

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.311 of 2016

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1. Nirmala Pathak wife of Late Pramod Pathak
2. Aditya Raj Pathak s/o Late Pramod Pathak Both residents of village -
Karimabad @ Magardahi ward no 13 near Mihir Ultrasound PS -
Samastipur Town, District - Samastipur.

.... Appellant/s

Versus

1. Smt. Prabha Triyar w/o late Brajbhushan Triyar
2. Binod Kumar Triyar s/o late Brajbhushan Triyar Both residents of village
- Karimabad ward no - 13 (new)/14(old) PS Samastipur town, District
Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar No-1

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

7 10-01-2018 Heard both sides.

The petitioner has filed this Civil Misc. petition for setting aside the order dated 10.03.2016 passed in Eviction Suit No.3 of 2013. The petitioners are the defendants in the Eviction Suit No.3 of 2013.

The petitioner appeared on 29.04.2014 but petitioners were debarred from filing written statement. The petitioner filed petition on 28.04.2015 to grant him leave to contest the suit and accept his written statement. The learned Court below rejected the petition of the plaintiff-petitioners vide order dated 10.03.2016. The learned counsel for the petitioners submits that the eviction suit was filed on the ground of personal necessity as well as on the ground of default. Therefore, the suit shall not be tried according to the special procedure



as provided under Section 14 of the Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter referred to as 'BBC Act'). Mr. Jitendra Kishore Verma, the learned counsel for the respondents submits that since the eviction suit is filed on the ground of default in payment of rent also, therefore, the suit shall not be tried according to the provisions as contained in Section 14 of the Act.

Having considered the submissions of both the sides, I find that once the suit is filed for default in payment of rent and the ground of personal necessity, the suit shall not be tried in accordance with the special provisions as provided under Section 14 of the BBC Act. Therefore, there is no question of grant of leave to contest the suit arises.

Accordingly, I find that the learned Court below committed jurisdictional error in rejecting the petition of the petitioner. Accordingly, this Civil Misc. petition is allowed and the order dated 10.03.2016 is set aside. The petitioner is allowed to contest the suit. The learned Court below is directed to dispose of the suit preferably within six months from the date of receipt / production of a copy of this order.

(Prabhat Kumar Jha, J)

Sanjeev/-

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