

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11980 of 2015

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Ishwari Prasad

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr. Sc17-Arbind Kumar No. Ii

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 02-12-2015

Heard learned counsel Mr. Anish Chandra Sinha for the petitioner and learned counsel Mr. Ashok Kumar Verma, A.C. to S.C 17 on behalf of the plaintiff-respondent (State of Bihar).

2. This application under Article 227 of the Constitution of India has been filed by defendant no.9 against order dated 20.05.2015 passed by Subordinate Judge-V, Ara in Title Suit No.250 of 2003 whereby the court below rejected the application filed by the petitioner to recall the earlier order closing the case of the petitioner and refused to give opportunity even for three dates for producing evidences, oral as well as documentary.

3. It appears that the suit has been filed by the State of Bihar. From perusal of the impugned order itself, it appears that the case of the defendant nos.1 and 2 was closed on 28.05.2013 and then the petitioner, who is defendant no.9, was directed to adduce evidence and the date was fixed on 05.06.2013. The case

of the petitioner has been closed on 15.06.2013 i.e. within ten days.

4. Learned counsel Mr. Anish Chandra Sinha for the petitioner submitted that if three dates are given to the petitioner, the petitioner will conclude his evidence within the aforesaid period but the court below instead of granting opportunity has refused to recall the earlier order whereby the defendant's case was closed. According to the learned counsel, the petitioner was attacked by paralysis and, therefore, no evidence could be produced and from the impugned order itself it appears that no sufficient opportunity was granted.

5. Learned A.C. to S.C. 17 appearing on behalf of the plaintiff-respondent (State of Bihar) objected the prayer and submitted that after closure of the case of the petitioner, the petitioner filed application after three months.

6. Perused the impugned order. It appears that within ten days the case of the petitioner has been closed. Admittedly defendant nos.1 and 2 have also not adduced any evidence. The case of defendant nos.1 and 2 was closed on 28.05.2013. The petitioner was directed to produce evidence on 05.06.2013 and the case of the petitioner was closed just within ten days i.e. on 15.06.2013.

7. In view of the above facts and circumstances of the case, in my opinion, if the petitioner is denied any opportunity, it will occasion failure of justice. I, therefore, allow this writ application and the impugned order is set aside. The order passed by the court below closing the case of the petitioner is hereby recalled. The court below is directed to give three dates according to the convenience of the Court and the petitioner is directed to produce and conclude his evidences within the aforesaid three dates.

(Mungeshwar Sahoo, J)

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