

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.765 of 2019**

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Shri Vinay Kumar Gupta, S/o Late Dharam Das Gupta, Proprietor of M/s. Alka Jewellers and Co., Laxmi Bhawan, Muradpur, Ashok Rajpath, P.S.- Pirbahore, Distt.- Patna-800004

... .. Petitioner

Versus

Shri Pradeep Kumar Jain, S/o Late Basant Lal Jain, Resident of Mohalla- Muradpur, Ashok Raj Path, P.S.- Pirbahore, Distt.- patna-800004

... .. Respondent

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Sinha, Advocate
For the Respondent	:	Mr. Kumar Uday Singh, Advocate

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

Date : 12-09-2019

In the instant application under Article 227 of the Constitution of India, the petitioner has challenged the order dated 30.04.2019 passed by the learned Execution Munsif, Patna in Misc. Case No.135 of 2018 arising out of Execution Case No.136 of 2017 by which he has dismissed the Misc. Case No.135 of 2018 and fixed the next date on 30.05.2019 in the execution proceeding.

2. The petitioner has essentially raised the following grounds for setting aside the impugned order of the learned Execution Munsif, Patna:-

- (i) The petitioner is tenant under the BBC Act and he can be evicted only by a decree passed under Section 11 of the BBC Act and not otherwise by way of Execution Case No.136 of 2018.



(ii) The compromise decree giving fresh tenancy in favour of the petitioner with effect from 01.07.2002 for fifteen years on fresh terms for value of more than Rs.100/- is required to be compulsorily registered under Section 17 of the Registration Act and in absence thereof the same is not enforceable in law and as such the decree under execution is fit to be rejected.

(iii) The rights of the parties shall be governed by the registered lease deed dated 25.09.2002 and not by the unregistered compromise decree as claimed.

(iv) Any agreement is restraint of legal proceeding and that too is void in terms of Section 28 of the Contract Act.

3. By order dated 23.05.2019 notice was issued to the sole respondent and further proceedings in Execution Case No.136 of 2017 pending before the Execution Munsif was ordered to remain stayed. The sole respondent has appeared before the court and contested the matter by filing a counter affidavit. After elaborate argument advanced before the court, when the court was not convinced with the submissions of the petitioner, adjournment was sought on 19.07.2019 by the learned counsel for the petitioner



for consulting his client in order to file an affidavit before the court for vacating the premises if reasonable time is granted by the court. As such, at the request of the learned counsel for the petitioner, the case was adjourned.

4. An affidavit on behalf of the petitioner has been filed wherein following averments have been made:-

(i) That I am petitioner in this case and I am well acquainted with the facts and circumstances of the case.

(ii) That I undertake to vacate the premise within 6 (six) months from today.

(iii) That with this undertaking I withdraw this case and also undertake to withdraw C. Misc. 715 of 2019 pending before the Hon'ble Court relating to the same subject matter.

(iv) That I have gone through the contents of this affidavit and have understood the same and they are true to my knowledge.

5. Learned counsel for the petitioner submitted that since the petitioner is running his business from the premise in question, if six months time is granted to him, he would definitely vacate the premise under his occupation.



6. Learned counsel appearing for the respondent submitted that the respondent has no objection in allowing the petitioner to continue in the premises for six months from the date of affidavit, i.e. 05.09.2019, if he vacates the same thereafter.

7. Considering the undertaking given by the petitioner, the civil miscellaneous application is disposed of on the following terms:-

(a) That the petitioner shall vacate the premises in question on or before 4th March, 2020 and,

(b) That in case the petitioner fails to comply with the undertaking given by him on oath as narrated in para-4 of the order apart from any other action, which this Court may take against him, learned Execution Munsif, Patna shall be required to enforce decree in question without any delay.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2019
Transmission Date	NA

