

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.82 of 2019**

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Bhola Sah, Son of Late Santlal Sah, Resident of Village- Sherpur chhatwara,
P.S.- Mahua, District- Vaishali.

... .. Appellant/s

Versus

Dharmendra Kumar, Son of Late Bhagwat Singh, Resident of Village- Mahua
Singhrai, P.S. Mahua, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Surendra Kishore Thakur
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 15-01-2019

By way of instant application preferred under Article 227 of the Constitution of India, the petitioner seeks quashing of the order dated 11.09.2018 passed by the learned Munisif-II, Vaishali at Hajipur in Eviction Suit No. 06/2016 whereby he has rejected the application filed by defendant-petitioner dated 05.07.2018 under Order-39 Rule-7 and 151 of the Code of Civil Procedure for appointment of Advocate Commissioner for physical verification.

2. Learned counsel appearing for the petitioner submitted that the order impugned is bad in law as the court below failed to appreciate that the appointment of Advocate Commissioner in the present case is necessary for just adjudication of the case. He contended that the specific case of



the plaintiff in the court below is that the petitioner is defaulter and has got bona fide requirement of the shop and when there was denial by the petitioner that many other shops in the premises are already vacant and even though after filing of the suit by the plaintiff, many other shops have been vacated by different tenants and the claim of the plaintiff of bona fide requirement is not necessary, it was incumbent upon the court to have allowed the prayer of the petitioner and appointed Advocate Commissioner for physical verification.

3. I have learned counsel for the petitioner and carefully perused the record.

4. It is not disputed that the petitioner is a tenant in a shop of the plaintiff for which the eviction suit has been brought by the plaintiff on the plea that the petitioner is a defaulter and has got bona fide requirement of the shop. The case of the petitioner is that the plaintiff – respondent has neither any personal necessity nor the defendant is defaulter in making payment of monthly rent rather many shops in the premises of the plaintiff are already vacant, which can fulfill the personal requirement of the plaintiff. His further case is that the plaintiff forcibly broke open the shutter of the shop of the defendant- respondent resulting in closure of his business,



which was required to be inspected by the Advocate Commissioner.

5. If that is the defence of the defendant-petitioner in the court below, nothing stops him from leading evidence in support of his defence.

6. The court will not come to the assistance of the petitioner and collect evidence on his behalf by way of appointing Pleader Commissioner for physical verification of the shop or the premises in which the shop is situated.

7. In that view of the matter, if the court below has rejected the prayer of the petitioner vide impugned order dated 11.09.2018, I see no illegality in the same.

8. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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