

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2807 of 2013

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Mahavir Chaudhary @ Vikram Chaudhary, Son of Late Dillu Choudhary,
Resident of Village-Madhampur, P.S.- Silao, District-Nalanda.
..... Petitioner.

Versus

Bajjnath Chaudhary, Son of Late Fakirchand Chaudhary, Resident of
Village- Madhopur, P.S.- Silao, District-Nalanda.
..... Respondent.

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Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 10-12-2015 Heard the learned counsel for the petitioner and
the learned counsel for the respondent.

Questioning the rejection of the petition filed by
the defendant-petitioner for recall of the order dated 15.01.2008 by
which the petitioner was debarred from filing written statement,
the application under Article 227 of the Constitution of India has
been filed.

It is manifest from the records that the eviction
suit was filed in the year 2006 and the defendant had appeared in
the suit but subsequently debarred from filing written statement by
order dated 15.01.2008. It is also apparent from the impugned
order that the defendant also cross-examined the witnesses of the
plaintiff on 03.06.2008, 02.09.2008, 11.09.2008, 25.09.2008 and
09.12.2008 even when he had been debarred from filing the

written statement and there was no petition filed by him for recall of the said order or approaching the higher forum challenging the said order, after cross examining the witnesses of the plaintiff. The defendant-petitioner filed the petition on 08.07.2009 for recall of the earlier order dated 15.01.2008. The learned court below, by the impugned order, has declined the prayer of the petitioner and rejected the petition dated 08.07.2009.

The learned counsel for the petitioner has submitted that the petitioner was not aware of the fact that no written statement had been filed nor he was informed regarding this fact by his counsel. It has also been submitted that the petitioner is an illiterate person and he is not aware of the niceties of the law. The learned counsel has also pointed out that the plaintiff and the defendants are Gotiyas.

The learned counsel appearing for the plaintiff-respondent has opposed the prayer and supported the impugned order.

After considering the submissions and perusal of the impugned order, it is pellucid that the suit for eviction has been filed in the year 2006 and the order debarring the defendant from filing the written statement has been passed as far back as on 15.01.2008. It has also not been disputed that thereafter suit has

proceeded and the plaintiff has produced his witnesses who have all been cross-examined by the defendant-petitioner. At no point of time the defendant-petitioner ever prayed before the court for recall of the earlier order dated 15.01.2008. It also does not appear that the petitioner has approached the higher authorities against the said order. After the cross examination of the plaintiff's witnesses was over, the petitioner filed the petition on 08.07.2009 for recall of the earlier order praying for grant of opportunity to file written statement. The learned court below has taken into notice the conduct of the defendant-petitioner and has come to the conclusion that the defendant has intentionally, in order to lengthen the proceeding of the eviction suit, not filed the petition at the earlier stages before the plaintiff started adducing evidence. This Court does not find any material irregularity or illegality in the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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