

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1493 of 2017

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1. Dharamnath Prasad, S/o late Jagarnath Prasad, R/o Moh-Salempur (Near Bank of India), P.S.-Chapra town, P.O.-Chapra, District-Saran.

.... Petitioner/s

Versus

1. Brajesh Kumar Singh, S/o Satyadeo Singh, Proprietor of Maa Durga Enterprises, R/o Village-Chotka Baijutola, P.O.-Sitab Diyara, P.S.-Rivil Ganj, District-Saran, Presently R/o Mohalla-Salempur, (near Bank of India), P.S.-Chapra town, P.O.-Chapra, District-Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

3 23-07-2018 Heard learned counsel for the petitioner. Nobody appears on behalf of the respondents in spite of service of notice.

Petitioner is the plaintiff in the court below. The petitioner filed civil miscellaneous petition against the order dated 26.04.2017 by which the learned Munsif I, Chapra allowed leave petition of the defendant to contest the suit.

The learned counsel for the petitioner submits that in view of the provisions as contained in Section 14(4) and 14(7) of the B.B.C. Act, the defendant, from the date of his appearance or on the date he received the summons, should file petition within ten days for grant of leave to contest the suit. Sub-section (7) of Section 14 prescribes that the procedure of eviction under Section



14 of the Act shall be the same as of small causes court. Article 118 of the Limitation Act prescribed the period for ten days to file petition for grant of leave to contest the case. Admittedly, the defendant appeared in the suit on 16.09.2016 and prayed for time to file written statement. The defendant filed petition on 27.02.2017 for leave to contest the suit but the petition for grant of leave did not accompany with the petition for condoning the delay. Once the period for filing grant of leave to contest the suit is expired, the defendant shall be precluded from contesting the suit and the suit has to be decided according to the procedure as laid down under sub-section (6) of Section 14 on the admission of averment made in the plaint. It is submitted that the learned Munsif has committed jurisdictional error by allowing the defendant and granting leave to contest the suit on payment of cost of Rs.1,000/- without condoning the delay. The learned counsel for the petitioner further placed his reliance in support of his contention on the judgment of Dhiraj Singh Ruhela @ Dhiraj Singh v. Brij Kishore Kumar Jain reported in 2010(1) PLJR 33.

From perusal of the order impugned, passed by the learned Munsif I, Chapra, it is crystal clear that defendant appeared on 16.09.2016 and prayed for time to file written statement and the petition for grant of leave to contest the suit but



the defendant filed petition for grant of leave to contest the suit only on 27.02.2017. The defendant did not file any petition for condoning the delay in filing petition for grant of leave to contest the suit. In view of the provisions as contained in sub-section (7) of Section 14 of the B.B.C. Act, it is mandated that the provisions of small causes court shall be applicable for deciding the suit under Section 14 of the B.B.C. Act. Article 118 of the Limitation Act prescribed the period for filing petition for grant of leave to contest the case in eviction suit. The Court has of course granted leave to the defendant to contest the suit but without condoning the delay as no petition for condoning the limitation in filing petition for grant of leave to contest the suit was filed.

Therefore, I find that learned Munsif has committed jurisdictional error in allowing the petition of the defendant and grant him leave to contest the suit without condoning the delay. Accordingly, the order dated 26.04.2017 is set aside and the matter is remanded to the Munsif to pass order afresh in accordance with law.

Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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