

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.244 of 2016**

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Madan Singh

.... Appellant/s

Versus

Sunil Prasad @ Sunil Kumar Prasad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kr Singh No.1

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 16-09-2016

Heard the learned counsel, Mr. Ajay Kumar Singh No.1

for the petitioner. In spite of service of notice, nobody appeared on behalf of the respondent.

This Civil Miscellaneous application has been filed by the plaintiff-petitioner against the order dated 02.05.2016 passed by Munsif III, Chapra in Eviction Suit No.4 of 2015 whereby the learned Court below has granted leave to the defendant to contest the suit filed by the plaintiff-petitioner under Section 11(i)(c) of the Bihar Building(Lease, Rent & Eviction) Control Act, 1982(hereinafter referred to as the B.B.C. Act).

The learned counsel for the petitioner submitted that the suit has been filed by the plaintiff-petitioner for bonafide requirement of the suit premises, therefore, special procedure under Section 14 of the B.B.C. Act is applicable. For contesting the suit, the defendant is required to obtain leave on the basis of an



affidavit disclosing the grounds on which he seeks to make such contest and if the Court from the affidavit finds that the disclosed fact may disentitle the landlord from obtaining an order for eviction on the grounds specified in clauses (c) and (e) of sub-section (1) of Section 11 then the leave is to be granted. According to the learned counsel, in the present case, the defendant did not dispute the relationship of landlord and tenant nor the defendant has denied the bonafide requirement of the plaintiff. The plea taken in the affidavit is that he has spent Rs.4,76,000 along with other tenants in making construction of the suit premises. So far this defence is concerned, it is not related to the requirement of the landlord and that cannot be investigated under Section 14 of the B.B.C. Act. The Court below without considering this provision has by non-speaking order granted leave to the defendant.

Perused the order passed by the Court below. Perused the affidavit filed by the defendant-respondent seeking leave to contest, Annexure 2 to this Civil Miscellaneous application. From perusal of Annexure 2, it appears that only defence is that he has spent Rs.4,76,000 along with other tenants in constructing the suit premises. Except this in the affidavit, no other fact has been disclosed so as to disentitle the landlord from obtaining an order for eviction on the grounds of bonafide requirement provided

under Section 11(i)(c) of the B.B.C. Act.

The Hon'ble Supreme Court in the case of **Rita Lal v. Raj Kumar Singh, 2002(4) PLJR 118(SC)** has held that "raising a triable issue, as Sub-section (5) of Section 14 suggests is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction. If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue then the Court is justified in refusing the leave to defend. A defence, which is practically moonshine, sham or illusory cannot be held to be raising a triable issue. Else the whole purpose behind enacting a provision for granting leave to defend, and not permitting a contest unless leave was granted, would stand defeated."

From perusal of the said decision, it appears that in that case, on the basis of the facts disclosed in the affidavit, the Court below refused to grant leave but this High Court set aside the order of trial court and granted leave in revisional jurisdiction. The Hon'ble Supreme Court held that the High Court in exercise of revisional jurisdiction ought not to have interfered with the well considered and reasoned order of the trial court. In the present case, the order passed by the Court below is without any reason. No satisfaction has been disclosed by the Court below. The settled

principles of law laid down by the Supreme Court as well as by the High Court have not been considered.

Further, same view had been taken by this Court in the case of **Md. Fahimuddin v. Godhan Prasad Singh & anr., 1992(2) PLJR 352.**

It may be mentioned here that the same provision is there in Delhi Rent Control Act. The Supreme Court in the case of **J.P.Anand v. D.G.Baffna, AIR 2002 Supreme Court 141** has held that the case set up by the defendant to the effect that there is no relationship of landlord and tenant and that the defendant is residing as owner towards part performance of the contract entered into between him and the landlord is unfounded and, therefore, the learned Additional Rent Controller and the High Court have rightly refused to grant leave to contest the suit.

In view of the above settled proposition of law laid down by Supreme Court as well as the High Court in the aforesaid cases, the leave can be granted to the tenants, if the affidavit filed by the tenant disclose such fact to disentitle the landlord from obtaining an order of eviction. Where the affidavit does not disclose any such fact, the Court would not be justified in granting leave.

A Division Bench decision of this Court in the case of

Santosh Singh and others v. Ram Chandra Sah and others,
1992(2) PLJR 91 has held that the provision as contained under
Section 14(4) of the B.B.C. Act is mandatory.

In view of the above settled proposition of law, in my
opinion, the learned Court below has exercised a jurisdiction in the
manner not permitted by law and has granted leave contrary to the
provisions and settled principles of law laid down by this Court as
well as the High Courts, as such, the impugned order is not
sustainable in the eye of law.

In the result, this Civil Miscellaneous application is
allowed. The impugned order is set aside. The leave to contest the
suit is refused. The Court below is directed to proceed according
to law.

(Mungeshwar Sahoo, J)

Saurabh/-A.F.R.

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