

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13872 of 2013

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RAJESH KUMAR AGRAWAL SON OF LATE DWARIKA AGRAWAL
RESIDENT OF FLAT NO. 55, 5TH FLOOR, VAIBHAV APARTMENT,
BUDH MARG, P.S.- KOTWALI, IN THE TOWN AND DISTRICT OF
PATNA

.... PETITIONER/S

VERSUS

SRI DINESH KUMAR KHOWALA SON OF LATE MAHABIR PRASAD
KHOWALA RESIDENT OF FLAT NO. 54, VAIBHAV APARTMENT,
BUDH MARG, P.S.- KOTWALI, DISTRICT- PATNA

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Manoj Kumar, Adv.
Mr. Ajay Kumar, Adv.
Mr. Jashwir Singh Arora, Adv.
Mr. Ram Bhalia, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 04-10-2016 Because of the fact that the controversy being raised on behalf of petitioner/defendant could be disposed of in absence of respondent/plaintiff, on account thereof, he is not being noticed.

2. Heard learned counsel for the petitioner.

3. Petitioner is aggrieved by an order dated 31-05-2013 passed by Sub-Judge, Ist, Patna in Title Suit No.62 of 2009 whereby and whereunder the learned lower court had admitted two documents having been filed at the end of respondent/plaintiff after framing of issue.

4. It has been submitted on behalf of petitioner that though the order impugned suggest that the deed of agreement dated 08.04.2008, by way of photocopy was annexed with the plaint but, the order impugned is silent whether the original



thereof was filed and so, in terms of Order-VII Rule-14(1) of the CPC the same was required to be attached with the plaint at the time of its presentation. In likewise manner it has also been submitted that the second document which happens to be the rent receipt granted by the Municipal Corporation would not have been accepted at the end of the learned lower court in the background of the fact that the photocopy of aforesaid document was not annexed while presenting plaint and so, in terms of Order-VII Rule-14(3) of the CPC even if it was accepted at the end of the plaintiff/respondent that was to be after granting leave for which the plaintiff/respondent would have prayed before the learned lower court. Neither leave was sought for nor the court had granted leave on account thereof, admitting those two documents happens to be bad consequent thereupon, the order impugned is fit to be set aside. It has also been submitted that respondent/plaintiff filed those documents even passing the stage as recognized under Order-XIII Rule-1 of the CPC on account of settlement of issue and so, the document would not have been admitted.

5. The order is silent with regard to the fact that whether at the time of presentation of plaint original deed of agreement was presented though it speaks with regard to having the photocopy of agreement dated 08.04.2008 annexed with the plaint at the time of presentation of the plaint. So far municipal rent receipt are concerned, for that there happens to be no

disclosure so perceived from the order impugned whether same was available. In likewise manner, the order impugned is also silent whether the aforesaid municipal rent receipt happens to be relating to earlier period than that of filing of instant suit or to the period after filing of the instant suit.

6. Whether plaintiff is precluded from filing of the document which he had failed to annex while filing/presentation of the plaint as per Order-VII Rule-14(1) of the CPC and for that after going through sub-rule 3 of Rule-14 Order-VII, it is apparent that the Code takes care of. The only condition happens to be with the leave of the court.

7. Giving a pause at the present moment, the submission having been made on behalf of petitioner should be considered in more pragmatic way. In the opinion of the learned senior counsel, while invoking the privilege having enumerated under sub-rule 3 of Rule-14 of Order-VII there should have been a separate prayer at the end of the plaintiff asking for a leave, from the court, after hearing both the parties would have been adjudicated upon and further, there should have been a definite finding with regard thereto either refusing or allowing the leave. From the order impugned, it is apparent that such exercise has not been taken up at the end of the learned lower court. For that purpose, the order impugned has been given through. After going through the same it is evident that learned lower court had

perceived that in the interest of justice, those documents should be permitted to be accepted.

8. With regard to first item, that means to say the deed of agreement, that was available since before in terms of Order-VII Rule-14(1) of the CPC whereupon, even though after settlement of the issue, in terms of Order-XIII Rule-1 of the CPC some sort of relaxation is found in favour of plaintiff and that being so, the submission having raised on behalf of petitioner/defendant to that extent is found non-appreciable.

9. With regard to second item that means to say Municipal Survey receipt, for that approach having been taken at the end of the learned lower court needs revisit whereupon is ordered so.

10. In terms thereof, instant petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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