

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.177 of 2024**

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1. M/s Santosh Printing Press through its authorized representative Santosh Kumar Jha @ Santosh Kumar, (Male) aged 49 years Son of Sri Bhagwan Lal Jha, Resident of village- Sangi, P.S. - Phulparas, District- Madhubani, presently residing at Mohalla and P.S. - Kadam Kuan, District Patna.
2. Santosh Kumar Jha @ Santosh Kumar, Son of Sri Bhagwan Lal Jha, Resident of Village Sangi, P.S. Phulparas, District - Madhubani, presently residing at Mohalla and P.S. - Kadam Kuan, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Collector, Patna.
2. The District Magistrate, Patna at Collector Compound, Patna, P.S. Gandhi Maidan Town and District Patna (Bihar).
3. The Commissioner, Patna Division at Patna, District- Patna.
4. The Chief Secretary, Government of Bihar, Patna. Patna Secretariat, Mangles Road, Patna - 800001.
5. The Secretary, Department of Disaster Management, Government of Bihar, Patna. Patna Secretariat, Mangles Road, Patna - 800001.
6. Union of India through the Secretary, Ministry of Home Affairs, New Delhi, Central Secretariat, New Delhi.
7. The Bihar State Small Industries Corporation Ltd. through Managing Director.
8. Indian Air Force, Ministry of Defence, Government of India.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Santosh Kumar, Advocate  
Mr. Sanjeev Ranjan, Advocate  
Mr. Prafulla Ranjan Tiwary, Advocate  
Mr. Madhunendra Sharma, Advocate  
Ms. Aastha Ananya, Advocate  
For the Respondent/s : Mr. Mujtabaul Haque, G. P.-12  
Mr. Manish Kumar, AC to GP-12

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

**Date : 14-08-2024**

The instant petition has been filed by the plaintiffs/petitioners under Article 227 of the Constitution of India against the order dated 16.01.2024 passed by the learned



Sub Judge-IV, Patna Sadar in Title Suit No. 5743 of 2014 whereby and whereunder the learned Sub Judge- IV, Patna Sadar rejected the petition filed by the plaintiffs/petitioners under Order XXVII Rule 5B of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. The conspectus of the case as it appears from the record is that the petitioner no.1 is a proprietorship firm and the petitioner no.2 is its proprietor. The petitioners are the plaintiffs in Title Suit no. 5743 of 2014 filed for payment of principal amount of Rs. 13,17,08,762/- with interest @ 18% per annum + 4% per annum interest on delayed payment and thus total interest amount till 16.12.2014 to the tune of Rs.91,45,43,271/-. In this manner money decree of Rs. 1,04,62,52,033.60 /- has been sought by the plaintiffs against the defendants/respondents. The payment was sought for supply of variety of foodgrains and other flood relief materials to the people affected by devastating flood in the area of North Bihar in 2004. It appears that certain irregularities were observed and the Government conducted an inquiry and petitioner no.2 was taken into custody as it was found that during the flood operation in 2004, materials worth Rs. 7,34,17,863.50/- were supplied against an advance of Rs. 17.80 crore. Dispute having been raised, the petitioners



approached the High Court by filing CWJC No. 11974 of 2007. Vide order dated 28.07.2008, a learned Single Judge of this Court disposed of CWJC No. 11974 of 2007, directing the Chief Secretary to immediately constitute a team with officials from the concerned departments, including the vigilance department for scrutinizing all papers and come to a concrete finding with regard to the work done and the payment made and or due and also directed that such exercise must be completed within a period of six months from the date of this order. Thereafter, the petitioner filed MJC No. 467 of 2009 for initiation of contempt for violation of the order dated 28.07.2008 passed in CWJC No. 11974 of 2007 and the said MJC was disposed of by a learned Single Judge of this Court giving liberty to the petitioner to challenge the decision of the committee before the appropriate forum or in an appropriate proceeding. Against the order dated 29.07.2009, passed in MJC No. 467 of 2009, the petitioner filed Special Leave to Appeal (Civil) No. 22759 of 2009 before the Hon'ble Supreme Court and the Special Leave to Appeal (Civil) No. 22759 of 2009 was withdrawn vide order dated 30.11.2009. Further, the petitioner has also filed CWJC No. 3332 of 2010 and the same was dismissed, vide order dated 13.03.2012, by this Court. Against the order dated 13.03.2012 passed in CWJC



No. 3332 of 2010, the petitioner has filed LPA No. 594 of 2012 and the same was withdrawn vide order dated 24.09.2013. However, the petitioners exercised their option of filing a suit and thus instituted a suit before the learned trial court for enforcement of their claims. The petitioners claimed that they were entitled for a payment of Rs.30,97,08,762/- which was due and payable to them along with interest @ 18% per annum for delayed payment from the date of supply to the date of filing of the present suit. Thus, the amount due and payable was calculated by the petitioners to be Rs.1,04,62,52,033.60/- and the said amount was further claimed with 18% interest till adjudication. The defendants/respondents appeared and filed their written statement disputing the claim of the plaintiffs/petitioners mainly on the ground that the order for supply of relief materials was awarded to Bihar State Small Scale Industries Corporation Ltd., a unit of State Government and the claim of the petitioners was not acceptable and sustainable because there was no contract with the petitioners and the petitioners were not the persons who were supposed to make supply and any payment received by the petitioners was liable to be recovered and two certificate cases were also instituted for the said purpose. It further transpires that after



filing of the written statement, the learned Sub Judge-IV, Patna Sadar referred the matter for mediation in terms of Section 89 of the Code. But it appears the mediation failed due to non-appearance and non-cooperation of the defendants. The petitioners further moved before this Court seeking early disposal of the suit by filing CWJC No. 24085 of 2018 whereby this Court, vide order dated 01.02.2023, directed for early disposal of the suit preferably within one year. As the trial of the suit did not proceed, the petitioners again approached this Court by filing Civil Misc. Jurisdiction No. 1107 of 2023 whereby and whereunder a Co-ordinate Bench of this Court, vide order dated 10.11.2023, directed the learned Sub Judge-IV, Patna Sadar to dispose of all interim applications pending in the case within one month of the communication of the order. Thereafter, the learned Sub Judge-IV, Patna Sadar took steps for framing of the issues and directed the plaintiff to lead evidence. Thereafter, the petitioners filed a petition on 11.01.2024 under Order XXVII Rule 5B of the Code with a prayer to the learned trial court to invoke the duty cast upon the court under the provision of the Code for making an endeavor to assist the parties in arriving at a settlement since Order XXVII Rule 5B(2) of the Code provides that a settlement could be arrived at any stage of the suit. The



learned trial court after hearing both the sides dismissed the petition vide order dated 16.01.2024 which is under challenge before this Court.

3. Learned counsel for the petitioners submitted that the impugned order is without merits and has been passed against the provision of law. Order XXVII Rule 5B(2) of the Code provides that if in any suit or proceeding, at any stage, it appears to the court that there is a reasonable possibility of settlement between the parties, the court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement. Learned counsel further submitted that the learned trial court proceeded on the assumption that as the earlier efforts for settlement under Section 89 of the Code failed, the present petition has been filed only to delay the matter. Learned counsel further submitted that the learned trial court did not take into consideration the fact that earlier efforts for settlement under Section 89 of the Code failed because none of the Government officials appeared on the date fixed for making an endeavor to settle the dispute and thus there was no effective steps taken for an amicable settlement. Such effort was only an empty formality to comply the provision in this regard and there was no conscious effort to



settle the dispute. In these circumstances, it is the duty of the court as envisaged under Order XXVII Rule 5B of the Code to direct the parties to appear and take responsibility upon itself to assist the parties in arriving at a settlement. Thus, the learned trial court failed to adopt the procedure as envisaged under the provisions of Order XXVII Rule 5B of the Code and has committed a manifest error. It was the bounden duty of the Court to summon a responsible Government official conversant with the facts of the case and having a decision making power to participate in the settlement. So that the dispute could be settled in a reasonable manner, if there exists a reasonable possibility of such settlement. The failure on the part of the court amounts to abdication of its duties. Learned counsel referred to the two decisions of the Hon'ble Supreme Court in support of his contentions. In the case of *Haryana State & Anr. Vs. Gram Panchayat Village Kalehari*, reported in *(2016) 11 SCC 374*, the Hon'ble Supreme Court referred to Order XXVII of the Code holding that if no endeavor was made by the court or by the parties to arrive at a settlement keeping in view of the mandate of Order XXVII Rule 5-B, it should have been done and only on failure being reported, the case should have been finally decided on merits in accordance with law. Learned



counsel further submitted that the provision is mandatory as the word used is 'shall'. Learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Mohan Kumar Vs. State of Madhya Pradesh & Ors.***, reported in ***(2017) 4 SCC 92*** on the same proposition. Thus, the learned counsel submitted that the impugned order of the learned trial court is arbitrary, illegal and unsustainable and the same needs be set aside and the petition of the petitioners be allowed directing the learned trial court to make efforts to bring about the settlement between the parties.

4. *Per contra*, learned counsel appearing on behalf of the State respondents vehemently contended that there is no infirmity in the impugned order and the same is correct and needs no interference. Learned counsel submitted that the petitioners as plaintiffs have filed the suit on entirely frivolous grounds and during the relevant period tender was floated for supply of relief materials for rendering help to flood affected family in Sitamarhi District. The tenders were received and opened on 20.06.2004. Tender submitted by the Bihar State Small Industries Corporation Limited (for short 'the B.S.S.I.C.L.') was accepted and supply order was given. The petitioners by committing fraud and impersonation of



B.S.S.I.C.L. tempered with the tender papers. The petitioners by impersonating B.S.S.I.C.L. began making supply of the relief materials and managed to receive payment in the name of B.S.S.I.C.L. The payment was to be credited in the bank account of B.S.S.I.C.L. but the petitioners fraudulently managed to get the payment credited in the bank account of Baba Satya Sai Enterprises Corporation Limited impersonating B.S.S.I.C.L. and thus succeeded in crediting an amount of Rs. 17.80 crores in the account of Baba Satya Sai Enterprises Corporation Limited which was in fact to be paid B.S.S.I.C.L. (Bihar State Small Industries Corporation Limited). When the fraud committed by petitioner no.2, came to the knowledge of the respondents, Vigilance P.S. Case No. 08 of 2005 was registered and petitioner no.2 was sent to jail. Learned counsel further submitted that the petitioner has concealed material facts as the petitioner has lost up to Hon'ble Supreme Court as his S.L.P. No. 22759 of 2009, filed against the order dated 29.07.2009 passed in MJC No. 467 of 2009 has been dismissed. Learned counsel further submitted that the present petition has been filed with *mala fide* intention and ulterior motive and just to linger the matter. Learned counsel further submitted that the petitioners have filed the case before the learned trial court with false averments and



fraudulent documents and, hence, there is no possibility of settlement in the matter. The petitioner has come to realize that he would lose the suit and for this reason he is trying to somehow delay the inevitable. The learned counsel also pointed out that prior to moving the petition dated 11.01.2024, no such prayer was made by the petitioners before this Court though he moved before this Court as well as the Hon'ble Supreme Court on a number of occasions with different prayers by filing different petitions. Thus, the learned counsel submitted that the petition of the petitioners has got no legs to stand in the eyes of law and it is devoid of any merit and, hence, the same be dismissed and the impugned order be affirmed.

5. I have given my thoughtful consideration to the rival submission of the parties in the background of facts and circumstances of the case. Before discussing the rival contention of either parties, it would be beneficial to extract the provision of Order XXVII Rule 5-B of the Code which reads as under:-

*“5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.- (1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and*



*circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.*

*(2) If, in any such suit or proceeding, at any stage, it appears to the court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.*

*(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.]”*

6. Bare perusal of Sub-rule 1 of Rule 5B of the Code shows the duty is cast upon the Court to make an endeavor to assist the parties in arriving at a settlement in respect of subject matter of the suit but it is not a blanket provision as certain conditions have been put in the provision itself. Such endeavor shall be made at the first instance under Sub-rule (1) and it could not be at any stage. Admittedly, an endeavor has been made and the matter has been referred for mediation under Section 89 of the Code. Then, such endeavor even if it is to be made at the first instance, it postulates that where it is possible to do so consistently with the nature and circumstances of the case. So it is not that the court is bound to refer the matter in every case without considering the nature and circumstance of



the case as the same would be against the provisions of law as envisaged by the legislature.

7. Much stress has been put by the learned counsel for the petitioners on Sub-rule (2) of Rule 5B of the Code that the court could make endeavor at any stage but I think the learned counsel for the petitioners missed the point that this provision is again qualified and is subject to certain conditions. The efforts or attempts to settlement would be made only if it appears to the court that there is reasonable possibility of settlement between the parties. So it is not a *carte blanche* to the Court that in each and every case, at any stage, the court is bound to make efforts for bringing settlement between the parties if one of the parties is Government or public official. Moreover, the fact should not be lost sight of that any settlement requires mutuality and meeting of mind of two sides. If there is some common ground then only the court could make efforts for assisting the parties in arriving at a settlement. When there is no such common or meeting ground, any such exercise by the court, would be an exercise in futility and would be a purposeless exercise.

8. Now coming back to the facts of the case, when there is complete denial of the claim of the petitioners by the



State respondents and to aggravate the matter, there is serious charge of fraud and impersonation leading to registration of criminal case, where is the scope of any common ground between the parties? Even the conditions which have been provided under Order XXVII Rule 5B of the Code are conspicuous by their absence as there appears no such circumstances which may require the court to make any endeavor to assist the parties even at a later stage. The case is fixed at the stage of plaintiffs' evidence as is evident from the impugned order. So the parties have crossed the initial stage and there could be no application of Order XXVII Rule 5B(1) of the Code. Moreover, at the initial stage reference has already been made under Section 89 of the Code towards settlement by way of mediation which failed for whatsoever reason. For later stage of the trial, it is left at the discretion of the court to adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement. If the court fails to see any reasonable possibility, no duty is cast upon the court to compulsorily make an attempt to effect any settlement. If there appears no possibility of settlement, there is no duty cast upon the court to adjourn the matter. So far as the reliance placed by the learned counsel for the petitioners on the decisions of the



Hon'ble Supreme Court in the cases of *Haryana State & Anr.* (supra) and *Mohan Kumar* (supra) are concerned, the same is misplaced for the reasons that the facts of the present case are entirely different. Here, it is pertinent to refer to some of the decisions of the Hon'ble Supreme Court. In the case of *State of Orissa vs. Sudhansu Sekhar Misra*, reported in *AIR 1968 SC 647*, the Hon'ble Supreme Court observed that a decision is only an authority for what it actually decides. Similarly, in the case of *Ambica Quarry Works vs. State of Gujarat*, reported in *(1987) 1 SCC 213*, it has been held that the ratio of any decision must be understood in the background of the facts of that case. The Hon'ble Supreme Court further observed that it has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. In the case of *Bharat Petroleum Corporation Limited & Anr. vs. N.R. Vairamani & Anr.*, reported in *(2004) 8 SCC 579*, it has been observed that the judgments of the court should not be cited like Euclid's Theorem and the slight change in the facts of the case would make a sea difference in the judgment of the Court.

9. In the light of aforesaid decisions, I am of the view that the authorities cited by the learned counsel for the petitioners are clearly distinguishable and are not applicable in



the facts of the present case.

10. Therefore, in the light of discussion made hereinbefore, I do not think the learned trial court committed any error of jurisdiction while passing the impugned order which appears to be a correct and proper order in the facts and circumstances of the case. Hence, the impugned order dated 16.01.2024 passed by the learned Sub-Judge-IV, Patna Sadar in Title Suit No. 5743 of 2014 is affirmed.

11. As a result, the instant civil miscellaneous petition stands dismissed.

**(Arun Kumar Jha, J)**

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AFR/NAFR	AFR
CAV DATE	15.07.2024
Uploading Date	19.08.2024
Transmission Date	NA

