

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2294 of 2014

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Sri Jai Ram Pd. & Anr

.... Petitioner/s

Versus

Sri Shankar Pd. Yadav

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mohit Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 2 07-01-2016 1. Heard the learned counsel, Mr. Rakesh Kumar Verma, for the petitioner and the learned senior counsel, Mr. T. N. Maitin, on behalf of the respondent.
2. By the order dated 03.10.2013, the learned Vth Subordinate Judge, Patna city rejected the application under Section 28 of the Specific Relief Act filed by the petitioner which was registered as Misc. Case No.6 of 2010.
3. It appears that suit for specific performance was filed by the plaintiff respondent which was decreed and the Court below in the operative part of the Judgment directed that within 60 days, the defendant shall receive the amount of balance consideration and execute the registered sale deed otherwise the plaintiff shall deposit the amount and get the decree executed. Section 28 application was filed by the Judgment-debtor alleging that within two months, the

plaintiff did not pay the amount nor he ever deposited the amount in the Court within 60 days and, therefore, the contract should be rescinded. The executing Court registered this application under Section 28 as Misc. Case No.6 of 2010. Both parties adduced evidence and on the basis of the evidences, the Court below recorded finding that in fact the plaintiff offered the amount to the defendant within 60 days and when he refused, the petitioner with permission of the Court deposited the amount in the executing Court and accordingly, the Court below rejected the Misc. Case.

4. Section 28 of the Specific Relief Act provides that the application is required to be filed in the same suit. In the present case, the application has been filed in the executing Court in the execution case and not in the same suit. Further, on the basis of the evidences, when the Court below has recorded clear finding that with permission of the Court, the plaintiff has deposited the amount in the Court, this Court while exercising supervisory jurisdiction cannot interfere with the finding because this Court is not exercising appellate jurisdiction or revisional jurisdiction. Accordingly, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)