

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15321 of 2012

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1. Abinash Tiwary @ Mangal Tiwary S/O Late Gupteshwar Tiwary Prop.
Shiv Mangal Traders, G.T. Road Mohania, District Kaimur (Bhabua).

.... Petitioner/s

Versus

1. Jay Shri Sah S/O Late Heera Sah Resident Of Village Mamadeo, Police
Station Mohania, District Kaimur (Bhabua).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyam Narayan Pandey-Advocate

For the Respondent/s : Mr. Alok Kumar Sinha No.1-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

05 07-12-2015

Heard learned counsel for the petitioner as well as

learned counsel for the respondent.

Petitioner happens to be the plaintiff before the
learned lower Court whereas respondent is the defendant.

On account of non-appearance of defendant, vide
order dated 15.02.2006, the suit fixed for ex parte hearing. On the
next date i.e. 09.03.2006, defendant put his appearance with a
prayer to recall the ex parte order. Hearing over said petition was
deferred, during midst thereof, written statement was filed on
behalf of defendant on 07.02.2008. It is further evident that
learned lower Court proceeded with and lastly, on 16.06.2008,
recalled the ex parte order at a cost of Rs.1,000/-. The aforesaid
Rs.1,000/- has not yet been paid by the defendant. However,

petition after petition were filed in order to erase the aforesaid condition in an alternative to reduce the amount whereupon lastly, the learned lower Court vide order dated 14/ 19.05.2009, which ever may as the earlier order contains overwriting over date, rejected his prayer as well as also observed that the opportunity granted by Court to the defendant at an earlier occasion should remain stale. Accordingly, witnesses were examined, who were cross-examined in terms of Order-8, Rule-10. Subsequently thereof, an amendment petition was filed on 11.12.2009 at the other end, the defendant was also directed to adduce his evidence. However, vide order dated 22.03.2010, the amendment petition was allowed at a cost of Rs.4,00/- with a further opportunity to the defendant to file additional written statement, if he so desires. Subsequently thereof, as is evident on 06.04.2010, again a petition was filed and vide order dated 25.05.2010, it is evident that learned lower Court had reduced the amount of cost from Rs.1,000/- to Rs.5,00/-, which was deposited and accordingly, by the order impugned dated 01.09.2010, the written statement has been accepted, which has been challenged on behalf of plaintiff whereupon after hearing the parties by the order impugned on 04.05.2012, the learned lower Court passed the order giving an opportunity to the defendant to cross-examine the witnesses and

for that, plaintiff was directed to produce the witnesses and for the aforesaid exercise, a sum of Rs.4,00/- has been recorded as cost.

From the entire order sheet, it is apparent that it gives a vivid picturization of mode of working of the learned lower Court. If further speaks, how the parties are allowed to delay the proceeding on one pretext or the other and on that score, there happens to be slackness on the part of the plaintiff as well as defendant, both. The cost of Rs.4,00/- inflicted against the plaintiff while allowing the amendment vide order dated 22.03.2010, has not yet been deposited. Furthermore, the order dated 10.02.2009 (date is not clear), although the previous order sheet dated 10.11.2008 suggest it to be 10.02.2009, the next date has got some sort of overwriting over the next date i.e. 14.05.2009 while the next date happens to be, as is evident from photo copy of certified copy of dated 19.05.2009. So, the learned lower Court is expected to have proper vigil and command over the proceeding running before him.

The submission made on behalf of petitioner is based upon technicalities whereunder it has been submitted that without having the order dated 14.05.2009 (Order dated 19.05.2009), the written statement filed on behalf of defendant would not have been accepted. It has also been submitted that



conduct of the learned lower Court is further evident from the order sheet dated 01.09.2010 whereby and whereunder the written statement has been accepted, but no amount has been incorporated and remained allowed to be blank and that shows the mechanical approach of the learned lower Court. It has also been submitted that by order dated 04.05.2012, the learned lower Court had tried to justify his illegal action. So, submitted that the relevant orders are fit to be set aside.

The learned counsel for the respondent opposed the prayer and submitted that once the defendant has been allowed to come in main stream, then in that event, he should not be deprived of, otherwise he will be victimized of misdeeds of plaintiff whereunder instant Money Suit has been filed against him for realization of Rs.70,000/-.

As pointed out, there happens to be slackness on the part of the respective parties and further, it is also apparent that the cost at an earlier occasion inflicted against the defendant to a tune of Rs.1,000/- has been reduced to Rs.5,00/-, which he had already deposited (vide order dated 25.05.2010) and further, the petitioner allowed the aforesaid order to be operated upon and then, in 2012 has filed instant petition for challenging the order including that of dated 04.05.2012, whereby and whereunder defendant has been

allowed to sail in main stream and further, allowing the examination of witnesses at a cost of Rs.4,00/-, did not find favour for interference at the present stage by this Court, save and except enhancing the cost which is accordingly, enhanced Rs.25,00/-.

With the above modification in cost, instant petition is disposed of. However, it is made clear that in case, there happens to be failure on the part of the either of the parties, then in that event, the learned lower Court is directed to have proper application of relevant rules in getting the matter finally concluded. At the present moment, respective counsels are of the view that they are eager to cooperate with the learned lower Court and that being so, the learned lower Court will decide the issue at an earliest preferably within nine months.

(Aditya Kumar Trivedi, J)

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