

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.5 of 2017

In

Civil Revision No.14 of 2014

Basudeo Prasad Son of Late Bhattu Yadav @ Bhattu Mahto, Resident of Village Dhangawan, P.S. Ekangarsarai, District Nalanda, at present resident of Meer Gulabibagh, Sadar Gali, P.S. - Khajekalan, District - Patna.

... .. Opposite Party... ..Petitioner

Versus

Umesh Ravidas Son of Chhotan Ravidas Resident of Village Maksudpur, P.O. - Parthu, P.S. Ekangarsarai, District Nalanda.

... .. Petitioner... ..Opposite Party

Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 05-09-2018

Heard Mr. J.S. Arora, the learned senior counsel appearing on behalf of the petitioner.

2. The petitioner has filed this civil review petition for reviewing the order dated 09.11.2016, passed in Civil Review No.14 of 2014.

3. The learned counsel for the petitioner submits that the petitioner is the plaintiff of Title Suit No.116 of 2011. The defendant had earlier filed Civil Review No.14 of 2014 for setting the order dated 07.11.2013 by which the learned court below has rejected the petition of the defendant filed under Order VII Rule 11 of the CPC praying for rejection of the plaint. This Court vide order dated 09.11.2016 set aside the order dated 07.11.2013,



passed by the learned court below holding that since the firm is a registered one and the court below has not considered the provisions of Order VII Rule 11(e) of the CPC as the registered firm has not been made defendant and accordingly, remitted the matter to the court below to pass order afresh after hearing both sides.

4. Mr. J.S. Arora, the learned senior counsel for the petitioner submits that at the time of passing of the order, this Court did not take the plaint as a whole. The plaintiff-petitioner has made alternative prayer that if the court feels any difficulty in accounting the accounts of the firm, the court may direct for refund of Rs.15,00,000/- in favour of the petitioner who invested the money in the firm. It is further submitted that this prayer can be allowed.

5. I find no ground to review the order dated 09.11.2016 passed by this Court in Civil Revision No.14 pf 2014 since this Court has remitted the case to the court below to hear both sides afresh and pass order on the petition filed under Order VII Rule 11 CPC. It goes without saying that the petitioner has got every right to agitate all the points before the court below that the suit is not barred under Order VII Rule 11 of the CPC in view of the alternative prayer made in the plaint for recovery of money.



6. Having considered the facts aforesaid, I do not any merit in the civil review petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2018
Transmission Date	NA

