

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.964 of 2016

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1. M/s Excel Auto, the office of it at 204, Chandan Villa Ara Garden, Jagdeo Path, Bailey Road, Police Station- Air Port, District- Patna- 800014.
 2. Ajay Kumar Singh Son of Dr. Suryadeo Singh Resident of 204, Chandan Villa, Ara Garden, Jagdeo Path, Bailey Road, Police Station- Air Port, District- Patna- 800014.
 3. Vineet Kumar Jha Son of Sri Sushil Kumar Jha Resident of 81/B, Ashiana Nagar, Police Station- Rajiv Nagar, District- Patna- 200025.
 4. Satyendra Kumar Sinha Son of Late (Dr) D.K. Ambastha Resident of D/95, P.C. Colony, Kankarbagh, District- Patna- 800020.

.... Appellant/s

Versus

1. Rajendra Kumar Son of Late Nand Keshwar Singh Resident of Mohalla-Goria Asthan, (Behind Shiv Mandir), Sheikhpura, Police Station- Air Port, District- Patna- 800014.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Bihari Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

4 05-12-2017 Heard both sides.

The petitioners have filed this civil miscellaneous application against the order dated 23.06.2016 passed by learned Sub Judge I, Danapur in Misc. Case No.11 of 2014 wherein the learned Sub Judge directed the petitioners to pay the monthly rent to the land owner during the pendency of the miscellaneous petition besides the payment of arrear in 12 installments.

The respondent, Rajendra Kumar filed Eviction Suit No.2 of 2012 in which the petitioners are the defendants. Eviction



Suit No.2 of 2012 was decreed ex parte. The petitioners-defendants of Eviction Suit No.2 of 2012 filed Misc. Case No.11 of 2014 under Order IX Rule 13 for setting aside the judgment and decree passed ex parte in Eviction Suit No.2 of 2012. During the pendency of the Misc. Case No.11 of 2014 filed under Order IX Rule 13, the plaintiff-landlord-respondent filed petition under Section 15 of the B.B.C. Act for payment of rent and arrears and on such petition, the learned Sub Judge I directed the petitioners to pay the rent as well as arrears of rent in 12 equal installments vide order dated 23.06.2016. Against the aforesaid order, the petitioner filed this petition.

The learned counsel for the petitioners submits that only question to be decided in this case as to whether the petition under Section 15 of the B.B.C. Act is maintainable in a miscellaneous case filed under Order IX Rule 13 C.P.C. for setting aside the ex parte judgment and decree passed in eviction suit. It is submitted that this question has already been decided by a Bench of this Court in the case of Sri Mishri Lal Yadav v. Budhdeo Yadav, 1991(1) PLJR 119 in which it is held that petition under Order IX rule 13 is not in continuation of the suit. Petition under Section 15 includes within its ambit any appeal and revision and not a proceeding under Order IX Rule 13 of the Code. The petition



under Order IX rule 13 of the Code is a separate proceeding in which the petition under Section 15 of the B.B.C. Act is not maintainable, therefore, the order directing the petitioner to pay the current rent as well as arrears of rent in 12 installments is without jurisdiction and illegal and fit to be set aside.

On the other hand, Mr. Prem Kumar Verma, the learned counsel for the respondent submits that Supreme Court in the case of M/s G.M.G. Engineering Industries and others v. M/s Issa Green Power Solution and Ors., 2015(4) PLJR 110(SC) held that in a proceeding under Order IX Rule 13 read with Section 5 of the Limitation Act that of course liberal construction be made for condoning the delay but in the facts and circumstances of the case before setting aside the ex parte judgment and decree, the Supreme Court ordered for payment of some of the decretal amount.

In the present case also, the petitioners be directed to pay the current rent as well as the arrears of rent but having considered the submissions, I find that the judgment on which the learned counsel for the respondent placed reliance is of no help to his case. In the present case, the only question arises as to whether the petition under Section 15 of the B.B.C. Act is maintainable on a proceeding under Order IX Rule 13 of the Code for setting aside the ex parte judgment and this question has already been decided



by this Court in the case of Mishri Lal Yadav(supra) that the proceeding under Order IX Rule 13 is a separate proceeding and the petition under Section 15 of the B.B.C. Act does not include the proceeding under Order IX rule 13 rather it includes suit, appeal and revision.

Therefore, I have got no hesitation to hold that the order dated 23.06.2016 passed in Misc. Case No.11 of 2014 by which the learned Sub Judge allowed the petition of the plaintiff-respondent filed under Section 15 of the B.B.C. Act is without jurisdiction. Accordingly, the same is set aside and civil miscellaneous petition is allowed.

It goes without saying that the learned Sub Judge shall dispose of the miscellaneous case forthwith preferably within three months.

(Prabhat Kumar Jha, J)

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