

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1638 of 2017**

Dr. Birendra Prasad Saha son of Late Surya Narayan Saha, Resident of
Village- Udakishunganj, P.S.- Udakishunganj, District- Madhepura.

... .. Petitioner/s

Versus

Ghanshyam Kumar Yadav Son of Sri Surendra Prasad Yadav, Resident of
Village- Mahesua, P.S.- Udakishunganj, District- Madhepura, Presently
residing at Village- Udakishunganj, P.S.- Udakishunganj, District-
Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arjun Kumar, Advocate Mr. Alok Kumar, Advocate
For the Respondent/s	:	Mr. Sanjeev Kumar Mishra, Sr. Advocate Mr. Manas Rajdeep, Advocate Mr. Shubham Kumar Upadhayay, Advocate Ms. Adya Panday, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 08-08-2025

Heard both the parties.

2. The present civil miscellaneous petition has been
filed seeking the following reliefs:-

“(i) For the quashing/setting aside the order dated 19.08.2017 passed in Eviction Suit No. 41 of 2015 by learned Munsif, Udakishunganj. District whereby whereunder the learned Munsif, Udakishunganj has been Madhepura and pleased to reject the petition dated 18.08.2016 under Section 14(4) of Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (the Act hereinafter for the sake of brevity) filed by the plaintiff/petitioner.

(ii) For the direction that the written



statement of the respondent cannot be accepted in the present sets of facts and for the further direction to proceed the case as per the Special Procedure for disposal of cases for eviction on the ground of bona fide requirement and expiry of lease.

(iii) For the issuance of any other appropriate relief/(s)/order/(s)/direction/(s) which your Lordships may deem fit in the present facts and circumstances of the case.”

3. Briefly stated facts of the case, culled out from the record, are that the petitioner filed Eviction Suit No. 41 of 2015 on 17.06.2015 before the court of learned Civil Judge, Junior Division, Udakishunganj, Madhepura under Section 11(1)(c) and 11(1)(e) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for brevity, hereinafter "the Act") against the respondent on the ground of personal necessity and expiry of lease.

4. The plaintiff/petitioner claimed that on request of the defendant/respondent, he let out the suit property to him on monthly rent from 05.06.2005 and the lease was extended from time to time. The petitioner sent a legal notice on 03.08.2013 intimating the respondent to vacate the suit premises. Another notice was given on 29.02.2014. A *Panchayati* was also held but the respondent refused to vacate the premises and the petitioner was compelled to file the suit for eviction on the ground of



personal necessity as well as expiry of lease. Eviction Suit No. 41 of 2015 was admitted and summons were issued to the respondent vide order dated 10.08.2015 and the respondent appeared in the suit. After his appearance, the respondent filed his written statement on 25.07.2016 contesting the claim of the petitioner. The respondent further filed a petition dated 04.08.2016 with prayer to grant him leave to deposit the rent of the suit premises at the rate of Rs.1100/- per month in the court till pendency of the suit. Since the respondent did not file any affidavit stating the grounds on which he wanted to contest the suit and did not obtain any leave to contest the case, the petitioner filed a petition dated 18.08.2016 with a prayer to reject the written statement and to proceed in the case as per special procedure for disposal of the case for eviction on the ground of *bona fide* requirement. The respondent filed his rejoinder on 28.02.2017. The learned trial court heard both the parties and rejected the petition dated 18.08.2016 filed on behalf of the petitioner and ordered for acceptance of written statement. This order dated 19.08.2017 is under challenge before this Court.

5. Learned counsel for the petitioner submits that the impugned order is not sustainable as it is against the mandate of



law. The petitioner has filed the eviction suit under Section 11(1)(c) and (1)(e) of the Act. Section 14(1) of the Act provides that every suit by a landlord for the recovery of possession of any premises on the ground specified in clause (c) or (e) of sub-section (1) of section 11 shall be dealt with in accordance with the procedure specified in Section 14. Learned counsel further submits that further Section 14 sub-section (4) provides that The tenant on whom summons is duly served shall not 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 but no such ground were submitted by the respondent and no such leave was obtained by the respondent. Learned counsel further submits that as the respondent failed to obtain the leave, the averment of the petitioner in the suit for eviction ought to be considered as admitted by the tenant/respondent and therefore petitioner shall be entitled to an order for eviction on the ground taken in the plaint. But this provision of law has been ignored by the learned trial court which wrongly held that summary procedure would not be followed in the eviction suit for the reason that prayer of the plaintiff was based on consolidated ground. Learned counsel further submits that seeking relief under Section 11(1)(c) and



11(1)(e) together cannot be said to be seeking relief on consolidated ground to take out the case of the petitioner from purview of Section 14 of the Act. Thus, the learned trial court has committed a gross error of law while passing the impugned order discarding the settled principles of law that summary procedure under Section 14 of the Act is to be followed if the suit has been instituted under Section 11(1)(c) and 11(1)(e) of the Act. When Section 14(1) itself makes it clear that the suit brought for recovery of possession of premises on the ground specified in clause (c) or (e) of sub-section (1) of Section 11 shall be dealt with in accordance with the procedure specified in Section 14, there was no scope for the learned trial court to take a different view. Learned counsel further submits that seeking relief of eviction on the aforesaid two grounds cannot be said to be consolidation of prayers.

Learned counsel referred to a decision of the learned Single Judge of this Court (Ranchi Bench) in the case of ***Reyazul Haque vs. Most. Maimun Khatoon and Anr.*** reported in ***1985 PLJR 490*** wherein it has been held that a landlord can avail the benefit of Section 14 of the Act only if he confines his claim to the above noted two permissible grounds i.e. under Section 11(1)(c) and 11(1)(e) of the Act. In case he elects to add



grounds other than those specified in clauses (c) and (e) of subsection (1) of Section 11 of the Act, he foregoes the privilege of summary procedure prescribed under Section 14 of the Act. Thus, the learned counsel submits that it is a fit case where the written statement of the respondent should be rejected and the eviction suit be decreed in the light of deemed admission of the respondent.

6. Learned senior counsel appearing on behalf of the respondent vehemently contends that there is no infirmity in the impugned order and the same is proper and correct. The learned senior counsel, at the outset, submits that he does not agree with the reasoning adopted by the learned trial court while passing the impugned order that the consolidation of prayers in eviction suit of the petitioner would take it out from the purview of summary procedure prescribed under Section 14 of the Act. But the subsequent events after filing of the eviction suit show that the matter proceeded under a general procedure and not under special procedure of Section 14 of the Act. The learned senior counsel submitted that Section 14(7) prescribes that notwithstanding anything contained in the Code of Civil Procedure, 1908 (hereinafter "the Code") or any other law, the Court while hearing a suit under this section shall follow the



practice and procedure of a Court of Small Causes including the recording of evidence. Learned senior counsel further submits that Section 17 in the Provincial Small Cause Courts Act, 1887 provides that the procedure prescribed in the Code, shall, save insofar as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits. Learned senior counsel further submits that though Section 14(7) of the Act provides for practice and procedure of Court of small causes in the proceeding under Section 14 of the Act, the Small Causes Act, in turn, provides for the same procedure of Code. Furthermore, Order 37 Rule 2 Sub-Rule (2) of the Code provides that summons of the suit shall be in Form No. 4 in Appendix B or in such other form as may, from time to time, be prescribed. Learned Senior Counsel submits that Order 37 provides for summary procedure and if summons of the eviction suit filed by the petitioner were not issued in proper format, the same would result in adoption of general procedure by the learned trial court and not in a summary procedure.

In this regard, the learned senior counsel referred to a Division Bench decision of this Court in the matter of ***Santosh Singh And Ors. vs Ram Chandra Sah And Ors.***, reported in



(1992) 2 PLJR 91 wherein learned Division Bench held that the procedure provided under the Code of Civil Procedure will apply before the Court while hearing the suit in accordance with the provisions of Section 14 of the Act. On the aspect of the procedure under Order 37 of the Code for issuance of summon, the learned Senior Counsel referred to the decision of High Court of Madhya Pradesh in the case of **Man Singh Vs. Ranveer Singh**, reported in **2021 2 MPWN 10**.

The learned senior counsel thus submits that as no summons have been issued under Form 4 in Appendix B of the Code, the respondent was not bound to state the grounds on which he sought to make the contest and to obtain leave from the Court. Therefore, for non-compliance of the procedure regarding issuance of summons for summary procedure, the proceeding before the learned trial court would run as a general proceeding and not a summary proceeding under Section 14 of the Act. Thus, the learned senior counsel submits that the reasoning adopted by the learned trial court might not be correct but considering the aforesaid situation about non-compliance of issuance of summons for summary proceeding, the effect would be the same and the learned trial court rightly rejected the application of the petitioner and rightly allowed the written



statement of the respondent to be taken on record after accepting the same.

7. By way of reply, the learned counsel appearing on behalf of the petitioner submits that there is no requirement of issuance of summons under any special format or under Form 4 of Appendix B of the Code and the issue stands settled by a Division Bench decision of this Court in the case of *M/s Bihar Alloy Steels Ltd. vs Hari Shanker Worah (Properties) Ltd & Anr.*, reported in *1987 PLJR 868* which has held that a provision like one in Sub-section (2) of Section 14 of the Act is not mandatory and if no form has been prescribed, still a notice served in a suit by a landlord for the recovery of possession of any premises on the ground specified in Clauses (c) or (e) of Sub-section (1) of Section 11 of the Act, which is tried in accordance with the special procedure, no error of jurisdiction is committed. In the said case an issue was raised that based on the language used in Section 14 (2) of the Act, before a suit for the recovery of possession of any premises on the ground specified in Clause (c) or (d) of Sub-section (1) of Section 11 of the Act, be taken up for hearing in accordance with the procedure in Section 14 of the Act, summons must be issued in the prescribed form in every such suit. Further contention has been raised that



since no rule has been prescribed, not a notice contemplated in Sub-section (2) of Section 14 but a notice of regular suit in accordance with the Code had been issued. In such a situation, the trial on the facts of the case was not in accordance with the special procedure prescribed in Section 14 of the Act but in accordance with procedure in any other suit. However, the Hon'ble Division Bench of this Court rejected all the contentions. Thus, learned counsel submits that the issue thus stands settled and there is no merit in the submission of the learned senior counsel for the respondent.

8. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

9. The learned trial court rejected the petition dated 18.08.2016 filed by the petitioner on the ground that eviction suit has been instituted on consolidated ground of Section 11 (1) (c) and Section 11(1)(e) of the Act and as the eviction suit has not been filed on any single ground, summary procedure under Section 14 of the Act would not be applicable. I find such finding to be absolutely perverse.

Section 14 (1) of the Act reads as under:-

"(1)Every suit by a landlord for the recovery of possession of any premises on



the ground specified in clause (c) or (e) of sub-section (1) of section 11 shall be dealt with in accordance with the procedure specified in this section."

When the Legislature has provided that every suit filed on the ground specified in clause (c) or (e) of sub-section (1) of section 11 shall be dealt with in accordance with the procedure specified under Section 14 of the Act, merely because the provision mentions clause (c) or clause (e) of sub-section (1) of Section 11 and the suit has been filed under both the clauses, it cannot be said to be a composite suit based on consolidated grounds. Now, object of Section 14 of the Act is to give expeditious relief to the landlords seeking recovery of possession of a house on the ground of personal necessity and such landlords have been placed in a separate class. Thus Legislature has simplified the procedure with main object of avoiding delays in disposal of such cases. Therefore, the learned trial court completely missed the point, purpose and intent behind enactment of the provision under Section 11 (1)(c) and Section 11(1)(e) of the Act and prescription of special procedure under Section 14 of the Act. Therefore, joining these two grounds together would not affect the nature of such suit to be dealt with under the special procedure of Section 14 of the Act.

10. So far as contention of learned Senior Court about



applicability of Section 37 and format of Form 4 of Appendix B of the Code is concerned, such submission is without any basis.

Order 37 Rule 1 of the Code reads as under :-

"1. Courts and classes of suits to which the Order is to apply.

(1) This Order shall apply to the following Court, namely-

*(a) High Courts, City Civil Courts and Courts of Small Causes; and
(b) other Courts;*

***Provided** that in respect of the Courts referred to in clause(b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.*

(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely-

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-

*(i) on a written contract, or
(ii) on an enactment, where the sum sought*



to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only."

Bare reading of Order 37 Rule 1 Sub-Rule (2) makes it very clear that this order applies only to the above noted classes of suits, i.e., suits upon bills of exchange, hundies and promissory notes; suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, on a written contract, or under certain conditions. Evidently, the suit of the petitioner would not fall within any of the above noted categories. If this is the situation, then there is no occasion for application of the provision of Order 37 Rule 2 Sub-Rule (2) of the Code. Moreover, there has been no enactment providing that the summons for service on defendant/tenants under Section 14 Sub-Section (2) of the Act shall be in the format prescribed under Order 37 Rule 2 Sub-Rule (2) of the Code.

11. Section 14 (2) of the Act provides as under:-

"(2) The Court shall issue summons in the prescribed form in every suit referred in sub-section (1) without delay. "

The contention of the learned senior counsel of the



respondent is on the point that in a suit filed for recovery of possession of any premises on the grounds specified in clause (c) or (e) of Sub-Section 1 of Section 11 of the Act before it is taken up for hearing in accordance with procedure under Section 14 of the Act, summons must be issued in the prescribed form as provided under Section 14(2) of the Act. This issue has been considered by a Division Bench of this Court (Ranchi Bench) in the case of *M/s Bihar Alloy Steels Ltd.* (supra) and this Court observed that the word 'prescribed' has been defined in Section 2(g) of the Act to mean, 'prescribed by rule'. The contention was raised that since no rule has been prescribed, not a notice contemplated in Sub-Section (2) of Section 14, but a notice of regular suit of the Code had been issued and under these circumstances, suit would be like any other suit and the trial would follow general procedure of normal suit and not special procedure prescribed in Section 14 of the Act. The Hon'ble Division Bench settled the matter with observation that that a provision like one in Sub-section (2) of Section 14 of the Act is not mandatory and if no form has been prescribed, still a notice served in a suit by a landlord for the recovery of possession of any premises on the ground specified in Clauses (c) or (e) of Sub-section (1) of Section 11 of the Act, which is



tried in accordance with the special procedure, no error of jurisdiction is committed. The Hon'ble Division Bench affirmed the view taken earlier in the case of ***Sardar Rajendra Singh Vs. Sardar Bahadur Singh, (1984 B.L.T. 177: 1984 PLJR 525)*** wherein it has been held that sub-section (2) of section 14 of the Act which has said that the Court would issue summons in the prescribed form in every suit referred in sub-section (1) thereof could be satisfied if on service of notice and appearance, the party concerned submitted to the jurisdiction and the special procedure for disposal of cases for eviction on the ground of *bona fide* requirement or in other words the ground specified in clause (c) or (e) of sub-section (1) of section 11 of the Act. Therefore, this issue is no more *res integra* and whatever submission has been made on behalf of respondent is devoid of merit in the light of Division Bench decision of ***M/s Bihar Alloy Steels Ltd.*** (supra). Further the authorities cited by learned senior counsel for the respondent are completely out of context and not pertinent for deciding the present matter.

12. Therefore in the light of discussion made hereinbefore, I have no hesitation in holding that the learned trial court committed a gross error of jurisdiction in passing the impugned order dated 19.08.2017 and hence, the said order is



set aside and the application dated 18.08.2016 filed by the petitioner is allowed.

13. Accordingly, the present civil miscellaneous petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11.08.2025
Transmission Date	N/A

