

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1558 of 2005

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1. Om Narain Singh
 2. Vijay Narayan Singh
 3. Arvind Kumar Singh

All are sons of Late Ramjee Singh, are residents of Mohalla Ujjaintola, PS-Bettiah, District-West Champaran.

.... Petitioner/s

Versus

1. Smt. Rekha Devi wife of Dr. Devendra Nath Singh, resident of Ujjaintola, PS-Bettiah, District-West Champaran at present residing at Doctor's Colony Darbhanga Medical College, PS-Laheriasarai, District-Darbhangha.
2. The State Bank of India through its Chief Manager Bettiah Branch, PS-Bettiah, District-West Champaran,
3. Smt. Urmila Devi wife of Shailendra Singh
4. Shailendra Singh son of Late Nand Kishore Singh
5. Ajoy Kr. Singh son of Shailendra Singh
6. Arun Kr. Singh, son of Shailendra Singh

.... Respondent/s

with

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Miscellaneous Jurisdiction Case No. 3316 of 2005

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1. Smt. Urmila Devi wife of Shailendra Singh
2. Shailendra Singh son of Late Nand Kishore Singh
3. Ajoy Kr. Singh son of Shailendra Singh
4. Arun Kr. Singh, son of Shailendra Singh

All are residents of Mohalla-Ujjain Tola, PS/PS-Bettiah, District-West Champaran.

.... Petitioner/s

Versus

1. Om Narain Singh son of Late Ramjee Singh
2. Vijay Kumar Singh son of Late Ramjee Singh
3. Arvind Kumar Singh son of son of Late Ramjee Singh

All are residents of Mohalla Ujjaintola, PS-Bettiah, District-West Champaran.

.... Respondent/s

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Appearance :

(In MJC No. 1558 of 2005)

Appearance :

For the Petitioner/s : M/s Ganpati Trivedi and Sanjay Kr. Pandey, Advs.

For the Respondent/s : Mr. Ranjay Kumar Dubey,
Mr. Chandra Kant
Mr. Lakshman Lal Pandey
Mr. Ravi Shankar Dwivedi
Mr. Shailendra Kumar Dwivedi
Mr. Shiv Kumar Dwivedy

(In MJC No. 3316 of 2005)

For the Petitioner/s : Mr. Shiv Kumar Dwivedy

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-08-2015

Heard learned counsel for the petitioners and
learned counsel for the respondents.

Both the applications are disposed of by a
common order.

This Court, while giving liberty for withdrawal of
the rent of the building, at the first instance, put a rider that the
defendant will take his share from rent of the building, subject
to furnishing of the security and later on, the condition was
modified, vide order dated 20th May 2005 in MJC No. 108 of
2004, in the following term:-

"I would accordingly direct in partial
modification of the order dated 19.8.97 passed
by this court, that instead of security, all the
parties, including opp. party nos. 3 to 6 except
the plaintiffs, shall furnish bank guarantee in
respect of the amount which they receive out of
the amount of rental."

As per the direction of this Court, the parties, for
some time, gave the bank guarantee, later on failed to comply
the order that led to a contempt proceeding as M.J.C. No. 108 of
2004 where this Court has found that they have admittedly

violated the order passed by this Court but did not initiate contempt proceeding, passed the following order:-

“On hearing Mr. S.S.Dwivedi, Senior Advocate appearing for the petitioner, counsel for the State Bank of India, Mr. Ganpati Trivedi and Mr. Keshri on behalf of the respective defendant-opp. parties, it appears to me that though opp. parties 2 to 10 have admittedly failed to give bank guarantees, their failure to do so does not amount to any willful or deliberate disobedience of the court’s order calling for a proceeding of contempt against them and further observed that it may be observed here that if they found it difficult to comply with the court’s direction, they ought to have filed a petition before this court praying for suitable modification/amendment in the court’s direction. Not doing so clearly amounts to laches on their part. But all laches need not necessarily lead to a contempt proceeding.”

After this observation, the present application has been filed for modification of condition, submission has been made by the parties that instead of putting a rider of furnishing bank guarantee for withdrawal of the rent of the building, it

should be substituted by another condition that their share in the building which generates rent, itself be made security.

Counsel for the plaintiff/opposite party submits, there may be situation, withdrawal rent will be of higher than to the value of the share in the property, in that circumstance, if the decree goes in favour of plaintiff, the court would pass necessary order for return of the excess amount received by them.

It goes without saying that if any party to suit gets the rental amount higher than the value of the share in the Building, the other side will have a liberty to file a suitable application for return of the excess amount paid to the parties, that will include not only the principal amount but also the interest at the rate of 9% per annum. The aforesaid condition applies to the defendant but also to the plaintiffs equally.

As has been informed to this Court that it is a matter of 1996 and the court below has not even framed the issue, it is a very shameful state of affairs with case of 1996, is being dragged by the parties for such a long period i.e. about 19 years and Court be tacitly co-operating the parties. As the court below has not taken care even to frame the issue, this Court directs, the trial Court to conclude the trial within one year from the date of receipt/production of a copy of this order.

The parties are directed to co-operate in the

court proceeding. If they fail to do so, the court below will have liberty to pass a suitable order even cost against the party in laches.

Accordingly, this application is disposed of.

(Shivaji Pandey, J)

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