

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.200 of 2017

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Smt. Chanti Devi

.... Appellant/s

Versus

Hridaya Nand Rai & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajkumar Rajesh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 04-02-2017

Heard learned counsel for the petitioner.

2. Perused the impugned judgment/order dated 16.12.2016 passed by 3rd Additional District Judge, Ara in Miscellaneous Appeal No.24 of 2012 whereby the learned Additional District Judge has set aside the order of the trial court dated 05.07.2012 passed by learned 4th Subordinate Judge, Ara in Miscellaneous Case No.37 of 2007.

3. It appears that the present petitioner filed the suit for specific performance of contract. The defendants appeared but in spite of direction to file written statement they did not file written statement. Accordingly, the suit was decided under Order 8 Rule 10 of the Code of Civil Procedure and judgment and decree was passed. Thereafter the defendants appeared and filed application under Order 9 Rule 13 of the Code of Civil Procedure. The present petitioner filed reply to the application and denied the



allegation made by the petitioner of the miscellaneous application. Both parties adduced their respective evidences. After hearing both the parties the learned Subordinate Judge rejected the miscellaneous application under Order 9 Rule 13 of the Code of Civil Procedure on the ground that Order 9 Rule 13 of the Code of Civil Procedure is not maintainable. Thereafter the defendants filed miscellaneous appeal before the lower appellate court. The lower appellate court by the impugned judgment and decree held that Order 9 Rule 13 application was maintainable and that it is proved that the petitioner Hridaya Nand Rai had sufficient ground for non-appearance in Title Suit No.109 of 2002 and had sufficient reason for not filing the written statement and accordingly, miscellaneous appeal has been allowed and title suit has been restored to its original file after setting aside judgment and decree passed ex-parte.

4. Learned counsel for the petitioner submitted that the decree passed for specific performance has already been executed and the petitioner has already paid the entire amount and that the petitioner is in possession of the property. The defendants did not file any application to show that the petitioner ever threatened them.

5. So far the submission of learned counsel for the



petitioner is concerned, all the matters are the questions of merit. The Hon'ble Supreme Court in the case of **Jai Singh and others Vs. Municipal Corporation of Delhi and another (2010) 9 Supreme Court Cases 385** has held that supervisory jurisdiction must be exercised within the well recognized constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a Court, or tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally it cannot substitute its own conclusion for the conclusion reached by the courts below. In the present case, admittedly the trial court without deciding the question regarding as to whether the defendants were prevented by sufficient cause has rejected miscellaneous case only on the ground that Order 9 Rule 13 of the Code of Civil Procedure is not applicable. The Division Bench of this Court in the case of **Sampat Kumar Singh Vs. Ram Janam Ram, 2009 (1) P.L.J.R. 666** has held that even if the judgment and decree is passed under Order 8 Rule 10 of the Code of Civil Procedure for non-filing of the written statement by the defendant, Order 9 Rule 13



application is maintainable.

6. From perusal of the impugned judgment/order, it appears that the lower appellate court has placed reliance on Division Bench decision of this Court. Therefore, in no way it can be said that the judgment/order passed by the lower appellate court is arbitrary, irrational or contrary to law so as to call for an interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

7. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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