

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15045 of 2014

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Smt. Malti Devi Gupta Wife of Ramesh Chandra Gupta Resident of Mohalla-
Mirzapur, Old Bus stand, P.S.- L.N.M.U. Campus, District- Darbhanga through
Manoj Kumar Jha, S/o Late Chandra Shekhar Jha, Resident of Mohalla-
Balbhadrapur, P.S.- Laheriasarai, District- Darbhanga. Petitioner/s

Versus

Ashutosh Kumar S/o Late Mahanth Madan Mohan Das Resident of Mohalla-
Bengali Tola, New Market, Benta Road, Ward No. 31, P.O.- Laheriasarai, P.S.-
Laheriasarai, District- Darbhanga. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-10-2016

Heard Mr. Uma Shankar Singh, learned counsel for the
petitioner.

Learned counsel for the petitioner after placing the
impugned order has submitted that as he has placed the impugned
order the appropriate order may be passed by this Court.

The legal sustainability of the impugned order by which
the appellate court below has turned down the prayer for amendment
in the written statement made by the defendant-appellant has been
questioned before this Court by filing this application under Article
227 of the Constitution of India.

The fact is not in dispute that the suit was filed for eviction



of the defendant from the suit premises on the ground of default in payment of rent and personal necessity. After the decree of the suit, the defendant-petitioner filed the appeal before the learned appellate court below. In the impugned order, the learned court below has recorded that the prayer for amendment has been made at the advanced stage of the argument of the appeal. The learned court below has further also rightly considered the facts and circumstances of the case before turning down the prayer for amendment. Though the law is well settled that even at the appellate stage the prayer for amendment can be entertained, but it is also well settled that such prayer for amendment is to be considered with circumspection and not liberally when made at the advanced stage of a proceeding. The fact cannot be ignored that the decree for eviction has been passed against the defendant-appellant and from perusal of paragraph-2 of the petition for amendment it transpires that the defendant has proposed to incorporate the fact regarding new construction by the plaintiff in the vacant land and starting a new business but in the pleading sought to be added by amendment, no date or period of new construction or letting out other premises has been mentioned. The learned court below has also found the amendment to be vague.

In the background of the aforementioned facts and findings, this Court, therefore, is not inclined to invoke its



jurisdiction under Article 227 of the Constitution of India to interdict the impugned order.

The application is, accordingly, dismissed.

Devendra/-

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(V. Nath, J)

