

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 244 of 2017

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Dip Narayan Singh, aged about 65 years, S/o Late Sajiwan Singh, resident of
Village- Manoharpur Kachchuara, P.S.- Gopalpur, District- Patna.

.... Plaintiff/Petitioner

Versus

Nagendra Pandit, aged about 45 years, Son of not known, proprietor of Micromax
Servicing, opposite SBI Bank, near Janta Motor & More Motor Parts, Main Road
Kankarbagh, P.O.- Lohianagar, P.S.- Kankarbagh, District & Town- Patna,
Pincode-

.... Defendant/Opposite Party

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Appearance :

For the Petitioner : Mr. Dilip Kumar, Adv.

For the Opposite Party : Dr. Kamal Deo Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 18-10-2017

Despite valid service of notice upon the sole
respondent/opposite party and his appearance through
Vakalatnama, there is no representation on his behalf. Learned
counsel, who had filed *Vakalatnama* on his behalf, submits that the
said respondent/opposite party has taken back the brief and he does
not have any further instructions.

2. The petitioner, in the present application filed under



Article 227 of the Constitution of India, is aggrieved by an order, dated 07.12.2016, passed by learned Sub-Judge-I, Patna, in Eviction Suit No. 58 of 2015, whereby, he has rejected an application filed by the plaintiff-petitioner under Section 15 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 (*in short 'the BBC Act'*).

3. Learned counsel, appearing on behalf of the petitioner, while assailing the impugned order, dated 07.12.2016, has relied on a decision of this Court, dated 23.11.2016, passed in Civil Miscellaneous Jurisdiction No. 796 of 2016 (***Anchala Kumari Vs. Sri Ajay Kumar***), to contend that the court below ought not to have accepted the plea of the respondent/defendant that he was paying the rent to the petitioner's daughter in respect of the tenanted house and, therefore, the rent was duly being released by the plaintiff.

4. Learned counsel for the petitioner has submitted that the defendant's plea to the effect that he was inducted as tenant by the petitioner's daughter, could not have been a ground for rejection of the petitioner's application under Section 15 of the BBC Act.

5. Learned counsel for the petitioner appears to be right in his submission. The court below ought to have taken into



account the law laid down by this Court in case of ***Dinesh Kumar Purbey Vs. Mahesh Kumar Poddar***, reported in ***1991 (1) PLJR 650***.

6. The impugned order, dated 07.12.2016, is, accordingly, set-aside. The matter is remanded back to the court below for passing an order afresh in terms of the exposition of law in case of ***Anchala Kumari (supra)*** and in case of ***Dinesh Kumar Purbey (supra)***. Such order must be passed within a period of two (2) months from the date of receipt/production of a copy of this order.

7. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

