

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1421 of 2018

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1. Md. Akbar @ Mohammad Akbar, aged about 68 years, Son of Md. Abdul Gaffar, Resident of Mohalla- Ward No- 12, Near Masjid, Saguna Danapur, Danapur, Police Station- Danapur, Post Office- Danapur Cantt., District- Patna.

.... Appellant/s

Versus

1. Shazia Alam age about 46 years wife of Dr. Rizwan Rehman Khan, Resident of Mohalla- 403, Park View Apartment, South Gandhi Maidan, Police Station- Gandhi Maidan, Town and District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 04-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 12.07.2018 passed by learned Munsif, Patna in Execution case No. 255 of 2017 whereby the learned Munsif has directed to issue delivery of possession.

The brief facts relevant for disposal of this Civil Misc. petition is that plaintiff filed Eviction Suit No. 19 of 2007 in the court of Munsif-I, Patna for eviction of the suit premises and arrears of rent. The suit was compromised on 07.04.2011 and the defendant/ petitioner agreed to vacate the suit premises without any further delay. It was agreed between plaintiff and defendant that after construction of proposed market the plaintiff shall



provide a shop to the defendant on monthly market rent. The case of the petitioner is that after compromise decree there was an oral agreement between the decree holder and judgement debtor and on such agreement the judgement debtor continues in occupation of the suit premises on payment of monthly rent and, therefore, the decree holder waived her right for vacating the premises on the basis of such oral agreement. The decree holder filed execution proceeding after six years of the judgement and decree passed in Eviction Suit No. 19 of 2017.

The learned counsel for the petitioner submits that the learned Munsif without taking into consideration the facts aforesaid ordered for issuance of delivery of possession. It is submitted that the decree holder is not entitled to get delivery of possession on the basis of judgement and decree passed in the year 2011 on compromise. After passing of judgement and decree the decree holder allowed the petitioner to continue in occupation of the suit premises and in fact fresh cause of action arose to the plaintiff/ decree holder but I do not find any merit in the submission. The eviction suit has already been decreed on compromise and the petitioner had agreed to vacate the suit premises but even after the decree the petitioner continued in possession and did not vacate the suit premises compelling the



decree holder to file execution case and on such the learned Munsif has rightly passed the order for issuance of delivery of possession in order to execute the judgement and decree passed in Eviction Suit No. 19 of 2007. Thus, I do not find any merit in this Civil Misc. petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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