

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1085 of 2017

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1. Sri Vishal Keshari, Son of Late Bhola Nath Keshari Raj Ratan Jewellers, Shop No. 2, Hira Place, Dak Bunglow Road, P.S. Kotwali, P.O. G.P.O., Town and District Patna.

2. Sri Rajesh Kunal Keshari, Son of Late Bhola Nath Keshari, Raj Ratan Jewellers, D-13A, Lajpat Nagar-II Alankar Cinema Road, New Delhi-110024.

.... Appellant/s

Versus

1. Sri Bal Manohar Jalan,

2. Sri Giri Raj Manohar Jalan Both Sons of Late Hira Lal Jalan

3. Sri Nikhil Jalan, Son of Late Shyam Manohar Jalan All Resident of Kuila House, Police Station Chowk, Patna City, P.O. Jhauganj, District Patna-800008.

4. Sri Sanjay Keshari Son of Late Bhola Nath Keshari, Resident of Flat No. 502, B-Block Aditya Tower, White House Apartment Behind Land Mortgage Bank, Budh Marg, P.S. Kotwali, P.O. G.P.O., Town and District Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Vedasen
Mr. Subhash Chandra Bose

For the Respondent/s : Mr. Rajendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 30-08-2017

By the impugned order dated 31.05.2017, passed by the Sub-Judge Vth, Patna in Eviction Suit No. 72 of 2009, an application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to “Code”), seeking amendment in the plaint, has been rejected.

Petitioner nos. 1 and 2 are defendant nos. 1 and 2 before the court below. This is not in dispute that the evidence is closed and the matter, when the order was passed by the court below on



31.05.2017, was pending for final argument. As a matter of fact, when the petition dated 11.04.2017, seeking amendment under Order 6 Rule 17, was filed, evidence had already been closed.

Relationship of the plaintiffs and the defendants as landlord and tenant is not in dispute. The eviction is being sought on the ground of the defendants being defaulters.

Learned counsel for the petitioners has submitted that it has been the plea on behalf of the defendants before the court below that they had been paying rent regularly but the plaintiffs/landlord had not been receiving the rent. According to him, very recently, the defendants procured documents showing that father of the defendants late Bhola Nath Keshari had paid a sum of Rs. 15,000/- to the original landlord, late S.N. Jalan as security deposit when he had entered as tenant in the year 1979. According to him, considering the fact that the said amount was paid as security deposit, the defendants cannot be held to be defaulters and to establish this fact, the defendants wanted to amend the written statement by filing petition under Order 6 Rule 17. Learned counsel for the petitioners has also argued that since the petitioners got hold of the said documents very recently, he immediately applied for amendment in the written statement, which has been wrongly rejected by the impugned order. He has relied on a decision of this Court in case of *Ashok Kumar*



Singh Vs. Rajendra Singh reported in 2017 (1) PLJR 711 in order to contend court's approach towards amendment in written statement should be liberal.

Learned counsel appearing on behalf of the respondents, on the other hand, has submitted that for the sole purpose of delaying the disposal of the eviction suit, the petitioners filed the application for amendment belatedly. He has also submitted that the amendment, which is being sought on behalf of the defendants, is unnecessary, since it has nothing to do with the main issue, viz. 'whether the defendants are defaulters or not, i.e. they have been paying monthly rent regularly or not as per the lease agreement'. He has also submitted that while allowing the amendment, the legislative intent as incorporated under Order 6 Rule 17 of the Code cannot be altogether forgotten. An amendment in the pleadings, should be permitted to be maintained, only in exceptional circumstances when the party seeking amendment is in position to satisfy the court that despite due diligence, certain facts or material could not be incorporated in pleadings he contends.

I have considered rival submissions made on behalf of the parties. Though, on perusal of the impugned order, I am of the view that the court below ought to have assigned reasons while rejecting the application, under Order 6 Rule 17 of the Code of Civil



Procedure, as untenable, I am not inclined to interfere with the same, since in my view, the amendment which is being sought to be made in the written statement is inconsequential for determination of the issues framed in the eviction suit. The decision of this Court, on which learned counsel for the petitioners has placed reliance, cannot be applied in the present case, since the issues and facts, involved, in the said case were substantially different.

This application is, accordingly, dismissed, having no merit.

(Chakradhari Sharan Singh, J.)

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AFR/NAFR	
CAV DATE	N.A.
Uploading Date	05.10.2017
Transmission Date	N.A.

