

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18176 of 2012**

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Khurshid Alam

.... .... Petitioner/s

Versus

Ful Chand Chaudhary

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Pravin Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
**ORAL ORDER**

6      08-08-2017    **1.**            Heard the learned counsel, Mr. Rajesh Kumar Sinha, for the petitioner and the learned counsel, Mr. Shyam Bihar Prasad, for the plaintiff respondent.

**2.**            This application has been filed under Article 227 of the Constitution of India for setting aside the order dated 15.05.2012 passed by the learned Munsif, Hilsa, Nalanda in Eviction case No.5 of 2008 whereby the learned Court below refused to stay further proceeding of the eviction suit during the pendency of the title suit No.65 of 1994 filed by the petitioner for specific performance of alleged contract.

**3.**            The learned counsel for the petitioner submitted that the petitioner has purchased the suit property from the plaintiff respondent and he has filed the suit for specific performance in the year 1994. Subsequently, the plaintiff respondent has filed this



eviction suit in the year 2008 for the eviction of the petitioner on the ground of personal necessity which is mala fide and if during the pendency of the suit for specific performance of contract, the eviction suit is decided, the petitioner shall suffer serious loss and prejudice the petitioner because in fact there is no relationship of landlord and tenant between the parties as the petitioner has entered into an agreement to sell with the plaintiff respondent as such on the date of the alleged agreement, the relationship of landlord and tenant ceased to exist. But the learned Court below without considering this aspect of the matter has rejected the application.

4. On the other hand the learned counsel appearing on behalf of the plaintiff respondent submitted that in fact the respondent has mortgaged the house property in favour of the petitioner and thereafter, the amount was deposited by the plaintiff respondent under Section 83 of the Transfer of Property Act as such the mortgage was redeemed then the petitioner with a view to delay the matter has forged the deed of agreement and falsely filed the suit for specific performance of contract. The agreement was sent to the expert for examination and report has been received to the effect that the agreement is forged one and it is not executed by the plaintiff respondent. The suit has been filed for eviction on



the ground of personal necessity and now the petitioner is trying to delay the disposal of the eviction suit on the ground of pendency of the suit for specific performance of contract. According to the learned counsel, the issue to be decided in suit for specific performance of contract is as to whether the agreement in question is enforceable or not whereas in eviction suit, the issue is to be decided is as to whether there is relationship of landlord and tenant between the parties and whether the plaintiff has been able to prove the ground raised in the plaint of eviction suit for the eviction of the petitioner.

**5.** Perused the impugned order passed by the learned Court below. Admittedly, the suit filed by the petitioner is suit for specific performance of contract. It is not denied that a report has been submitted by the expert that the alleged agreement is not executed by the plaintiff respondent. The question to be decided in the said suit for specific performance is whether the plaintiff who is defendant in eviction suit is entitled for grant of decree in specific performance of contract or not and this is not an issue involved in the eviction suit. So far eviction suit is concerned, it is on the ground of personal necessity and in this eviction suit, the issue to be decided is whether there is relationship of landlord and tenant between the parties or not and whether any of the ground



mentioned in Section 11 of the Bihar Building (Lease, Rent and Eviction) Control Act arise or not. These issues are not involved in the suit for specific performance of contract. Therefore, neither under Section 151 nor under Section 10 of the Code of Civil Procedure, the Court has the jurisdiction to stay further proceeding on eviction suit during the pendency of Title suit No.65 of 1999 which is a suit for specific performance of contract.

**6.** In such circumstances, when the Court below has rejected application, I do not find any jurisdictional error in the impugned order as such this writ application is dismissed.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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