

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18907 of 2012

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1. Shambhu Prasad Son Of Late Ganga Sah Resident Of Mohalla -
Shamsher Ganj, Bara Bagan, P.S. - Darbhanga Town In The District Of
Darbhanga

.... Petitioner/s

Versus

1. Md. Zikrul Haque @ Md. Arman Son Of Md. Ainul Haque Resident Of
Mohalla - Lalbagh Town Chowk, Lalbagh (Classic Shoe, Ganga Complex)
Tower Chowk, P.S. - Darbhanga Town, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Roy Shivaji Nath, Senior Advocate
Mr. Gopal Prasad Roy, Advocate
For the Respondent/s : Mr. S. Arshad Alam, Advocate with
Mr. Fakhruddin Ali Ahmad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

05 04-01-2016 Petitioner/plaintiff is aggrieved by an order dated

21.07.2012 whereby and whereunder, the petition dated
08.02.2012 filed on his behalf has been rejected. Simultaneously,
the plea of counter claim has been accepted, so raised, by the
defendant/ respondent.

While challenging the order impugned, it has been
submitted on behalf of learned counsel for the petitioner that an
earlier occasion the defendant had taken a plea that during course
of tenancy, Rs. 2,25,000/- was paid as advance which,
subsequently been changed whereunder there happens to be plea
of borrowing a loan appertaining to Rs. 2,25,000/- by the plaintiff
and so, asked for relief by way of counter claim in that context.

Therefore, it has been submitted that present suit which happens to be for termination of tenancy should not be allowed to be converted under money suit, so raised, as well as pleaded subsequently by the defendant. Hence, in stead of rejecting the prayer of the petitioner/ plaintiff, the learned Lower Court should have allowed.

On the other hand, the learned counsel representing the defendant/ respondent has submitted that plea of counter claim is available to him and for that, he has been directed to pay proper Court fee inconsonance with the relief so sought for. Therefore, the plea of the defendant has rightly been accepted negating the plea raised on behalf of the plaintiff.

Admittedly, from the recital of the plaint coupled with the nomenclature of the suit, it is apparent that it happens to be an Eviction Suit, whereunder plaintiff has prayed for directing the defendant to evict on the termination of tenancy against which the defendant objected as well as has raised the plea regarding Rs. 2,25,000/- as an advance which, subsequently is found modified by way of counter claim suggesting the same to be procured by the plaintiff by way of loan whereupon relief of relating to recovery and having failed on that very score, indulgence of Court has been sought for. Therefore, certainly by way of entertainment of

aforesaid theme by way of counter claim, the nature of suit is found duly altered. In such kind of eventualities, as is apparent from plain reading of order 8 Rule 6 (c) of the C.P.C the plaintiff has put an option to pray for independent hearing which, the petitioner/plaintiff can very well avail of. In case, such kind of prayer is made before the learned lower Court by the petitioner/plaintiff, then in that event, the learned lower Court will consider the same and pass appropriate order in accordance with law.

Accordingly, instant petition is disposed in terms thereof.

(Aditya Kumar Trivedi, J)

siddharth/-

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