

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.5 of 2016**

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Md. Salamat

.... Appellant/s

Versus

Md. Jalil

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nawal Kishor Prasad

For the Respondent/s : Mr.

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

4 15-02-2017 **1.** Heard the learned counsel for the petitioner and the
learned counsel for the respondent.

2. It appears that the present plaintiff-petitioner filed
Eviction Suit No.6 of 2010 for eviction of the respondent herein
on the ground of Section 11(1)(c) of the Bihar Building (Lease,
Rent & Eviction) Control Act, 1982 (hereinafter the same shall be
referred to as 'BBC Act'). The defendant respondent appeared in
the suit and without taking leave as required under Section 14 sub
Section 4 of the BBC Act fled the written statement denying the
relationship of landlord and tenant between the parties. The Court
below by the impugned order has accepted the written statement
overruling the objection raised by the plaintiff.

3. The learned counsel for the petitioner submitted that the
provision as contained under Section 14 sub Section 4 of the BBC



Act is mandatory and unless the defendant-respondent obtained leave under the said provision, he cannot be allowed to contest the eviction suit.

4. On the other hand, the learned counsel for the respondent submitted that in fact the respondent has purchased the property in the name of the plaintiff-petitioner as such there is no relationship of landlord and tenant between the parties.

5. From perusal of the impugned order, it appears that the Court below accepted the written statement on presuming that affidavit to contest the suit must have been filed without enquiring as to whether it was filed or not. Before this Court, the defendant respondent admitted the fact that leave to contest affidavit was never filed.

6. The Hon'ble Supreme Court in the case of **Rita Lal v. Raj Kumar Singh, 2002(4) PLJR 118(SC)** has held that "raising a triable issue, as Sub-section (5) of Section 14 suggests is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction. If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue then the Court is justified in refusing the leave to defend. A defence, which is practically moonshine, sham or



illusory cannot be held to be raising a triable issue. Else the whole purpose behind enacting a provision for granting leave to defend, and not permitting a contest unless leave was granted, would stand defeated.”

7. From perusal of the aforesaid decision of the Supreme Court, it appears that in that case on the basis of all the facts disclosed in the affidavit, the Court below refused to grant leave but the High Court set aside the order of trial Court and granted leave in revisional jurisdiction. The Supreme Court held that the High Court in exercise of revision jurisdiction ought not to have interfered with the well considered and reasoned order of the trial Court.

8. This Court also in the case of Md. *Fahiuddin Vs. Bodhan Prasad Singh 1992 (2) PLJR 352* has taken the same view.

9. It will not be out of place to mention here that the provision in Delhi Rent Control Act is the same and considering the same provision of Delhi Rent Control Act, the Supreme Court in *AIR 2002 SC 141* has held that the case set up by the defendant to the effect that there is no relationship of landlord and tenant and that the defendant is residing as owner towards part performance



of the contract between him and the landlord is invalid, and therefore, the learned Addl. Rent Controller and the High Court has rightly refused to grant to contest the suit.’ In the present case, there is no affidavit even filed by the defendant-respondent praying for leave to contest the suit and in the written statement, the ground taken by the defendant-respondent is that in fact, he is the owner of the suit property and the plaintiff is his Benamidar who is his own brother. The learned Court below in the impugned order not at all considered all the settled provision of law laid down by this Court as well as the Supreme Court.

10. A Division Bench of this Court in the case of *Santosh Singh Vs. Ram Chandra Sah 1992 (2) PLJR 90* has held that the provision as contained under Section 14 sub-Section 4 of the BBC Act is mandatory.

11. Considering the above referred to issues, this Court in Civil Misc. Case No.244 of 2016 by order dated 16.09.2016 has held that ‘the trial Court without considering the settled principal of law passed the order granting leave to the tenant to contest in the manner not permitted by law.’ In the present case what to speak of granting leave or not in fact, the affidavit itself has not



been filed.

12. Therefore, in my opinion, the learned Court below had no jurisdiction to accept the written statement, particularly when the defendant-respondent has not obtained leave as required under the provision of Section 14(4) of the BBC Act which is mandatory provision. Thus, the impugned order is liable to be set aside.

13. In the result, this Civil Misc. application is allowed. The impugned order is set aside. The Court below is directed to proceed according to law.

(Mungeshwar Sahoo, J)

Sanjeev/-

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