

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.333 of 2016**

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Ranchhor Prasad Chaudhary & Ors

.... Appellant/s

Versus

Surendra Mohan Gupta

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dronacharya

For the Respondent/s : Mr.

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

ORAL ORDER

2 18-08-2016

Heard learned counsel, Mr. Dronacharya,

appearing for the petitioners.

2. Perused the order dated 28.09.2015 passed by the learned Munsif-Ist, Patna in Eviction Suit No. 16 of 2009, whereby the application filed by the petitioners for appointment of Advocate Commissioner has been rejected.

3. It appears that this eviction suit has been filed by the plaintiff-respondent on the ground of personal necessity under Section 11(1)(c) of the ***Bihar Building (Lease Rent and Eviction) Control Act, 1982***. The evidence is going on. At this stage, the defendant has filed an application under Order 26 Rule 9 C.P.C. for appointment of Pleader Commissioner on the ground that the owners of the shop premises by the side of the tenanted shop of the petitioners and the landlord of the petitioners in collusion with each



other broke the lock of the suit shop and have removed some articles and, therefore, it is necessary to appoint a Pleader Commissioner for preparation of inventory. The court below, by the impugned order, considering the allegation and counter allegation by the parties, has held that, in fact, the tenant-petitioners are trying to delay the disposal of the suit, which is being tried under the special procedure provided under Section 14 of the ***Bihar Building (Lease Rent and Eviction) Control Act, 1982***.

4. As stated above, the only question to be decided in a suit for eviction, on the ground of personal necessity, is whether the plaintiff has been able to prove his case that he requires the suit premises *bona fide* for his occupation. As has been held by the trial court, it appears that the defendants, with a view to delay the disposal of said eviction suit, have filed this frivolous and vexatious application, which is not at all maintainable in this suit. I, also, therefore, confirm the finding recorded by the trial court that the petitioners, who are defendants, are trying to delay the disposal of the eviction suit.

5. The Hon'ble Supreme Court in the case of ***Ram Rameshwari Devi Vs. Nirmalal Devi (2011)8 SCC 249*** has



given guidelines for shortening the civil litigation *vide* paragraph 52(c). The Hon'ble Supreme Court held that 'imposition of actual, realistic or proper cost and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigant. Imposition of heavy costs would also control unnecessary adjournments by the parties.' At paragraph 54, the Hon'ble Supreme Court has held that 'while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees structures of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing , photocopy, court fee etc.' At paragraph 55, again it has been held 'the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.'

6. It may be mentioned here that this Court in the case of ***Gyan Infra Build Pvt. Ltd. & Anr. Vs. Smt. Mamta***



Sinha @ Rupam & Ors. in Civil Miscellaneous Case No. 189 of 2016 on 17.08.2016 has held that the decision of the Supreme Court, referred to above, is applicable when it is found that the defendant is adopting dilatory tactics for getting benefits and, therefore, this conduct of the petitioners should be dealt with strongly from the very beginning by the Court, so that it will be a lesson to the other in near future, the same dilatory tactics for the purpose of getting benefit and harassing the other party by abusing the process of the Court would not be adopted. Unless this message is given to the litigants, who are trying to misuse the process of Court, the disposal of civil cases cannot be shortened and wrong doer will always try to harass the other helpless litigants. The Court cannot be a silent spectator and dance at the instance of a litigant, who is misusing the process of Court. This case is one of such instance. Therefore, in my opinion, this civil miscellaneous is devoid of merit and fit to be dismissed.

7. Accordingly, this civil miscellaneous application is, hereby, dismissed with a cost of Rs. 5,000/- (Rupees Five Thousand) to be deposited by the petitioners in the court below within a period of one month from today. If the cost is not deposited within stipulated period, as aforesaid, the

respondent shall be at liberty to realize the same through the process of the Court.

8. This civil miscellaneous application is, accordingly, dismissed with the aforesaid direction.

(Mungeshwar Sahoo, J.)

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