

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.592 of 2016**

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Surendra Mohan Gupta

.... Appellant/s

Versus

Vijay Bhasin & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Braj Nandan Singh

For the Respondent/s : Mr.

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

2 26-08-2016 Heard learned counsel Mr. Navin Kumar for the

petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 06.05.2016 passed by Munsif-I, Patna in Eviction Suit No.09 of 2010 whereby the application filed by the petitioner under Section 10 of the Bihar Building (Lease, Rent & Eviction) Control Act has been rejected.

3. From perusal of the impugned order, it appears that the court below held that the suit has been filed for eviction of the defendant-petitioner herein on the ground of fixed term tenancy and personal necessity. Special procedure is adopted in deciding the eviction suit. The plaintiffs' evidence was closed in the year 2012 and thereafter the petitioner was directed to examine his witnesses but he himself has not been examined as witness and

earlier application was filed for appointment of Pleader Commissioner and now application under Section 10 of the B.B.C. Act has been filed.

4. It further appears that Pleader Commissioner's Report was also considered. It is not clear as to how the Pleader Commissioner was appointed for submission of the report particularly when the order dated 25.06.2014 (Annexure 4) to this application shows that the application filed by the defendant-petitioner for appointment of Pleader Commissioner has already been rejected. The court below also held that so far Section 10 of the B.B.C. Act is concerned, the wall constructed according to the Pleader Commissioner's Report is on the own land of plaintiffs and not in the suit premises. The court below also observed that the eviction suit is of the year 2010 and the petitioner has already examined ten witnesses.

5. Section 10 of B.B.C. Act provides that if the provision of sub-section (1) is contravened by the landlord then the tenant should make an application to the Controller complaining of such contravention.

6. So far eviction on the ground of personal necessity and fixed term tenancy is concerned, special procedure under Section 14 has been provided. Therefore, the question which is



being raised by the petitioner either for appointment of Pleader Commissioner or for providing the amenities under Section 10 is concerned, those are foreign questions. It appears that the petitioner is dragging the case of the plaintiffs-respondents particularly when the suit has been filed on the ground of personal necessity and the fixed term tenancy. The plaintiffs' evidence has been closed in the year 2012 but the evidence of the defendant has not been closed till date and by filing one application or the other which are either frivolous or vexatious the petitioner is trying to abuse the process of the Court.

7. The Hon'ble Supreme Court in the case of *Ram Rameshwari Devi Vs. Nirmalal Devi (2011)8 SCC 249* has given guidelines for shortening the civil litigation vide paragraph 52(c). The Hon'ble Supreme Court held that **'imposition of actual, realistic or proper cost and / or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigant. Imposition of heavy costs would also control unnecessary adjournments by the parties.'** At paragraph 54, the Hon'ble Supreme Court has held that **'while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually**



incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees structures of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing , photocopy, court fee etc.’ At paragraph 55, again it has been held ‘the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.’

8. In such circumstances, in view of the decision of the Supreme Court referred to above the courts have the jurisdiction to deal with these situations for doing justice to the parties but it should not be forgotten that for doing justice to one party, injustice should not be done to the other party. The balance should be maintained. The process of the Court should not be allowed to be used by one party as weapon to be used against actual consumer of the justice. Here the petitioner is purchasing by misusing the process of Court only with a view to harass the plaintiffs as they are in possession of the suit premises. Generally this is the tendency of the tenant in the cases of eviction and this one is example.

9. In my opinion, the applications by which the petitioner is dragging the case are frivolous and vexatious applications. Therefore, this civil miscellaneous application is dismissed with cost of Rs.10,000/-(ten thousand) to be deposited by the petitioner in the court below for payment to the plaintiffs-respondents. This cost must be deposited within one month from today. If it is deposited, the plaintiffs will be at liberty to withdraw the same. If it is not deposited, the same shall be recovered by the court below according to law.

Harish/-

(Mungeshwar Sahoo, J)

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