

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4350 of 2014

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Leela Devi & Ors

.... Petitioner/s

Versus

Deo Dutta Singh

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambuj Nayan Chaubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 14-01-2016 Heard learned senior counsel Mr. K.N. Choubey on
behalf of the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the tenants-petitioners against the order dated 20.12.2013 passed by Execution Court No.1(Munsif-III), Patna in Execution Case No.03 of 2011 and also for quashing subsequent orders dated 06.01.2014 and 08.01.2014 passed by the Execution Munsif-III, Patna in the aforesaid execution case and also for appropriate direction to restore possession of the suit premises in favour of the petitioners.

3. It appears that eviction suit was filed by the plaintiff-respondent under the Bihar Buildings (Lease, Rent and Eviction) Control Act. The suit was decreed. Thereafter the original defendant filed Title Appeal No.63 of 2009. In the said appeal an application under Order 41 Rule 5 CPC was filed on 04.06.2013



praying for stay of further proceeding in execution case. However, no stay order was produced before the executing court and the time application was filed by the petitioners before the executing court. The executing court rejected the said time petition on 20.12.2013 and directed to issue delivery of possession, which was effected on 06.01.2014 and the petitioners were evicted from the suit premises.

4. Perused the order dated 20.12.2013 and the order dated 06.01.2014. It appears that the court below rejected the application for time only. It is settled principle of law that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree. Admittedly in the present case, appeal was filed and application for stay was also filed but the petitioners did not obtain the stay order from the appellate court. In such circumstances, the executing court has rightly rejected the time application. So far the prayer for directing to the court to re-deliver possession of the suit premises is concerned, since the appeal is pending and if at all the appeal will be allowed, the petitioners have got right to restitution under section 144 CPC. In such circumstances in supervisory jurisdiction

neither the order impugned can be supervised nor such direction
can be given by this Court.

5. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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