

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11901 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

Sunil Kumar Jha S/O Shyam Jha Resident of Flat No.402, Sri Nagar Co- Operative Society Near Amar Jyoti School, Sri Sai Baba Nagar, Navghar Road, Bhaindra East, District- Thane (Maharashtra)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Raj Kumar Jha S/O Sri Bhadra Jha Resident Of Village- Supaul (Rewari), P.S- Angarghat, District- Samastipur.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 06-04-2015

The petitioner seeks quashing of the order dated 20.08.2011 passed by the Judicial Magistrate, 1st Class, Samastipur in Complaint Case No. 181 of 2011, Tr. No. 1763 of 2012.

The case of the complaint is that despite execution of agreement for sale of a flat at Thane Maharastra for consideration of a certain amount of money and receipt of the same the accused person refused to execute the sale agreement.

It has been submitted on behalf of the petitioner that even conceding the allegations in the complaint petition, the best course for the complainant would have been to file a suit for specific performance and the complaint appears to have been filed as a short

curt method bypassing the procedure.

On the last occasion the complainant had sought time for filing a counter affidavit but has not done so within time and once again seeks further time for filing counter affidavit. I see no requirement for a counter affidavit since the application has to be decided on the facts of the complaint.

In the facts mentioned above, I would be inclined agree with the submissions raised on behalf of the petitioner.

Hence, the application is allowed. The order dated 20.08.2011 passed by the Judicial Magistrate, 1st Class, Samastipur in Complaint Case No. 181 of 2011, Tr. No. 1763 of 2012, is hereby quashed.

However, quashment of this proceeding shall have no bearing on the claims of the complainant.

(Anjana Prakash, J)

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