

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4540 of 2016

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Motilal Sonar

.... Petitioner/s

Versus

Chintu Kumar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 15-03-2016 **1.** Heard the learned senior counsel, Mr. S. S. Dwivedi, on behalf of the petitioner.

2. The learned Munsif by order dated 06.02.2016 rejected the application under Section 10 CPC and refused to stay further proceeding in Eviction Suit No.2 of 2014 during the pendency of the Title Appeal No.17 of 2014 arising out of suit for specific performance filed by the petitioner being Title Suit No.5 of 1995.

3. The learned counsel for the petitioner submitted that the suit was decreed but only refund of amount was directed to be paid and, therefore, the petitioner has filed Title Appeal before the Court below. Accordingly, the lower appellate Court should be directed to expedite the hearing of the Title Appeal and during that period, the further proceeding of Eviction suit may be stayed.

4. Perused the order. So far this question about the stay of eviction suit during the pendency of the suit for specific performance is concerned, it has already been settled by the Division Bench of this Court which was relied upon by Single Bench of this Court in the case of Sri *Niawah Singh Vs. Chandradeo Singh 2006 (4) PLJR 129* wherein it has been held that **‘a suit for specific performance is not appertaining to a right in the present time. The right in a party is only created once a decree for specific performance is in issue. It has been held further that merely because a suit for specific performance is pending, proceedings in an eviction suit cannot be avoided.’**

5. In view of the Division Bench decision as well as decision referred to above, I find no reason to interfere with the impugned order passed by the Court below. Therefore, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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