

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.64 of 2016**

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Dr. (Miss) Shyam Dulari Bhatia

.... Appellant/s

Versus

Pradeep Kumar Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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

3 22-08-2016

Heard the learned counsel, Mr. J.S.Arora for the petitioner and the learned counsel, Mr. Amitesh Kumar for the respondent.

Perused the impugned order dated 26.02.2016 passed by Subordinate Judge IX, Patna in Eviction Suit No.21 of 2013.

It appears that this suit was filed by the plaintiff-petitioner for eviction of the tenant-respondent on the ground of personal necessity and for recovery of arrears of rent and also for compensation. Since the eviction suit is being tried as regular suit and since the plaintiff is in urgent need of the suit premises, she filed an application to withdraw part of the claim with liberty to file a fresh suit on the ground of personal necessity only so that the trial may be expedited under the special provision provided under Section 14 of the Bihar Building(Lease, Rent & Eviction) Control Act but the learned Court below by the impugned order has



rejected the application finding that the first relief i.e. eviction of the defendant is not separable from the second relief. The learned Court below did not consider that the suit is the plaintiff's suit and that she requires the suit premises urgently, as such, she has the right to institute a separate suit on that ground so that the suit may be tried under Section 14 of the B.B.C. Act. The Court below gravely erred in holding that the first relief is not separable from the second relief.

Order 23 Rule 1(3)(b) of the Code of Civil Procedure provides that "where the Court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

The learned Court below has not considered the application in the light of the provision as contained in Order 23 Rule 1(3)(b) C.P.C. and, therefore, the learned Court below has refused to exercise a jurisdiction vested in it by law and thereby it prejudiced the plaintiff-petitioner. On the contrary, if permission is granted to institute another suit, it will neither cause any prejudice

to the defendant-tenant nor it will occasion failure of justice.

In view of the above facts and circumstances of the case, this Civil Miscellaneous is allowed. The impugned order is set aside. The plaintiff-petitioner's application is allowed and the plaintiff is allowed to withdraw that part of the claim/relief made in the suit regarding eviction of the tenant on the ground of personal necessity and liberty is granted to her to file a fresh suit on that ground.

(Mungeshwar Sahoo, J)

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