

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.786 of 2015

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Binay Kumar

.... Petitioner/s

Versus

Sri Manoj Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 18-12-2015 1. Heard the learned counsel, Mr. Surendra Prasad Singh,
for the petitioner.

2. Although this application has been filed under Article
226 of the Constitution of India, I heard him treating the
application as an application under Article 227 of the Constitution
of India as the Supreme Court has held in the case of **Radhey
Shyam Vs. Chavi Nath 2015 (5) SCC 423** that the order passed by
the Civil Court are not amenable to writ jurisdiction.

3. This application has been filed by the defendant
petitioner against the order dated 09.07.2014 passed by Sub Judge
VIII, Patna in Title Suit No.41 of 1983 whereby the Court below
rejected the application filed by the defendant petitioner giving
undertaking before the Court below for not making any
construction during the pendency of the suit.



4. The learned counsel for the petitioner submitted that on 10.09.1997, injunction order was passed by the Court below restraining the defendants from making any construction. The petitioners filed Misc. Appeal before the High Court and High Court in Misc. Appeal No.429 of 1997 set aside the order dated 10.09.1997. According to the learned counsel, since the injunction order has already been set aside, how the petitioner could have undertaken before the Court below for not to construct any further. Therefore, the petitioner filed application seeking permission to withdraw the said undertaking. By the impugned order, the Court below erroneously rejected the said application.

5. Perused the order passed by the Court below. Admittedly, the injunction order was passed on 10.09.1997, it was set aside by this Court in M.A. No.429 of 1997 on 10th February, 1998. In the meantime, prior to passing the order in the Misc. Appeal on 20.09.1997, the petitioner gave undertaking before the Court below that he will not make any further construction during the pendency of the suit. So far that order is concerned, for the first time, in the year 2014, the petitioner filed application before the Court below for withdrawing this undertaking. The Court below by the impugned order has rejected the same as it is the undertaking given by the petitioner. Now, if the argument of the



learned counsel is accepted that it is wrongly given then in such circumstances, if in fact wrongly the undertaking was given then after such a long period, how at this stage, it can be decided, particularly when it is not denied that there is no undertaking. Therefore, whether it was wrong undertaking or because of mistake of fact cannot be looked into in supervisory jurisdiction under Article 227 of the Constitution of India. Moreover, the order of injunction was set aside by the High Court in the year 1986, i.e., 17 years ago. In other words, now the intention of the petitioner is for making construction and, therefore, he is seeking permission to withdraw the undertaking.

6. In view of the above facts and circumstances of the case the order cannot be interfered with in supervisory jurisdiction. Accordingly, this writ application is dismissed. However, the Court below shall see that the suit is disposed of as early as possible as it is of the year 1983.

(Mungeshwar Sahoo, J)

Sanjeev/-

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