

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2162 of 2014

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1. Brahma Kumar Gupta Son Of Late Babu Ram Gupta Resident Of C/O
Saraswati Churi Bhandar, Railway Station Chowk, Lower Nath Nagar
Road, P.S.- Kotwali, District- Bhagalpur

.... Petitioner/s

Versus

1. Pran Nath Sanan Son Of Late Rola Ram Resident Of Mohalla-
Mundichak, Ps.- Kotwali, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.N. Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 12-01-2016 Heard Mr. D.N. Jha, learned counsel appearing for
judgment debtor-petitioner.

It appears that the plaintiff-respondent filed eviction suit
being Eviction Suit No. 09 of 1998 under *the Bihar Building
Lease Rent and Eviction Control Act, 1982* on the ground of
default in payment of rent and personal necessity. The plaintiff's
suit was decreed and thereafter the petitioner filed Eviction Appeal
No. 164 of 2011. In the meantime, the plaintiff-respondent filed
Execution Case No. 12 of 2011 for execution of the eviction
decree. After notice when the petitioner did not appear in the
execution case, the court below fixed the case for *ex-parte* hearing
of the execution case by order dated 05.01.2013. This order is

impugned in this application, under Article 227 of the Constitution of India.

According to learned counsel for the petitioner, the plaintiff obtained *ex-parte* order suppressing the fact that the appeal has been filed by the petitioner and further that no notice was ever served on the petitioner. However, the learned counsel for the petitioner admitted that the decree has been executed and the petitioner has already been evicted from the suit premises.

It is admitted fact that although appeal was filed in the year, 2011, but no stay application was filed before the lower appellate court nor any order of stay was produced before the executing court. So far question raised by the petitioner that the plaintiff suppressed the fact on filing of eviction appeal before the lower appellate court is concerned, it may be mentioned here that it is provided under Order 41 Rule 5 C.P.C. that an appeal shall not operate as a stay of proceeding under a decree or order appealed from except so far the appellate court may order. Admittedly, in this case, there is no order and, therefore, merely because the appeal has been filed, the proceeding arising out of the same would not have been stayed automatically by the executing court. Now, the decree has already been executed and the petitioner has already been evicted from the suit premises,

therefore, the petitioner, if law permits, may pray for restitution if at all in the appeal, the judgment and decree of the trial court will be set-aside.

In the result, the impugned order cannot be interfered with in supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Brajesh/-

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