

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.878 of 2012

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Shri Sheetal Singh

.... Appellant/s

Versus

Hri Neetan Chandra @ Vimal Chandra & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain, Advocate

For the Respondent/s : Mr. A.B.Ojha, Sr. Advocate &
Mr. Bharat Bhushan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL ORDER

8 09-03-2015 Appeal and Interlocutory application no 3587 of 14 are taken up together for hearing.

Heard learned counsel appearing for the parties

This is an appeal preferred against the order dated 23rd. June, 2012 in Misc. Case No. 8/09 passed by 6th Subordinate Judge, Patna dismissing the said application as not maintainable.

The case has peculiar and chequered history. The appellant filed title suit no. 113/97 with a certificate entitling exemption from payment of court fee. The plaint was accepted. Summons were issued. The defendant/respondent appeared and filed objection against the prayer of the plaintiff/appellant seeking exemption from payment of court fee and the court concerned by a reasoned order directed the plaintiff/appellant to pay the required court fee i.e. Rs. 9115/-.

Against the said order the plaintiff/appellant preferred Civil Writ followed by Letters Patent Appeal but could not succeed. However, the plaint vide order dated 10th May, 2006, stands rejected.

The plaintiff preferred Title Appeal No. 75/08 before learned District Judge but ultimately on the ground of pecuniary jurisdiction the appeal was withdrawn with a liberty to file before appropriate court i.e. this court.

But, instead of preferring appeal the appellant/plaintiff filed an application before the original court under the provisions of Rule -4 , Order IX C.P.C. which has been turned down by the impugned order.

Now after travelling about 18 years of litigation plaintiff/appellant is not only ready to pay the court fee but also to compensate loss suffered not only to the defendant/respondent but the State also.

Having regard to the facts and circumstances, interest of justice as well the parties to get their dispute finally set at rest coupled with the principle laid down by the Hon'ble Allahabad High Court in a case **Sita Ram Sahu and others vs. Kedarnath Sahu reported in AIR 1957 Allahabad 825.**

It is Ordered that in the event the plaintiff/appellant pays/deposits Rs. 5,000/- in the court below in favour of the defendant besides Rs. 5,000/- to District Legal Service Authority, Patna and appear before the court below with an application accompanied with due amount of court fee well within a month from today the order rejecting plaint shall be recalled and the plaint shall be treated readmitted , and the court below shall proceed expeditiously for final conclusion after giving the parties reasonable opportunity . It is

further made clear that in the event the plaintiff/appellant fails to comply either of the directions above and also avoid early hearing without any reasonable cause. The court below shall deal with firm hands. With the above observation and direction, the appeal stands disposed of.

(Akhilesh Chandra, J)

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