

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1378 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Vaishali

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Rajendra Ray, aged about 105 years, Son of late Digambar Ray, Resident of Mohalla - Nayatola, P.S. - Hajipur Town, Distt - Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through S. P. Vaishli.
2. S.H.O., Hajipur Town, District - Vaishali.
3. Subhash Kumar Ray, Son of Rajendra Ray, Resident of Village - Paharpur, P.S.- Jurawanpur, Distt - Vaishali.
4. Gyanika Devi, D/o late Krishna Prasad Ray, Resident of Village - Panapur Gaurahi, P.S.- Hajipur Sadar, Distt - Vaishali.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Rajeev Ranjan-Advocate
For the Respondents : Mr. Iqbal Asif Niazi-AC to G.P.-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

25-09-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing and commanding the respondent nos.2 to 3 to restrain the respondent no.4 from entering in the house of the petitioner. On the basis of order dated 14.08.2019 passed by the learned S.D.J.M., Vaishali at Hajipur in Domestic Violence Case No.2866/ 2016.

3. By the aforesaid order dated 14.08.2019, the learned S.D.J.M. has granted residence order in terms of Section



19(1) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') to the respondent no.4 and has allowed her to live together in the shared household at Naya Tola, Vaishali, Hajipur town with her husband and in-laws and has restrained her husband from dispossessing or in any manner, disturbing her possession from the shared household.

4. Learned counsel appearing for the petitioner submitted that the learned S.D.J.M., Vaishali has passed the order in mechanical manner without application of judicial mind. The said order dated 14.08.2019 was passed against the petitioner without the report of Protection Officer. He has submitted that respondent no.4 is not entitled to get such relief as granted by the Court of learned S.D.J.M., Vaishali. He pleaded that the house situated at Nayatola, Hajipur is the property of the respondent no.3. Hence, respondent no.4 has no legal right over the same. On the basis of aforesaid pleas, he submitted that the order impugned is fit to be set aside.

5. Per contra, learned counsel appearing for the State submitted that the order impugned is speaking one. The same does not suffer from any illegality or irregularity. He has further contended that the said order is appealable. Hence, an application under Articles 226 and 227 of the Constitution of



India would not be maintainable.

6. I find substance in the submissions made by the learned counsel for the State.

7. In view of the statutory remedy of appeal being available against the order impugned under Section 29 of the Act, I am not inclined to entertain the present application under Articles 226 and 227 of the Constitution of India.

8. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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