

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.549 of 2018

Vinod Dubey @ Vinod Kumar Dubey Son of Sri Vishwanath Dubey, Resident of Village- Kanhauli, Post Office- Bhikhpur Bhagwanpur, Police Station- Mazharul Haque Nagar Hasanpura, District- Siwan.

... .. Petitioner/s

Versus

1. Mt. Pushpanjali Tripathi Wife of Late Kiran Shankar Nath Tripathi,
2. Sudhanshu Nath Tripathi,
3. Abhi Nandan Nath Tripathi,
4. Anurag Nath Tripathi, Sl. nos. 2 to 4 are sons of Late Kiran Shankar Nath Tripathi,
5. Arpana, Daughter of Late Kiran Shankar Nath Tripathi, All residents of Village- Bhada Khurd, Post Office- Bhada, Police Station- Siwan Muffasil, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

4 01-09-2022 Heard Mr. Umesh Kumar Mishra, learned counsel for
the petitioner.

The petitioner is aggrieved by the order dated 18.05.2017 by which the learned trial court in Eviction Case No. 05 of 1998 has rejected the petition filed under Order 26 Rule 1 & 2 of the C.P.C. for cross- examination of the defendant / tenant on commission.

Learned counsel for the petitioner submits that petitioner was suffering from Hepatitis B and doctor had advised him bed rest for five months vide certificate dated 03.03.2017. He further submits that now the petitioner is all



right and can depose and cross-examined in person in the trial court.

From perusal of the impugned order it appears that the learned trial court has rejected the petition on the ground that the petitioner did not furnish any prescription showing treatment of his ailment and further examination- in- chief on affidavit was duly sworn by him before the Oath Commissioner. It further appears from the impugned order that an objection has been taken by the plaintiff / landlord that petition seeking cross examination of the defendant on commission is not supported by affidavit which is compulsory under Order 26 Rule 2 of the C.P.C.

In view of the fact the petitioner did not produce any prescription and document showing treatment of his ailment and the fact that petitioner sworn affidavit for examination- in -chief (in person) and appeared before the Oath Commissioner, I do not find any infirmity and / or material irregularity in the impugned order.

This application is accordingly rejected.

praful/-

(Anil Kumar Sinha, J)

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