

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1452 of 2018**

Md. Rizwi Pappu, Son of Late Mohd. Khalil, C/o Zaki Tailor Mojib Road,
Resident of Mohalla- Barehpura, P.O.- H.P.O., P.S.- Ishakchak, District-
Bhagalpur.

... .. Petitioner/s

Versus

Mohd. Amin, Son of Late Md. Nasim, Resident of Bhikhanpur Chowk, Gumti
No.2, P.S.- Ishakchak, P.O.- H.P.O., District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bimlendu Mishra, Advocate
For the Respondent/s : Mr. Rajiv Ranjan Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 12-01-2023

Heard learned counsel for the parties.

2. The petitioner moved before this Court for the
following reliefs:-

“a. Issuance of a writ or an appropriate order or direction setting aside order dated 28.03.2018 (annexure-3) passed by the learned Munsif-II (Sadar), Bhagalpur in Title Eviction Suit No. 01/2017 whereby he was pleased to dismiss leave petition dt. 20.02.2018 filed along with affidavit by the petitioner purportedly under Section 14 (4) of the Bihar Building (Lease Rent & Eviction) Control Act, 1982 (hereinafter referred to as the B.B.C. Act) along with Limitation Petition.

b. Issuance of a writ or an appropriate order or direction setting aside consequent order dt. 13.08.2018 (annexure-6)



passed by the learned Munsif-II (Sadar), Bhagalpur in Title Eviction Suit No. 01/2017 whereby he was pleased to dismiss recall petition dt. 20.04.2018 filed by the petitioner to recall the aforesaid order dt. 28.03.2018.

c. Issuance of any other relief or reliefs to which the petitioner may be found entitled in the facts and circumstances of the case.”

3. The fact, in brief, for the purpose of this petition is that the respondent filed the aforesaid Eviction Suit in the Court below on the ground that the suit premises is required for his personal need and necessity. The petitioner defendant entered appearance and filed written statement and on subsequent dates filed documents on realising the mistake, the leave to contest petition filed with affidavit and condonation of delay petition which was dismissed on the ground of delay about 11 months. The recall petition was also dismissed.

4. Learned counsel for the petitioner submits that the petitioner having received the summon has appeared and filed written statement on the very first date i.e. on 30.03.2017 without seeking any adjournment which shows that there was no deliberate delay in filing the leave petition to defend and to frustrate the proceeding of the eviction suit which was filed on the ground of personal necessity. He has further submitted that it



was due to ignorance and misunderstanding of the learned counsel who was representing defendant/petitioner that he did not file the leave petition and in the interest of justice, the petitioner is not made to suffer on account of mistake committed by his lawyer. Further, it is submitted that the petitioner has good case on merit.

5. Learned counsel for the respondent conceded that due to 11 month delay in filing of leave petition, the delay was not condoned. However, it is submitted that the petitioner may be directed to assist in disposal of this case as already delay has been caused for which learned counsel for the petitioner submits that the petitioner shall give all the cooperation to the Trial Court for expeditious disposal of this case.

6. The petitioner relied on the Judgment passed by this Court in **Kailash Prasad Chouhan vs. Krishna Devi (1998) 1 BLJR-740** wherein it was held that Section 14(4) of the Control Act simply makes a provision that the tenant should seek leave of the Court making out a ground to contest the suit and it is for the Court to consider the same. But such prayer is not expected to be made at an abnormal late stage with sole intention to delay the disposal of the suit because such suit in view of the provision laid down in the Control Act itself



requires expeditious disposal. There may be case which indicates that the tenant was deliberate and negligent in making such prayer only to defect the provision of law so far as the expeditious disposal is concerned. In such a situation the Trial Court is justified in refusing such prayer. In the instant case, the reason for delay has been assigned and it appears that there is no dilatory tactics on the part of the petitioner-tenant, and the Court is to consider the leave to defend petition on merit.

7. Accordingly, this Civil Miscellaneous application is allowed and the impugned order dated 28.03.2018 and subsequent order dated 13.08.2018 are hereby set aside and the court below is hereby directed to consider the petition of the defendant-petitioner for leave to contest the suit, as required under Section 14(4) of the Control Act on its own merit in accordance with law and both the parties shall cooperate in disposal of the said leave to contest petition . Hence, this case is disposed of with the aforesaid directions.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	18.01.2023
Transmission Date	

