

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.695 of 2016**

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Lalit Kumar Jain

.... Appellant/s

Versus

Raj Kumar Jain

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar

For the Respondent/s : Mr.

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

4 27-01-2017 **1.** Heard the learned counsel, Mr. Rai Shivaji Nath, for the petitioner and the learned counsel, Mr. Arvind Kumar Singh, for the respondent.

2. Perused the impugned order dated 09.05.2016 passed by learned Munsif Ist, Gaya in Eviction Suit No.17 of 2013 whereby the learned Munsif rejected the application filed by the plaintiff petitioner for adopting the special procedure provided under Section 14 of the Bihar Building (Lease Rent & Eviction Control Act, 1982 (hereinafter referred to as 'BBC Act') for deciding the eviction suit.

3. The learned senior counsel for the petitioner submitted that the suit has been filed only on the ground of Section 11(1) (c) of the BBC Act. Therefore, in view of the provision provided under Section 14 of the BBC Act, the suit has to be decided under



the same procedure but the Court below wrongly refused to adopt the special provision on the ground that the defendant has denied the relationship of landlord and tenant.

4. On the other hand, the learned counsel appearing on behalf of the tenant-respondent submitted that in fact there is no relationship of landlord and tenant between the parties, and therefore, the learned Court below has rightly refused to adopt the special procedure for deciding the suit.

5. Complaint of the eviction suit is Annexure '1' to the Civil Misc. application. From perusal of the complaint, it appears that the suit has been filed specifically on the ground of Section 11(1)(c) of the BBC Act. Except this ground of personal necessity, no other ground has been raised by the plaintiff-petitioner.

6. Section 14 of the BBC Act provides that 'every suit by a landlord for the recovery of possession of any premises on the ground specified in Clause (c) or (e) of sub Section (1) of Section 11 shall be dealt with in accordance with the procedure prescribed in this Section.' Admittedly, in this case, therefore, in view of this provision, i.e., special procedure is to be adopted, the application of Section 14 is not dependent on the question of defence. Whether the defendant is denying the title of the plaintiff or is



denying the relationship of landlord or tenant between the parties is not the decisive factor for adopting the special procedure provided under the BBC Act.

7. From perusal of the impugned order, it appears that the petitioner also cited decisions before the Court below but without considering the settled principle of law laid down by this Court has wrongly refused to adopt the special procedure as contained in Section 14 of the BBC Act. Therefore, in my opinion, the Court below has refused to exercise a jurisdiction vested in it by law in the manner not permitted by law. Thus, this Civil Misc. application is allowed. The impugned order is set aside. The application filed by the plaintiff petitioner is allowed. The Court below is directed to proceed and decide this eviction suit on the ground of personal necessity by applying the special procedure provided under Section 14 of the BBC Act expeditiously.

(Mungeshwar Sahoo, J)

Sanjeev/-

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