

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.668 of 2016**

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Dinesh Kumar

.... Appellant/s

Versus

Narayan Prasad & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Jha

For the Respondent/s : Mr.

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

2 21-09-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 27.04.2016 passed by the learned Munsif, Danapur in Title Suit No.3 of 2010 whereby the learned Court below rejected the application filed by the petitioner for dismissing the plaintiff's suit on the ground that the plaintiff has not complying the order passed by the Court below directing the plaintiff to produce the original sale deed under Order 11 of the C.P.C.

The learned counsel for the petitioner submitted that by terms of order dated 07.01.2014, the plaintiff was directed to produce the original sale deed but the plaintiff did not comply the said order passed by the Court below. Therefore, in view of Order 11 Rule 21, the plaintiff's suit should be dismissed for non-compliance of the order passed by the Court below as contained in Annexure 4. The learned counsel relied upon the case of Union of

India v. Ibrahim Uddin and another, (2012) 8 Supreme Court Cases 148, paragraph 21 to 23, and also the decision of this Court, 1955 BLJR 265(Raja Bahadur Kamakshya Narain Singh v. Thakur Satnarain Singh) and 1990(2) PLJR 658(Ashoke Banerjea v. Sulochna Devi & Ors.).

From perusal of these decisions, it appears that the High Court as well as the Supreme Court has elaborately discussed the provision as contained in Order 11 C.P.C. It may be mentioned here that the Supreme Court in the case of Ibrahimuddin(supra) after considering these provisions at paragraph 24 held as follows:

“24. Thus, in view of the above, the law on the issue can be summarised to the effect that the issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is one the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to

produce the document and the other side failed to comply with the court’s order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.”

Now, in view of this settled proposition of law laid down

by the Supreme Court, it is not always that if the order is not complied with, the plaintiff’s suit must be dismissed. The Supreme Court has laid down that if there is some reasonable ground for non-production that can be considered by the Court below and in that case, the adverse inference can be drawn.

In view of the above facts and circumstances of the case, in my opinion, this is not a case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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