अनुमति नहीं दी जानी चाहिए।