

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.559 of 2016**

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Mithilesh Kumar @ Pandey

.... Appellant/s

Versus

Braj Kishore Kumar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajoy Kumar Chakraborty

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 19-10-2016

Heard the learned counsel, Mr. Ajoy Kumar

Chakraborty for the petitioner and the learned senior counsel, Mr.

J.S.Arora for the plaintiff-respondent.

Perused the impugned order dated 17.05.2016 passed by the learned Munsif, Patna City in Title Eviction Suit No.9 of 2008 whereby the learned Court below rejected the application filed by the petitioner to adduce evidence after recalling the order closing the evidence of the petitioner.

It appears that the plaintiff-respondent filed the suit for eviction on the ground of default against the defendant-petitioner. The defendant-petitioner filed written statement denying the relationship of landlord and tenant with the petitioner and alleged that the vendor of the plaintiff is the landlord of the defendant. Issues were framed and thereafter, the plaintiff adduced evidence. His evidence was closed on 16.12.2013. Thereafter, the defendant-

petitioner was directed to produce evidence but in spite of different adjournments for several dates, not a single witness was produced by the petitioner.

From perusal of the impugned order, it appears that the Court below noticed that several times last chance was granted and the Court below awarded cost for adjournment. When no evidence was produced, the evidence of the petitioner was closed firstly on 20.05.2014. Again an application was filed for recall of the said order and the Court below recalled the same on payment of cost of Rs.800/- but it was not complied with and again last chance was given to the defendant on payment of cost of Rs.200/-. It was not complied with. Ultimately, his evidence was again closed on 07.11.2014 which was again on the petition of the petitioner recalled on 16.12.2014. Subsequently, when no evidence was produced, again the evidence of the petitioner was closed on 02.02.2016. Now, again application has been filed for recall of the said order and permission to adduce evidence. The said application was rejected by the Court below which is under challenge in this Civil Miscellaneous application.

From the above facts, now it becomes clear that this suit has been filed under the special statute i.e. under B.B.C. Act. The evidence of the plaintiff has been closed as far back as in the year



2013. In spite of repeated adjournments and directions, the defendant-tenant did not produce evidence and, therefore, different orders as stated above were passed by the Court below and sufficient indulgence was granted to the defendant-petitioner but it appears that the intention of the petitioner is not to co-operate with the Court for decision of the eviction suit rather he is purchasing the time and has been able to linger the eviction suit from the year 2013 to 2016 i.e. for three years without adducing any evidence and now again he is praying for recall of the order and seeking permission to adduce evidence.

The Hon'ble Supreme Court in the case of **Ram Rameshwari Devi and others v. Nirmala Devi and others, (2011) 8 Supreme Court Cases 249** has given guidelines for shortening the civil litigation vide paragraph 52(c). The Hon'ble Supreme Court held that **“imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties.** At paragraph 54, the Hon'ble Supreme Court has held that **“while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what**



the defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees structures of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopy, court fee etc.” The Hon’ble Supreme Court has again held that **“the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.”** This decision has again been followed by this Court in Civil Misc. Case No.189 of 2016(Gyan Infra Build Pvt. Ltd. & Anr. v. Smt. Mamta Sinha @ Rupam & Ors.) passed on 17.08.2016.

No doubt, the aforesaid decision relates to the suit at the time which was finally decided but the law laid down by the Supreme Court can be applied from the very initial stage in civil cases. The delaying tactics which is being adopted by the party for getting benefit should be dealt with strongly from the very beginning by the Court so that it will be a lesson to others and in future the same dilatory tactics for the purpose of getting benefit and harassing the other party by abusing the process of the Court

would not adopted and unless this message is given to the litigant who are trying to misuse the process of the Court, the disposal of civil cases cannot be shortened and wrongdoer will always try to harass the other helpless litigant. The Court cannot be a silent spectator and dance at the instance of a litigant who is misusing the process of the Court.

It may be mentioned here that this case at our hand, is one of such instances which clearly indicates that the petitioner, who is defendant in eviction suit, is adopting dilatory tactics by abusing the process of the Court on one or other grounds and is, therefore, harassing the plaintiff-respondent and has been able to drag him upto this Court without any rhyme and reason.

In the result, this Civil Miscellaneous application is dismissed with cost of Rs.10,000/- to be paid by the petitioner to the plaintiff-respondent within two months from today failing which the plaintiff-respondent is at liberty to realize the same through the process of the Court. If the cost is deposited by the petitioner in the Court below within two months, the plaintiff-respondent shall be at liberty to withdraw the same.

(Mungeshwar Sahoo, J)

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