

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.525 of 2022

Prashant Kumar Ray son of Late Ramayan Ray, resident of Kathwaleya, Ward No. 17, Near Biscoman Godown, P.O. and P.S.- Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. Ajay Kumar Kedia @ Ajay Kumar son of Late Mohan Lal Kedia, resident of Amardeep, Main Road, Mauza- Marwan Mohalla, P.O., P.S. and District-Gopalganj.
2. Abhishek Kedia, son of Sri Ajay Kumar Kedia @ Ajay Kumar resident of Amardeep, Main Road, Mauza- Marwan Mohalla, P.O., P.S. and District-Gopalganj.
3. Sumit Kumar, son of Sri Shyam Sundar Kejriwal, resident of Mauza-Prakash Nagar, Ward No. 12, Silliguri, West Bengal, presently residing at Gopalganj, P.O., P.S. and District- Gopalganj.
4. Sushil Kumar Kedia, son of Late Mohan Lal Kedia, resident of Mauza-Main Road, Ward No. 16, P.O., P.S. and District- Gopalganj.
5. Vinay Kumar Kedia, son of Late Banwari Lal Kedia, resident of Mauza-Main Road, Ward No. 16, P.O., P.S. and District- Gopalganj.
6. Sadhana Kedia, wife of Late Arun Kumar Kedia, resident of Mauza- Main Road, Ward No. 16, P.O., P.S. and District- Gopalganj.
7. Ashutosh Kumar Kedia, son of Late Arun Kumar Kedia, resident of Mauza-Main Road, Ward No. 16, P.O., P.S. and District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abinash Kumr, Advocate Mr. Binod Bihari Sinha, Advocate
For Respondent Nos. 4 to 7:		Mr. Vyas Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-03-2025

Present learned counsel for the petitioner as well as learned counsel appearing on behalf of respondent nos. 4 to 7.

2. Learned counsel appearing on behalf of respondent nos. 4 to 7 seeks time for filing counter affidavit.

3. However, from perusal of record, I do not find any



need to allow the prayer of the learned counsel for the respondents for the reason that the issue in the present case is quite simple and hence, I intend to dispose of the petition at the stage of admission itself.

4. The petitioner has approached this Court seeking direction to learned Sub-Judge XIth, Gopalganj to dispose of the petition dated 26.09.2020 filed by the petitioner in Execution Case No. 261 of 2016.

5. Learned counsel for the petitioner submits that the petition was filed for recalling the order dated 23.06.2018 by which the proceeding for delivery of possession was stayed at the instance of respondent 2nd set. Learned counsel further submits that in Title Suit No. 153 of 2016, the petitioner, who was the plaintiff, filed Execution Case No. 261 of 2016 for execution of the decree. At the prayer of the petitioner, executing court directed the office vide order dated 20.05.2017 for issuance of the auction sale of the suit property and the said notice was issued on 22.05.2017. As no one appeared and participated in the bid on three dates, the petitioner filed a petition with bid amount and was declared successful. As the bid was accepted by the learned executing court vide order dated 30.06.2017 and the auction sale was confirmed vide order



dated 31.07.2017, accordingly, learned executing court issued letter No. 10 dated 01.09.2017 to the District Registrar, Gopalganj for registering the sale certificate. On completion of all formalities, the learned executing court ordered for delivery of possession on 18.12.2017 and the same was issued on 19.12.2017 and on 01.02.2018 though the delivery of possession could not be effected. However, on 20.03.2018, respondent 2nd set appeared and prayed for staying the delivery of possession and filed a petition on 13.04.2018 under Order 21 Rule 97 & 99 of the Code of Civil Procedure which was replied by the petitioner on 25.04.2018. After hearing the parties, the learned executing court vide order dated 23.06.2018 stayed the further proceeding of Execution Case No. 261 of 2016 till disposal of respondent 2nd set's petition and office was directed to register separate miscellaneous case. Learned counsel further submits that the petitioner filed a petition on 26.09.2020 for recalling the order dated 23.06.2018 in view of general direction of Hon'ble Apex Court so that delivery of possession could be effected. Learned counsel further submits that the Hon'ble Apex Court has directed all the courts to vacate the order of stay after six months if the stay was not extended for further period. Learned counsel further submits that after staying the matter, the learned



executing court has not been hearing the application filed by the petitioner for recall of the stay order nor the miscellaneous case of the respondent 2nd set is being heard or taken to its logical end. Learned counsel further submits that the learned Sub-Judge XIth, Gopalganj may be directed to dispose of the petition of the petitioner dated 26.09.2020 within some stipulated period.

6. Learned counsel appearing on behalf of respondent nos. 4 to 7 though vehemently opposes the submission but fairly submits that he has no objection if the miscellaneous case of the respondent 2nd set is taken up for disposal and till then stay may be continued.

7. Having regard to the rival submission of the parties and facts and circumstances of the case, it is unfortunate that the execution proceeding is pending since 2016. The Hon'ble Supreme Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and Others***, reported in ***(2021) 6 SCC 418*** has issued certain directions to the executing court for completion of the execution proceeding within six months. But the learned executing court has not been proceeding in the execution matter with diligence in the light of the directions of the Hon'ble Supreme Court. In any case, the learned executing court is directed to take up the petition of the petitioner dated



26.09.2020 as well as miscellaneous case instituted by respondent 2nd set on urgent basis and dispose of the petition as well as miscellaneous case at the earliest and also dispose of the execution proceeding in terms of the directions of the Hon’ble Supreme Court in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and Others (supra)***.

8. With the aforesaid direction, the present petition stands disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2025
Transmission Date	NA

