

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.662 of 2008

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Gouri Shankar Middle School through The Acting Head Master G.S Middle School
@ Govt. Middle School Kotwali Chouk Darbhanganagar, P.S- Laheriasarai,
District- Darbhanga.

.... Petitioner/s

Versus

1. Jeevan Kumar Mehrotra S/O Late Jatashankar mehrotra R/O Mohalla- Kotwali
Chouk P.S- Laheriasarai, District- Darbhanga
2. The Collector Darbhanga
3. The Regional Deputy Director of Education Darbhanga
4. The District Education Officer Darbhanga
5. The District Superintendent Of Education, Darbhanga
6. Prabhat Kumar Mehrotra S/O Late Jata Shankar Mehrotra R/O Mohalla -
Kotwali ,P.S- Laheriasarai, District- Darbhanga
7. Prem Shankar Mehrotra S/O Late Jata Shankar Mehrotra R/O Mohalla - Kotwali
,P.S- Laheriasarai, District- Darbhanga

.... Respondent/s

With

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Civil Revision No. 222 of 2010

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Gouri Shankar Middle School through the Acting Head Master G.S Middle School
@ Govt. Middle School Kotwali Chowk Darbhanganagar, P.S- Laheriasarai,
District- Darbhanga

.... Petitioner/s

Versus

1. Jeevan Kumar Mahlotra S/O Late Jata Shankarmahlotra R/O Mohalla- Kotwali
Chowk P.S- Laheriasarai, District- Darbhanga
2. The Collector Darbhanga
3. The Regional Deputy Director of Education Darbhanga
4. The District Education Officer Darbhanga
5. The District Superintendent Of Education, Darbhanga
6. Prabhat Kumar Mahrotra S/O Late Jata Shankar Mehrotra R/O Mohalla -
Kotwali ,P.S- Laheriasarai, District- Darbhanga

7. Prem Shankar Mahrotra S/O Late Jata Shankar Mehrotra R/O Mohalla - Kotwali
,P.S- Laheriasarai, District- Darbhanga

.... Respondent/s

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Appearance :

(In C.R. No. 662 of 2008 and C.R. No. 222 of 2010)

For the Petitioner/s : Mr. Arjun Prasad Keshri, Adv.

For the Respondent/s : Mr. Md. Waliur Rahman, Adv.

Mr. Iqbal Asif Niazi, Ad.

Mr. Nishant Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-02-2015

Heard the learned counsel appearing on behalf of the petitioner and the learned counsel for the opposite parties in both the revision applications.

The petitioner, in both the revision applications, is the defendant no. 5 in the eviction suit filed for eviction of the defendants from the suit premises on the ground of personal necessity. It is transparent that the said eviction suit has been filed in the year 2002. By the order impugned in C.R. No. 662 of 2008, the petitioner has challenged the order dated 04.02.2008 whereby the prayer of the petitioner for recall of the earlier order precluding the petitioner from filing the written statement in the suit has been assailed. In C.R. No. 222 of 2010, the petitioner has assailed the final judgment and order

of eviction passed in the suit. This revision applications has been filed under Section 14 (8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

The factual expose' are that the defendant 1st set are running a school in the name and style Gauri Shankar Middle School (defendant no. 5) in the suit premises. The plaintiffs have claimed the defendant 1st set to be their tenant and filed the suit for eviction claiming bonafide personal necessity of the suit premises. It transpires from the impugned judgment and order as well as the order sheet of the eviction suit produced on behalf of the petitioner along with supplementary affidavit filed in C.R. No. 222 of 2010 that the written statement in the suit was earlier filed on behalf of the defendant no. 1, 4 and 5 on 07.02.2003. Thereafter, the issues were settled, the parties led their evidence and the suit was posted for argument. However, the defendant no. 5 (the petitioner in the two revision applications) later on appeared in the suit on 19.04.2007, denied to have filed written statement and prayed for grant of an opportunity to file written statement and contest the suit. By order dated 25.05.2007, after hearing the parties on the issue of granting opportunity to the defendant no. 5 to file written statement, the prayer of the defendant no. 5, in the interest of justice, was allowed directing the defendant no. 5 to file the written statement and also granting it an opportunity



to cross-examine the witnesses of the plaintiffs by the next date i.e. 13.06.2007. It further transpires from the said order-sheet that on 13.06.2007 and 06.07.2007, the petitioner (defendant no. 5) had made the prayers for extension of time for filing the written statements which were allowed. However, on the next date fixed i.e. 21.07.2007 again the said prayer was repeated and the learned court below after considering the entire facts and circumstances, debarred the defendant no. 5 (petitioner) from filing the written statement. It further transpires that instead of taking appropriate step promptly, the defendant no. 5 waited for a long four months when it filed the petition on 06.11.2007 praying for recall of the order dated 21.07.2007 and for condoning the delay in filing the written statement which was said to have been filed on 13.10.2007. By the impugned order in the C.R. No. 662 of 2008, the learned court below has rejected the said petition.

The learned court below, thereafter, proceeded to dispose of the suit on merits and after finding that there is relationship of landlord and tenant in between the plaintiffs and defendant 1st set and further finding that the plaintiffs have bonafide personal necessity of the suit premises and the partial eviction of the defendants would not satisfy the need of the plaintiffs, the learned court below has granted the decree of the eviction, as prayed. This order has been assailed in the C.R. No. 222 of 2010.



The learned counsel for the petitioner has submitted that the petitioner is a lady and the headmistress of a school and therefore there were constraints before her in not filing the written statement in time as required. It has further been submitted that the school is running in the suit premises and if eviction is allowed it would cause irreparable loss and injury to the defendants as well as to the public at large. It has also been canvassed by the learned counsel for the petitioner that there is no relationship of landlord and tenant in between the plaintiffs and defendant no. 5 and the said fact can be established by the defendant no. 5 if the opportunity to file written statement and to lead her evidence is granted. The learned counsel has, however, submitted that the judgment and order of eviction as impugned in C.R. No. 222 of 2010 is being assailed only on the ground that the same has been passed ex parte against the petitioner-defendant no. 5 and the said judgment and order can be assailed by the petitioner in accordance with law because against an ex parte decree the four remedies are there and this revision application under Section 14 (8) of the B.B.C. Act should be taken as one of them. The learned counsel has not made any submission on the findings of facts as recorded in the impugned judgment and order and has confined his submission assailing the ex parte nature of the impugned judgment and order of eviction.

The learned counsel for the opposite parties, on the other hand, has submitted that the defendant no. 5-petitioner is a tenant and as such it is definitely interested in elongating the disposal of the suit which has been filed long back on the ground of personal necessity. It has further been submitted by the learned counsel that the order-sheet of the eviction suit manifestly demonstrates the delaying tactics adopted by the defendant no. 5-petitioner which fact cannot be overlooked while assessing the contention on behalf of the petitioner who has dwelt upon tediously only on the ex parte nature of the impugned judgment. It has been pointed that the other defendants promptly appeared in the suit, filed the written statement and led their evidence and it is only the defendant no. 5 who has been set up by those defendants to delay the disposal of the eviction suit. It has further been submitted that in fact the defendant no. 5 is a Government School and all its assets are owned and its affairs are governed by the State Government which has represented its interest in the suit. By referring to the annexure in I.A. No. 462 of 2015 filed on behalf of the plaintiff-opposite parties, the learned counsel has pointed out that the petitioner in Execution case No. 01 of 2010 has filed an affidavit stating therein that the concerned school is running in a different building as the building in question (suit premises) is in dilapidated condition and as such also, the pleas raised by the

defendant no. 5 prove to be simply vexatious.

After careful consideration of the facts and materials on record and the submissions made on behalf of the parties, it is limpid that the eviction suit has been filed on the ground of personal necessity and the defendant no. 5-petitioner was one of the defendants in the suit. It is also apparent that some of the defendants (government official) appeared and filed the written statement which also purported to have been filed on behalf of the defendant no. 5. The suit proceeded, parties led their evidence and the stage of final argument reached. At this stage, the defendant no. 5 appeared on 19.04.2007 by filing Vakalatnama and filed a petition praying for grant of opportunity to file written statement and lead evidence. The said petition was allowed by order dated 25.05.2007. However, even then the defendant no. 5-petitioner did not file the written statement and instead continued to make prayer for extension of time for filing written statement. Ultimately by order dated 21.07.2007, the learned court below refused to grant further time, precluded the defendant no. 5 from filing written statement and posted the suit for argument. Instead of acting promptly, the defendant waited for nearly four months and then filed a petition on 06.11.2007 praying to recall the earlier order and also praying for condonation of delay in filing the written statement which was claimed to have been filed on

30.10.2007.

In the backdrop of these facts, it is evident that the disposal of the eviction suit on the ground of personal necessity filed in the year 2002 was substantially delayed for the reasons directly attributable to the defendant no. 5-petitioner. The specious plea on behalf of the petitioner that it is an institution and represented by a headmistress having constraints as a lady has failed to impress this Court. It is manifest that the other defendants are also government officials but they have appeared without delay and contested the suit. This Court therefore finds substance in the submission on behalf of the plaintiff-opposite parties that the defendant no. 5-petitioner purposely delayed the disposal of the suit and has been raising frivolous grounds.

The suit for eviction on the ground of personal necessity is to be tried under the special procedure prescribed under Section 14 of the B.B.C. Act and the scope of revision filed under the proviso to section 14 (8) is circumscribed by the very language of the statute which permit interference by the High Court only in a case where the order is not in accordance with law. The impugned judgment and order of eviction has not been challenged by the petitioner on merits rather the same has been assailed on the ground that no sufficient opportunity was granted to the petitioner to contest the eviction suit. The fact that the petitioner was granted appropriate opportunity to file

written statement and contest the suit, is manifest from the order dated 25.05.2007 passed in the suit but even thereafter no written statement was filed promptly and, instead the prayer for extension of time continued to be made by the petitioner on the basis of vague statements like the death of the mother of the learned counsel or the illness of the husband of the headmistress. The intention to prolong the proceeding of the suit is quite apparent from these facts and also corroborated by the statement of the petitioner in the execution case (Annexure-A to I.A. No. 462 of 2015) that the school has been shifted in another building.

The learned counsel for the petitioner has also failed to explain away the reason for not filing any petition in the C.R. No. 662 of 2008 for stay of further proceeding of the suit when the petitioner was well aware that the suit had been posted for final argument and thereafter would be disposed of. It is evident from the order-sheet of the C.R. No. 662 of 2008 that after its filing on 29.04.2008, no step was taken by the petitioner either for its early hearing or for grant of appropriate interim order. It is thus apparent that the petitioner has knowingly allowed the judgment and decree in the eviction suit to be passed by the court with the purpose to assail the same contemplating the benefit of the liberal approach of the courts in cases of ex parte decree. This Court, in the aforesaid background, does not find the

petitioner to be entitled to relief either in law or in equity.

For the aforesaid premised reasons, this Court does not find any merit in both the revision applications, which are, accordingly, dismissed.

(V. Nath, J)

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