

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1257 of 2023**

Junad Eqbal Khan @ Junaid Ekbal Khan son of Late Mohammad Ayub Khan @ Ayub Khan, resident of village -Baradih, P.S.- Agrer, District-Rohtas, At present resident of J-3/18 Gali No.7 second floor Kishan Kunj, P.S - Laxmi Nagar, East Delhi.

... .. Petitioner/s

Versus

1. Sohail Khan Son of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
2. Shamsher Alam, Son of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
3. Jamshed Alam, Son of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
4. Sarwar Alam, Son of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
5. Akhtar Alam, Son of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
6. Kausari Begum, Daughter of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
7. Khurshida Khatoon, Daughter of Late Jalil Akhtar resident of Mohalla Bhagh Bhail Khan Ward no.- 07 P.S.- Sasaram Town, District- Rohtas.
9. Mansoor Alam Khan, Son of Late Mohammad Ayub Khan, @ Ayub Khan, resident of village- Baradih, P.S.- Agrer, District- Rohtas.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Siddharth Harsh, Adv.  
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 06-02-2025**

Present learned counsel for the petitioner. However, there is no representation on behalf of the respondents, although the respondents appeared through *Vakalatnama* and attended the proceedings on previous dates.

**02.** The instant petition has been filed on behalf of the



petitioner for setting aside the order dated 19.09.2023 passed by the learned Munsif-I, Sasaram, Rohtas in Execution Case No. 05 of 2005 whereby and whereunder the learned executing court refused to proceed with the execution case and recorded its opinion that stay granted by the High Court in Second Appeal No. 315 of 2008 was still continuing and directed the office to seek guidelines from this Court over the continuation of stay.

**03.** Learned counsel for the petitioner submits that father of the petitioner filed Eviction Suit No. 03 of 1997 against the respondents-1st set. The suit was decided in favour of the plaintiff in terms of judgment and decree dated 14.12.2001 and 22.12.2001, respectively. The respondents-1st set filed Title Appeal No. 06 of 2002 against the aforesaid judgment and decree of the learned trial court but the title appeal was dismissed and findings of the learned trial court was upheld by the learned Additional District Judge, Fast Track Court No. 5, Rohtas at Sasaram vide order dated 18.08.2008 passed in Title Appeal No. 06 of 2002. Thereafter, the petitioner and respondents-2nd set filed Execution Case No. 05 of 2005 before the learned Munsif-I, Sasaram, Rohtas. In the meantime, respondents-1st set filed second appeal against the judgment and decree of the learned first appellate court vide Second Appeal



No. 315 of 2008. Respondents -1<sup>st</sup> set also filed an interlocutory application bearing I.A. No. 6155 of 2008 for staying the further proceeding in the execution case. The learned Single Judge, vide order dated 27.11.2008 passed in Second Appeal No. 315 of 2008, directed that I.A. No. 6155 of 2008 would be considered at the time of hearing of second appeal under Order-41 Rule 11 of the Code of Civil Procedure. Till then, further proceedings of Execution Case No. 05 of 2005 pending before the learned Munsif-I, Sasaram had been stayed. Learned counsel further submits that thereafter vide order dated 20.01.2009, the learned Single Judge admitted the second appeal for hearing and framed substantial questions of law. The matter was also ordered to be listed for final hearing on 09.02.2009 within top five cases. Learned counsel further submits that from these two orders, it is apparent that the stay has been granted in this case till the admission of the second appeal under Order 41 Rule 11 of the Code of Civil Procedure and the petitioner after waiting for quite long time for disposal of second appeal, filed a petition dated 16.03.2021 in Execution Case No. 05 of 2005 to execute the judgment and decree passed in his favour. A rejoinder to the said application was filed by the respondents-1st set and the learned executing court heard the matter and recorded its



opinion that stay granted by the High Court in second appeal was still continuing and directed the office to seek guidelines from this Court over the said stay.

**04.** Learned counsel for the petitioner reiterated that from perusal of the orders dated 27.11.2008 and 20.01.2009, both passed in Second Appeal No. 315 of 2008, it is clear that the stay on further proceeding in execution case was only till hearing of the matter under Order 41 Rule 11 of the Code of Civil Procedure and thereafter, it was not extended. It was also made clear that I.A. No. 6155 of 2008, which was filed for staying the matter, was ordered to be considered at the time of final hearing. Thereafter, there has been no orders on the said interlocutory application. Learned counsel further submits that, thus, the learned trial court erred in interpreting the said order of this Court with regard to stay operating in the matter. Learned counsel further submits that the petitioner is a landlord and has been fighting eviction suit since 1997 and could not get back his house. The petitioner has only this house in the town, which has illegally been occupied by respondents-1st set and the petitioner and his family are being forced to live in their village.

**05.** Perused the record.

**06.** The issue before this Court in the present case is



about the interpretation by the learned executing court regarding orders passed by this Court in Second Appeal No. 315 of 2008 and whether such interpretation is correct or not?

**07.** Order dated 27.11.2008 passed in S.A. No. 315 of 2008 reads as under:

*“Learned counsel for the appellants submits that all the defects have been removed.*

*Let the stay matter bearing I.A. No. 6155 of 2008 be considered at the time of hearing of the second appeal under Order XLI Rule 11 of the Code of Civil Procedure. Till then, let further proceeding of Execution Case No. 5 of 2005 pending before the learned Munsif-I, Sasaram (Rohtas) remain stayed.*

*Since the second appeal has been filed by the defendants against the judgments and decree passed in a suit of eviction on the ground of default in payment of rent as well as personal requirement of the plaintiffs, let this second appeal be placed for hearing under Order XLI Rule 11 of the Code of Civil Procedure on 15.12.2008.*

Thereafter, on 20.01.2009 following order was passed in S.A. No. 315 of 2008:

*Heard learned counsel for the appellants and learned counsel for respondent no.2.*

*This second appeal will be heard. Admit.*

*Following substantial questions of law arise for consideration in the instant second appeal:*

*(i) Whether a decree passed against a dead person can be sustained in law?*



*(ii) Whether admission in the criminal case can be a deciding factor in civil suit?*

*Learned counsel Mr. Md. Rashid Izhar, who is appearing on behalf of respondent no.2 submits that he will be filing power of respondent no.1 within one week. He accepts appeal notice on behalf of both the respondents. In the said circumstances, no appeal notice need be sent to the respondents.*

*Call for the records from learned courts below through special messenger, cost of which must be deposited by the appellants by Friday i.e. 23.01.2009 failing which this second appeal shall stand dismissed without further reference to a Bench.*

*Since this matter arises out of eviction suit filed under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982, let it be placed for final hearing on 09th February, 2009 within top five cases.*

**08.** A conjoint reading of the aforesaid orders, in my opinion, makes it clear that there could be two possible interpretations, firstly the stay has been operating till the second appeal was admitted for hearing under Order 41 Rule 11 of the Code of Civil Procedure as the said order mandates that stay sought in I.A. No.6155 of 2008 against execution proceedings would be considered at the time of hearing of the second appeal. In other words, the stay was to continue till the second appeal was admitted and, thereafter, there would be no stay. At the same



time order dated 27.11.2008 could also be interpreted to mean that stay order would continue till the hearing of the I.A. No. 6155 of 2008.

09. Since the issue involved is with regard to interpretation of the order of the learned Single Judge in Second Appeal No. 315 of 2008, I think it would be just and proper if the issue is placed before the roster Bench for consideration which is in seisin the matter of Second Appeal No. 315 of 2008. The petitioner is at liberty to raise the matter before the roster Bench in appropriate proceeding.

10. With the aforesaid observation, the present petition stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

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