

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.637 of 2016

=====

Krishnadeo Prasad

.... Appellant/s

Versus

Kamla Kant Sinha & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Sudhir Kumar, Advocate

For the Respondent/s : Mr. Devendra Kumar Sinha, Sr. Advocate

Mr. Pramod Kumar Sinha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 21-09-2016 Heard the learned counsel for the petitioner and learned
counsel for the respondent.

Perused the impugned order dated 28.04.2016 passed by
Munsif, Biharsharif, Nalanda in Eviction Suit No.3 of 2014
whereby the learned Court below refused to stay further
proceeding of this eviction suit on the ground of pendency of
Misc. Case No.26 of 2014.

It may be mentioned here that ex.-parte Judgment and
Decree was passed in partition suit No.211 of 2001. Since, it was
ex.-parte against this petitioner, this petitioner has filed Misc. Case
No.26 of 2014 under Order 9 Rule 13 CPC praying for setting
aside the ex.-parte Judgment and Decree. Therefore, the Eviction
Suit has got nothing to do with this Misc. case filed by the
petitioner.

In such circumstances because of pendency of the Misc. case under Order 9 Rule 13 CPC which arises out of the ex.-parte Judgment and Decree in partition suit, the present eviction suit filed under the special enactment, i.e., Bihar Building (Lease, Rent and Eviction) Control Act, 1982 cannot be stayed and rightly has not been stayed by the Court below.

Thus, I find no reason to interfere with the impugned order. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--