

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22245 of 2012

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MANOJ KUMAR @ MANOJ PRASAD S/O SRI CHHATHI LAL SAH
RESIDENT OF VILLAGE - MARHOWRAH KHURD, P.S. & P.S.
MARHOWRAH, DISTRICT – SARAN (CHAPRA).

.... PETITIONER/S

VERSUS

RAM DAYAL SAH S/O LATE THAKUR PRASAD RESIDENT OF VILLAGE -
MARHOWRAH KHURD, P.S. & P.O. MARHOWRAH, DISTRICT – SARAN.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. J.S. Arora, Adv.
Mr. Basant Kumar Singh, Adv.
Mr. Gaurav Pratap, Adv.
For the Respondent/s : Mr. Vishwajeet Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 3-02-2016

Petitioner has challenged order dated 04.04.2012 passed by
Additional District Judge, FTC-II, Saran at Chapra in Misc. Appeal
No.67 of 2006, while concurring with the order passed by the learned
lower court, dismissed the appeal.

2. Before adjudicating upon the matter in hand, it looks
desirable to have the brief facts, Title Suit No.170 of 1998 happens to
be at the end of Ram Dayal Sah, respondent/plaintiff with regard to
grant of permanent injunction restraining appellant/defendant from
making any change in the status quo of the land under dispute.
Furthermore, a prayer has also been made for grant of temporary



injunction. After appearance of petitioner/defendant and having show cause at their end, vide order dated 15.12.1998 the learned lower court rejected prayer for grant of temporary injunction against which, Misc. Appeal No.140 of 1998 was filed which was allowed. Subsequently thereof, a prayer has been made on behalf of respondent/plaintiff before the lower court alleging inter alia that petitioner/defendant had flouted the order of temporary injunction and so, they be punished under Order-XXXIX Rule-2A of the CPC whereupon Misc. Case No.8 of 1999 was drawn up by the learned lower court and after proceeding with the same, vide order dated 04.11.2006 found the appellant/defendant guilty for the same and directed to be kept under civil prison for a month which, has been assailed under Misc. Appeal No.67 of 2006 and the same has been dismissed vide order dated 04.04.2012 by Additional District Judge, FTC-II, Saran at Chapra, hence this appeal.

3. It has been submitted on behalf of petitioner that successive orders are bad, illegal and contrary to the spirit of law on account thereof, are fit to be set aside. It has further been submitted that learned lower court successively failed to appreciate Order-XXXIX Rule-2A in its right perception and that happens to be reason behind, passing of the successive illegal orders.

4. In order to substantiate its plea, the learned counsel for the



appellant submitted that admittedly temporary injunction was granted by the appellate court therefore, it was appellate court who could have taken recourse of Order-XXXIX Rule-2A of the CPC. As the order of injunction was not passed by the same court, rather it was passed by the appellate court on account thereof, the learned lower court was not at all competent enough to entertain petition under Order-XXXIX Rule-2A of the CPC. In likewise manner, the learned appellate court failed to appreciate infirmities committed by the learned lower court on that very score, hence the order impugned did not justify its legality. In order to substantiate his plea, the learned counsel for the appellant relied upon **AIR 2004 Karnataka 474** (*Chev. K. M. Joseph v. St. Mary's Jacobite Syrian Orthodox Church & Ors.*).

5. On the other hand, the learned counsel for the respondent controverted the submission and submitted that order passed by the successive courts are just, legal and proper, hence are fit to be confirmed. It has further been submitted that injunction was granted by the appellate court. After allowing the appeal, the Misc. Appeal lost its identity; therefore the learned appellate court was not in seisin of the case. Once, the order has been transmitted to the learned lower court who was in seisin of the case, then in that event, the learned lower court was, as per law, to see that injunction order is properly



being carried out. Once, observing that it has been flouted then, in that event, the learned lower court was competent enough to proceed in terms of Order-XXXIX Rule-2A of the CPC and rightly sentenced the appellant to be kept for one month under civil prison which, rightly been confirmed dismissing the appeal at the behest of petitioner/appellant by the learned appellant court.

6. It has further been submitted that aforesaid eventualities have been perceived by the legislature while framing the law by identifying the court concerned or where the case has been transferred to be competent enough to deal with an allegation purported to be under Order-XXXIX Rule-2A of the CPC. After passing of an order in a miscellaneous appeal, the matter came back to the learned lower court and on account thereof, could be identified as a transferee court which, the learned lower court had perceived otherwise, no procedure could be adopted in terms of Order-XXXIX Rule-2A of the CPC by the learned lower court nor the injunction will have its enforcement in true sense even passed by the superior court. Therefore, the successive order did not attract interference.

7. For better appreciation of the point in hand, it is desirable to see Order-XXXIX Rule-2(A) of the CPC which reads as follows:-

“2A.Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other Order made under rule 1 or 2 or breach of any of the terms on which the injunction was granted or the



Order made, the court granting the injunction or making the order, or any court to which the Suit or proceeding is transferred, may Order the property of the person guilty of such disobedience or breach to be attached, and may also Order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

8. From plain reading of the sub-clause(1) of Order-XXXIX Rule-2A of the CPC, it is apparent that the court which had granted injunction or any court to which the suit or proceeding is transferred has been identified to be competent enough to pass appropriate order in terms of Order-XXXIX Rule-2A of the CPC.

9. Admittedly, the order was passed by the Appellate Court. Though after disposing of Misc Appeal that has come to an end that does not mean that Appellate Court became infirm in entertaining petition in terms of Order-XXXIX Rule-2A, nor the Order-XXXIX Rule-2A does prescribe any sort of prohibition on that score. Therefore, the Appellate Court was not at all precluded from entertaining the petition. In likewise manner, the other part of event has to be seen. After disposal of Misc. Appeal, the proceeding is not



transferred to the lower court, as the proceeding remains before the learned lower court, even having pendency of Misc. Appeal before the Appellate Court, nor after passing of an order by the Appellate Court, the proceeding is transferred to the lower court. Presence of Misc. Appeal happens to be an intermediate effect without having encroachment over pendency of suit before the learned lower court. Therefore, it would be wrong perception on that very score that after passing of an order by the learned Appellate Court, the suit is being transferred to the lower court.

10. Transfer is an event by which suit are being allocated to different court of same category for trial. It may be caused by an administrative order or by a judicial order in appropriate case. Filing of an appeal, is a sequence whereunder the order is being challenged before superior court, as guided by the relevant provisions not attracted with regard to nature of the case. Whenever, during adjudication of the order impugned, the Appellate Court requires presence of lower court record, the same is requisitioned and after order /judgment the record is remitted back. As such, the paraphernalia adopted during course thereof, would not justify the event as transfer.

11. From perusal of the successive orders, it is evident that learned lower court had perceived it to be the transferee court and on

account thereof, entertained the petition and passed the order which the appellate court had confirmed in same manner. What is not incorporated in the statute, the court should not substitute it. In likewise manner, what is specifically laid down, same has to be interpreted in same way whenever there happens to be some sort of ambiguity, then in that event, there happens to be scope of interpretation, which, in the facts and circumstance did not justify.

12. That being so, the order impugned is set aside. Petition is allowed. However, in the facts and circumstances of the case parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 3rd day of Feb., 2016
Prakash Narayan

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