

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.227 of 2016**

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Sri Bajrang Prasad Agarwal @ Bajrang Prasad Goenka & Anr
..... Appellant/s

Versus

Sri Satish Kumar Goenka
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mohit Kumar
For the Respondent/s : Mr.

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

ORAL ORDER

4 20-09-2016 Heard learned counsel, Mr. Mohit Kumar, appearing
for the petitioner on I.A. No. 7546 of 2016.

This application has been filed for substitution of the
legal representatives of petitioner No.1, who died on 28.06.2016.

In view of the submission of the learned counsel, this
interlocutory application is allowed. The legal representatives are
substituted. They have already filed vakalatanama.

Heard learned counsel for the petitioner on merit. It
appears that the eviction suit was filed by the plaintiff-respondent
under the ***Bihar Building (Lease, Rent and Eviction) Control Act,
1982*** against the petitioners. The suit was decreed. Against the
said decree, the petitioners filed title appeal. Title appeal has been
dismissed by the appellate court. Against the said judgment and
decree, second appeal being S.A. No. 248 of 2015 has been filed
before this Court, which is still pending. According to learned

counsel for the petitioner himself, an application for stay under Order 41 rule 5 C.P.C. has been filed in the second appeal.

In the meantime, the decree-holder filed an application for delivery of possession. By the impugned order, the court below has allowed the said application on the ground that no stay order has been obtained from the High Court. In my opinion, therefore, there is no illegality or jurisdictional error in the order passed by the executing court. Accordingly, this civil miscellaneous application is dismissed.

The petitioner may press his application filed under order 41 Rule 5 C.P.C. in the second appeal.

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(Mungeshwar Sahoo, J)