

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 397 of 2018**

- Moh. Mustaq S/o Moh. Rafiq, Aged About 50 Years R/o Near Petrol Pump, Dharamjaigarh, Tehsil Dharamjaigarh, District Raigarh, Chhattisgarh.Defendant.

---- **Petitioner****Versus**

- Vijay Kumar Agrawal S/o Late Ramjivan Lal Agrawal, Aged About 50 Years Occupation Business, R/o Dharamjaigarh, Tehsil Dharamjaigarh, District-Raigarh, Chhattisgarh.Plaintiff.

---- **Respondent**

For Petitioner : Shri Govind Dewangan, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/05/2018**

1. Heard.
2. The present petition is against the order dated 20.04.2018 whereby an application preferred by the petitioner under Order 1 Rule 3 (B) and Order 6 Rule 4-A read with Section 151 CPC has been dismissed.
3. Learned counsel for the petitioner submits that in a suit for eviction, objection has been made that the suit property has been leased out by the State Government, as such the State Government is a necessary party, therefore, an application was moved under Order 1 Rule 3 (B) CPC, which mandates under the State amendment of Chhattisgarh no suit will maintainable further unless and until the State Government is impleaded in the case of like nature wherein agricultural lands are involved.

4. Perusal of the plaint would show that eviction has been sought for over a superstructure and the petitioner/defendant has been shown to be a tenant. Therefore, it prima facie appears it is an out an out eviction suit. In such suit the suit property is shown as superstructure. If the property therefore is not agricultural land, it being a superstructure the provisions of Order 1 Rule 3 (B) CPC would not be applicable. Even otherwise, the plaintiff is a *Dominus litis* and after going through the plaint, it shows that eviction has been sought for by the plaintiff wherein defendant/petitioner is shown as a tenant. In facts of this case obviously the State Government would not be a necessary party. The defendant if during the course of his evidence are able to establish that the ownership of suit property do not belong to the petitioner, it will have a different bearing on the merits. After perusal of record, the order dated 20.04.2018 cannot be stated to be illegal or without any jurisdiction or can be said that Court below has failed to exercise its jurisdiction vested in it under the law.
5. The petition has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu