

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9141 of 2013

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1. Nand Kishore Prasad S/O - Late Jai Govind Sah Resident Of Village - Chapra Lodi @ Maripur, P.S. - Kazi Mohammadpur, Town And District - Muzaffarpur, Presently Residing At Mohalla - Najirpur, Pankaj Market Road, Ward No. 19 , Town And District - Muzaffarpur

.... Petitioner/s

Versus

1. Amarnath Prasad S/O - Late Ramjeevan Sah Resident Of Mohalla - Brahmpura (Jhitkahiya), P.O. - M.I.T., P.S. - Brahmpura, Town And District - Muzaffarpur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Pushkar Narain Shahi-Sr. Advocate
Mr. Sanjeet Kumar Singh-Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 5-07-2016

Petitioner/ defendant is aggrieved by an order dated 16.01.2013 passed by the learned Subordinate Judge-II, Muzaffarpur in Title Suit No.740 of 2011 whereby and whereunder petitioner/ defendant has been directed to give his specimen of writing and signature in the Court in presence of counsels of both sides as well as Sarishtedar of the Court.

2. It has been submitted on behalf of petitioner that a suit for Specific Performance of Contract Act has been filed on behalf of respondent-plaintiff. Petitioner-defendant appeared and filed written statement wherein apart from denying his signature over the alleged



deed of Mahadnama, also pleaded that no concluded contract had ever effected amongst the parties on account thereof, suit was not maintainable. Subsequently thereof, respondent-plaintiff filed petition on 23.08.2012 with a prayer to direct the petitioner-defendant to give his signature, writing in Court and further, also to file deed of exchange dated 19.06.1992 whereupon petitioner-defendant filed his objection. The learned lower Court after hearing both the parties passed the order impugned on account of which, the same has been challenged under present petition.

3. It has been submitted on behalf of petitioner that the order impugned is unsustainable in the eye of law, because of the fact that it should not have been passed in the facts and circumstances of the case as well as in the background of the fact that petitioner had apart from denying having his signature over the deed of Mahadnama also submitted that no concluded contract was ever arrived at amongst the parties. Therefore, the suit in its present form would not lie.

4. Apart from this, it has also been submitted that issues are yet to frame. Trial is yet to commence. Then in that event, the order impugned would not have been passed. To substantiate such plea, also referred Kanwar Singh Saini v. High Court of Delhi reported in 2012(1) P.L.J.R. 241 (SC). Referring Para-6 thereof, it has



been submitted that the date of first hearing of the suit really gives an opportunity to the Court to come across with the facts of the case and then thereafter, only the Court would have been in a position to pass appropriate order. So, submitted that the order impugned is fit to be set aside.

5. Gone through the order impugned as well as the judicial pronouncement referred by the learned counsel representing the petitioner. Para-6 thereof, is nothing but precisely it connotes the different stages of the suit and the same was incorporated in the facts and circumstances of the said case as enumerated under Para-3 thereof. No such kind of controversy is found at the present juncture. Apart from this, the Court is found competent enough to pass such kind of order in the background of Section 94(e) read with Section 151 of the C.P.C. whereunder Court is empowered to pass such kind of interlocutory orders as may appear to the Court to be just and convenient in the interest of justice.

6. There is no controversy that instant suit has been filed under the banner of Specific Performance of Contract based upon an agreement allegedly amongst the parties. The defendant had denied his presence over the document dated 01.10.2010 and so, for ascertaining the actual affair, the learned lower Court had rightly

passed the order impugned which happens to be necessary for proper adjudication of the suit.

7. That being so, instant petition sans merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	21.06.2016
Uploading Date	05.07.2016
Transmission Date	N. A.