

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19400 of 2010

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1. Satyadeo Choudhary S/O Late Manik Chand Choudhary R/O Vill.-
Hasanpur, P.S.- Raniganj, Distt.- Araria

.... Opp. Ist party/ Petitioner

Versus

1. Arun Choudhary S/O Late Janardan Choudhary R/O Vill.- Hasanpur,
P.S.- Raniganj, Distt.- Araria
2. Anirudh Choudhary S/O Late Janardan Choudhary R/O Vill.- Hasanpur,
P.S.- Raniganj, Distt.- Araria
3. Jai Kumar Choudhary S/O Late Janardan Choudhary R/O Vill.-
Hasanpur, P.S.- Raniganj, Distt.- Araria
4. Pradeep Choudhary S/O Late Janardan Choudhary R/O Vill.- Hasanpur,
P.S.- Raniganj, Distt.- Araria
5. Munna Choudhary @ Manoj Kumar Choudhary S/O Late Janardan
Choudhary R/O Vill.- Hasanpur, P.S.- Raniganj, Distt.- Araria
6. Binod Choudhary S/O Late Jagdish Choudhary R/O Vill.- Hasanpur,
P.S.- Raniganj, Distt.- Araria
7. Sanjay Choudhary S/O Late Jagat Narayan Choudhary R/O Vill.-
Hasanpur, P.S.- Raniganj, Distt.- Araria
8. Vijay Kumar Choudhary S/O Late Jagat Narayan Choudhary R/O Vill.-
Hasanpur, P.S.- Raniganj, Distt.- Araria

.... Respondents

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Appearance :

For the Petitioner : Mr. Bidhanesh Mishra & Ms Tanuja
Mishra, Advocates

For the Respondents : Mr. Amrendra Narayan

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

4 04-08-2015

Heard counsel for the petitioner and the respondents.

The opposite party of Misc. case no. 06 of 1997 has
filed the present application challenging the legality of the order
dated 16.5.2007 passed by the learned Sub Judge-I, Araria
whereby the petition filed by the opposite party on 01.03.2007
for recall of the order dated 13.02.2007 has been considered and

rejected.

The petitioner had filed a Title Suit against the defendants-respondents herein vide Title suit no. 134 of 1994. The same was allegedly compromised between the parties and a decree of compromise was passed. The defendants of the said suit thereafter filed the present Misc. case for setting aside the compromise decree in terms of Order 23 Rule 3 of the Code of Civil Procedure (for short 'the CPC'). The matter obviously lingered for 10 years. However, the applicants of the Misc. case examined all the witnesses in the meanwhile in support of the case. The Court after closing the evidence of the applicants on 02.05.2006 permitted the opposite party to lead evidence. As many as six witnesses were examined on behalf of the petitioner and 13.02.2007 was the date fixed for adducing further evidence, if any, on behalf of the opposite party (writ petitioner herein). No pairvee was made on his behalf when the Court sat and took up the matter. Accordingly, on perusal of the record the Court having found that sufficient time was granted to the opposite party and several witnesses were also examined, closed the evidence of the opposite party of the Misc. case. It further appears that after the orders was passed a pairvee was made in the case seeking adjournment. Subsequently on 1.3.2007 the present



application was filed by the petitioner in the said Misc. case for recall of the said order closing the evidence of the petitioner (opposite party in the Misc. case). The learned trial Court found obvious contradictions in the plea(s) taken by the petitioner in the petition seeking recall of the order dated 01.03.2007 as also the time petition which was filed soon after the order dated 13.2.2007 was passed by the learned Court below. The Court further noticed that the relevancy of the witness sought to be examined by the opposite party was not set out. Further, neither the name of the witness was disclosed nor the point/issue on which he or she was to depose was explained. Finding the application completely vague and a ploy to delay disposal of the case, the learned court below rejected the said application. Aggrieved thereby the present application has been filed.

Learned counsel for the petitioner submitted that the pairvee was not made in time in the case on behalf of the petitioner due to unavoidable reasons. The Court below in the interest of justice ought to have allowed the application of the petitioner after imposing some cost. The same having not been done. The order is bad in law and merits to be set aside.

Learned counsel for the respondents (applicants of Misc. case) conversely submitted that the trial Court found the



application for recall of the order dated 13.2.2007 completely vague as also suffering from apparent contradictions and rejected the same. The Misc. case is pending on the file of the Court since last more than 15 years by now. Neither in the petition seeking recall of the order passed by the trial Court nor before this Court the petitioner has set out the name of the witness which the opposite party wanted to examine in the case and on what point in addition to the witnesses already examined by the opposite party. In the submission of the counsel the same was done with a view to procrastinate the proceeding and thereby continue to reap the benefit of the decree which was obtained by fraud.

Grant of adjournment on any ground is the discretion of the Court. The trial Court being aware of the previous orders passed in the proceeding can better appreciate the conduct of the parties. One thing is, however, apparent that in a Misc. proceeding like this as per the provisions contained in Order 23 Rule 3 the Court is expected to proceed expeditiously. Adjournments are normally not granted in view of the fact that a person cannot be allowed to reap the privilege of the decree which according to the applicants of the Misc. case has been obtained by fraud. This is spirit of proviso to Rule 3 of Order 23. In the case at hand, the trial Court has accorded reasons on perusal of the

application filed by the petitioner, the time petition filed by the petitioner after the order was passed for closure of the evidence as also the different orders which the Court passed in the proceeding. In my view, interference with such orders by invocation of writ jurisdiction of this Court would not be an appropriate exercise of the power.

The application is dismissed.

(Kishore Kumar Mandal, J)

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