

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.597 of 2016**

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Vivek Kumar

.... Appellant/s

Versus

Dinesh Chandra Azad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukund Mohan Jha

For the Respondent/s : Mr.

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

2 18-08-2016

Heard learned counsel Mr. Mukesh Mohan Jha for the petitioner and learned Ms. Archana Sinha for the respondent.

Perused the impugned order dated 21.06.2016 passed by 3rd Additional District Judge, Muzaffarpur in Letters of Administration Case No.12 of 2009 whereby the court below rejected the application filed by the defendant-petitioner for rejecting examination-in-chief filed by the plaintiff party himself on the ground that prior permission according to the provision has not been obtained by the plaintiff.

The Division Bench of Patna High Court in the case of **Pravesh Kumari and others Vs. Rishi Prasad and others, A.I.R. 1986 Patna 315** has held that Order 18 Rule 3A is directory and not mandatory. But that does not mean that Rule 3A need not be observed. It must be observed. But its non-observance in all cases should not lead to the extreme penalty of expunging

the evidence which had already been recorded. Therefore, where the plaintiff without obtaining leave of the court under Rule 3A was examined as a witness at a later stage after the witnesses on his behalf had already been examined and deposed in support of his case and proved number of documents, his evidence along with the exhibits which he had proved should not be expunged for non-observance.

From perusal of the impugned order, in the present case, it appears that the court below considering the facts of the case has held that impliedly leave has already been granted to the plaintiff.

In view of the above facts and circumstances of the case and the law laid down by the Division Bench decision of this Court, in my opinion, the learned court below has rightly passed the impugned order. As such, it needs no interference in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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