

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7920 of 2014

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Md. Allauddin @ Kanthaira Son of Late Ainaitullah, resident of village- Kamat Bhawanipur (Laheriaganj) P.O. + P.S. and District- Madhubani.

.... Petitioner

Versus

Sheikh Abdul Ajij Son of Late Md. Khalil, resident of Village- Kamat Bhawanipur (Laheriaganj) P.O. + P.S. and District- Madhubani.

.... Respondent

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Appearance :

For the Petitioner/s : Md. Anis Akhtar, Advocate

Mr. Ratanakar Jha, Advocate

For the Respondent/s : Md. Abdul Mannan Khan, Advocate

Md. Nazmul Hoda, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-08-2018

Petitioner before this court is defendant of Execution Case No.08 of 2008. He has filed this writ application for quashing the order dated 25.02.2014 whereby and whereunder the prayer of defendant to reject the petition of plaintiff to amend court fee portion and valuation was allowed.

2. Heard learned counsels for the petitioner and the respondent.

3. It appears that the respondent filed Eviction Suit No.06 of 1998 before the court of Munsif I, Madhubani which was dismissed on contest without cost as the plaintiff could not prove the relationship of landlord and tenant between the parties. The plaintiff filed Eviction Appeal No.01 of 2002 which after hearing was allowed by the 1st



Additional District Judge, Madhubani in the following terms:-

“In the above facts and circumstances, therefore, I find that the plaintiff is entitled to get equitable relief of eviction against the defendant with regard to the suit premises. As this relief of eviction is not under Bihar Building (Lease, Rent and Eviction) Control Act, 1982, the plaintiff shall have to pay ad-valorem court fee for this relief and accordingly, it is, therefore, ordered that this appeal is allowed on contest setting aside the order and judgment of learned lower court without cost. The respondent-defendant is directed to vacate the suit premises within one month from the date of this order failing which the appellant may get him evicted by the process of the court.”

4. The appellant-decree holder filed Execution Case No.08 of 2008 and in the said case the decree holder filed a petition praying therein to accept the ad-valorem court fee after due assessment. As per office report the petitioner has already deposited the required ad-valorem court fee. It appears that against the judgment of first appeal, the petitioner (defendant) filed Second Appeal No.440 of 2008 which after hearing has been dismissed as per judgment dated 09.05.2012. This fact has neither been disclosed by the petitioner in the present writ application nor the learned counsel disputed this fact.

5. Thus, I find that the respondent (plaintiff) has paid the ad-valorem court fee as per report of office in the light of judgment passed by the first appellate court. The said judgment is final one on account of dismissal of second appeal. The court below has rightly



refused to entertain the objection of the petitioner and has accepted the ad-valorem court fee in the light of judgment passed by the first appellate court.

6. In view of above discussions, I find no merit in this writ application and is, accordingly, dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2018
Transmission Date	

