

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.441 of 2016**

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Smt. Rashmi

.... Appellant/s

Versus

Nripendra Kumar Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rabindra Kumar

For the Respondent/s : Mr.

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

2 26-08-2016

Heard learned counsel, Mr. Rabindra Kumar, appearing
for the petitioner.

2. Perused the order dated 10.06.2016 passed by the Sub-Judge-IV, Patna in Eviction Suit No. 37 of 2008, whereby and whereunder the learned court below rejected the application filed by the present petitioner under Order 26 Rule 9 C.P.C. on the ground that the evidence of the petitioner has already been closed and the eviction suit is contrary to the Special procedure under Section 14 of the B.B.C. Act and there is no scope of appointment of Pleader Commissioner on the ground raised by the present petitioner. The reasons, for which, appointment of Pleader Commissioner is prayed for, cannot be investigated in a special procedure under Section 14 of the B.B.C. Act.

3. Learned counsel for the petitioner submitted that in fact, evidence of the petitioner has not been closed and it is error on the face of the record that the court below has wrongly held that evidence has been closed.

4. Learned counsel further submitted that the special procedure is not followed in this case because the eviction suit has been filed on composite grounds.

5. So far submission of the learned counsel for the petitioner is concerned, from perusal of the impugned order, it appears that the learned court below clearly held that the suit is being tried under Section 14 of B.B.C. Act and that the petitioner's evidence was closed on 16.12.2015 and thereafter on the request of the petitioner, it was reopened and only 13 days time was granted but still the petitioner has not closed his evidence which shows the intention of the petitioner to drag the suit.

6. It may be mentioned here that the eviction suit has been filed by the plaintiff- landlord for eviction of the petitioner on the ground of personal necessity. For deciding the question as to whether the plaintiff requires the suit premises or not, appointment of Pleader Commissioner is not at all necessary. It further appears that the petitioner's evidence was closed in December, 2015 but still the petitioner is lingering the matter by filing frivolous application under Order 26 Rule 9 C.P.C. and petitioner has been able to drag the matter for last 8 months. In other words, the petitioner is purchasing the time by abusing the process of court by filing frivolous and vexatious application with intention to get benefit because she is in possession of the property.

7. 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.'

8. In view of the above settled proposition of law, the Court cannot be a silent spectator and dance at the instance of the litigant, who is misusing the process of the Court. This case appears to be one of such case, where the petitioner is trying to abuse the process of Court on technical ground, which is not available to the petitioner in a suit filed under the Special enactment i.e. B.B.C. Act.

9. In my opinion, therefore, the learned court below has rightly passed the impugned order. Thus, this civil miscellaneous application is dismissed with a cost of Rs. 5000/- to be deposited by the petitioner in the court below within one month from today, failing which, the amount of cost shall be realized through the process of the Court. If it is deposited, the same shall be withdrawn by the plaintiff-respondent. The court below is directed to proceed to decide the eviction suit, expeditiously, without giving any unnecessary adjournment on the basis of frivolous applications, which are being filed by the petitioner.

(Mungeshwar Sahoo, J)

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