

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.183 of 2018**

Radhye Raman Agrawal @ Ramesh Agrawal Son of Late Ganesh Agrawal,
Resident of Mohalla Mateshwari Chouk, Siwan, P.O. P.S.District Siwan.

... .. Petitioner/s

Versus

Anil Kumar Keshri Son of Gorakh Prasad, Resident of Village-
Vishambharpur, P.S. Pachrukhi, District-Siwan. At Present Mohalla-Kishun
Katra No.2, Saheb Bazar, P.O. P.S. Siwan Town, District-Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Pandey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 21-11-2022 The petitioner-plaintiff / landlord has filed the suit for

eviction against the respondent-defendant on the ground of

personal necessity under Section 11 of the Bihar Buildings

(Lease, Rent and Eviction) Control Act, 1982 (for short the

“B.B.C. Act”).

2. The respondent-defendant / tenant appeared in the
eviction suit and filed his written statement.

3. A petition under Section 14(4) of the B.B.C. Act
was filed by the plaintiff-petitioner that the written statement
filed by the defendant-tenant is fit to be rejected in view of the
mandatory provision under Section 14(4) of the B.B.C. Act
inasmuch as the tenant on whom summon is duly served is not
permitted to 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. By the impugned order, the learned trial court has rejected the petition filed by the petitioner and has allowed the written statement to be taken on record on the ground that it is settled principle of law that case / suit is to be decided on its merit and not on technical ground.

4. Despite valid service of notice, no one appeared on behalf of tenant -respondent.

5. Learned counsel for the petitioner submits that the learned trial court has committed grave error of law by not appreciating that the provision of Section 14(4) of the B.B.C. Act is a mandatory provision and the written statement filed by the defendant – tenant was not acceptable in view of the statutory provision. In the judgment rendered by Division Bench of this Court and the judgment of Single Judge relying upon the judgment of the Division Bench the provision of Section 14(4) of the B.B.C. Act has been held to be mandatory. He further submits that from bare reading of Section 14(4) of the B.B.C. Act it will transpire that the consequences for not seeking leave of the Court is also mentioned in the Section inasmuch as in default of the tenant in 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 mentioned in the suit. Learned counsel relies upon a Division Bench judgment of this Court reported in **1993(2) PLJR 215 Manik Roy versus Raghunandan Prasad** and referring to paragraph -10 of the judgment, learned counsel submits that this Court has held that requirement of taking leave of the court as provided under Section 14(4) of the B.B.C. Act is mandatory and in its absence neither the written statement can be accepted nor the tenant can be allowed to contest the suit. He also relies upon the judgment of this Court reported in **2007(2) PLJR 452 Abdul Salam Vs Mohammad Junai & Ors** in which a Single Bench of this Court relying upon the judgment rendered in Manik Roy Case (Supra) has held that necessity to obtain leave of the court by the tenant is mandatory and in its absence neither the written statement can be accepted nor the tenant can be allowed to contest the suit.

6. I have heard learned counsel for the petitioner. It is the case of the petitioner that the suit for eviction has been filed under Section 11 of the B.B.C. Act i.e. eviction has been sought on the ground of bonafide personal necessity of the petitioner. Section 14 of the B.B.C. Act prescribes special procedure for



disposal of cases for eviction on the ground of bonafide requirement. Sub Clause 4 of Section 14 of the B.B.C. Act stipulates that a tenant on whom summon is duly served shall not be allowed to contest the prayer for eviction from the premises unless he files an affidavit stating therein the ground on which he seeks to make such contest and obtains leave from the court. Apart from the above the tenant is required to obtain leave from the court for contesting the suit and in default the consequence is that 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 aforesaid ground of personal necessity.

7. From the impugned order it appears that no affidavit stating the ground on which the tenant / respondent seeks to contest the suit was filed and the tenant did not obtain leave as required under Section 14(4) of the B.B.C. Act to contest the suit.

8. In view of the aforesaid facts of the case and the legal provision of Section 11(c) & 14(4) of the B.B.C. Act and the judgments discussed hereinabove, this Court arrives at a finding that the tenant has failed to obtain leave of the court which has been held to be mandatory by this Court.



Accordingly, the impugned order dated 17.08.2017 passed in Eviction Suit No. 06 of 2016 is not sustainable and accepting written statement of the respondent by the learned trial court without leave of the court amounts to jurisdictional error.

9. In the result, the order dated 17-08-2017 passed in Eviction Suit No. 06 / 2016 is set aside and the written statement filed by the respondent without having the leave of the court shall not be taken as a part of the record of the eviction suit.

10. The petition stands allowed.

(Anil Kumar Sinha, J)

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