

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.1968 of 2005

1. Nirala Sahkari Grih Nirman Samitee, Kesharinagar, P.S. Patliputra, Patna through its Secretary Sri Raghunandan Singh Son of Dhanuk Singh
2. Sri Raghunandan Singh Son of late Dhanuk Singh, Resident of Mohalla Kesharinagar, P.O. Kesharinagar, P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. Krishna Prasad Son of Late Bhukhlu Mallah, Resident of Mohalla- Amarpur, P.S. Paijawa, P.O Jhauganj, District- Patna.
2. Dina Prasad Son of Late Bhukhlu Mallah, Resident of Mohalla- Amarpur, P.S. Paijawa, P.O Jhauganj, District- Patna.
3. Ranjeet Kumar Son of Late Bhukhlu Mallah, Resident of Mohalla- Amarpur, P.S. Paijawa, P.O Jhauganj, District- Patna.
4. Rajesh Kumar Son of Late Bhukhlu Mallah, Resident of Mohalla- Amarpur, P.S. Paijawa, P.O Jhauganj, District- Patna.
- 5.2. Gauri Kumari Daughter of Late Basudeo Mallah Resident of Mohallah- Amarpur, P.S.- Paijawa, P.O.- Jhauganj, District- Patna.
- 5.3. Premika Kumari Daughter of Late Basudeo Mallah Resident of Mohallah- Amarpur, P.S.- Paijawa, P.O.- Jhauganj, District- Patna.
- 5.4. Punam Kumari Wife of Ajay Kewat Resident of Village- Berama Chakia, P.O and P.S- Punpun, District- Patna.
- 5.5. Rekha Kumari Wife of Sanjay Kewat Resident of Village- Berama Chakia, P.O and P.S- Punpun, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Adv.
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

35 19-12-2023 Heard the learned counsel for the petitioner. Despite repeated calls, none appeared on behalf of the respondents-opposite parties.

2. The petitioner being aggrieved by the order dated 13-07-2005 passed by learned Sub Judge-III, Patna City in



Execution Case No. 04 of 1998, this civil revision has been preferred.

3. Brief facts for appreciation of the revision petition is that the petitioner got a decree for specific performance of the contract on 30-08-1997 and the defendants-judgment debtors were directed to execute the sale deed in favour of the petitioner. For execution of the decree, the petitioner filed Execution Case No. 04 of 1998 and vide order dated 26-04-2004, the learned executing court directed the petitioners to deposit the balance consideration money of Rs. 4,42,500/- with an interest @ 9% p.a. effected from 01-12-1997 to 30-04-2004.

4. The petitioners were ready to deposit the balance consideration money but being aggrieved by the position of order of the in respect of the interest, they preferred Civil Revision No. 723 of 2004. Vide order dated 26-08-2004 that revision was disposed of with the observation that the learned executing court has rectified its earlier order imposing interest and in the opinion of this court, the order imposing the interest was amended as such the mistake itself was rectified and in the light of rectification of the mistake, the revision was disposed of. After the order dated 26.08.2004, passed by the Court, the learned Executing Court clarified that the earlier order of



imposition of the interest was not removed but it was wrongly submitted before this court that vide order dated 23-06-2004, the interest part was removed. It has been observed in the impugned order that when the interest was imposed, the petitioner preferred civil revision and as the delay was occurring in execution of the case, the petitioner was ordered to deposit simply the balance consideration money and neither the order dated 26-04-2004 was recalled nor it was rectified.

5. Learned counsel for the petitioner submits that from bare perusal of order dated 23-06-2004, it shows that the order of imposition of the interest was removed and simply consideration money of Rs. 4,42,500/- was ordered to be deposited on or before 2nd July, 2004 failing which, agreement between decree holder and judgment debtor would be taken as rescinded. Learned counsel has submitted that nowhere in the order dated 23-06-2004, it has been mentioned that the petitioner has to pay the interest money on the balance consideration amount. The High Court after perusing the order dated 23-06-2004, passed the order dated 26-08-2004 in Civil Revision No. 723 of 2004 and made observation that the portion of the impugned order whereby the interest was imposed, was removed.



6. The order dated 23-06-2004 passed by the Executing Court is being quoted hereinbelow:

“In pursuance of the order dated. 19.6.2004 a petition has been filed on behalf of the decree-holder supported by the affidavit/sworn by Satyanarain Singh. Secretary, Nirala Sahkari Grih Nirman Samittee Ltd. Patna. It is stated that the decree-holder is aggrieved of the order dated 26.04.2004 passed by this court by which the decree holder was directed to deposit the balance consideration money of Rs. 4,42,500/- alongwith interest at the rate of 9% per annum with half yearly rests with effect from 1.12.1997 to 30.04.2004 under intimation to the court. The order dated 26.04.2004 was passed on the petition dated 20.03.2004 filed on behalf of the decree holder praying therein to permit to deposit the balance consideration money. It appears that the decree-holder is aggrieved of the order to the extent only that the order regarding payment of interest on balance consideration money is beyond jurisdiction of this Court. However, this court believes that the decree-holder wants to delay in payment of money i.e. balance consideration on one ground or another. Due to this reason the decree passed in the year 1997 has not been executed till date. In the facts and situation the decree-holder in directed to deposit simply the balance consideration money of Rs. 4,42,500/- on the or before 2nd July 2004 failing which the agreement between the decree holder and judgement debtor would be taken as rescinded. Put up on 02.07.2004 for further action.”

7. From bare perusal of the operating portion of order dated 23-06-2004, it appears that the decree holder/petitioner is



directed to deposit simply the balance consideration money of Rs. 442500/- which has already been deposited by the petitioner.

8. There is no even whisper of payment of interest in the order dated 23-06-2004.

9. Considering the above-mentioned facts and circumstances, the order dated 26-08-2004 is set aside and the Executing Court is directed to proceed in accordance with the order dated 23-06-2004 passed by the Executing Court.

10. The revision is *allowed*.

11. The Execution Case No. 04 of 1998 is a very old case. The learned Executing Court is directed to dispose it of expeditiously.

(Nawneet Kumar Pandey, J)

Nirmal/AKV

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