

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23575 of 2013

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Bilakshan Mandal

.... Petitioner/s

Versus

Siromani Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indeshwari Prasad Mandal

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 11-10-2017 Heard learned counsel Mr. Indeshwari Prasad Mandal

for the petitioner.

2. This writ application has been filed under Article 227 of the Constitution of India for setting aside the order dated 19.09.2013 whereby the learned Subordinate Judge-III, Naugachhia (Bhagalpur) rejected the application filed by the defendant-petitioner under Order 7 Rule 11 of the Code of Civil Procedure in Title Suit No.15 of 2010.

3. The Hon'ble Supreme Court in the case of **Liverpool & London S.P. & I Asson. Vs. M.V. Sea Success I & Anr. (2004) 9 Supreme Court Cases 512** has held that an order refusing to reject a plaint will finally determine the right in terms of Order 7 Rule 11 of the Code of Civil Procedure.

4. In view of the settled propositions of law laid down by the Supreme Court the impugned order is not an



interlocutory order rather it is a preliminary judgment and, therefore, this application under the Constitution of India is not maintainable. The petitioner may move under the Code of Civil Procedure i.e. for revision.

5. In view of the above facts and circumstances of the case, the petitioner is permitted to convert this writ application to civil revision application within two weeks after Chhath holidays.

(Mungeshwar Sahoo, J)

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