

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9501 of 2014

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Shailendra Upadhyay, Son of Late Akhilanand Upadhyaya Resident of Mohalla-K-616, Lohiya Nagar, Kankarbagh, P.S.-Kankarbagh, Town & District-Patna presently running shop in name and style M/S Ambasee Sales, Krishna Market, Holding No.167 (C) Exhibition Road, P.S.-Ghandhi Maidan, Town & District-Patna.

.... Petitioner.

Versus

Smt. Malti Gupta W/o Sri Kalash Prasad Gupta of Mohalla-Bakarganj Bajaja, P.S.-Pirbahore, District-Patna.

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Vikas Mohan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-05-2016

V.Nath, J.

Heard Mr. Birju Prasad, learned counsel appearing

for the petitioner. The learned counsel for the other side is also present.

Calling in question the legal sustainability of the impugned order by which the petition filed by the defendant for appointment of a pleader commissioner under Order 26 Rule 9 C.P.C. has been turned down, the present application under Article 227 of the Constitution of India has been filed.

The fact is not in dispute that the eviction suit has been filed praying for eviction of the defendant-petitioner from the suit premises on the ground of personal necessity as well as the expiry of lease. The defendant entered his appearance and thereafter has



contested the claim of the plaintiff. During the pendency of the suit the petition was filed on behalf of the petitioner praying for appointment of a pleader commissioner to find out as to whether another shop no.3 was under occupation or was lying vacant. The learned court below has rejected the said prayer observing that for the purpose of appointment of a pleader commissioner as prayed in the petition, the pleader commissioner cannot be appointed by the court as the said fact has to be established by the defendant on the basis of his own evidence.

Mr. Birju Prasad, learned counsel appearing for the petitioner has submitted that the occasion for filing the petition has arisen when a wrong statement was made by the plaintiff before the court that the said shop was under occupation. The learned counsel for the petitioner, however, could not point out any provision of law or precedent as to how the said another shop being vacant or occupied would affect the claim of the plaintiff for eviction as made in the suit on the ground of personal necessity and expiry of lease. Mr. Prasad, has further argued that the lease has still not expired and the suit has wrongly been filed on the said ground. The submission has also been advanced that the learned court below has wrongly rejected the petition without considering the facts and circumstances of the case.

After considering the submissions and the

materials on record, it is evident that the suit has been filed for eviction on the ground of personal necessity and expiry of lease. In such a suit the prayer of the defendant for appointment of a pleader commissioner to find out the status of another shop of the plaintiff cannot have been legally entertained. The learned court below has rightly come to the conclusion that even if the said shop is vacant or occupied the same will make not any difference in view of the Explanation-II of Section 11(c) of the Bihar Building (Lease, Rent & Eviction) Control Act. No error of jurisdiction or illegality committed by the learned court below while passing the impugned order could be pointed out during the course of submissions. This Court, therefore, is not inclined to interfere in the impugned order exercising jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed with direction to the court below to expeditiously proceed with the hearing and disposal of the suit in accordance with law and avoid granting unnecessary adjournments to the parties.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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