

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.498 of 2019**

Binay Kumar Verma S/o Late Shambhu Jatadhar Sahay R/o Mohalla-Salempur, P.O., P.S., District-Chapra, Saran

... .. Plaintiff/Petitioner

Versus

Basant Raj S/o Late Arun Kumar Giri R/o Mohalla-Dahiyawan, near Shiya Masjid, P.O., P.s.-Chapra, at present doing his business at Vinay Market, P.O., P.S.-Chapra, District-Chapra, Saran

... .. Defendant/respondent

Appearance :

For the Petitioner : Mr.Rakesh Chandra, Advocate
For the Respondent : Mr.

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

Date : 08-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 15.01.2019 passed by the learned Munsif, Chapra in Eviction Case No. 18 of 2017 by which the prayer of the plaintiff-petitioner under Order 12, Rule 6 of the Code of Civil Procedure (for short 'CPC') has been rejected.

2. Learned counsel appearing for the petitioner submitted that the order impugned is bad in law as well as on facts. The court below has committed gross error in not decreeing the suit under Order 12, Rule 6 of the CPC as the defendant in his defence has clearly admitted that he has not paid rent after 2016 and became defaulter in the eyes of law. According to him, in a suit for eviction on the ground of default



in payment of rent and personal necessity, the court below ought to have passed a decree on admission made by the defendant that he had not paid rent after 2016, which is more than two months statutory provision, as provided under the Bihar Buildings (Lease, Rent and Eviction) Control Act. He has argued that the findings of the court below are perverse.

3. The short facts of the case are that the plaintiff-petitioner has filed Eviction Suit No. 18 of 2017 against the defendant-respondent on the grounds of default in payment of rent and personal necessity. His case is that the defendant is his tenant at monthly rental of Rs.1300/-. He has paid rent till December, 2016. He has failed to deposit rent from January, 2017 to April, 2017. His further case is that he has two sons. His first son is PhD and the second son is a doctor. They are unemployed and dependent upon him and for starting their own business, they need the premises given on rent to the defendant.

4. The defendant appeared in the case and filed his written statement wherein he has stated that the shop in question was taken on rent by his father in the year 1984. He was running a stationery business from the shop. After his death, he himself took up the charge of the business. Initially,



the rental of the shop was Rs.360/-, which was increased to Rs.480 in the year 2000. Thereafter, it was decided that the rental of the shop would increase at the rate of 20 per cent after the interval of four years. In terms of the said agreement, the rental of shop was increased to Rs.580 in the year 2003, Rs.680 in the year 2007 and Rs.800 in the year 2011. In the year 2014, the plaintiff-petitioner requested to increase rental from Rs.800 to 1300, which was much more than the agreed amount of 20 per cent. In spite of that the defendant agreed to pay Rs.1300/- since January, 2014 and is paying rent @ Rs. 1300/- per month since January, 2014. In January, 2017, the plaintiff-petitioner suddenly increased the rental from Rs.1300/- to Rs.2000/-, which was not accepted by the defendant-respondent, as it was contrary to the terms of the agreement that rental would increase @ 20 per cent per annum after interval of 4 years. It was further pleaded that the two sons of the plaintiff-petitioner are not unemployed. The eldest son is a practicing lawyer in the Civil Court, Chapra and the second son is a Homeopathy doctor. Both of them are economically sound and are not dependent on the income of the plaintiff-petitioner. It was further pleaded that the plaintiff has got no personal necessity of the shop in question.



5. After filing of the written statement, an application was filed by the plaintiff-petitioner under Order 12, Rule 6 of the CPC praying therein to deliver judgment on admission of defendant without waiting for determination of any other question between the parties.

6. A rejoinder was filed on behalf of the defendant-respondent stating therein that nothing was admitted by him in the written statement. Hence, the application filed under Order 12, Rule 6 of the CPC is fit to be dismissed.

7. Having heard the parties, the court below vide order dated 15.01.2019 rejected the application filed by the petitioner.

8. Being aggrieved by the aforesaid order, the petitioner has filed the instant case.

9. Having heard the petitioner and perused the materials on record, I find that the contention of the petitioner that the defendant had admitted the facts stated in the plaint is not correct. In his written statement, the defendant has controverted both the grounds taken by the petitioner, i.e., (I) default in payment of rent and (II) personal necessity. Since there is no admission on fact by the defendant in his written statement, no jurisdictional error has been committed by the



learned Munsif in passing the order impugned whereby he has rejected the prayer of the petitioner made under Order 12, Rule 6 of the CPC.

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

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.08.2019
Transmission Date	NA

