

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.631 of 2014

Arising out of

First Appeal No. 39 of 1987

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Sanjeet Kumar, son of Late Nand Kishor Prasad, Resident of Mohalla- Hathsargunj,
P.O.- Hajipur, District- Vaishali, Pin- 844101, Bihar

.... Petitioner/s

Versus

1. Ramesh Chandra Prasad, son of Late Ramswarup Sah, Resident of Mohalla-
Bagtaj Kha @ Pokhara Gudry Bazar, P.S.- Nagar Thana Hajipur, Post- Hajipur,
District- Vaishali, Bihar
2. Shiv Chandra Prasad, son of Late Ramswarup Sah, Resident of Mohalla- Bagtaj
Kha @ Pokhara Gudry Bazar, P.S. Nagar Thana Hajipur, Post- Hajipur,
District- Vaishali, Bihar
3. The State of Bihar through Sri Jitendra Srivastava, District Magistrate, Vaishali,
Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. Siddharth Shankar Pandey, A.C. to S.C. 28

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-05-2017

Inter alia contending that temporary injunction granted
by this Court on 01.05.1998 in First Appeal No. 39 of 1987 has been
violated, initially petitioner filed an application and rightly so under
Order XXIX Rule 2A which was registered as M.J.C. No. 3885 of



2012 and when the matter came up before a Bench of this Court on 03.01.2014 it was found that in the application neither facts have been properly stated nor necessary parties impleaded and as the application under Order XXIX Rule 2A was not properly filed, liberty was granted to the applicant to withdraw the application and file a properly constituted application in accordance with law. After withdrawing the said proceedings initiated under Order XXIX Rule 2A, instead of filing a properly constituted application under Order XXIX Rule 2A, petitioner, for reasons best known to him, filed this application under Section 12 of the Contempt of Court Act read with Article 215 of the Constitution, instead of filing and initiating proceedings under Order XXIX Rule 2A read with Section 151 C.P.C. Supreme Court in the case of **Modern Food Industries (India) Ltd. And another Vs. Sachidanand Dass and another- 1995 Supp (4) SCC 465** has laid down the principle that an order passed can be put to execution in accordance with the provisions of law and when a remedy under law is available for disobedience of the order passed, a contempt application under Section 12 of the Contempt of Court Act is not maintainable. An aggrieved party has to take recourse to the statutory remedy provided for execution of the order. That being so, the petitioner should have filed an application under Order XXIX Rule 2A instead of this application under Section



12 of the Contempt of Court Act.

Keeping in view the aforesaid, this application is disposed of and liberty granted to the petitioner to initiate fresh proceedings in accordance to Order XXIX Rule 2A, in case the applicant has any grievance still subsisting in the matter.

The application stands disposed of with the aforesaid.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	25.05.2017
Transmission Date	

