

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.571 of 2016**

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Sharwan Kumar

.... Appellant/s

Versus

Parvez Hussain

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar(Asg)

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 07-09-2016 **1.** Heard the learned counsel for the petitioner and the
learned counsel for the respondent.

2. It appears that eviction suit was filed by the landlord
against the petitioner tenant for eviction of the petitioner from the
suit shop on the ground of default. The trial Court decreed the suit
and directed the defendant to pay the arrears of rent of Rs.3000/-
at the rate of Rs.150/- per month from the month of March, 2003
to October, 2004. Against the Judgment and Decree, the tenant
filed Title Appeal No.2 of 2016. In the said Title Appeal, the
petitioner filed application for stay under Order 41 Rule 5 of the
Code of Civil Procedure praying for stay of further proceeding in
Execution Case No.171 of 2015 for obtaining delivery of
possession according to the Judgment and Decree. The lower
appellate Court by the impugned order dated 09.06.2016 rejected

the stay application.

3. According to the learned counsel, since the appeal has already been filed by the tenant, if he will be dispossessed during the pendency of the appeal, it will cause serious loss to the petitioner and occasioned failure of justice.

4. The learned counsel for the landlord respondent submitted that after the Judgment and Decree, the petitioner is neither paying the decretal amount nor is paying or depositing the current monthly rent in the executing Court. The learned counsel also submitted that now if according to the decree, the suit shop is vacated, the landlord will be able to get at least Rs.5000/- per month for the suit shop.

5. The Hon'ble Supreme in the case of *M/S. Atma Ram Properties (P) Ltd vs M/S. Federal Motors Pvt. Ltd (2005) (1) SCC 705* has held that '**dispossession, during the pendency of an appeal of a party in possession, is generally considered to be 'substantial loss' to the party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code.**' The Hon'ble Supreme Court further in the said decision has held that '**on the passing of a decree for possession, the tenant's possession would become unlawful not**



from the date of the decree but from the date of the termination of the contractual tenancy itself. In such circumstances, the tenant can be put on such reasonable terms as would in the opinion of the appellate Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.'

6. Admittedly, in the present case, the tenancy started in the year 1995. Now, in the year 2016 considering the above facts and circumstances of the case and considering the rise in the value of the property, I hereby direct that the delivery of possession of the suit shop in Execution Case No.171 of 2015 pending in the Court of Munsif, Danapur shall remain stayed during the pendency of the Title Appeal on condition that the petitioner tenant shall deposit amount @ Rs.2000/- per month from the date of decree till the month of September, 2016 within one month from today in the executing Court and shall go on depositing the said amount per month within the 15th of next month, i.e., the amount for the month of October, shall be deposited by 15th November, and amount of November shall be deposited by 15th

December and so on and so forth till the appeal is decided. If any of the condition indicated above is violated by the tenant petitioner, the order of stay shall automatically stand vacated and the executing Court shall proceed to execute the decree.

7. It is made clear that the delivery of possession of the suit premises is only stay and not the amount decreed which is towards arrears of rent.

8. Accordingly, this Civil Misc. application stands allowed. If the aforesaid amount is deposited by the tenant in the executing Court, the landlord shall be entitled to withdraw the same.

(Mungeshwar Sahoo, J)

Sanjeev/-

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