

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1329 of 2016**

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Manoj Kumar

.... Appellant/s

Versus

Sri Baidhnath Prasad & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Rajesh Kumar Singh

For the Respondent/s : Mr.

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

ORAL ORDER

2 15-12-2016 Heard the learned counsel for the petitioner.

Perused the impugned order dated 05.09.2016 passed by Sub Judge, Saran at Chapra in Eviction Suit No.5 of 2012 whereby the learned Court below rejected the application under Order VII Rule 11 CPC filed by the defendant-tenant-petitioner praying for rejection of the plaint on the ground that the plaintiff never issued any notice to the defendant petitioner under Section 106 of the Transfer of Property Act.

It appears that the plaintiff-respondent filed the suit for eviction on the ground of personal necessity only. So far issuance of notice under Section 106 of Transfer of Property Act is concerned, it may be mentioned that as far back as in the year 1979, the Hon'ble Supreme Court in the case of *V. Dhanapal Chettiar Vs. Yesodai Ammal AIR 1979 SC 1745* has held that 'for eviction of the tenant under the Bihar Building (Lease, Rent &



Eviction) Control Act, notice under Section 106 of the Transfer of Property Act is not required.’ In my opinion, the petitioner is adopting dilatory tactics to delay the disposal of the eviction suit filed on the ground of bona fide personal necessity and he is abusing the process of the Court.

Thus, this Civil Misc. application is dismissed with cost of Rs.5000/- to be paid by the petitioner to the plaintiff-respondent within one month from today. If the cost is not paid within the aforesaid period, the plaintiff shall realize the same through the process of the Court.

(Mungeshwar Sahoo, J)

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