

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14548 of 2013

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Shivanand Mishra Son Of Late Anirudh Mishra Resident Of Lalbagh, Town, P.S.
And District Darbhanga

.... Petitioner

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Patna
2. The District Magistrate, Darbhanga At Laheriasarai
3. The Senior S.P. Darbhanga At Laheriasarai
4. The Officer-In-Charge Darbhanga Town Police Station , Darbhanga
5. Mr. Satya Narain Prasad Kedia Son Of Late Sahdeo Prasad Kedia Resident Of
Mohalla Lalbagh, Town , P.S. & District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. DR. MAYANAND JHA
For the Respondent/s : Mr. HARENDRA PD. SINGH

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-12-2016

Heard Mr. Mayanand Jha, learned counsel
appearing for the petitioner.

The present application has been filed
questioning the legal sustainability of the impugned order, in the
peculiar facts and circumstances of the case, whereby the learned
court below has directed the parties to maintain status quo with regard
to the suit properties.

A decree for eviction was passed against the
petitioner. The decree holder thereafter levied execution case wherein
the order for delivery of possession was passed. The delivery of
possession was effected on 30.6.2013. The petitioner thereafter filed a



petition on 05.07.2013 in the execution case, informing the executing court that the operation of the judgment and decree under execution had been stayed by order of this Court passed in C.R.No.729/2010. The learned court below, after considering the facts and circumstances in detail as well as the submissions on behalf of the parties, has passed the order directing the parties to maintain status quo over the suit property.

Mr.Jha, learned counsel appearing on behalf of the petitioner has accepted that no affidavit was filed by the petitioner before the executing court or before the officer of the court who reached the spot for effecting the delivery of possession informing the fact regarding the stay of the operation of the judgment and decree under execution. The petition, however, was filed by the petitioner on 05.07.2013 before the executing court in this regard. In view of the provision as contained in Order 41 Rule 5 (Explanation) C.P.C., this Court does not find that the learned court below has committed illegality , irregularity or has acted without jurisdiction in passing the impugned order after considering the facts and circumstances of the case. At this juncture, the learned counsel for the petitioner has prayed that this application may be directed to be placed alongwith the C.R.No.729/2010. This Court, after considering the submissions, is not inclined to allow this prayer, as in the facts of the case, even if the



petitioner succeeds in the said revision application, he will have to approach the executing court below for passing a fresh order.

This application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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