

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.555 of 2010

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Pramod Kumar Sharma			Appellant/s
Versus			
Raj Kumar Sharma & Ors.			Respondent/s

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with
Miscellaneous Jurisdiction Case No.2205 of 2016
IN
SA 555 of 2016

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Pramod Kumar Sharma			Petitioner/s
Versus			
Raj Kumar Sharma & Ors.			Respondent/s

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Appearance :
(In SA No.555 of 2010)
For the Appellant/s : Mr. Jashawir Singh Arora
For the Respondent/s : Mr.
(In MJC No.2205 of 2016)
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

11 06-09-2016 Heard learned counsel, Mr. J.S. Arora appearing for the petitioner and learned counsel, Mr. Sabbir Alam, appearing for the respondent No.1 on the application (M.J.C. which is treated as an application in this second appeal).

2. It appears that the second appeal was directed by terms of order dated 13.07.2012. Stay application was filed by the appellant praying for stay of further proceeding in Execution Case No. 10 of 2007. This Court by terms of order dated 20.07.2012

after hearing both the parties passed the order staying the further proceeding of execution case on terms and conditions mentioned in the order in following terms;

“In view of the above facts and circumstances of the case, the appellant shall deposit the arrears of rent @ Rs. 405 perm month from 7th of July, 1999 to 31st of May, 2007 and thereafter @ Rs. 2,000/- per month from the month of June, 2007 to July, 2012 by 3 equal installments with a gap of 45 days each. The first installment must be deposited by 15th September, 2012 and after next 45 days, second installment shall be deposited and the rest amount by next 45 days and the rent for the month of August, 2012 shall also be included in the first installment and likewise, the rent for the month of September, 2012 in the second installment and likewise, the rent for the month of October, 2012 in the third installment and shall also go on depositing the rent for the month of November, 2012 by 15th of next following month in the Executing Court and also on and so forth for future rent at the said rate then the further proceeding so for delivery of possession is concerned, in Execution Case No. 10 of 2007 pending in the court of Munsif-II, Munger shall remain stayed. It is made clear that so far decree for realization of rent already passed by the trial court is not stayed. Further, tit

is made clear that if any of the conditions stated above is defaulted, the order of stay granted by this court today shall automatically stand vacated”

Pursuant to this order of stay, the appellant did not deposit the rent in the court below and, therefore, subsequently, the stay was vacated automatically. The M.J.C. application was filed by the present petitioner for modification of this order of stay on the ground that entire arrears of rent and current rent up to August, 2016 has already been deposited by the appellant in the executing court. Therefore, the delay, if any, in depositing the monthly rent or arrears of rent or current rent be condoned and rent deposited may be accepted and the order be modified to the extent that the appellant in future shall comply the order as directed in the stay order.

3. This M.J.C. application was directed to be treated as an application in the second appeal. Therefore, this second appeal has been listed with this M.J.C. application.

4. Learned counsel, Mr. Sabbir Alam, appearing for respondent No.1 submitted that this application is not maintainable in this case because the appellant has not challenged the order, whereby the stay has already been vacated as directed by this Court by terms of order dated 20.07.2012. This application has

been filed for modification of the stay order to nullify the subsequent order passed by the executing court, which is in terms of the order passed by the High Court, as such, it is a legal order.

5. It is not denied by the respondents that the appellant has already deposited the entire arrears and current rent up to August, 2016. The appellant is ready to abide the conditions in future that he will go on depositing the current rent directed in the stay order by 15th of the next month. So far the objection raised by the respondents is concerned, those are all technical grounds and it is settled principle of law that technicalities should not perform in the way of administration of justice. So far the submission that the order passed by the executing court vacating the stay order is legal and valid is concerned, it may be mentioned here that the order passed by the executing court, no doubt, is legal and valid but it is a consequential order of this High Court dated 20.07.2012.

6. In view of the facts and circumstances of the case, the order dated 20.07.2012 is modified to the extent if the appellant has already deposited the entire amount till August, 2016, the further proceeding in execution case shall remain stayed on condition that the appellant shall go on depositing the current rent at the rate directed earlier by the next following month, for which, the rent becomes due. Thus, this application, which is filed in

terms of M.J.C. application, stands allowed.

6. Learned counsel for both the parties submitted that they will pray before the Court concerned for expeditious hearing for the second appeal. They are at liberty to do so.

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(Mungeshwar Sahoo, J)