

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8244 of 2015

=====

Manju Devi

.... Petitioner/s

Versus

Sanjeeda Khatoon & Anr

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 21-04-2016

Heard learned counsel, Mr. J.S. Arora, appearing for the petitioner and learned counsel, Mr. Rajendra Prasad Singh, appearing for the respondents.

2. By the impugned order dated 22.04.2015, the learned Munsif, Danapur rejected the objection petition filed by the judgment debtor-petitioner under Section 47 C.P.C. in Execution Case No. 11 of 2008.

3. It appears that Eviction Suit No. 05 of 2005 was filed by the decree holder-plaintiff-respondent. The defendant admitted the default i.e non payment of rent to the extent of Rs. 18,000/-. Accordingly compromise decree was passed in terms of the compromise arrived at between the parties, wherein it was agreed that Rs. 18000/-, the arrears of rent will be deposited at the rate of Rs. 500 per month along with current rent of Rs. 12000/- per month till the entire amount of Rs. 18000/- is deposited. This

payment was to be started from the month of December, 2006. On default thereof, it was agreed that the compromise decree will be executed against the judgment debtor. Subsequently, in 2008, the plaintiff- decree holder filed execution case alleging that after the compromise decree, nothing has been paid by the judgment debtor not to speak of arrear but also the current rent. The defendant judgment debtor filed objection alleging that since the defendant is paying the rent regularly and there is no default, the execution case itself is pre-matured and not maintainable. The judgment debtor also questioned the executibility of the compromise decree. The executing court earlier rejected the application filed by the judgment debtor under Section 47 of the C.P.C. Against that order, the judgment debtor filed Civil Revision No. 1303 of 2009 before the High Court. The High Court by order dated 06.09.2011 held that the compromise decree is executable but since the executing court has not investigated about the allegation made by the judgment debtor regarding the payment of arrears and the rent, the matter was remanded to the executing court with a direction to investigation as to whether payment has been made or not. By the impugned order, the executing court has recorded clear finding that the judgment debtor has made default for payment of arrears of rent or current rent as per terms of compromise decree passed in

Eviction Suit No. 05 of 2005 and accordingly, rejected the objection petition.

4. Although the learned counsel for the petitioner argued the case at length but the main grievance is that the petitioner was not allowed to adduce any oral evidence and that the finding recorded by the court below is perverse based on no evidence.

5. On the other hand, learned counsel for the respondent submitted that, in fact, after compromise decree, till today, not a single farthing has been paid.

6. From perusal of the impugned order, it appears that the court below has considered the earlier order passed by the High Court, the compromise decree and the terms thereof and also considered the decision of this High Court reported in AIR 1988 PLJR, 961 including the provisions contained in Order 21 Rule 2 Sub-Rule 2-A C.P.C. and thereafter, recorded finding that no documents have been produced by the judgment debtor in support of his case of payment of rent i.e arrears of rent as provided under the said provision, which has been interpreted by the High Court in the aforesaid decisions. Therefore, the order passed by the court below is not arbitrary nor it can be said that the court below has no jurisdiction to decide the same. So far the ground that the

petitioner should be allowed to adduce oral evidence is concerned, in my opinion, when the law provides that the payment by the judgment debtor is to be made according to the procedure prescribed under Order 21 Rule 1 Sub-Rule 2-A C.P.C. ,the court below has rightly rejected the objection and if the petitioner is allowed to adduce further oral evidence, it will be nothing but empty formality.

7. In such view of the matter, I, therefore, find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed. Stay, if any, is vacated.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--