

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.331 of 2018**

Md. Raushan S/o Late Md. Yunus, Resident of Mohalla- Panchayati Akhara,
near Taj Colony, River side Road, P.S.- Kotwali, District- Gaya.

... .. Petitioner/s

Versus

1. Tanweer Alam S/o Late Zaffar Alam,
2. Md. Matloob, S/o Late Md. Manzur,
3. Shaheb Alam, S/o Late Eawab,
4. Md. Nazir, S/o Late Zaffar Alam, All Resident of Village/ Mohalla-
Panchayati Akhara, near- Taj Colony, Lal Bahadur Shastri Road, P.S.-
Kotwali, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sinha, Advocate Mr. Arvind Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Mr. Amaresh Kumar Sinha, Advocate Mr. Vaibhav Narayan, Advocate Mr. Mrigendra Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 19-06-2023

Heard learned counsel for the parties.

2. This Civil Misc. Application has been filed under Article 227 of the Constitution of India against the order dated 30-01-2018 passed by Learned Execution Munsif, Gaya in Execution case No. 10 of 2005 whereby and whereunder the petition dated 24.01.2018 of the petitioner / objector to stay the proceeding of execution case till the disposal of title suit bearing No. 3 of 2018 was rejected.

3. Respondent No. 01 (Decree-holder) had filed a



Eviction Suit No. 02 of 2004 (1 of 2000) in the Court of Munsif-1st, Gaya for eviction of Scheduled property and after hearing both parties, the suit has been decreed in favour of the Respondent No. 1/ Decree-holder on 13-04-2005. The Respondent No.1 as Decree holder filed the Execution Case No. 10 of 2005 against Respondent Nos. 2 and 3 (Judgment Debtors) for delivery of vacant possession over the tenanted portion (5 rooms pucca house occupied by Judgment Debtors) of the suit property in which delivery of possession has been issued.

4. The claim of the petitioner / objector is that out of five rooms in the ground floor of suit premises two rooms are under the possession of Respondent No. 2 and two rooms under the possession of Respondent No. 3 who are Judgment Debtors and one room is under the possession of the petitioner as a tenant of Respondent No. 4 (brother of Decree holder-Respondent No.1). The petitioner claimed that the Decree holder wrongly stated in the plaint that 2 ½ rooms each are in possession of Judgment Debtors (Respondent Nos. 2 and 3). He is in possession of one room as tenant but he has not been made party in the eviction suit. He came to know about the execution proceeding in which the room in possession of the petitioner as



tenant is also part of the execution proceeding, then he filed an application dated 24.01.2018 before the Court of learned Execution Munsif 1st, Gaya praying to stay the proceeding of execution case till the disposal of the suit bearing Title Suit No. 3 of 18 filed on 16.01.2018 by him against the decree holder claiming therein a decree for permanent injunction restraining the defendant not to eject the petitioner save and except under Bihar Building (Lease Rent & Eviction) Control Act, 1982 (in short 'Bihar Building Act').

5. The learned trial court observed in the impugned order that Md. Matloob and Shahab Alam are defendants and the decree was contested decree. Both the defendants preferred appeal against the said judgment and decree and the same was dismissed on 31.07.2013 by the Court of learned Ad hoc A.D.J IV, Gaya. In this case, the applicant neither have any independent title nor living with express written permission of the landlord. The petitioner in his earlier petition took the plea that Decree-holder is not the actual landlord of the suit property and the suit property is a Waqf property. In his petition dated 24.01.2018 he has submitted that he is under the tenancy of Md. Nazir (wrongly mentioned in petition as Md. Matloob) who is full brother of the Decree-holder and thus there is vital



contradiction in the petitions of the petitioner. The learned court below held that there is no force in the petition of objector / petitioner and was filed only to linger the execution of decree.

6. Learned counsel for the petitioner submits that the decree passed in Eviction Suit No. 02/2004 and D.P. issued in Execution Case No. 10/2005 is not binding on the petitioner in any manner as the petitioner was not a party in the said proceedings. He has further submitted that there is no relationship of landlord and the tenant between the petitioner and respondent No.1 and his landlord is Md. Nazir who is full brother of respondent No. 1.

7. On the other hand, learned counsel for the respondent No. 1 has submitted that the decree passed by the learned court below applies to all occupants of the premises. The tenant Md. Matloob has admitted in his deposition that Roshan (petitioner) is son of his sister who used to come and stay with him for sometime and thus he was not the tenant of the landlord but is only an occasional visitor to the tenanted house of Md. Matloob and it appears that Md. Raushan has been set up by Mr. Matloob in the execution case so as to frustrate the Decree obtained by Decree-holder and is an attempt by the judgment debtor to deny the fruits of the Decree to the Decree



holder. He has further submitted that out of 5 rooms, two and half rooms were in possession of Md. Matloob and other two and half rooms were under the possession of the other tenant namely Sahab Alam which fact was admitted by them. The suit by the petitioner / objector is filed with *mala fide* to obstruct the execution proceedings after the judgment debtors lost their title appeal in the appellate court. Further he has submitted that The Bihar Building Act is a special legislation and the judgment pronounced in the suit and affirmed by the Appellate Court shall bind all occupants.

8. After the first appeals filed on behalf of judgment debtors were dismissed then the same became the background for the next stage of the proceedings i.e., execution. Execution proceedings are now being subsisting for over 18 years.

9. The decree holder is not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of the decree.

10. The three Judge Bench of Hon'ble Supreme Court in the case of **Bibi Zafira Khatoon and Ors. Vs. Mohammad Hussain and Anr.** reported in **2010 (1) PLJR (SC) 35** in paragraph 13 held as follows:

“13. By enacting the above reproduced provision, the legislature has ensured that an order



made by the court for recovery of possession should be executed in a wholesome manner and the landlord should not be compelled to enter into further prolonged litigation for the purpose of getting possession of the suit premises simply because the tenant may have, without the knowledge or permission of the landlord, inducted some other person in the tenanted premises. This is the reason why Section 12 begins with a non obstante clause and lays that where the interest of tenant is determined and an order is made by the court for recovery of possession of the premises, such order shall be binding on all persons, who may be in occupation of the premises, and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom. The use of the words "all persons" in the substantive part of Section 12 signifies the legislative intendment that the order passed by the court for the recovery of possession of the tenanted premises should bind everyone who may be occupying the premises irrespective of his status. To put it differently, Section 12 seeks to ensure delivery of vacant possession of the premises to the landlord by evicting not only the tenant but any other person who may be occupying the premises. The proviso to Section 12 protects the person who has independent title to such premises or the tenant who has been inducted with the express written permission of the landlord himself personally."

11. The Hon'ble Supreme Court in **Ghanshyam Das Gupta Vs. Anant Kumar Sinha (AIR 1991 SC 2251)** observed that the Court must not allow the Judgment Debtor or any person instigated or raising frivolous claim to delay the execution of decree.

12. In 1872, the Privy Council in **The General Manager of the Raja Durbhanga Vs. Maharaja Coomar**



Ramaput Singh (1871-72) 14 Moore's I.A. 605 observed that the actual difficulties of a litigant in India begin when he has obtained a decree.

13. The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice (**Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna (2009) 9 SCC 689**).

14. This Court in case of **Lalit Prasad Sah Vs. Mahendra Sah** reported in **2007 (4) PLJR 427** observed that:

“In my opinion, if this wide proposition that once an application under Order 21 Rule 97 of the Code of Civil Procedure is entertained, delivery of possession cannot be effected, will lead to dangerous result. The parties may resort to litigation after litigation and the decree-holder shall be deprived of the fruits of the decree. This will lend support to too known saying that real ordeal of the decree-holder begins after he had obtained the decree.”

15. The Hon'ble Supreme Court (three judge bench) in the case of **Rahul S Shah Vs. Jitendra Kumar Gandhi and Ors. (2021 SCC Online SC 341)** vide judgment dated 22.04.2021 issued few directions to bring to an end the unnecessary order of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.



16. Considering the facts and circumstances of the case, submissions made on behalf of the parties and the legal provisions stated above, in my considered opinion, there is no illegality or irregularity in the impugned order for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution. The impugned order is a reasoned order and this Civil Miscellaneous Application is devoid of merit and liable to be dismissed.

17. Hence, this Civil Miscellaneous Application is dismissed. The Executing Court is directed to complete the process expeditiously without any unnecessary adjournments.

(Sunil Dutta Mishra, J)

shweta/-

AFR/NAFR	NAFR
CAV DATE	23.03.2023
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Transmission Date	

