

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.124 of 2016

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Saiyed Azam Kaifi

.... Appellant/s

Versus

Tahir Hussain Tegi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arvind Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 02-09-2016

Heard learned Senior Counsel Mr. Baxi S.R.P. Sinha

for the petitioner and Mr. Arun Kumar Sinha for the plaintiff-
respondent.

Perused the order dated 01.04.2016 passed by the
learned Munsif, Sherghati, Gaya in Eviction Suit No.02 of 2015.

It appears that the eviction suit has been filed by the
plaintiff-respondent on the ground of personal necessity. The
defendant-petitioner after summons appeared and filed affidavit
praying for leave to contest on 09.11.2015. Thereafter the court
below instead of hearing the parties on the said application
according to the provision provided under Sections 14 (5) and (6)
of the Bihar Building (Lease, Rent & Eviction) Control Act heard
the parties under Section 89 of the Code of Civil Procedure.
Subsequently the court below heard the parties on the application
for several dates but by the impugned order dated 01.04.2016

rejected the affidavit filed by the defendant-petitioner seeking leave to contest the suit on the ground that there is no sufficient reason as to why this application to obtain leave was pressed earlier. Now after two stages i.e. hearing under Section 89 CPC and suggested issues are filed by the parties, the application is being pressed.

It may be mentioned here that under Section 14(5) it is the duty of the Court to give the leave to the tenant to contest the suit, if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for eviction.

From perusal of the impugned order, it appears that the court below has not at all examined this aspect of the matter as to whether the affidavit filed by the tenant discloses any such fact to disentitle the landlord from obtaining an order of eviction but the court below has rejected the affidavit and application only on the ground that earlier it was not pressed and two stages have been passed without looking into the provision as contained in Section 14 wherein it is specifically provided that the suit for eviction on the ground of bonafide requirement shall be dealt with in accordance with the procedure specified in this Section. Therefore, the Court is required to deal the matter according to Section 14 of the B.B.C. Act. This procedure prescribed for disposal of eviction

suit on the ground of bonafide requirement is a special procedure and according to Section 14(7) the procedure is to be followed is the procedure of a Court of Small Causes. Therefore, no doubt there is no bar in framing the issues but at the same time it is not compulsory to frame issue according to special procedure. The court below did not consider all these aspects of the matter and on technical ground has rejected the application filed by the tenant-petitioner.

Thus, this civil miscellaneous application is allowed. The impugned order dated 01.04.2016 passed by Munsif, Sherghati, Gaya in Eviction Suit No.02 of 2015 is hereby set aside. The court below is directed to pass a fresh order according to law on the affidavit filed by the petitioner after hearing the parties.

(Mungeshwar Sahoo, J)

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