

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.239 of 2011

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Sk. Md. Haroon S/O Late Sk. Md. Rafique R/O Village - Dhankutwa Toa
Lakhaura, P.S. Balthar, District - West Champaran..... **Petitioner.**

Versus

Wazul Haque S/O Late Sk. Taslim R/O Village - Dhankutwa, Tola
Lakhaura, P.S. Balthar, District - West Champaran..... **Respondent.**

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Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

16 13-01-2015

Heard the learned counsel for the petitioner.

By the impugned order, the court has refused to reject the plaint on the prayer of the defendant-petitioner. The defendant-petitioner raised the objection that in view of the averments made in the plaint where the plaintiff has accepted the purchase-transaction of the suit property to be a benami transaction, the suit would be barred under the provisions of Benami Transaction (Prohibition) Act, 1988.

From the impugned order, it transpires that the learned court below has taken into notice the averments made in the plaint wherein the plaintiff has come out with the case of having the fiduciary relationship and his repose and trust in the defendant being a relative also in whose name the property was purchased. These averments per se attract the provision of Section 4(3) (b) of the Benami Transaction Act. While considering the

prayer for rejection of plaint under Order 7 Rule 11 C.P.C. , only the averments in the plaint are to be looked into without any addition or subtraction. The learned court below has come to the conclusion that in view of the aforesaid averments in the plaint the same could not be rejected outrightly as barred by the said Act and therefore has directed the issue of bar of the suit under the provisions of Benami Transaction Act to be decided alongwith other issues.

After hearing the learned counsel for the petitioner and considering the facts and circumstances of the case, this Court does not find any error of jurisdiction or material irregularity in the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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