

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.429 of 2014

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Krishna Dubey

.... Petitioner/s

Versus

Om Prakash Prasad & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 07-12-2015 1. Heard the learned counsel, Mr. Lakmesh Marvind, for the petitioner and the learned counsel, Mr. Vijay Shanker Srivastava for the respondents.

2. The learned counsel for the petitioner submitted that the by the impugned order dated 31.10.2013, passed in Title Suit No.195 of 2013 by Sub Judge IX, Motihari, the Court below without assigning any reason allowed the application filed by the defendants respondents seeking permission to file written statement in the case.

3. According to the learned counsel, the defendants respondents had already appeared in the case on 3.4.2013 and they filed application for time to file written statement. The case was adjourned for different dates but they did not file written statement and thereafter left pairvi. Subsequently, the Court below proceed

ex.-parte and heard the plaintiff and hearing was concluded on 22.10.2013. The case was fixed for 31.10.2013 for Judgment. In the meantime, on 30.10.2013, the application was filed by the defendants respondents seeking permission to file written statement after recalling ex.-parte order. A fresh Vakalatnama was filed by them.

4. On the other hand, the learned counsel appearing on behalf of the defendant respondents submitted that in fact there was no service of summons on the defendants respondent and the earlier Vakalatnama filed alleged to have been filed by them was not their Vakalatnama. Moreover, the Court below has awarded cost of Rs.6000/-, therefore, the defendant respondent be allowed to contest the suit otherwise the plaintiff will get ex.-parte decree.

5. Perused the order passed by the Court below. From perusal of the order, it appears that the Court below recorded a clear finding that the Vakalatnama filed by the defendants on 3.4.2013 is the Vakalatnama and, therefore, they had already appeared but the Court below allowed their application only on payment of Rs.6000/- stating that the plaintiff has got no objection. The learned counsel for the petitioner vehemently opposed this statement in the order and submitted that in fact there

was no concession and the Court below has illegally allowed the application recording the concession.

6. The Hon'ble Supreme Court in the case of *Aditya Hotels Pvt. Ltd. Vs. Bombay Swadeshi Ltd. AIR 2007 SC 1574* it has held that 'since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of the time fixed, we set aside the order of the trial Court and the High Court. The matter is remanded to the trial Court to consider the matter afresh in the light of what has been stated in *Kailash case., i.e., 2005(4) SCC 48*. In the present case, as stated above, no reason has been assigned by the trial Court while passing the impugned order. In such view of the matter, in my opinion, the order is not sustainable and thus this order is set aside as it is contrary to the provision as contained in Order 8 Rule 1 CPC.

7. Accordingly, this writ application is allowed. The matter is remanded back to the Court below for a fresh decision according to the decision referred to above.

(Mungeshwar Sahoo, J)

Sanjeev/-

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