

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.852 of 2016

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1. Uma Shankar Chaudhary S/o Late Vishwanath Chaudhary Resident of Sehanipatti, P.O.- Buxar, P.S.- Buxar (T), District- Buxar (Bihar).

.... Petitioner/s

Versus

1. Wakil Ansari S/o Akbar Ali
2. Mukhtar Ansari S/o Akbar Ali
3. Islam Ansari S/o Akbar Ali Resident of Mohalla- Nalband Toli, P.O.- Buxar, P.S.- Buxar (T), District- Buxar (Bihar).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 09-01-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 13.07.2016 passed in Title Appeal No.19 of 2016 by which the learned District Judge, Buxar dismissed the appeal holding as not maintainable.

The petitioner is defendant in Eviction Suit No.1 of 2014. The respondents filed the eviction suit against the petitioner-defendant for eviction of the defendant from the suit premises on the ground of personal necessity as well as on the ground of default in payment of rent. The eviction suit was decreed on 20.04.2016. The learned Munsif held that the plaintiff requires the suit premises for their personal necessity and the defendant has



also defaulted in payment of rent. The petitioner-tenant filed Title Eviction Appeal No.19 of 2016 but the learned District Judge vide order dated 13.07.2016 dismissed the appeal as not maintainable on the objection of the respondent-plaintiff that the suit was tried according to special procedure of Section 14 of the Bihar Building (Lease, Rent & Eviction) Control Act(hereinafter referred to B.B.C. Act) and in view of sub-section 8 of Section 14 of the B.B.C. Act, the appeal is not maintainable.

The learned counsel for the petitioner submits that eviction suit was filed on the ground of personal necessity and also on the ground of default in payment of rent. The defendant put forth his defence that he paid Rs.1,40,000/- to the plaintiff as security money and the same amount has not yet been adjusted. The learned Munsif decreed the suit finding that the plaintiff required the suit premises for their personal necessity and the defendants also defaulted in payment of rent. It is submitted that suit was not tried according to the special procedure as mentioned in Section 14 of the B.B.C. Act but the learned District Judge has committed illegality. Even in the case of Subodh Kumar @ Subodh Kumar Gupta v. Sitaram Prasad & Ors., reported in BBCJ 1999 page 486, this court has held that when the suit is filed under Section 11(i)(c) and (e) of the B.B.C. Act, there shall be no appeal



under Section 14(8) of the B.B.C. Act but in the present case, the suit was not tried according to the special procedure as provided under Section 14 of the B.B.C. Act, therefore, the order of the learned District Judge is illegal and not sustainable.

On the contrary, the learned counsel for the respondents submits that the suit was filed for eviction on the ground of personal necessity.

The question arises for consideration as to whether the suit was filed under Section 11(i) (c) and (e) of the B.B.C. Act and the order of the District Judge suffers from any illegality?

From perusal of the judgment passed in Eviction Suit No.1 of 2014, it appears that the learned Munsif has framed issue Nos.5, 6 and 7 with regard to relationship of landlord and tenant between the plaintiff and defendant. Issue no.6 is whether the plaintiff got personal necessity of the suit premises and issue no.7 is whether defendant has defaulted in payment of rent. The suit was not filed only under Section 11(i)(c) and (e) of the B.B.C. Act, therefore, the suit was not tried by the Munsif according to the special procedure as provided under Section 14 of the B.B.C. Act. The defendants never sought any permission to contest the suit as required under Section 14(4) of the B.B.C. Act. If the suit is tried according to general procedure and not under Section 14 of



the B.B.C. Act, there shall be appeal against the judgment and decree. The appeal is barred under Section 14(8) of the B.B.C. Act when the suit is brought under Section 11(i)(c) and (e) of the B.B.C. Act and suit is tried in accordance with special procedure as provided under Section 14 of the B.B.C. Act.

Therefore, I find that the learned District Judge has committed illegality in holding that the appeal is not maintainable and the order dated 13.07.2016 passed by the learned District Judge in Title Eviction Appeal No.19 of 2016 is not sustainable. Accordingly, this civil miscellaneous petition is allowed. The order dated 13.07.2016 passed in Title Eviction Appeal No.19 of 2016 is set aside.

(Prabhat Kumar Jha, J)

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