

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.768 of 2018**

Rajkumari Sinha wife of Sri Basudeo Prasad, resident of Mohalla-Jay Prakash
Nagar, Ward No.12, Pargana-Farkia, P.S.- Nagar Thana, Khagaria, P.O. &
District- Khagaria

... .. Petitioner

Versus

Rekha Devi wife of Udheshwar Prasad Yadav, resident of village-Awash
Board, Khagaria, Pargana-Farkia, P.O.-Koshi College, P.S.-Nagar Thana,
Khagaria, District-Khagaria

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Dharmendra Chaubey, Advocate
	:	Mr. Nidhi, Advocate
For the Respondent/s	:	Mr. Md. Waliur Rahman, Advocate
	:	Mr. Nishant Kumar Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 09-08-2019

Heard Mr. Dharmendra Chaubey, learned
counsel for the petitioner and Mr. Waliur Rahman, who has
appeared suo motu on behalf of the respondent.

2. This application under Article 227 of the
Constitution of India has been filed by the petitioner for
quashing the order dated 20.10.2018 passed by the learned Sub-
Judge-1, Khagaria whereby he has dismissed the application
dated 06.05.2017 filed by the petitioner in Execution Case
No.03 of 2011 wherein the petitioner had prayed to dismiss the
execution proceeding filed by the respondent.

3. The petitioner is defendant in the court
below. The respondent herein had filed Title Suit No.08 of 2001



for decree of specific performance of contract in respect of the suit property in question. He had pleaded that on the basis of registered agreement to sell dated 14.07.1999 the petitioner had received rupees two lacs twenty five thousand as advance amount for the said property in question and rest twenty five thousand was to be paid at the time of execution of the sale deed. The sale deed had to be executed by 15.10.2000. The respondent sent several registered notice to the petitioner between 02.10.2000 to 25.09.2000 to accept the balance amount and execute the sale deed, but the petitioner did not execute the sale deed in favour of the respondent.

4. On contest, the suit was decreed in favour of the respondent vide judgment dated 10.05.2011.

5. The petitioner filed first appeal against the aforesaid judgment dated 10.05.2011 passed in Title Suit No.08 of 2001.

6. In the said Title Suit No.08 of 2001, decree was passed on 10.05.2011.

7. Thereafter, the respondent filed Execution Case No.03 of 2011 before the learned Sub-Judge-1, Khagaria for executing the decree passed in the suit.

8. In the execution case, the petitioner filed an



application on 06.05.2017 under Section 28 of the Specific Relief Act, 1963.

9. The said application was rejected by the learned Sub-Judge-1, Khagaria vide order dated 20.01.2018.

10. Assailing the impugned order dated 20.01.2018, learned counsel for the petitioner submitted that in the judgment dated 10.05.2011 passed in Title Suit No.08 of 2001, the trial court had specifically ordered the decree holder to deposit the remaining consideration amount of rupee twenty five thousand within sixty days from the date of the judgment. The said period of sixty days expired on 11.07.2011. Since the respondent did not deposit the balance amount as ordered by the court within the stipulated time, the judgment and decree passed by the trial court could not have been executed. He has further contended that the executing court could not have extended the time granted by the trial court. On the basis of the aforesaid pleadings, learned counsel for the petitioner submitted that the order impugned is bad in law and is fit to be set aside.

11. Per contra, learned counsel appearing for the respondent submitted that the petitioner has not approached this Court with clean hands. He has not stated in his application that in the first appeal, i.e., F.A. No.132 of 2011 filed against the



judgment passed in Title Suit No.08 of 2001, the petitioner had made prayer before the Lawazima Board of the Patna High Court vide I.A. No.5848 of 2016 for stay of further proceeding in Execution Case No.03 of 2011 and the said prayer was rejected by the Lawazima Board vide order dated 31.08.2016. She had filed another interlocutory application being I.A. No.7561 of 2016 in First Appeal No.132 of 2011 under Section 151 read with Order XLI Rule 5 of the Civil Procedure Code praying therein to stay the execution of the sale deed by the executing court in favour of the decree holder (respondent) and further to stay the further proceeding of Execution Case No.03 of 2011 pending before the learned Sub-Judge-1, Khagaria till disposal of the appeal. However, the said interlocutory application was also rejected by this Court vide order dated 22.09.2016.

12. Having heard learned counsel for the parties and carefully perused the records including the order passed in First Appeal No.132 of 2011, which was brought on record subsequently after objection was raised in this regard, I find substance in the submission of the learned counsel appearing for the respondent. It is an admitted fact that the appellant had challenged the judgment passed in Title Suit No.08 of 2001 by



way of filing First Appeal No.132 of 2011. In the aforesaid first appeal, the petitioner filed an interlocutory application being I.A. No.5848 of 2016 for stay of further proceeding in Execution Case No.03 of 2011 pending in the court of Sub-Judge-1, Khagaria. The Lawazima Board finding no merit in the application rejected the prayer vide order dated 31.08.2016. Thereafter, another application being I.A. No.7561 of 2016 under Order XLI Rule 5 of the CPC was filed praying therein for stay of execution of the sale deed by the executing court in favour of the decree holder and further to stay the further proceeding of Execution Case No.03 of 2011 pending in the court of Sub-Judge-1, Khagaria till disposal of the appeal. This Court, vide order dated 22.09.2016 finding no merit in the prayer of the petitioner, rejected I.A. No.7561 of 2016. The aforesaid facts were certainly relevant and they ought to have been brought to the notice of the court in the present proceeding by the petitioner. The petitioner has deliberately not brought those facts on record and has tried to obtain the order from the court by suppressing the relevant materials.

13. In that view of the matter, apart from there being no merit in the application of the petitioner, I find that the application is fit to be rejected on the sole ground of suppression



of the relevant facts from the court.

14. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.08.2019
Transmission Date	N/A

