

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1370 of 2016

1. Usha Sinha, Wife of Late Birendra Kumar Singh,
2. Annunay Sinha, Son of Late Birendra Kumar Singh.
3. Annuneet Sinha, Son of Late Birendra Kumar Singh, All resident of Village- Rampur Balli @ Repura, P.S.- Saraia, District- Muzaffarpur, At present residing at Jaitpur House, Mohalla- Maripur, P.S.- Town, District- Muzaffarpur.

... .. Petitioners

Versus

1. Muzaffarpur Culb through its Honorary Secretary Mauza Sarai Syed Ali Muzaffarpur Near General Post Office, P.S.- Town, District- Muzaffarpur.
2. Sri Kumod Sahay, Son of Late Gopal Ji Sahay, Resident of Mohalla- Motijheel, P.O.- Head Post Office, Muzaffarpur, P.S.- Town, District- Muzaffarpur.
3. Sri R.K. Sahu @ Lalan Babu, Son of late Krishna Mohan Prasad Sahu, Resident of Mohalla- Sahu Pokhar, P.S.- Town, District- Muzaffarpur.
4. Sri Krishna Mohan Tiwari, Son of Late Babu Laxmi Narayan Tiwari, Resident of Mohalla- Bela, P.O.- R.K. Ashram, P.S.- Mithanpura, District- Muzaffarpur.
5. Dr. C.P.N. Thakur, Son of Shri Raghu Raj Thakur, C/o Thakur Nursing Home at Mohalla- Naya Tola, P.S.- Kazim Mahammadpur, District- Muzaffarpur.
6. Sri Pradeep Mehrotra, Son of Late Radhey Shyam Mehrotra, Resident of Mohalla- Juran Chhapra, Road No. 1, P.S.- Brahampur, District- Muzaffarpur.
7. Sri Baidnath Prasad Verma, Son of now known to the petitioner, Resident of Professor Colony, Aamgola, P.S.- Town, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. J.S. Arora, Senior Advocate
For the Respondents	:	Mr. J.K. Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 03-12-2018

Heard Mr. J.S. Arora, the learned senior counsel for the petitioner and Mr. J.K. Verma, the learned counsel for the respondents.

2. The petitioners preferred this civil miscellaneous petition against the order dated 29.09.2016, passed in Title Appeal



No.57 of 2015 whereby the learned Additional District Judge-XIV, Muzaffarpur allowed the petition of the appellants filed under Order XLI Rule 5 of the CPC to stay the further proceeding of Execution Case No.2 of 2015 pending in the court of learned Sub Judge-VII, Muzaffarpur without imposing any condition.

3. The brief facts relevant can be summarized as follows:-

The petitioners filed Title Suit No.69 of 1983 for decree for eviction of the defendants-respondents herein from the suit premises and realization of arrears of rent. The plaintiff set forth his case that the suit premises was leased out by Chaudhary Mahanth Raghunath Das, predecessor in interest of the plaintiff by a lease for a period of ten years from 01.08.1885 to 01.08.1894 at a monthly rent of Rs.25/- in favour of Sri A.N. Stuart described as the Secretary, Station Club, Muzaffarpur. On 17.07.1889 lease in the form of मुकररी इस्तमरारी was executed by Choudhary Mahanth Raghunath Das in favour of the Secretary, Station Club, Muzaffarpur.

The defendants-respondents herein contested the suit primarily on the ground that the suit premises was settled in favour of the defendants by deed of मुकररी इस्तमरारी vide deed dated 17.07.1889 and so the plaintiffs have no right to maintain suit for



eviction of the defendants from the suit premises as on the basis of such settlement, the members of Station Club, Muzaffarpur acquired absolute right, title and interest on the basis of said document and made permanent construction thereon by the members of the Club. The plaintiff no.1 was also member of the Club. The father and grandfather of the plaintiff no.1 was also member of the Club. There is no relationship of landlord and tenant between the plaintiffs and the defendants. The Building Controller in House Control Case No.2 of 1955 rejected the case of the plaintiff for eviction of the suit premises. The defendants also took other grounds including the limitation under Section 67 of the Limitation Act, 1963. The suit was decreed. The defendants filed Title Appeal No.57 of 2015 against the judgment and decree dated 30.09.2015 passed in Title Suit No.69 of 1983. The appellants-opposite parties also filed petition for stay of the execution case and the learned appellate court vide order dated 29.09.2016 stayed Execution Case No.2 of 2015 filed for execution of the judgment and decree passed in Title Suit No.69 of 1983.

4. Mr. J.S. Arora, the learned senior counsel for the petitioners submits that the tenant after passing of the decree for eviction is not entitled as a matter of right to continue in the



premises merely after filing appeal against the judgment and decree passed in eviction suit. The appellate court is not supposed to pass order of stay in execution case filed for execution of the decree passed in eviction suit in a routine manner. The opposite parties are in possession of the suit premises since 1885 and the suit was filed in the year 1983 but the appellate court without following the principles laid down by the Hon'ble Apex Court for staying the execution case for execution of the judgment and decree passed in eviction suit in the case of Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705 and the same principle has been reiterated in subsequent judgment in the case of Jai Singh v. MCD, (2010) 9 SCC 385, State of Maharashtra v. Supermax International (P) Ltd., (2009) 9 SCC 772. Mr. Arora further submits that the appellate court can impose a condition and direct the appellant to pay the rent at the market rate after passing of the judgment to the decree holder for staying the execution case under Order 41 Rule 5 CPC and this view has been reiterated time and again but the learned Additional Judge while staying the further proceeding of the execution case during the pendency of the appeal did not impose any condition for payment of rent to the landlord-petitioners.



5. Contending the submissions of the learned counsel for the petitioners, Mr. J.K. Verma, the learned counsel for the respondents submits that on the facts and in the circumstances of the case the learned Additional Judge stayed the further proceeding of the execution case without putting any condition and directing the opposite party to pay the rent at market rate. Learned counsel further submits that the suit premises was leased out in favour of Station Club, Muzaffarpur by a deed मुकररी इस्तमरारी and on plain reading of the contents of the deed, it is evident that the suit premises was permanently settled in favour of Station Club, Muzaffarpur and the Club remained as tenant of the original landlord. The Building Controller decided the dispute in the year 1955 itself and rejected the petition of the landlord for eviction of the suit premises, therefore, the court on the facts aforesaid is justified in not imposing any condition for payment of rent at the market rate after the judgment and decree passed in the suit and the order does not require any interference under the supervisory jurisdiction of this Court as no injustice is done to any party.

6. From submissions of both sides, in my view, the one and only question arises as to whether the appellate court while exercising power under Order 41 Rule 5 for staying the operations of the judgment and decree passed in a suit or for staying the



execution case filed for execution of a judgment and decree is duty bound to impose certain conditions. Order 41 Rule 5 stay by appellate court. An appeal shall not operate as a stay of a proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. From perusal of the aforesaid provisions, it appears that mere preferring an appeal does not operate as a stay of a decree or order appealed against nor the proceeding in the court below. A prayer for grant of stay of proceeding or on the execution of decree or order appealed against has to be specifically made to the appellate court and the appellate court has discretion to grant an order of stay or to refuse the same. The only guiding principle/factor appeared in Order 41 Rule CPC is the existence of sufficient cause in favour of the appellant. On the availability of such sufficient cause, the appellate court may stay the order appealed against or the execution of the judgment and decree, therefore, the deciding factor is the availability of the sufficient cause. The court granting stay had discretion to stay the order appealed against or the execution proceeding on the conditions seems appropriate to the appellate court. In the cases of



Atma Ram Properties (P) Ltd. (supra), Jai Singh (supra) and State of Maharashtra v. Supermax International (P) Ltd. (supra), the appellate court found that the tenant who preferred appeal should pay the rent at the market rate or an appropriate rate, after passing of the decree impose such condition and imposition of such condition for grant of stay was under consideration before the Hon'ble Apex Court and it has been held that the appellate court may impose such conditions which deem fit and proper at the time of granting stay of the order appealed against or the execution proceeding for execution of the judgment and decree appealed against but I find that if the appellate court while granting stay of the execution case on availability of sufficient cause may not impose any condition on consideration of the facts of the case. In the present case, the existence of relationship of landlord and tenant is denied on the basis of the lease deed or permanent settlement vide the deed मुकररी इस्तमरारी and the defendant denied to have any relation of landlord and tenant between the plaintiffs and defendants. The opposite parties have also denied to have made any payment of rent after permanent settlement of the suit premises in favour of a body, Station Club, Muzaffarpur. Thus, if the appellate court does not impose any condition while granting stay on the availability of sufficient cause, such order of the



appellant court cannot be held to be illegal and does not suffer from any jurisdictional error, therefore, I find that the order passed by the appellate court granting stay of the execution case does not require any interference.

7. Having considered the facts aforesaid, I find no merit in this civil miscellaneous petition and the same is dismissed accordingly.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2018
Transmission Date	NA

