

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.781 of 2018**

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Smt. Shakuntla Devi Wife of Shri Brahamdev Prasad @ Vakil Prasad,
Resident of Mohalla-Kathribag, Mahavir Asthan, Police Station-Chapra Toan,
District-Saran.

... .. Petitioner/s

Versus

Raj Kishore Prasad Son of Late Laxmi Prasad Resident of Bareja, Police
Staton-Daudpur, District, District Saran at Present Residing at Sahebganj,
Butanbar, Police Station-Town Chapra, District-Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anuj Kumar Shrivastava
For the Respondent/s : Mr.Vijay Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 18-10-2022 Heard Mr. Anuj Kumar Shrivastava, learned counsel

for the petitioner and Mr. Vijay Kumar, learned counsel for the

respondent.

The petitioner is a plaintiff in Eviction Suit No. 6 /
2012 filed against the respondent-defendant on the sole ground
of personal necessity. The written statement has been filed by
the defendant-tenant in the year 2013 and after framing of the
issues, thereafter, trial commenced around 2013.

Assailing the impugned order, learned counsel for the
petitioner submits that five witnesses on behalf of the petitioner
have been examined and the sixth witness is being examined at
present, but in the meanwhile, the defendant-tenant filed an
amendment petition on 08.01.2018 seeking to amend the written



statement by incorporating therein “that in the year 2001 defendant-respondent entered into the suit premises not as a tenant but he was put in possession in the suit shop on the basis of verbal agreement for sale entered into between the husband of the petitioner-plaintiff and the respondent-defendant for a total consideration amount of Rs. 4 Lakhs, out of which earnest money was paid by the defendant, and subsequently, every month Rs. 2500/- was being paid by the defendant to the plaintiff as installment as on the date of written statement total amount of installments to the tune of Rs. 3.25 Lakh was paid against the total consideration amount of Rs. 4 Lakh. It has further been stated in the amendment petition that Rs. 65,000/- and odd amount was sent by the defendant by way of Money Order to the plaintiff but the same has been returned. He has further sought to add the fact that a suit for specific performance of contract has been filed by the defendant against the plaintiff bearing Suit No. 856/2013 which is pending in the court of Sub Judge VI, Chapra. Learned counsel further submits that amendment in the written statement has been allowed at very belated stage after commencement of the trial and the jurisdictional fact regarding due diligence has not been stated in the amendment petition by the defendant. He further submits



that even in the impugned order there is no discussion as regards the satisfaction of the court that in spite of due diligence exercised by the defendant the facts could not be brought on record earlier. He relies upon a judgment of this court reported in 2014 (1) PLJR 48 Lal Babu Rai and Ors. *versus* Ramagaya Rai. He also submits that amendment sought in the written statement by the defendant is not *bona fide* and has been brought in order to delay the disposal of the eviction suit which has been filed on the ground of personal necessity by the plaintiff and the fact which the defendant wants to add in the written statement was very well known to him at the time of filing of the written statement. In fact, the defendant wants to change the nature of the suit from a suit for eviction to a suit for specific performance of contract with an intention to linger the disposal of the suit notwithstanding he has already filed a separate suit for specific performance of contract as stated in the amendment petition. Accordingly, submission is that the amendment in question has been filed with malafide intention in order to delay the disposal of the suit which is not permissible as per proviso of Order 6 Rule 17 of the C.P.C.

On the other hand, learned counsel for the respondent-tenant submits that amendment sought by the respondent in the



written statement is formal in nature and no prejudice shall be caused to the plaintiff if the same is allowed.

I have heard learned counsel for the parties and have perused the material on record as well as the impugned order. From perusal of the amendment petition it transpires that the fact which the respondent tries to bring by way of amendment was very much available to him at the time of filing of the written statement. No plea has been taken in the amendment petition regarding due diligence inasmuch as it is not stated that defendant could not have raised such fact prior to the commencement of trial. The plaintiff-petitioner has filed the suit for eviction on the basis of tenancy agreement on the ground of personal necessity which is to be decided expeditiously as per the scheme of Bihar Buildings (Lease, Rent & Eviction) Control Act. The amendment sought by the defendant, therefore, in my opinion is not *bona fide* and has been brought in order to delay the disposal of the suit particularly when the defendant-tenant has also filed suit for specific performance of contract.

In view of the aforesaid discussions and the fact that the learned trial court has not considered the point as to whether the defendant - respondent in spite of due diligence could not have raised such facts prior to commencement of trial which he



wanted to introduce by way of amendment and the jurisdictional fact in this regard has also not been stated in the amendment petition, accordingly, I come to the conclusion that the learned trial court has committed illegality in exercise of his jurisdiction as such the impugned order is not sustainable. This Court is also of the considered opinion that amendment sought by the respondent / tenant is not bonafide and has been brought in order to delay the disposal of the suit.

In the result the order dated 16-04-2018 passed in Eviction Suit No. 6 of 2012 is hereby set aside.

The application stands allowed.

(Anil Kumar Sinha, J)

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