

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.136 of 2024

Binod Kumar Singh, son of Late Hulash Singh @ Hullas Singh, Resident of Village -Rukkanpura, near Dr. Abhay Kumar Singh, Post- B.V. College, PS-Rupaspur, District Patna, Bihar

... .. Petitioner/s

Versus

Mahesh Kumar, son of Ram Ishwar Sharma, Resident of Mohalla-Kankarbagh, Rupam Timber, P.S.-Kankarbagh, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Sr. Advocate
Mr. Apurv Harsh, Advocate
Mr. Manu Tripurari, Advocate
Mr. Girish Pandey, Advocate
Ms. Almany, Advocate
Mr. Amit Jha, Advocate
Mr. Raghu Raj Pratap, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 06-03-2024

Heard learned senior counsel appearing on behalf of the petitioner on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India seeking following reliefs :

“I. Issuance of appropriate direction/order for quashing order dated 23.01.2024 passed by Learned Additional District Judge- III, Danapur in Misc. Civil Appeal No. 20/2023 by which the Learned Judge has stayed the operation of Execution Case No. 16 of 2016 pending before Sub Judge- V, Danapur; without allowing the Petitioner to file reply.

II. To take appropriate actions against the erring respondents for committing misdeeds,



misdemeanour and illegality, particularly by passing a completely non-est order without complying with the principles of natural justice.

III. Any other/relies that the petitioner may found to be entitled to in the facts and circumstances of the present case”.

3. Briefly stated the case of the petitioner is that the petitioner is the owner of suit property bearing Khata No.91 & 100, Plot Nos. 338 & 339, situated at Rupaspur, Danapur, Patna whereas the respondent is the tenant of the petitioner, who had been running a lumber/ saw mill on the suit property. The suit property was leased out by the petitioner to the respondent vide lease agreement dated 26.07.2000 for a period of 11 months, which was extended from time to time till 2010. When the respondent defaulted in payment of rent and did not vacate the premises after repeated notice, the petitioner filed Title Eviction Suit No.1 of 2012 in the court of learned Sub Judge-IV, Danapur in which summon was issued on 18.06.2012 but the respondent did not appear in the case, despite valid service of notice upon him. Thereafter, paper publication was made on 01.03.2015 as well as on 06.12.2016 twice in Hindi newspaper. But the respondent did not appear. Ultimately, the Title Eviction Suit No.1 of 2012 was decreed *ex-parte* in favour of the petitioner on 08.02.2016. Thereafter, the petitioner filed Execution Case



No.16/2016. The respondent filed Misc. Case No.07/2017 against the *ex-parte* decree dated 08.02.2016 passed in Title Eviction Suit No.1/2012, which was rejected by the learned Sub Judge-V, Danapur vide order dated 12.05.2023. The Title Suit No.582 of 2010 filed by the respondent for protection of tenancy was also dismissed vide order dated 01.06.2017 passed by learned Sub Judge-II, Patna. Thereafter, on 21.07.2023, the respondent filed Misc. Civil Appeal No. 20/2023 against the aforesaid order dated 12.05.2023 in which vide order dated 11.01.2024, the learned Additional District Judge-III, Danapur, Patna directed the petitioner to file reply granting stay in further proceeding Execution Case No.16/2016 till next date, i.e., 23.01.2024. Thereafter, vide order dated 23.01.2024, the learned Additional District Judge-III, Danapur further extended the stay order. Being aggrieved and dissatisfied with the aforesaid order dated 23.01.2024, the petitioner has preferred the instant petition.

4. The learned senior counsel appearing on behalf of the petitioner submits that a Misc. Appeal No.20/2023 has been filed against the dismissal order dated 12.05.2023 passed by the learned Sub Judge-V, Danapur in Misc. Case No.07/2017 which was instituted for setting aside the *ex-parte* decree under Order



9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). In that miscellaneous appeal, an application under Section 151 of the Code was filed. The execution proceeding in Execution Case No.16/2016 has been stayed vide order dated 11.01.2024 which was further extended till the next date i.e. 23.01.2024. The learned senior counsel further submits that despite objection being made on the ground that the copies of applications have not been furnished to the petitioner, who is respondent before the learned appellate court and also despite having knowledge that transfer petition has been filed before the learned District Judge, Patna for transfer of the miscellaneous appeal, still the learned Additional District Judge-III, Danapur has been proceeding in the matter.

5. From perusal of order sheets dated 11.01.2024 and 23.01.2024 of the learned appellate court, it is apparent that interim stay has been granted in the Execution Case No.16/2016 pending before the learned Sub Judge-V, Danapur. Evidently, the Misc. Appeal No.20/2023, filed against the dismissal order dated 12.05.2023 passed by the learned Sub Judge-V, Danapur in Misc. Case No.07/2017 for setting aside the *ex-parte* decree under Order 9 Rule 13 of the Code, is pending. Since it is an interim order and merit is yet to be decided, I do not think any



useful purpose would be served in issuing the notice to the respondent. Instead, it would be better if the learned appellate court is directed to dispose of the petition within a stipulated time so that the matter may be heard and adjudicated on merits.

6. In the aforesaid facts and circumstances of the case, the learned Additional District Judge-III, Danapur is directed to dispose of the Misc. Case No.20/2023 pending before it on its merits and in accordance with law within a period of two months from the date of receipt/production of a copy of this order, without adjourning the matter unnecessarily.

7. The parties are also directed to cooperate in the matter for its early disposal without seeking unnecessary adjournment. It is made clear that operation of stay would come to an end on expiry of stipulated period and could only be extended by a reasoned order.

8. With the aforementioned observations and directions, the instant petition stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2024
Transmission Date	NA

