

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8938 of 2013

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Tarkeshwar Prasad, S/O Late Dhanraj Sah, R/O Mohalla- Begampur, P.S.- Ara Town, District- Bhojpur, Proprietor Of Shop No. 174/49, Chandhary Katra, Ara Town

.... Petitioner

Versus

1. Sri Baba Jaleshwar Nath Mandir, Tari Chowk, Ara Through Secretary, Plaintiff
No. 2 Ram Kumar Bam
2. Ram Kumar Bam S/O Late Sripati Sah R/O Chouk Tari, P.S.- Ara Town,
District- Bhojpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kr. Mishra, Advocate
Mr. Varun Kumar, Advocate
For the Respondents : Mr. Nityanand Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 18-05-2016

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

Gone through the impugned order. Though, the
plaint has not been annexed at the end of the petitioner but the
same has been made available. After going through the same, it is
evident that apart from identifying the petitioner to be defaulter,
the suit has also been filed on the ground of personal necessity
and so in terms of Section 11 of the Bihar Building (Lease, rent
and eviction) Control Act, 1982, the proceeding is to be guided in
accordance of Section 14 of the Act for which a summary trial is

permissible and further, for contesting the same permission has to be obtained from the Court concerned.

It is further evident that on account of some sort of lapses at the end of petitioner/ tenant, he has been debarred from filing written statement.

Now, the prayer having been made on behalf of petitioner is to allow him to cross-examine the witnesses to substantiate the same which has been rejected by the learned lower court, hence this petition.

While challenging the order impugned it has been submitted on behalf of petitioner that debarring from filing written statement is one event, while allowing the defendant/ tenant to participate during trial, and for that allowing him to cross-examine the witness is other event. Mere debarring to file W.S. will not take away his right to cross-examine the witness, which is the basic theme of natural justice as well as its depriving will not only cause hardship rather a substantial right is found axed in illegal manner. To substantiate such plea, Learned counsel for the petitioner has relied upon *AIR 1968 Patna 415*.

Learned counsel for the respondent opposed the prayer and submitted that having debarred from filing W.S., petitioner has nothing in their defense, and so, would not be entitled to cross-examine the witness.

As per para 18 of the plaint, it is evident that apart from identifying the petitioner to be defaulter, the plaintiff has also prayed for eviction on the ground of bonafide requirement as well as personal necessity which happens to be one of the ground enumerated under Section 11(i)(c) of the Bihar Building Control Act. Whenever an eviction suit is filed on that very ground then it has to be proceeded with in summary manner and for that special procedure has been prescribed under Section 14 of the B.B.C. Act whereunder an obligation has been inflicted upon the tenant to ask for a leave from the Court to contest the suit and further, the aforesaid petition has to be duly substantiated by cogent grounds. Because of the fact that no such prayer has been made asking for permission/ leave to contest the suit on account thereof, he will not be in a position to contest the suit. That being so, his presence before the learned lower court will be that of a silent spectator.



The principle of the case so referred on behalf of the petitioner reported in *AIR 1968 page 415* is not applicable in the facts and circumstances of the case because of the fact that in the aforesaid case, as is evident, the suit had proceeded for eviction after having notice u/s 106 of the Transfer of Property Act. While the suit was being proceeded with, a petition under Section 11(a) of the B.B.C. Act was filed to direct the defendant to deposit the rent which was allowed. But, as the defendant failed to deposit the amount so directed by the Court, on account thereof, his defense was struck off. The subsequent eventualities have been perceived on the aforesaid score. In the present circumstances, being a case of bonafide requirement as well as personal necessity prescribing special procedure so laid down under Section 14 of the B.B.C. Act wherein defendant has to take leave for contesting the suit which, in the facts and circumstances of the suit, could not be obtained and so, plea of defendant is found quite different and distinct from the case as referred by the learned counsel for the petitioner. That being so, the principle so enumerated thereunder is not at all found applicable in the facts and circumstances of this case.

Hence, the order impugned did not require
interference whereupon the instant petition is rejected.

(Aditya Kumar Trivedi, J.)

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