

COURT OF MUNSIIF, PATNA CITY

T.E.S. No. 29 of 2018

C.I.S. No. 39/18

ORDER

07.08.2019.

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 and plaintiff dated 10.05.2019, although petitions has been filed by both sides on 10.05.2019. But its contentions goes to show that actually they are rejoinder of each other. Also, perused the rejoinder filed on behalf of both sides on 24.05.2019 and it appears necessary in the interest of justice to pass orders on all these together as they are related with same matter and both sides have also argued on the same.

Learned counsel for the plaintiff while moving his petition has argued that this case has been filed on behalf of the plaintiff under Section 11(c) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 on the ground of bonafide requirement for a decree of eviction against the defendant. He, further, has stated that under Section 14 of the Act, the tenant has to file an affidavit stating therein the grounds on which he seeks to contest and obtain the leave from the Court failing which the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and a landlord shall be entitled to an order for eviction on the ground taken by the landlord but the defendant appeared on 15.04.2019 but instead of affidavit seeking the leave of the Court to contest the suit has only filed a time petition for filing written statement. As such under the law, a right has been acquired in favour of the plaintiff and he is entitled to get the order of eviction against the defendant and make a prayer to deprive the defendant from contesting the suit. At the same time, learned counsel for the defendant while moving his petition under Section 14(4) of B.B.C. Act, 1982 has stated that the petitioner has received notice and summon in the present case and after receiving, appearing in this suit today alongwith the petition for grant of leave of the Court to contest the suit under Section 14(4) of B.B.C. Act. He, further, has stated that the plaintiff has filed this case malafidely on the ground of personal eviction but the defendant is residing in the suit premises in the capacity of absolute and exclusive owner as the property has been sold out in the name of father of the defendant and after partition, the same has came in the possession of the present defendant and also his name has been registered in Municipal Corporation through Mutation Case No. 453/11-12 and the plaintiff is not entitled institute the present suit and finally make a prayer to grant leave to contest the suit. Also, learned counsel for the plaintiff while moving his rejoinder dated 24.05.2019 has stated that defendant has filed a leave petition with incorrect statements which are not admitted by the plaintiff and the defendant prejudiced to the aforesaid leave may be granted to the defendant and he may be directed to file written statement to avoid delay and make a prayer to grant the leave to the defendant to file written statement. Learned counsel for the defendant while moving his rejoinder dated 24.05.2019 has stated that after receiving the summon, the defendant appeared in the suit on 15.04.2019 and filed a petition for time and the suit was posted on 10.05.2019 for further procedure. He also has stated that on 10.05.2019, the defendant-petitioner filed a petition for grant of leave to contest the

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suit under Section 14(4) of B.B.C. Act but defendant have not filed any leave petition on 15.04.2019. He also has stated that Hon'ble Court in 1990(1) PLJR 356 Basudeo Pd. Vs. Raghunath Pd. has been placed to observe that Section 14(4) does not provide that tenant is required to file a petition for leave on the date of first appearance, it can be filed on subsequent date and make a prayer to allow to file the written statement.

Heard and perused the case record. I find that this case has been filed under Section 11(1)(c) of B.B.C. Act, 1982 on the ground of personal necessity. I, further, find that on 15.04.2019, defendant has appeared in this case and instead of filing a leave petition, has filed a time petition. I, further, find that on 10.05.2019, the leave petition has been filed on behalf of the defendant under Section 14(4) of the B.B.C. Act. It has been made clear in many cases by the Hon'ble Court that the tenant can seek leave to contest the suit after the date of appearance i.e., on later date but such prayer is not expected to be made at an abnormally late stage done with the sole intention to delay the disposal of the suit and it is not necessary that the affidavit to obtain leave should be filed on the first day of appearance in suit but at the same time, the time should not be unreasonable and not be treated like ordinary suits. Hence, seeing the facts and circumstances discussed above and also in the light of the direction given by the Hon'ble High Court in 1990(1) PLJR 356 Basudeo Pd. Vs. Raghunath Pd. and the prayer made by the plaintiff in his rejoinder dated 24.05.2019 to grant the leave to the defendant to file written statement. The petition filed on behalf of the defendant for grant of leave is hereby allowed. As far as the contention of the plaintiff that although he do not have any objection in granting leave to the defendant but he did not admit the grounds raised by the defendant is concerned, in my opinion, is a matter of trial and will be decided during trial or at the time of judgment and with this direction, the other petitions is hereby disposed of. Put up on 03.09.2019 for further proceeding.

Dictated

Munsif, Patna City.