

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9174 of 2015

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Om Prakash Sharma son of Late Girdhari Sharma, resident of Barhai Tola, Machhipur, P.S.- Lodipur, District - Bhagalpur, At present resident of Mailchak, Dr. Rajendra Prasad Road, Khalifabagh, P.S.- Kotwali, Town and District- Bhagalpur.

.... Petitioner/s

Versus

1. Bushra Zafar Alias Bushra Islam wife of Late Dr. Zafar Ahmad.
2. Sahabaj, minor son of Late Dr. Zafar Ahmad
3. Md. Shuza Ahmand, minor son of Late Dr. Zafar Ahmad
4. Zoya Zafar, minor daughter of Late Dr. Zafar Ahmad. Nos.2 to 4 are presented through their mother, guardian Bushra Zafar and next friend All resident of Milchak, Dr. Rajendra Prasad Road, Khalifabagh, P.S. - Kotwali, Town and District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 21-07-2015 Heard Mr. Anish Chandra Sinha, the learned counsel appearing on behalf of the petitioner.

Calling in question the legal acceptability of the order rejecting the prayer of the petitioner in the appellate court below for framing the issues as proposed in the petition filed by the petitioner, this application under Article 227 of the Constitution of India has been filed.



The suit has been filed for eviction of the defendant (petitioner in this writ application) on the ground of personal necessity and default in payment of rent. The defendant appeared in the suit and filed his written statement and thereafter the court framed the issues on 20.01.2003. It also appears that the issues were recast on 18.12.2012. The petitioner who was the defendant in the suit did not raise objection at any stage after 20.01.2003 that another issue regarding the maintainability of the suit under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the 'BBC Act') was also involved. The judgment and decree of eviction thereafter was passed against the defendant and the appeal has been filed against the same. At the stage of argument, a petition was filed on behalf of the defendant-petitioner praying to frame certain issues as mentioned in the petition including the issue regarding the maintainability of the suit under the provisions of BBC Act. The learned court below, by the impugned order, has passed the order for consideration of the said prayer at the time of decision of the suit.

Mr. Sinha, the learned counsel for the petitioner has submitted that the appellate court below should have framed the issues after allowing the prayer of the petitioner and has wrongly deferred the matter to be considered at the time of passing of the

judgment.

After considering the submissions on behalf of the petitioner as well as the facts and circumstances of the case, it is transparent that after the framing of the issues on 20.01.2003, the defendant did not chose to raise his objection with regard to another issue also arising in the suit. Admittedly, there was no prayer for trying any issue as preliminary issue under Order 14 Rule 2 C.P.C. After taking chance of the judgment going in his favour, on the basis of the issues already framed, the petitioner at appellate stage has filed the petition praying the appellate court to frame issues as mentioned in the petition. As the appellate court below has passed the order for consideration of the petition/prayer of the petitioner at the time of the passing of the judgment, this Court is not inclined to exercise its jurisdiction under Article 227 of the Constitution of India in the facts and circumstances of the case.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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