

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.360 of 2016**

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Dr. Aree Pongsai @ Dr. Nachhi Pongsai

.... Appellant/s

Versus

Dr. Phramaha Phan Suphajaro (Thaekrathoke)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar

For the Respondent/s : Mr.

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

ORAL ORDER

5 19-12-2016 Heard the learned senior counsel, Mr. Rama Kant Sharma for the petitioner and the learned counsel, Mr. Pankaj Kumar for the respondent.

This application has been filed under Article 227 of the Constitution of India by opposite party-petitioner for setting aside the order dated 03.03.2016 passed by learned Additional District and Sessions Judge VI, Nalanda in Misc. Case No.5 of 2009 whereby the Court below rejected the application filed by the petitioner seeking permission to withdraw Rs.10 lacs from Canara Bank, Nalanda for the purpose of maintenance of the vehicles and Wat Thai temple at Nalanda.

It appears that a probate case was filed by the present petitioner which was granted ex parte. Subsequently, the respondent filed revocation case under Section 263 of the India Succession Act for revocation of the probate granted in favour of



the respondent. The said revocation case has been registered as Misc. Case No.5 of 2009. In this revocation application, the petitioner filed an application for permission to withdraw Rs.10 lacs for maintenance as aforesaid. The Court below by the impugned order rejected this on the ground that the revocation case is fixed for hearing i.e. final argument and the revocation case can be disposed of within 2-3 dates. The petitioner herein, instead of assisting the court for disposal of the revocation case, is interested in withdrawing the amount.

At the time of hearing of this Civil Miscellaneous application, the learned counsel for the respondent produced the ordersheet from January, 2014. It is submitted by him that since then i.e. from January, 2014, the revocation case is pending and the present petitioner is taking time instead of assisting the court to dispose of the miscellaneous case i.e. revocation case and she is only interested in withdrawing the money and not for disposal of the revocation case. The learned counsel for the respondent still submits that the revocation case can be disposed of within two dates.

In view of the above finding recorded by the Court below and the submission made by the learned counsel for the respondent, I find no jurisdictional error in the impugned order nor



it can be said that the order has been passed in the manner not permitted by law. Since the miscellaneous case itself is pending for hearing for last two years, both the parties are directed to assist the court without praying for unnecessary adjournments and arguing the case so that the same can be disposed of within a reasonable period.

It will not be out of place to mention here that the application has been rejected by the Court below on 03.03.2016 and since then the matter regarding permission to withdraw Rs.10 lacs is pending i.e. about nine months. In such circumstances, it is futile to pass any interim order when the revocation case itself is ripen for final argument.

Accordingly, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed with direction to both the parties to get the case disposed of within a reasonable period.

(Mungeshwar Sahoo, J)

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