

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.54 of 2016

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Ajay Kumar(Advocate),Son of Sri Bijay Nandan Prasad Singh, resident of 1st floor,
31/CA, People's Co-operative Colony, Kankarbagh, P.S.-Kankarbagh,
District/Town-Patna.

.... Petitioner

Versus

Smt. Anchala Kumari, Wife of Sri Komalam Prashant, daughter of Sri Ram Kishroe
Prasad, presently residing at Komal Niwas "Opposite Handloom House, Patliputra
Path, Rajednera Nagar, P.S.-Kadamkuan, Town and District-Patna through her duly
constituted and appointed attorney Sri Komalam Prashant, Son of Sri Amrendra
Komalam, residing at Komal Niwas, Patliputra Path, Opposite Handloom House,
Rajednra Nagar, P.S.-Kadamkuan, Towan and District-Patna.

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-03-2017

Heard Mr.S.S.Dwivedi, learned senior counsel

appearing on behalf of the petitioner.

The defendant in the suit for eviction on the
ground of personal necessity is the petitioner before this Court and has
challenged the impugned order by which the learned court below has
directed that the objection to maintainability of the suit as raised by
the petitioner under Order 7 Rule 11 C.P.C. shall be considered at the
time of hearing alongwith other issues.

The plaint of the suit has been annexed as
Annexure-1 to this revision application from which it transpires that
the plaintiff Smt.Anchala Kumari has filed the suit against the sole



defendant Sri Ajay Kumar seeking relief for his eviction from the suit premises. It also transpires from the plaint that the suit has been filed by the plaintiff Smt Anchala Kumari through her duly constituted and appointed attorney and further the verification of the plaint has been done by the plaintiff Smt. Anchala Kumari herself whereas the affidavit to the plaint has been done by the power of attorney holder of the plaintiff. Evidently, therefore, the plaintiff Smt Anchala Kumari has filed the suit for eviction through her power of attorney holder. The objection was raised by the defendant who filed the petition (Annexure-3) praying for rejection of the plaint on the ground that as the suit was not filed by the alleged owner of the tenanted premises on the ground of personal necessity himself/herself, the same was not maintainable in view of the provision of Section 11(1)(c) of the Bihar Building (Lease, Rent & Eviction) Control Act . The learned court below by the impugned order has come to the conclusion that the point of maintainability of the suit shall be considered alongwith other issues at the time of trial of the suit and accordingly has disposed of the petition filed by the defendant-petitioner under Order 7 Rule 11 C.P.C (Annexure-3) .

After considering the submissions on behalf of the petitioner and the facts and circumstances of the case that it is apparent that the suit has been filed by the plaintiff Smt. Anchala



Kumari being represented by her duly constituted and appointed attorney. The learned senior counsel for the petitioner has failed to persuade this Court that in these facts and circumstances, the suit would be deemed to have been filed not by the plaintiff Smt Anchala Kumari but by the power of attorney holder so far as it concerns the issue of personal necessity. From the averments made in the plaint, it does not appear that the personal necessity as claimed for the suit premises is that of the power of attorney holder and not of the plaintiff. In this view of the matter, this Court does not find substance in the prayer made by the petitioner for rejection of plaint under Order 7 Rule 11(1)(c) on the grounds stated therein. However, as the learned court below has kept the question of maintainability to be considered at the time of trial of the suit, this Court is not inclined to interfere in the impugned order and further also refrains from expressing any opinion on the objection as raised by the petitioner.

The revision application is accordingly dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2017
Transmission Date	

