

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18321 of 2014

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Manoj Kumar Sinha son of Late Radha Raman Prasad Sinha Resident of
Kameshwar Market, Harahi Terrace, Station Road, Darbhanga, P.O. Lalbagh, P.S.
L.N.M.U., District – Darbhanga Petitioner.

Versus

Shiv Chandra Mishra son of Gunanand Mishra Resident of village - Bajitpur, P.O.
Singhia, P.S. Kamtaul, District - Darbhanga at Present resident at Narahi Terrace,
Old Market, P.S. L.N.M.U., Distt. Darbhanga Respondent.

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Appearance :

For the Petitioner/s : Mr. Dharendra Narain Mallik
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-05-2016

V.Nath, J.

Mr.Surendra Kishore, learned counsel appearing for

the petitioner has submitted that the present application has been filed questioning the part of the order dated 10.07.2014 passed in Eviction Appeal No.23/2012 whereby the appellate court below has required the petitioner to furnish Rs.2 lacs by way of security while allowing the prayer for stay of further proceeding of the execution case filed for execution of the decree under appeal for one month. It has also been submitted that the proceeding of the execution case is going on where the direction for delivery of possession has been issued and in this regard the averments made in the interlocutory application (I.A.No.3930/2016) have been referred. It has been contended that the deposit of security amount of Rs.2 lacs is onerous in view of the fact that even the entire arrears of rent or the decretal amount is below the



said amount. The learned counsel for the petitioner has also submitted that the petitioner is ready to deposit Rs. 1 lac by way of security for due performance of the decree under execution for stay of the proceeding of the execution till the disposal of the appeal. It has also been lastly submitted that the suit premises is a shop which is the only source of livelihood of the petitioner and the appellate court below after considering this fact has granted the order for stay.

After considering the materials on record and submissions on behalf of the petitioner, it is manifest that by the order dated 10.07.2014 the appellate court below allowed the prayer for stay of further proceeding of the execution case which has been filed for execution of the decree of eviction as against the petitioner. However, the said order of stay was granted only for one month with further direction to the petitioner for deposit of Rs.2 lacs in the court by way of security. It also appears from the said order that the direction was issued to both sides in the appeal to initiate the argument and conclude the same expeditiously preferably within a month.

The learned counsel for the petitioner in this regard however has submitted and has also referred to the statement made in the interlocutory application that the appeal in the court below is still pending and the proceeding of the execution case is going on wherein the order for delivery of possession has been issued.

However, it is manifest that the present application has been filed questioning only the part of the order dated 10.07.2014 pertaining to the amount of security which the petitioner was directed to furnish. It is obvious enough that the petitioner has not been aggrieved by the remaining part of the order granting the stay of the further proceeding of the execution case for a month. It is thus evident that the order dated 10.07.2014 had already spent its force after one month. The petitioner had admittedly not deposited the amount of security as required by the said order. Therefore the present application even for quashing the part of the said order relating to the deposit of security has become infructuous.

This Court, therefore, dismisses the present application as infructuous but grants liberty to the petitioner to approach the appellate court below in accordance with law with a fresh prayer for stay of further proceeding of the execution case filed for execution of the decree under appeal and if such petition is filed, the same shall be disposed of in accordance with law on its own merits.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.05.2016
Transmission Date	NA