

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9713 of 2014

M/s A.b. Enterprises and A.B.T.V.S. Motor through it's proprietor Sri Akhauri Bishwanath son of Late Akhauri Bhol Nath At Marketing Complex Building, Holding No. 53/47, Ward no. 19, Dak Banglow Road, Police Station- Civil Lines, District- Gaya and resident of Mohalla Bairagi, P.S- Delha, District- Gaya.

.... Petitioner/s

Versus

Upendra Kumar, Son of Sri Baldeo Prasad, for self and power of attorney holder of Sanjay Kumar son of Sri Baldeo Prasad, Smt. Sunita Devi wife of Sri Upendra Kumar Smt. Geeta Devi Wife of Sri Sanjay Kumar and Smt Neelam Devi wife of Sri Mahendra Prasad vide power of attorney bearing deed No. 92/27.2.2008, resident of Mohalla- Krishna Prakash Road, P.S- Kotwali, District- Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Binay Kumar, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-05-2016

Nobody appears on behalf of the petitioner. Learned counsel for the respondent is present and has made his submission.

The present application has been filed praying for issuance of appropriate direction to the respondent not to take delivery of possession over the suit premises in pursuance to the order dated 28.03.2014 passed in Execution Case No. 02 of 2013, till the disposal of the First Appeal No. 216 of 2012 pending before



this Court. From the submission on behalf of the respondent and also from the materials on record including the impugned order, it is evident that the decree under execution is a decree for eviction against the present petitioner. The petitioner has filed F.A. No. 216 of 2012 before this Court against the judgment and decree of eviction but from the perusal of the order dated 21.03.2013 passed in the said appeal (a copy of which has been produced by the learned counsel for the respondent for perusal of this Court), it transpires that the order for stay of further proceeding of the execution case has been passed on the condition to deposit the amount of arrears of rent by the petitioner (appellant in the said appeal) and it has also been further directed in the said order that in case of failure of the petitioner, as directed, the executing court would be enjoined to execute the decree. From the impugned order dated 28.03.2014 passed in the Execution Case No. 02 of 2013, it appears that the said order dated 21.03.2013 passed in F.A. No. 216 of 2013 has not been complied by the petitioner and in that view of the mater, the learned executing court below has directed for delivery of possession to the decree holder respondent over the suit premises through the process of the court.

The prayer in the present application has been made to restrain the respondent from taking delivery of possession over the

suit property through the process of the court as directed in the Execution Case No. 02 of 2013. After considering the facts and circumstances of the case, this Court finds that the petitioner has failed to make out a case for interference with the impugned order dated 28.03.2014.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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