

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1054 of 2016**

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Shankar Kumar Choudhary & Anr

.... Appellant/s

Versus

Indradeo Yadav

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Kumar Choudhary

For the Respondent/s : Mr.

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

- 2 09-11-2016 1. Heard the learned counsel for the petitioner and the learned counsel for the respondent.
2. Perused the impugned order dated 06.08.2016 passed by Sub Judge-I, Bhagalpur in Title Execution Case No.4 of 2003. Perused the order passed by this Court in Civil Revision No.378 of 2009 dated 12.03.2013.
3. It appears that earlier the executing Court has directed the petitioner to hand over possession to the decree holder respondent herein. The petitioner challenged the said part of the order by filing Civil Revision. This Court upheld the order of the executing Court whereby the petitioner was directed to hand over possession and the Court below by the impugned order accordingly directed to depute Civil Court, Nazir and Pyada, a Magistrate accompanied with four armed constables and four lady

constables to assess the Nazir at the cost of the decree holder.

4. Admittedly, the petitioner is the landlord of the suit premises. The respondent is tenant. Admitted fact is that the landlord has not taken any step under the Bihar Building (Lease, Rent and Eviction) Control Act for vacation of the tenant respondent from the suit premises.

5. Section 11 of the Bihar Building (Lease, Rent and Eviction) Control Act provides that 'Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds :- (a)...(b)...(c)...(d).....' Therefore, a tenant cannot be evicted without the recourse of the provisions as contained in the Bihar Building (Lease, Rent and Eviction) Control Act.

6. Here the landlord petitioner has not taken any step. The shop premises was locked by the Excise Department and when the lock was opened by the Excise Department, the landlord put a lock on it. Now the dispute is whether the tenant has suo motu vacated the suit premises or the landlord has falsely put the lock in the suit

premises. This Court in the revision petition held that as the lock was opened by the Excise Deptt., the possession will be that of the tenant. The tenant filed the suit for recovery of possession.

7. Considering all these facts of the case, this Court in Civil Revision held that the executing Court has rightly directed the petitioner to hand over possession of the suit premises.

8. In view of the above facts and circumstances of the case when the Court below by the impugned order has given effect to the order passed by this Court in Civil Revision application, there is no question of interference in exercise of supervisory jurisdiction arises.

9. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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