

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1365 of 2016

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1. Dr. Md. Azam Hussain Son of Late Tahir Hussain Ansari @ Zabir Ansari, Resident of Mohalla- Shibdhara (Alaganj), Post Office- Lalbag, Police Station- L.N.M.U., District- Darbhanga.

.... Petitioner/s

Versus

1. Sita Ram Sah, Son of Late Chulhai Sah.
2. Vijay Kumar Sah, Son of Sita Ram Sah. Both resident of Mohalla- Chakai Zamganj (Balughat), Post office- Lalbagh, Police Station- L.N.M.U., District- Darbhanga.

.... Respondent/s

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with

CIVIL MISCELLANEOUS JURISDICTION No.227 of 2017

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1. Sita Ram Sah son of Late Chulhai Sah
2. Vijay Kumar Sah Son of Sita Ram Sah Both resident of Mohalla-Chak Nizam(Belaghat), P.S.-L.N.M.U., Darbhanga, P.O. Lalbagh, District- Darbhanga

.... Appellant/s

Versus

Dr. Md. Azam Hussain, Son of Late Md. Tahir Hussain Ansari, Resident of Mohalla-Shibdhara Alafganj, P.S. L.N.M.U. Campus, P.O. Lalbagh, District- Darbhanga.

.... Respondent/s

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Appearance :

(In C.Misc. No.1365 of 2016)

For the Appellant/s : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Ranjan Kumar Dubey
Mr. Parth Gaurav
For the Respondent/s : Mr. Chittaranjan Sinha, Sr. Adv.
Mr. Alok Kumar Sinha
Mr. Surya Nilambari

(In C.Misc. No.227 of 2017)

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Adv.
Mr. Alok Kumar Sinha
Mr. Surya Nilambari
For the Respondent/s : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Ranjan Kumar Dubey
Mr. Parth Gaurav

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER



5 06-11-2018 Heard Mr. S.S.Dvivedi, learned senior counsel for the petitioner and Mr. Chittaranjan Sinha, learned senior counsel for the respondents.

Civil Misc. No.1365 of 2016 is filed against the order dated 29.08.2016 by which the learned District Judge, Darbhanga admitted Eviction Appeal No.3 of 2016 filed by the respondent against the judgment and decree passed in Eviction Suit No.6 of 2010. Civil miscellaneous No.227 of 2017 is filed by the tenants-appellants against the order dated 19.12.2016 passed in Eviction Appeal No.3 of 2016 by which the learned District Judge rejected the petition of the appellant-petitioner filed under Order XLI Rule 5 of the C.P.C. for stay of the further proceeding of Execution Case No.5 of 2016. Both the civil miscellaneous petitions are filed against two orders one dated 29.08.2016 by which the appeal was admitted and another by the appellant against the order dated 19.12.2016 by which the petition of the appellant for stay of the execution case has been rejected. Therefore, I heard both the civil miscellaneous petitions together and dispose of both the cases by the common order.

Mr. S.S.Dvivedi, learned senior counsel for the petitioner of Civil Miscellaneous No.1365 of 2016 submits that the respondents-judgment debtor filed Eviction Appeal No.3 of 2016



against the judgment and decree passed in Eviction Suit No.6 of 2010. The petitioner filed the aforesaid eviction suit for eviction of the respondents-tenants on the ground of personal necessity. The respondents appeared and filed petition under Section 14(4) of the B.B.C. Act for grant of leave to contest the suit. Learned Munsif adopted the summary procedure as prescribed under Section 14 of the B.B.C. Act, if the suit is filed on the ground of personal necessity, Section 11(1)(c) and on determination of the lease deed, Section 11(1)(e). Section 14(8) bars any appeal against the judgment and decree passed in eviction suit summarily tried under Section 14 of the B.B.C. Act if the suit is filed on the ground of personal necessity and determination of lease deed. It is submitted that the petitioner-respondent in the appeal raised all objections about the maintainability of the appeal but the learned District Judge without giving any reasons admitted the appeal. Mr. Dvivedi, learned senior counsel further submits that the judgment and decree was passed on 12.05.2016. Eviction Appeal No.3 of 2016 was filed on 01.08.2016 i.e. admittedly beyond period of limitation. The appellant-respondent did not file any petition for condoning the delay and learned District Judge has committed illegality by admitting the appeal without condoning the delay. Learned counsel for the petitioner further submits that respondent



filed Civil Misc. No.227 of 2017 against the order dated 19.12.2016 passed in Eviction Appeal No.3 of 2016. It would appear from perusal of the order dated 19.12.2016 that the notice was issued to the respondents and further proceeding in Eviction Appeal No.3 of 2016 was stayed. On the same day, the appellate court refused to stay the Execution Case No.5 of 2016 filed for execution of the judgment and decree passed in Eviction Suit No.6 of 2010. It is further submitted that Civil Misc. No.227 of 2017 was filed on 25.01.2017. The petitioner of this civil miscellaneous appeared on 23.01.2017 in Civil Misc. No.1365 of 2016 and came to know about the order of stay staying the further proceeding of Eviction Appeal No.3 of 2016 but the petitioner did not disclose the facts in his petition and suppressed the material facts. It is further submitted that Civil Misc. No.227 of 2017 is liable to be dismissed on account of suppression of facts itself.

Controverting the submission of the learned counsel for the petitioner of Civil Misc. No.1365 of 2016 and respondent of Civil Misc. No.227 of 2017, Mr. Chittaranjan Sinha, learned senior counsel for the respondent submits that from bare perusal of para 8 page 49 of the judgment of Eviction Suit No.6 of 2010, it would appear that the learned Munsif decided the suit on the ground of personal necessity as well as on the ground of default in



making payment of rent and, therefore, the suit was tried on composite grounds and so the appeal is maintainable. So far as the question of admission of the appeal without condoning the delay is concerned, it is submitted that respondent-plaintiff may raise this point of limitation even after his appearance and the appellate court may consider point of limitation. It is submitted that if the execution case is not stayed, the appeal would become infructuous.

Having considered the submissions of both sides and on perusal on the record, I find that it is admitted that petitioner of Civil Misc. No.1365 of 2016 filed Eviction Suit No.6 of 2010 and made averment in the plaint that the plaintiff requires the suit premises on the ground of his personal necessity. The plaintiff also stated that the defendants defaulted in making payment of rent since February, 2008 although the prayer as mentioned in para 15 of the suit, the plaintiff sought eviction of the suit premises on the ground of personal necessity and on such averment, learned counsel for the petitioner led emphasis that the suit was filed for eviction on the ground of personal necessity but without considering the merit of the case, I find that the case is fit for remand because the plaintiff-respondent appeared in Eviction Appeal No.3 of 2016 and raised objection about the



maintainability of the appeal in view of the provisions as contained under Section 14(8) of the B.B.C. Act. Admittedly, the appellant had also not filed any petition for condonation of delay although the appeal was filed after the prescribed period to file appeal. The tenant earlier filed Civil Revision No.138 of 2016 against the judgment and decree passed in Eviction Suit No.6 of 2010 as provided under Section 14(8) of the B.B.C. Act but the stamp reporter of the High Court raised objection about the maintainability of the civil revision and on such objection, learned counsel appearing on behalf of the tenant, who preferred civil revision, sought permission to withdraw the revision petition with liberty to file appeal and after withdrawal of the civil revision, tenant-judgment debtor filed eviction appeal.

Therefore, I find that once the objection about the maintainability of the appeal is raised on behalf of the decree holder-plaintiff, the District Judge is bound to pass reasoned order about the maintainability of the appeal and also on the petition for condoning the delay, if filed. Accordingly, I set aside the order dated 19.12.2016 passed in Eviction Appeal No.3 of 2016 as well as the order dated 29.08.2016 passed in Eviction Appeal No.3 of 2016 and remitted the case to the Court of learned District Judge to pass reasoned order after considering the submission of both



sides on the point of maintainability of the suit. At the same time, the learned District Judge is also directed to pass order afresh on the petition of the appellant filed under Order XLI Rule 5 C.P.C. Accordingly, both the civil miscellaneous petitions are allowed.

(Prabhat Kumar Jha, J)

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