

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.41 of 2016

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Lal Muni Sao, Son of Late Chatohar Sao, Resident of Village-Jamui, P.O.-
Jamui, P.S.-Dulhin Bazar, District-Patna. Petitioner.

Versus

Smt. Parvati Devi, Wife of Yadunandan Sao, Resident of Village-Jamui,
P.O.-Jamui, P.S.-Dulhin Bazar, District-Patna. Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Amitabh Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

2 05-04-2016

Heard learned counsel for the petitioner in the

limitation petition as well as on merits of this revision application.

In view of the averments made in the limitation
petition, the prayer for condonation of delay is allowed.

The present revision application has been filed
assailing the order by which the learned court below has turned
down the prayer on behalf of the defendant for rejection of plaint
under Order 7 Rule 11 (a) C.P.C. and has rejected the petition filed
on behalf of the defendant in this regard.

The learned counsel for the petitioner has
submitted that the plaintiff has no cause of action for filing the suit
as the plaintiff has failed to pay the remaining consideration
amount within the time stipulated in the agreement. It has been
therefore submitted that the learned court below has misconceived
the said aspect and has rejected the petition committing error of
jurisdiction.

After considering the submissions and perusal of the impugned order, it is manifest that the suit for specific performance of contract has been filed by the plaintiff against the defendant. According to the case of plaintiff, the defendant did not accept the remaining consideration amount and did not execute the sale deed as agreed whereas according to the case of the defendant as stated in the petition filed under Order 7 Rule 11 (a) C.P.C, it was the plaintiff who failed to abide by the terms of the agreement to pay the consideration amount even when the defendant was always ready to execute the sale deed. This disharmony between the parties necessarily raises a crucial issue of fact to be decided on the basis of evidence which is still to be led by the parties and on this basis it cannot be said that the plaintiff has no cause of action for filing the suit. The learned court below has rightly found that the plaintiff has the cause of action for filing the suit and the plaint cannot be rejected on this ground only on the basis of assertions made in petition by the defendant under Order 7 Rule 11 (a) C.P.C.

This Court, therefore, finds that there is no merit in this revision application, which is, accordingly, dismissed.

(V. Nath, J)

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