

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14452 of 2014

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Binod Kumar Patwari S/o Late Multan Chand Patwari Resident of Village Salmari,
P.S. Salmari, District Katihar. Petitioner/s

Versus

Arun Kumar Prasad S/o Late Raja Ram Sah Resident of Arun Katra, Mahatma
Gandhi Road, P.S. and District Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Musowir

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-01-2015

Heard Mr. Bishwanath Choudhary, the learned counsel
appearing on behalf of the petitioner.

Grieved by the order 04.07.2014 rejecting the prayer of the
defendant-petitioner for rejection of the plaint made in Eviction Suit
No. 03 of 2011 (05 of 2014), the present application under Article 227
of the Constitution of India has been filed for quashing of the said
order.

The factual expose' are that the eviction suit was filed by the
plaintiff-respondent seeking a decree of eviction against the
defendant-petitioner on the ground of personal necessity alone. The
defendant-petitioner filed the petition asserting that there was a lease
agreement in between the plaintiff and the defendant whereby the
defendant was allowed to remain in possession of the suit premises as

tenant therein for three years. On that basis, the contention raised by the petitioner was that the suit for eviction could not have been maintained by the plaintiff before expiry of the said three years.

Mr. Choudhary, the learned counsel for the petitioner has submitted that in view of the lease agreement the defendant-tenant was entitled to be in occupation of the suit premises for three years and the eviction suit filed before expiry of three years was premature. It has further been canvassed that the learned court below has erred in law in not considering the said aspect and the reasons assigned for rejecting to the prayer of the defendant-petitioner for rejection of the plaint cannot be legally sustained.

After careful consideration of the submissions and the facts of the case, it is transparent that the suit has been filed for eviction on the ground of personal necessity alone. It has been accepted on behalf of the petitioner that there is no mention of lease agreement in the plaint. Even otherwise also the presence of the lease agreement cannot preclude a landlord for maintaining the suit for eviction on ground of bona fide personal necessity unless the terms of the agreement expressly exclude the same. The law has been also well settled that while considering the issue of rejection of the plaint under Order VII Rule 11 C.P.C. only the averments made in the plaint are to be looked into without any addition or subtraction therein. The learned

court below has rightly come to the conclusion that the plaint cannot be rejected in the facts and circumstances of the case.

This Court is not persuaded to interdict the impugned order in this writ application which, is accordingly, dismissed.

It is however, observed that as the suit has been filed on the ground of personal necessity, the learned court below shall make every endeavor for early disposal of the suit.

(V. Nath, J)

Devendra/-

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