Sri Chandra Mohan Prasad Vs Sri Gyandeo Sharma

F.A. No. 299 of 2005

Court: Patna High Court

Date of Decision: Jan. 29, 2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 5

Citation: (2007) 2 PLJR 193

Hon'ble Judges: Rekha Kumari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rekha Kumari, J.

I.A. No. 5 of 2007

1. This is an application filed by the appellant under Order XLI Rule 5 C.P.C. for stay of the proceeding of Execution Case No. 5 of 2005 arising

out of the impugned judgment and decree pending in the court of Sub Judge II, Patna. The respondent has appeared and has filed his reply

opposing the prayer.

2. Learned counsel for both the sides were heard.

3. Learned counsel for the appellant submitted that the decree under appeal is based on erroneous finding by the trial court which is liable to be set

aside and he has every chance to succeed in the appeal. The suit has been filed by the respondent for his eviction from the suit premises. Thus, if

the stay is not allowed he would be evicted and he would cause irreparable loss and the (sic--it?)appeal would become infructuous.

4. Learned counsel for the respondent replied that as provided under Order 41 rule 5 C.P.C. mere filing of an appeal is no ground for the

appellate court to stay the execution of the decree. Hence, such stay can be granted only on showing sufficient cause. But the impugned judgment

would show that the respondent had filed the suit against the appellant for eviction from the suit premises on the ground of default in payment of

rent and personal necessity and the judgment would further show that during trial the appellant was directed u/s 15 of the B.B.C. Act to deposit

rent but he failed to comply with it and as such, his defence was struck off. He further submitted that the appellant though had admitted that he was

initially inducted as tenant but his plea is that on account of a collaboration agreement with the father of the plaintiff, who had inducted him as

tenant, and others he ceased to be tenant and there was no landlord and tenant relationship existed thereafter between them. But he did not lead

any evidence to produce the above defence.

5. The respondent, on the other hand. examined himself and the other witnesses to prove the relationship of landlord and tenant. He also by

examining witnesses proved the grounds for the eviction of the appellant, but the appellant did not cross-examine any of the witnesses and the case

of the respondent is well proved. There is no sufficient cause for allowing the stay of the execution proceeding.

6. Learned counsel for the appellant in reply submitted that the appellant was not allowed by the court to cross-examine any of the witnesses,

examined by the appellant. He was also not allowed to lead evidence to prove his defence on effoneous findings. In support of his submissions he

relied on the decision of this Court reported in 1991 BLJR 268.

7. It appears from the impugned judgment that the plaintiff/respondent has brought the suit for eviction of the defendant/appellant from the suit

premises on the grounds of default in payment of rent and personal necessity. It further appears that the appellant in hi3 written statement has

admitted that he was inducted as tenant by the father of the respondent but he took the defence that later on account of collaboration agreement

dated 13.12.1999 with the father and brother of the respondent and Replica Estates Pvt. Ltd., a sister concern, he ceased to be a tenant. The

impugned judgment further shows that the appellant was directed to deposit to pay arrears of rent and monthly rental at the rate of Rs. 10,000 but

he did not comply with the order and as such, his defence against ejectment was struck off. The judgment also shows that the respondent during

trial examined witnesses including himself and also filed documentary evidence in support of his case but the appellant did not care to cross-

examine them. He also not led any evidence in support of his denial of his relationship of landlord and tenant and that the learned trial court after

considering the evidence adduced by the respondent found that he has fully proved that there was relationship of landlord and tenant between the

parties and that the respondent failed to pay rent of the suit premises of June, 1999 to May, 2002 and that the plaintiff/ respondent bonafide

required the suit premises for personal necessity for the establishment of factory for his unemployed nephew. The photo copy of the deposition of

the witnesses filed by the respondent also show that in spite of repeated calls no body appeared for the defendant (appellant) to cross-examine the

witnesses. The judgment also shows that the appellant did not lead any evidence in support of their evidence, there is no substance in the

submission of the learned counsel that the appellant was not allowed to cross-examine the plaintiff witnesses and lead evidence.

8. In the above facts and circumstances, I agree with the contention of the learned counsel for the respondent that the appellant has failed to show

sufficient cause to stay the execution proceeding. In the result, the prayer of the appellant is rejected and the interlocutory application is dismissed.