

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.70 of 2016**

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Ratan Prakash Singh

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar

For the Respondent/s : Mr. Smt. Namrata Mishra- Ga13

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

4 02-08-2016

Heard the learned counsel, Mr. Pankaj Kumar for the petitioner and the learned counsel, Mr. Chhotelal Mishra, A.C. to G.A.6 for the State.

It appears that in the title suit filed by the petitioner, Governor was made party-defendant. Subsequently, after issuance of notice, the application has been filed by the petitioner for deleting the name of the Governor from the array of defendant. The Court below while allowing the said application imposed cost of Rs.50,000. The petitioner is aggrieved by the cost awarded by the Court below.

According to the learned counsel for the petitioner, under Section 35-A C.P.C., the Court can award cost of Rs.3,000 but the Court below without examining this provision has awarded cost of Rs.50,000.

Section 35-A(1) C.P.C. reads as follows:



“(1) If in any suit or other proceeding, [including an execution proceeding but [excluding an appeal or a revision]], any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, [if it so thinks fit], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

In view of this provision, the Court has the jurisdiction to

award cost.

However, sub-section (2) reads as follows:

(2) No Court shall make any such order for the payment of an amount exceeding [three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887(9 of 1887), [or under a corresponding law in force in [any part of India to which the said Act does not extend]] and not being a Court constituted [under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as

costs under this section.

In view of this provision, the Court can award cost of Rs.3,000 or exceeding the limits of its pecuniary jurisdiction whichever is less. Therefore, when the Sub Judge is awarding cost, this cost will be limited to Rs.3,000 only which is the less amount of the pecuniary jurisdiction of Sub Judge.

Section 35-B also speaks that **“the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court.”**

Therefore, in any manner the cost should be reasonable cost and not arbitrary. In the present case, the litigant filed the suit adding Governor as party. It is for the Court to have decided the matter prior to admission of the suit as to whether suit itself was maintainable against the Governor but instead of examining the same, notices were issued. Thereafter, the amendment application has been filed. In such circumstances, the fault is on the part of the plaintiff as well as on the part of the Court also.

Thus, the part of the impugned order passed by the Court below dated 16.02.2016 passed by Sub Judge I, Barh in Title Suit

No.220 of 2014 is hereby set aside and is reduced to Rs.3,000 that should be deposited by the petitioner as directed by the Court below within two weeks from today.

Thus, this civil miscellaneous application is disposed of.

(Mungeshwar Sahoo, J)

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