

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13616 of 2014

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1. Hari Narayan Lal Khatri Son of Late Bhagwat Narayan Lal Khatri resident of Mohalla Kuncha Banke Rai, Sadar Gali, P.S. Khajikalan, District-Patna.

.... Petitioner/s

Versus

1. Smt. Indu Devi Wife of Sri Bandhu Thakur @ Ashok Thakur Resident of Mohalla Kuncha Banke Rai, Sadar, Gali, P.S. Khajikalan, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. Shailendra Kumar Jha, learned counsel appearing on behalf of the petitioner.

The legal sustainability of the impugned order by which the learned executing court below has turned down the prayer made on behalf of the judgment debtor-petitioner for stay of further proceeding of the execution case in view of the pendency of the miscellaneous case under Order 9 Rule 13 C.P.C, has been questioned in the present application under Article 227 of the Constitution of India has been filed.

After considering the submissions and the perusal of the



impugned order, it transpires that a decree in the suit has been passed against the petitioner under Order 8 Rule 10 C.P.C. Thereafter the petitioner has filed a petition under Order 9 Rule 13 C.P.C whereas the decree holder plaintiff has filed the execution case for execution of the decree. The petitioner filed the petition before the executing court for stay of the proceeding of execution case, which has been rejected.

Mr. Jha, learned counsel appearing for the petitioner has submitted that under Order 21 Rule 29, the learned court below ought to have stayed the proceeding of the execution case. It has, however, been accepted that the petitioner had appeared in the suit but had left the pairvi in that suit at later stage resulting in the decree passed against him. No other submission has been made on behalf of the petitioner.

After considering the submissions and perusal of the impugned order, this court finds that the cogent reason has been given by the court below for turning down the prayer as made by the petitioner for stay of the further proceeding of the execution case. The learned court below has also observed that the judgment debtor-petitioner has been negligent in his conduct in pursuing the suit and the proceeding, and has further come to the conclusion that the decree holder cannot be denied fruits of the decree passed in T.S. No. 108



of 2008. In the backdrop of the aforesaid facts, this Court is not inclined to interdict the impugned order invoking its jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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