

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.700 of 2016

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Shailendra Upadhyay

.... Appellant/s

Versus

Smt. Malti Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Murari Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-09-2016 Heard the learned counsel for the petitioner and the learned
counsel for the respondent.

Perused the impugned order dated 15.06.2016 passed by Sub
Judge II, Patna in Eviction Suit No.83 of 2011.

The learned counsel for the petitioner submitted that the said
eviction suit was filed by the plaintiff respondent against the
petitioner for eviction of the petitioner on the ground of personal
necessity. Arguments were concluded after evidence of the parties.
At this stage, amendment application has been filed by the defendant
petitioner for amendment in the written statement alleging that after
the closure of the evidence of the parties, one shop premises
measuring 7 feet x 7 feet had been vacated by another tenant, i.e.,
shop No.1 B. The said shop was tenanted to another tenant, as such
the plaintiff has no bona fide personal necessity of the suit premises.
In such circumstances, the Court below should have taken into

consideration the subsequent event and should have allowed the application for amendment in written statement but the learned Court below has wrongly rejected the amendment application by the impugned order.

On the other hand, the learned counsel for the respondent submitted that in fact after eviction of the said shop, it was offered to the petitioner and when this petitioner refused, the plaintiff inducted another tenant in the shop premises.

In view of the aforesaid submissions of the parties, now it becomes admitted fact that the shop premises was vacated and it was tenanted to the third person by the plaintiff. The plaintiff is not disputing these facts. The dispute is that it was first offered to the petitioner or that it was not offered. Therefore, the question and the relevancy and its implication and effect shall be considered by the Court below in view of the provision as contained in the Bihar Building (Lease, Rent and Eviction) Control Act. When the fact is admitted, there is no need to amend the pleading.

Thus the Court below has rightly rejected the amendment application as the argument has already been concluded.

Thus, this Civil Misc. application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)