

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.452 of 2018

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1. Smt. Vidyawati Devi @ Vidyawati Singh, W/o Chandra Shekhar Singh,
R/o Mohalla- Vikash Nagar, Road No.1, P.S.- Alamganj, P.O.- Mahendru,
District- Patna.

.... Petitioner/s

Versus

1. Sri Raju Singh @ Raju Kumar Singh, S/o Sri Surendra Singh, R/o
Village- Baikathpur, P.S.- Khusrupur, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harsh Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

5 24-04-2018 Heard both sides.

The petitioner-judgment debtor has filed this civil miscellaneous petition against the order dated 26.02.2018 passed in Execution Case No.3 of 2014 by which the petition of the petitioner-judgment debtor for stay of Execution Case No.3 of 2014 till the disposal of Misc. Case No.1 of 2018 filed under Section 47 of C.P.C. has been dismissed.

The learned counsel for the petitioner submits that once the petition under Section 47 of C.P.C. is filed, the Court is obliged to stay the execution case till the disposal of the miscellaneous petition filed under Section 47 of the C.P.C. The petitioner being judgment-debtor filed the petition that the



judgment and decree for which the execution case is filed is a nullity and the same cannot be executed.

The learned counsel for the respondent submits that till the disposal of the miscellaneous case, arising out of filing of the petition under Section 47 of the C.P.C., the execution of the delivery of possession should have been stayed but since the petition filed under Section 47 of the C.P.C. is devoid of any merit, the order does not require any interference.

Having considered the submissions of both sides, I find that once the judgment debtor filed petition under Section 47 C.P.C., the executing court should stay the execution case till the disposal of the miscellaneous case arising out of petition filed under Section 47 of the C.P.C., therefore, the executing court has committed jurisdictional error in rejecting the petition of the petitioner for stay of the Execution Case No.3 of 2014.

Accordingly, the order dated 26.02.2018 is set aside. The Civil Miscellaneous petition is allowed. The execution case is stayed till the disposal of Misc. Case No.1 of 2018. The Executing Court is directed to dispose of the miscellaneous case within two months from the date of receipt of the order.

(Prabhat Kumar Jha, J)

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