

## COURT OF MUSIF, PATNA CITY

Title Eviction Suit No.12 of 2012

### ORDER

**13.11.2019.** Attendance has been filed on behalf of both sides. Today the case record has been produced for passing order on the petition filed on behalf of the defendant under Order 26 rule 1 and 2 read with Section 151 of CPC dated 23.07.2019 and its rejoinder filed on behalf of the plaintiff dated 16.08.2019.

Learned counsel for the defendant while moving his petition has argued that the record was fixed for evidence on behalf of the defendant but the defendant's witness namely, Ram Bilas Yadav is suffering from various elements and he is unable to move. He, further, has stated that it is expedient in the interest of justice that Advocate Commissioner reappointed for recording his cross-examination at his residence. He also has stated that he is a material witness of the case and make a prayer to appoint the Advocate Commissioner for recording the evidence of the defendant's witness namely, Ram Bilas Yadav at the cost of the defendant. On the other hand, learned counsel for the plaintiff while moving his rejoinder dated 16.08.2019 has argued that the petition filed on behalf of the defendant is neither maintainable in law or in fact and this has been filed with ulterior motive to prolong the disposal of the suit. He, further, has stated that Order 26 Rule 1 of the CPC does not attracted in this case and Rule 2 has got no application. Since, except defendant no.1, no witness has been examined nor any medical certificate has been brought on record. He also has stated that the proposed person, Ram Bilas Yadav is neither a party to the suit nor within the purview of Rule 2 Order 26 of CPC and make a prayer to reject the same.

Heard and perused the case record. I find that this case has been filed on behalf of the plaintiff with a prayer for a decree of eviction against the defendant from the suit property including the arrears of rent. I, further, find that this case was at the stage of evidence on behalf of the defendant when this petition has been filed. I also find that only one witness namely, Naiyar Ikbal, who is the defendant no.2

**Cont.** of this case has been examined on behalf of the defendant and **13.11.2019.** defendant no.1 is yet to be examined. I also find that no certificate of doctor with regard to the contention of the defendant that he is unable to move or suffering from such kind of disease that he will not be able to present before the Court to record his evidence, has been filed on behalf of the defendant. No any other document has been filed on behalf of the defendant in support. Hence, in my opinion, the petition filed on behalf of the defendant is not sustainable and stands hereby rejected. Defendant is directed to produce witness. Put up on 05.12.2019 for evidence on behalf of the defendant.

Dictated

Munsif, Patna City.