

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.314 of 2019**

Shishir Kumar S/o Late Bimal Chandra @ Bimal Chandra Agrawal residence
of Govardhan Road, Darbhanga -846004

... .. Plaintiff-petitioner

Versus

Sri Sandeep Kumar Gupta S/o Late Sheetal Prasad, proprietor of Student
Point, Mohalla Kalyani Bhawan, govardhan Road, P.O.-Lalbagh, Tower
Chowk, Darbhanga-846004, at present resident of Mohalla-Mashraf Bazar,
P.O.-Lalbagh, P.S. Town, District-Darbhanga-846004

... .. Defendant-Respondent

Appearance :

For the Appellant/s : Mr.Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr.

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

Date : 09-05-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 22.12.2018 passed by the learned Munsif-I, Darbhanga in Eviction Suit No. 15 of 2017 by which he has allowed the petition dated 12.06.2018 filed by the respondent under Section 14(4) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short 'Act').

3. The short facts of the case are that the petitioner filed Eviction Suit No. 15 of 2017 against the respondent with a prayer to grant decree of eviction of the respondent from the suit premises on the ground of expiry of lease deed on 30.11.2014. After summons, the respondent did not appear in the suit. Later, he filed an application under



Section 14(4) of the Act with a prayer to permit him to contest the suit. The said prayer was allowed by the learned Munsif-I, Darbhanga vide impugned order dated 22.12.2018.

4. Being aggrieved by the aforesaid order dated 22.12.2018, the petitioner has filed the instant application under Article 227 of the Constitution of India.

5. Learned counsel appearing for the petitioner submitted that while allowing the application filed by the respondent, the learned Munsif has failed to appreciate that except the wild statement that summon was not served upon him, there is nothing to support such statement as made in the petition dated 12.06.2018. He erred in law while allowing the aforesaid petition dated 12.06.2018. He committed mistake in holding that the respondent has stated about separate agreement between him and the father of the plaintiff contrary to the fact that as per the respondent there was an oral agreement. He contended that the learned Munsif also failed to appreciate the scope and ambit of Section 14(4) of the Act. According to him, the impugned order granting leave to contest is without any reason and the affidavit filed by the respondent does not disclose any such fact on the basis of which the court could have granted leave.



6. I have heard learned counsel for the petitioner and perused the materials available on record.

7. The relevant sub-sections (4) and (5) of Section 14 of the Act read as under:-

"(4) The tenant on whom summons is duly served (whether by ordinary mail or by registered post) shall not contest the prayer for eviction from the premises unless he files an affidavit stating the ground on which he seeks to make such contest and obtains leave from the Court as hereinafter provided; and in default of the appearance in pursuance of the summons or his obtaining such, leave the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground aforesaid.

(5) The court shall give to the tenant leave to contest the suit if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for eviction on the grounds specified in clauses (c) and (e) of sub-section (1) of section 11."

8. Thus, from the conjoint reading of the aforesaid sub-sections (4) and (5), it would be manifest that



while considering the application for leave to contest the suit, the Court has to confine itself only to the averments made in the affidavit. Leave to contest the suit shall be granted only if the affidavit filed by the tenant would disclose such facts as would dis-entitle the landlord from obtaining an order of eviction.

9. In the instant case, in the affidavit filed by the respondent following averments have been made in paragraph nos.3 to 13:-

"3. That the defendant even after 30.11.2014 continued to be in possession over suit premises and used to give rental to landlord as also admitted in the plaint. That defendant is still making regular payment of rental and rent is received by landlord happily.

4. That no prior notice as agreed upon between landlord Bimal Chandra and this defendant was ever served. 1 month prior to filing suit sending notice and no specific fact about bona fide need of any member of the family of landlord was noticed to defendant.

5. That never Binal Chandra made a request to this defendant to vacate the premises either before or after expiry of lease on 30.11.2014. The allegation about the same in the plaint is purely a



concoction and introduced for the purpose of the suit.

6. That the allegation and factum of need of plaintiff is vague and general. No specific fact regarding purpose and nature of business in suit premises is shown in the plaint when as a matter of fact the mother and other members are doing business of garments, mobile sale and sale of T.V. and other materials in separate premises/rooms in the building.

7. That previously also the plaintiff's family got some premise vacated and then started business therein.

8. That absolutely there is no need in the family for doing any thing in the premise. The ground is vexatious and mischievous.

9. That this defendant has been maintaining himself and his family members after doing business in the suit premise and half life gone. Now this defendant would starve if unnecessarily he will be evicted on fabricated ground and owing to altercation with present plaintiff over return of money and other matters.

10. That never any notice was served validly from the court. This defendant



never reads daily paper. Besides, he was ill at the relevant time.

11. That even notice sent by learned counsel could not reach the defendant.

12. That when altercation between plaintiff and defendant took place, the plaintiff had warned that he would file case for eviction.

13. That the no legal step for eviction could be taken by father of plaintiff even after expiry of period of lease in 2014 and he is said to survive till 2015 and it is due to agreement between him and this defendant.

The suit is vexatious and mala fide. The expiry of period is only a pretext. Nothing is said about return of security amount in the plaint."

10. Having gone through the aforesaid averments made in the affidavit filed by the respondent, learned Munsif-1, Darbhanga allowed his application observing as under:-

"Heard both the parties and perused the entire case record. From perusal of the case record it transpires that the defendant has stated in the affidavit that the plaintiff has no necessity of the suit



premises and there was a separate agreement between the father of the plaintiff and the defendant. The terms of which were not complied with by the plaintiff. In all the rulings files on behalf of both the parties the principle laid down by the Hon'ble court is that for grant of leave to contest the tenant must make out a prima facie case as would disentitle the landlord from obtaining an order for eviction. The another principle is that the facts alleged by the defendant required examination of witness and determination of facts. Then the court should allow the matter to go to trial by granting leave. The facts stated in leave to contest has prima facie fact which requires examination of witness and determination of fact and if proved it may disentitle the plaintiff from obtaining an order of eviction. Hence, the affidavit filed on behalf of the defendant dated 12.06.2018 is hereby allowed and defendant/tenant is granted leave to contest this suit."

11. From a bare reading of affidavit filed by the respondent, as contained in Annexure-3 and the order impugned, it would be manifest that the respondent had disclosed the



grounds on which he wanted to contest the suit. The grounds taken by the respondent were found cogent and the court below was satisfied on the basis of affidavit filed by the defendant that an issue has been raised which required adjudication on merit and may disentitle the landlord from an order of eviction, it cannot be said that the court committed an error in granting leave to the defendant to contest the suit. The order is neither perverse nor without jurisdiction. In that view of the matter, I am not inclined to interfere with the same in exercise of powers under writ jurisdiction under Article 227 o the Constitution of India.

12. However, before parting with this order, I deem it fit and proper that since both the parties have appeared in the suit, the court below shall adjudicate the matter as early as possible, preferably within nine months from the date of receipt/production of a copy of the order.

13. The application stands dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
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