

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22837 of 2012

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Harendra Prasad S/o Late Gopal Sah, resident of mohalla- Loharpatti, P.O+ P.S-
Motihari Town, District- East Champaran, Motihari.

.... Petitioner/s

Versus

Mahendra Prasad S/o Late Gopal Sao, resident of mohalla- Bistipatti, P.O & P.S-
Motihari Town, Distt.- East Champaran, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Suresh Prasad and Anurag Pandey, Advs.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-11-2017

1. Defendant before the Court below is petitioner.
2. This application has been filed for issuance of an appropriate order in the nature of certiorari to quash the order dated 28.09.2012 passed by the Sub-Judge-V, Motihari, East Champaran in Eviction Suit No. 1 of 1990 whereby and whereunder the Court below rejected the prayer of petitioner filed for restoration of his possession over the suit premises.
3. Heard learned counsel for the petitioner. Nobody appeared on behalf of the respondent.
4. The petitioner is the full brother of respondent. The respondent filed an Eviction Suit No. 1 of 1990 for eviction of the petitioner. It has been submitted that in absence of the petitioner, the



respondent locked his room for which the petitioner filed a petition before the learned Court below for restoration of possession by way of mandatory injunction. The said petition after hearing was allowed on 19.08.2004 and the respondent (plaintiff) was directed to hand over possession of the suit premises to the petitioner. The respondent filed Miscellaneous Appeal No. 37 of 2004 against the said order dated 19.08.2004 before the District Judge, Motihari. The said miscellaneous appeal was dismissed by the 4th Additional District Judge on 09.11.2004. Thereafter, the respondent filed C.W.J.C. No. 1580 of 2005 before this Court which was disposed of as per order dated 27.03.2012. This Court while disposing of the case, directed the Trial Court to dispose of the Eviction Suit No. 1 of 1990 on merit without giving any unnecessary adjournment. The petitioner filed a petition before the Court below for Police help for getting possession through the process of the Court. The learned Court below rejected his prayer observing that a Partition Suit No. 249 of 1987 is also pending with respect to suit premises and the Eviction Suit No. 1 of 1990 has to be heard analogously with the said Partition Suit No. 249 of 1987. From the order of the Court below it appears that the Court below on being satisfied with the submission of the petitioner, had ordered for restoration of possession, but subsequently prayer of the petitioner for getting his possession restored with the help of Police has been



refused. It is the duty of the Court to enforce its order by passing appropriate order and if necessary can direct the police to enforce the order of the Court. It is well settled that a party cannot be rendered remedy less as observed by the Hon’ble Apex Court in ***Rameshwar Lal vs. Municipal Council Tonk and others, (1996) 6 SCC 100.*** There is not only an obligation but a solemn duty of the court to enforce its order by all means. The matter relating to restoration of possession cannot be kept pending for indefinite period only on account of pendency of partition suit particularly when the petitioner has been dispossessed from the suit premises.

5. In view of above facts, this writ petition is allowed and order refusing to restore possession the petitioner with Police help is set aside and the Court below is directed to pass a fresh order as regards restoration of possession expeditiously.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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