

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9855 of 2014

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Pramila Devi W/O Late Ramprit Sah, R/O Village- Benipur, Nawada,
Kalpna Studio, N.H.-28, P.S.- Dalsingsarai, District- Samastipur

.... Petitioner/s

Versus

Basant Kumar Chaudhary S/O Late Hemant Kumar Chaudhary R/O
Village- Keota Kothi, P.S.- Dalsingsarai, District- Samastipur

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Rina Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 21-06-2016

Heard Smt. Rina Sinha, learned counsel for the

petitioner.

Questioning the legal acceptability of the
impugned order to the extent whereby a cost of Rs.500/- has been
imposed upon the petitioner, the present application under Article
227 of the Constitution of India has been filed.

The facts are not in dispute that the petitioner is
defendant in the suit for eviction. The controversy arose with
regard to the examination of the plaintiff by a Commissioner in
accordance with the provision of Order 18 Rule 4 C.P.C. wherein
the petitioner raised the objection that the examination-in-chief of
the plaintiff Shishir Kumar Chaudhary was not complete in
absence of affidavit. The learned court below by the impugned



order ignored the examination-in-chief of the plaintiff as recorded by the pleader commissioner and has passed the order for appointment of a fresh pleader commissioner with further direction to the plaintiff to file his examination-in-chief on oath in the court itself granting liberty to the defendant to raise objection at that time itself. The learned court below, however, has also come to the finding that the plaintiff as well as the defendants both are intending to delay the proceeding and therefore has directed for payment of Rs.500/- by the plaintiff as well as the same amount by the defendant-petitioner as the fee of the commissioner. This order has been passed by the court by exercising jurisdiction under Section 151 C.P.C.

The learned counsel has fairly submitted before this Court that as the petitioner has not committed any fault, the direction for payment of Rs.500/- to the petitioner in the facts and circumstances cannot be sustained. It has also been submitted that the petitioner is aggrieved by the impugned order only to that extent.

After considering the submissions and perusal of the impugned order, this Court finds that the aforesaid order has been passed by the court by exercising jurisdiction under Section 151 C.P.C. after considering the facts and circumstances of the

case and in particular for expeditious proceeding of the suit which is an eviction suit. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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