

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7564 of 2014

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1. Sri Keshav Kumar Gupta S/o Late Purushottam Prasad
2. Sri Rishu Kumar Gupta son of late Krishna Kumar Gupta, Both Residents of
Kamla Sadan, Makhania Kuan, P.S.- Pirbahore, District- Patna.
..... Petitioner/s

Versus

1. Md. Zakia Sultan, Proprietor, Indian Electronics, Paradise Market, Bakerganj,
Baripath, P.O.- Bankipore, P.S.- Kadamkuan, District- Patna.
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Nath, Advocate
For the Respondent/s : Mr. Abinash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-02-2018

This application has been filed for quashing the order dated 02.11.2013 passed by the learned Additional District Judge- XIV, Patna in Miscellaneous Appeal No. 7 of 2013. The learned Additional District Judge, as per impugned order, allowed the said miscellaneous appeal and set aside the order dated 08.02.2013 whereby and whereunder the Miscellaneous Case No. 23 of 2011 filed under Order 9 Rule 13 of Code of Civil Procedure, was dismissed.

2. Heard learned counsels for the petitioners as well as the respondents.

3. The petitioners are plaintiffs of Eviction Suit No.11 of 2011 which was filed for eviction of the respondent. The respondent did not appear before the Trial Court and so the suit was decreed *ex parte* on 30.05.2011. The respondent filed a Miscellaneous



Case No. 23 of 2011 under Order 9 Rule 13 of Code of Civil Procedure for setting aside the *ex parte* decree. After hearing, the said miscellaneous case was dismissed. Against the said order, the respondent filed a Miscellaneous Appeal No. 7 of 2013 which after hearing was allowed and the order passed in Miscellaneous Case No.23 of 2011 was set aside, subject to payment of cost of Rs.5,000/- to the petitioners.

4. The contention of the learned counsel for the petitioners is that the respondent had full knowledge about the institution of eviction suit as admitted by him in his cross-examination before the court below and so the order of the learned Additional District Judge passed in Miscellaneous Appeal No. 7 of 2013 is not sustainable. The learned Additional District Judge has passed the impugned order ignoring the materials, which were available on record, which are sufficient to establish that the respondent had full knowledge about the pendency of Eviction Suit No. 11 of 2011.

5. The learned counsel for the respondent on the other hand submitted that the respondent had no knowledge about the filing of eviction suit and so the learned Additional District Judge has rightly set aside the order passed in Miscellaneous Case No.23 of 2011. It has been submitted that after setting aside the *ex parte* decree, the trial has already commenced. The respondent has already filed his



written statement and plaintiffs have examined two witnesses and so the order passed by the learned Additional District Judge does not require any interference.

6. On perusal of impugned order and the documents on record I find that the learned Additional District Judge on being satisfied with the submission of learned counsel for the respondent set aside the impugned order observing that the respondent had no knowledge about the institution of the eviction suit. The trial of eviction suit has already commenced before the lower court and the petitioners-plaintiffs have examined two witnesses.

7. Considering the stage of trial, facts and circumstances of the case, the order allowing the miscellaneous appeal does not require any interference.

8. This application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.02.2018
Transmission Date	

