

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1256 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Damodar Prasad Gupta @ Damodar Prasad @ Damodar Sah son of
Kapildev Prasad @ Kapildev Sah resident of At Dehri Bazar, P.O. & P.S.
Dehri, District Rohtas.

.... Petitioner

Versus

1. The State of Bihar, through Chief Secretary, Bihar, Patna.
2. The Collector, Rohtas (Sasaram).
3. The S.D.M. Dehri-on-Sone, District - Rohtas.
4. The Superintendent of Police, Rohtas.
5. The Officer-in-Charge, Dehri Town Police Station, Rohtas.
6. Dilip Kumar Gupta son of Kapildev Sah resident of at Dehri Bazar,
P.O. & P.S. - Dehri, District - Rohtas.
7. Parmanand Jaiswal S/o Late Jugal Prasad Mohalla - Kumhrar Toli,
Ward No. 33, P.S. - Dehri, Distt - Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay

For the Respondent/s : Mr. Ajay Kumar, A.C. to G.P.4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 07-05-2018

Heard learned counsel for the petitioner and
learned counsel representing the State.

2. Petitioner has moved this court with a prayer
to quash the order dated 27.03.2018 passed by Sub-Divisional
Magistrate, Dehri in Miscellaneous Case No. 36M-2016 by
which he has deputed a Magistrate to get the lock of the two
shops opened and to get restored the amenities attached to
those shops.



3. It is the case of the petitioner that he happened to be the brother of respondent no. 5 and had advanced a sum of Rs. 10 lakhs by way of loan to him in lieu of and against the shops in question. He submits that while an appeal arising out of a Title Suit is pending before the court and an order of injunction is operating in Title Appeal No. 4/2006 and 5/2006, the agreement executed between the petitioner and his brother respondent no. 5 was filed in the Title Appeal informing the court about the deal which had taken place between the brother and respondent no. 5, however, the petitioner has alleged that his brother in order to dupe him entered into an agreement with respondent no. 6.

4. In sum and substance, the claim of the petitioner is that he is in possession of the shops by virtue of the part performance of the agreement and by the impugned order the Sub-Divisional Magistrate, Dehri is in fact interfering with his possession with the shops. It is the submission of learned counsel that the Sub-Divisional Magistrate, Dehri has gone beyond his jurisdiction in issuing the order as contained in Annexure-5, and therefore the order impugned is fit to be set aside.

5. On the other hand learned counsel



representing the State points out that Annexure-5 is an order for restoring the amenities attached to the shops. It is demonstrated from the order dated 07.04.2017 passed by the Sub-Divisional Magistrate, Dehri in Miscellaneous Case No. 36M/2016 that earlier the Sub-Divisional Magistrate, Dehri had passed a reasoned order whereunder it was also indicated that if the parties are aggrieved by the action of the first party in the matter of not adhering to the terms and conditions of the agreement, they have a remedy before the competent court of law and they can pursue their remedy before the appropriate forum.

6. It is submitted that Annexure-7, i.e., the order dated 07.04.2017 was challenged before the learned Sessions Judge, Rohtas vide Criminal Revision No. 284/2017, but the Revision Application was dismissed as no ground for interference with the order passed by the learned Sub-Divisional Magistrate, Dehri could be made out.

7. Referring to Annexure-6, learned counsel points out that the Sub-Divisional Magistrate, Dehri had passed the order in exercise of his power under Section 10 of the Bihar Buildings (Lease, Rent and Eviction Control) Act, 1982 and the order passed under Section 10 is an appealable order



in terms of Section 24 of the said Act. It is submitted that no appeal under Section 24 of the said Act has been preferred either by the petitioner or respondent no. 5, therefore, the order dated 07.04.2017 passed in Miscellaneous Case No. 36M/2016 has attained finality, and therefore, if that order has been put under execution and steps are being taken by the Sub-Divisional Magistrate, Dehri to execute the order, no fault may be found with the same.

8. Having heard learned counsel for the petitioner and learned counsel representing the State, this court is of the considered opinion that at the very first instance filing of the criminal writ application for setting aside of Annexure-5 is not an appropriate remedy. The order as contained in Annexure-5 is an order in the nature of an executing court order whereunder the order dated 07.04.2017 which has already attained finality is being executed. Learned counsel for the petitioner has not been able to show that the order dated 07.04.2017 is not an order passed under Section 10 of the aforesaid Act. Admittedly, from the reading of the order dated 07.04.2017, it appears that the said order is with respect of restoration of the amenities attached to the shops and the same is under execution. The nature of disputes,



which are being raised by the petitioner, were not the subject matter of disputes before the Sub-Divisional Magistrate, Dehri and even if those questions arose incidentally for consideration, the petitioner was not a party there in the miscellaneous case, and at this stage, if the petitioner is raising a question as to possession and wants confirmation of possession in the garb of the present writ application, this court would refrain from entertaining this application as the nature of disputes would involve a question of fact which cannot be gone into in the writ jurisdiction. The order dated 07.04.2017 which has been affirmed in revision has made it clear that the person aggrieved by the action of other party in the matter of violation of agreement can invoke his remedy before an appropriate court of law and this court having gone through the same would not exercise its extraordinary writ jurisdiction in the nature of the present dispute.

9. The writ application is, therefore, dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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