

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.850 of 2017

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Md. Basir Alam, son of Late Sk. Abdul Khair, resident of Mauza- Dhaka
Ramchandra Naya Tola, P.S.- Dhaka, District- East Champaran.

.... Petitioner

Versus

1. Bhagat Sah, son of Late Tula Sah,
2. Sanjay Sah, son of Bhagat Sah, Both resident of Mauza-Jhoa Ram, P.S.-
Dhaka, District- East Champaran, at present residing at Dhaka
Ramchandra Tola Ishlampur, Main Road Near Barrier, P.S.- Dhaka,
District- East Champaran.

.... Respondents

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with

CIVIL MISCELLANEOUS JURISDICTION No.616 of 2017

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Md. Basir Alam, son of Late Sk. Abdul Khair, resident of Mauza- Dhaka
Ramchandra Naya Tola, P.S.- Dhaka, District- East Champaran.

.... Petitioner

Versus

1. Bhagat Sah, son of Late Tula Sah,
2. Sanjay Sah, son of Bhagat Sah, Both resident of Mauza-Jhoa Ram, P.S.-
Dhaka, District- East Champaran, at present residing at Dhaka
Ramchandra Tola Ishlampur, Main Road Near Barrier, P.S.- Dhaka,
District- East Champaran.

.... Respondents

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Appearance :

(In C.Misc. No.850 of 2017)

For the Petitioner : Mr. Uma Shankar Verma, Sr. Advocate
Mr. Binod Kumar Mishra, Advocate

For the Respondents : Mr. Samir Kumar, Advocate

(In C.Misc. No.616 of 2017)

For the Petitioner : Mr. Uma Shankar Verma, SR. Advocate
Mr. Binod Kumar Mishra, Advocate

For the Respondents : Mr. Samir Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 04-08-2017

Heard learned Counsel for the parties in Civil Misc. No.

850 of 2017 and Civil Misc. No. 515 of 2017, which have been



heard together on the prayer on behalf of the parties.

The petitioner has filed Civil Misc. No. 616 of 2017 questioning the legal sustainability of the order dated 23.2.2017 passed by the learned court below in Misc. Case No. 53 of 2015. The petitioner has also filed Civil Misc. No. 850 of 2017 praying for quashing of the order dated 24.3.2017 passed by the learned court below in Title (Execution) Case No. 3 of 2015.

The matrix of facts discloses that the petitioner filed a suit for declaration of title and recovery of possession over the suit property, which comprised a residential house, against the defendant-respondents. The said suit was decreed *ex parte* on 13.4.2015. The defendants in the suit filed Misc. Case No. 53 of 2015 under Order 9 Rule 13 CPC for setting aside the said *ex parte* decree on 18.9.2015. The decree holder - petitioner, however, filed Execution Case No. 3 of 2015, praying for delivery of possession over the suit house through the process of the court. In the said execution case on the prayer of the defendant - judgment debtor, the learned court below passed the order on 29.4.2016 staying the proceeding of the



execution case. This order was assailed by the petitioner before this Court by filing Civil Misc. No. 283 of 2016, which was allowed by order dated 9.12.2016 set aside the said order of stay. This Court while passing the order dated 9.12.2016 had also taken the notice of the submission on behalf of the judgment debtor - respondents that a petition for stay of the execution case had been filed in Misc. Case No. 53 of 2015 and it was observed in the order that the disposal of the said stay petition would not be prejudiced by the order dated 9.12.2016. It further transpires that the stay petition dated 2.11.2016 filed by the judgment debtor-respondents was taken up by the learned court below on 23.2.2017 along with the another application filed by the decree holder - petitioner challenging the maintainability of the Misc. Case No. 53 of 2015 itself as barred by limitation. From perusal of the order dated 23.2.2017 which has been challenged in Civil Misc. No. 616 of 2017 it appears that by the said order the learned court below has stayed further proceeding of the execution case for one month and simultaneously directed the decree holder - petitioner to complete his evidence in the Misc.



Case within one month. The order sheets of the Misc. Case and the execution case thereafter have been brought on record and enclosed with the two supplementary affidavits, and it is transparent from the different orders passed in the Misc. Case No. 53 of 2015 that the decree holder - petitioner did not lead evidence in spite of specific direction of the court for completing the evidence within one month at the time of passing the order of stay of further proceeding of the execution case. It is also clear that by the subsequent order the learned court below has closed the evidence of the decree holder -petitioner in the misc. case and posted the matter for argument, but even thereafter the decree holder - petitioner did not participate in the proceeding and tried to elongate the disposal of the misc. case on one ground or other, and did not even start his arguments. The anxiety of the learned court below in the matter is writ large from the different orders passed in the misc. case and the execution case. It is relevant to mention here that the execution case and the misc. case are pending before the same court. Ultimately it transpires that the learned court below has passed the



order dated 24.3.2017 in Execution Case No. 3 of 2015 extending the period of order of stay passed in the Misc. Case till disposal of the Misc. Case No. 53 of 2015. This order has been challenged in Civil Misc. No. 850 of 2017.

After considering the submissions and the perusal of the materials on record, it is manifest that the petitioner in whose favour the *ex parte* decree in the suit for declaration of title and recovery of possession has been passed, is bent upon to obtain the delivery of possession without cooperating in the disposal of the Misc. Case No. 53 of 2015 which has been filed by the respondents under Order 9 Rule 13 CPC for setting aside the *ex parte* decree. From the different orders passed both in the misc. case and the execution case the fact is clearly borne out that the conduct of the petitioner in those two cases has not been aboveboard and does not convince this Court to invoke its jurisdiction under Article 227 of the Constitution of India in the matter.

Learned Counsel for the petitioner, however, has been emphatic in his submission that the learned court below has



committed error of jurisdiction in passing the order dated 24.3.2017 in the execution case extending the order dated 23.2.2017 passed in the misc. case. This error of jurisdiction no doubt is apparent and therefore in the eye of law this order dated 24.3.2017 cannot be sustained. It is accordingly quashed.

However, the matter does not end with the quashing of the order dated 24.3.2017 as this Court is satisfied that the said order extending the period of stay should have been passed in the facts and circumstances in the Misc. Case. By exercise of its supervisory jurisdiction, this Court directs that the proceeding of the Execution Case No. 3 of 2015 shall remain stayed till the disposal of the Misc. Case No. 53 of 2015 in accordance with law. This Court further directs the learned court below to dispose of the Misc. Case No. 53 of 2015 within a period of six weeks from the date of receipt/production of a copy of this order.

Mr. Uma Shankar Verma, learned Senior Advocate, representing the petitioner in both the civil misc. applications has categorically submitted that the petitioner will cooperate in the



disposal of the misc. case within the aforesaid time period. The learned Counsel appearing for the respondents has also stated that the respondents will cooperate in disposal of the aforesaid misc. case within the said time frame.

In the result, the two applications are accordingly disposed of with the aforesaid directions.

The learned court below is further directed to invoke all the procedures of the CPC introduced by the amendment to ensure expeditious and timely disposal of the cases.

(V. Nath, J.)

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