

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.570 of 2017

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Madan Singh, Son of Late Kapildeo Singh, resident of Village + Post Office + Police Station- Baniapur, District- Saran at Chapra.

.... Petitioner

Versus

Om Narayan Prasad Rastogi, Son of Late Rama Shankar Prasad Rastogi, resident of Village + Post Office + Police Station- Baniapur, District Saran at Chapra.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ajay kr Singh No.1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-04-2017

Heard learned counsel for the petitioner and learned counsel for the respondent.

Questioning the legal sustainability of the impugned order by which the learned court below has turned down the prayer of the plaintiff-petitioner for grant of decree under Oder 12 Rule 6 C.P.C on the basis of admission, the present application under Article 227 of the Constitution of India has been filed.

The matrix of facts discloses that the suit for eviction has been filed by the plaintiff-petitioner against the defendant-respondent on the ground of personal necessity. During the pendency of the suit, an affidavit has been filed on behalf of the defendant-respondent on 16.06.2015 praying for accepting the said



affidavit and granting permission to contest the suit. It is the stand of the learned counsel for the plaintiff-petitioner that no order has been passed by the learned court below on the said affidavit and prayer as made by the defendant-respondent up-till-now. The learned counsel for the petitioner, however, has submitted that as the facts of the relationship of landlord and tenant and existence of the personal necessity of the plaintiff for eviction of the defendant on the said ground have not been denied, the plaintiff is entitled to a decree on the basis of admission.

The provision as contained in Section 14(4) of the Bihar Building (Lease, Rent & Eviction) Control Act clearly stipulates that after the rejection of the prayer of the tenant to contest the suit, the plaintiff shall be entitled to a decree for eviction, as prayed straightway. As no order has up-till-now been passed which fact has been accepted by the learned counsel for both parties, this Court directs that the learned court below to dispose of the pending affidavit and prayer as contained in the said affidavit dated 16.06.2005 (Annexure-3) to this application. This Court, at present, is not inclined to interfere in the impugned order. However, the petitioner shall have the liberty to approach this Court, if such occasion arises, after the disposal of the affidavit and prayer dated



16.06.2015(Annexure-3).

This application is accordingly, dismissed with
direction.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.06.2017
Transmission Date	

