

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15843 of 2015

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Ashok Prasad

.... Petitioner/s

Versus

Manoj Kumar & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 01-02-2016

Heard the learned counsel, Mr. Surendra Kishore Thakur

for the petitioner on I.A. No.623 of 2016. At the time of hearing of this I.A. for stay, the learned counsel submitted that the writ application itself may be heard on merit in admission matter. Accordingly, I heard him on merit in admission matter.

This application under Article 227 of the Constitution has been filed by the defendant-petitioner for setting aside the order dated 03.09.2015 passed by Sub Judge V, Bettiah in title suit No.23 of 2008 whereby the application filed by the defendant-petitioner under Order VII Rule 11(A) has been rejected by the Court below.

The application under Order VII Rule 11(A) has been annexed as Annexure 3 to the application. According to the defendants, the plaintiff has no cause of action for filing the suit.

It may be mentioned here that Order VII Rule 11(A) do



not provide for rejection of the plaint on the ground that the plaintiff has no cause of action for suit. The provision is that if the plaint does not disclose cause of action, the plaint can be rejected. There should not be any confusion between the case that the plaint does not disclose cause of action and the case that the plaintiff has got no cause of action. So far the former is concerned, that can be the ground for rejection of the plaint and so far the later is concerned, the same can only be decided at the final hearing of the suit. The Court below has rightly held that the matter can be decided at the hearing of the suit, therefore, no case for supervision under Article 227 of the Constitution is made out.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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