

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.845 of 2017

Vivek Sharma son of Late Saryug Vishwakarma, resident of Village- Larsa, P.S.- Parasbigha, District- Jehanabad, proprietor of M/s Vivek Saw Mil, P.G. Road, Jehanabad, P.S.- Jehanabad, District- Jehanabad.

... .. Petitioner/s

Versus

1. Surendra Sharma and Anr son of Late Ambika Prasad Sharma, resident of Village- Khaira, P.S.- Parasbigha, District- Jehanabad.
2. Ramadhar Sharma, son of Late Ambika Prasad Sharma, resident of Village- Khaira, P.S.- Parasbigha, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vinay Mistry, Advocate
For the Respondent No.2:		Mr. Rajesh Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 29-04-2024 The matter has been listed under the heading “For Orders (On Office Notes). However, from perusal of the record I find that the present petition has been filed under Article 227 of the Constitution of India for quashing of order dated 06.03.2017 passed by learned Munsif, Jehanabad in Execution Case No. 03 of 2015, whereby and whereunder the petition filed by the petitioner under Order XXI Rule 26 of the Code of Civil Procedure has been rejected.

2. It has been submitted by learned counsel appearing on behalf of respondent no. 2 that against the judgment and decree dated 10.10.20214 passed in Title Suit No. 45 of 2012,



the petitioner/plaintiff filed Title Appeal No. 46 of 2014 and this fact has been mentioned in paragraph 6 of the petition itself. A petition under Order XLI Rule 5 was also filed. Now Title Appeal No. 46 of 2014 stands dismissed in default and the present petition has become infructuous.

3. Learned counsel for the petitioner submits that the steps have been taken for restoration of Title Appeal.

4. Order XXI Rule 26 reads as under:-

“26. When Court may stay execution.-

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such



person pending the result of the application.”

5. Admittedly, the stay was already granted for three months. Order XXI Rule 26 is only applicable till filing of the title appeal and admittedly title appeal has been filed.

6. From the submissions made on behalf of the parties, it appears that the said title appeal has been dismissed in default, the present petition is not maintainable and has become infructuous and hence, the present petition is disposed of as having become infructuous.

(Arun Kumar Jha, J)

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