

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1361 of 2018

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Chandrika Mahto, Son of Ramanand Mahto, resident of Village- Bahuarwa,
P.O.- Laxmipur, P.S.- Shanichari, District- West Champaran.

... .. Defendant-Judgment Debtor-Petitioner
Versus

Munni Mahto, Son of Late Lakhan Mahto, resident of Village-Bahuarwa,
P.O.- Laxmipur P.S.- Shanichari, District-West Champaran.

... .. Plaintiff-Decree Holder-Respondent

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Appearance :

For the Petitioner : Mr. Rajendra Prasad Sah, Advocate
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 24-10-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 11.05.2018 passed by the learned Munsif, Bettiah in Execution Case No.1 of 2005 whereby the application filed by the petitioner under Section 47 of the Code of Civil Procedure (for short 'CPC') to dismiss the execution case has been rejected.

3. Learned counsel appearing for the petitioner submitted that the order impugned passed by the court below is bad in law and fit to be set aside. According to him, the ground taken for rejecting the application dated 12.12.2014 filed by the petitioner is not justified. Merely because on earlier occasion the



delay in filing Execution Case No.1 of 2005 was erroneously condoned, it can not be said that the same point could not have been raised later. He has also submitted that allowing the Execution Case No.1 of 2005 to proceed is void *ab initio* and continuance of the same would set a bad precedent in law.

4. The facts of the case, in short, are that Title Suit No.106 of 1984 was filed by the plaintiff-respondent against the defendant-petitioner for the relief that the possession of the petitioner over the lands in question was illegal and wrongful and liable to be vacated therefrom. The further relief claimed in the suit was for recovery of possession of land within a time frame to be fixed by the court and for restraining the defendant-petitioner from making any construction over the suit land.

5. The defendant-petitioner appeared in the suit on notice. However, he left *pairvi* whereafter an *ex parte* judgment was passed on 31.07.1989 and the decree was passed on 18.08.1989. An execution case was belatedly filed on 29.07.2005 with an application for condoning the delay caused in filing the execution case. After having heard the application for condonation of delay, the same was allowed and the execution case proceeded. The defendant-petitioner appeared in



the execution case and filed his objection on 21.10.2005. A rejoinder to the objection was filed by the plaintiff-respondent on 17.02.2006.

6. After hearing the parties, vide order dated 08.08.2008, the objection raised by the defendant-petitioner was rejected. Being aggrieved, the defendant-petitioner filed a revision application vide Civil Revision No. 2020 of 2008 before this Court, which was dismissed vide order dated 03.12.2008. Thereafter, the defendant-petitioner filed a writ petition vide CWJC No.15586 of 2010 before this Court whereby he had challenged the order dated 02.07.2010 passed by the executing court in Execution Case No.1 of 2005 whereby the application filed by the defendant-petitioner to stay the proceedings of Execution Case No.1 of 2005 till the decision of Misc. Case No.13 of 2009 filed by the defendant-petitioner for setting aside the *ex parte* judgment and decree in Title Suit No.106 of 1984, giving rise to the Execution Case No.1 of 2005 was rejected. The writ petition filed by the defendant-petitioner was dismissed vide order dated 26.06.2014.

7. It would be relevant to note here that even prior to the dismissal of the aforestated writ petition, Misc. Case No.13 of 2009 filed by the petitioner under Order 9 Rule 13



CPC for setting aside the *ex parte* decree passed in the suit had already been dismissed on 06.06.2014.

8. In the background of the factual matrix, when I look to the application filed by the petitioner under Section 47 of the CPC, as contained in Annexure-1 to this application, I find that the only question raised by the defendant-petitioner was that the execution case was hopelessly time barred. Thus, it was fit to be dismissed. The said issue was raised by the defendant-petitioner again and again and was always decided against him by the executing court as also this Court, as would appear from the facts noted above.

9. In that view of the matter, the learned Munsif, Bettiah has rightly rejected the application filed by the petitioner vide order impugned dated 11.05.2018.

10. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.10.2019
Transmission Date	NA

