

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12730 of 2015

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1. Pandit Damodar Upadhyay Son of Late Kameshwar Upadhyay,
2. Satyendra Upadhyay, Son of Sri Pandit Damodar Upadhyay,
3. Rajendra Upadhyay, S/o Sri Pandit Damodar Upadhyay, All resident of
village - Mira Bigha, P.S. - Chandauti, District - Gaya at present living at
Mohalla - Lakhibagh, P.S. - Mofasil, District - Gaya (Bihar).

.... Petitioner/s

Versus

1. Sri Ram Chandra Upadhyay
2. Sri Vidyadhar Upadhyay, Both sons of Brajbhushan Upadhyay,
Resident of Mohalla - Lakhibagh, P.O. - Buniyadganj, P.S. - Mofasil,
District - Gaya (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Tiwary
For the Respondent/s : Mr. Harsh Anuj

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 05-05-2016 Mr. Ranjeet Tiwary, learned counsel for the
petitioner and Mr. Harsh Anuj learned counsel for the respondent.

By order dated 06.06.2015 the learned Sub Judge, 1st
Gaya, rejected the application filed by the petitioner for recalling
the order dated 19.10.2013 and allowing the petitioner to be
examined as witness in Misc. case no. 11 of 2010.

Learned counsel for the petitioner submitted that
within any reasonable period that may be given by this court the
petitioner is ready to get himself examined as witness and for the
delay and laches the petitioner is ready to compensate the other
side that is respondent. The learned counsel for the respondent



vehemently opposed the prayer and submitted that since 2012 the court below is directing the petitioner for his examination as witness but because of lingering tactics the petitioner dragged the Misc. case for four years and now after argument is concluded on behalf of the respondent, this application has been filed intentionally only to delay the matter. In such circumstances the petitioner is not entitled to invoke extra ordinary discretionary equitable relief under Article 227 of the Constitution of India.

It appears that suit filed by the respondent has been decreed ex-parte and thereafter this Misc. Case No. 11 of 2010 has been filed under Order 9 Rule 13 CPC by the petitioner wherein other witnesses have been examined. In my opinion therefore it is necessary for the ends of justice that one opportunity should be granted to the petitioner for being examined himself as a witness in the Misc. Case. However, from perusal of the impugned order it appears that the submission of learned counsel for the respondent that it is the lingering tactics of the petitioner appears to be correct in my opinion the petitioner is liable to pay cost as the petitioner is only purchasing time not one month, two month or one year rather he has already dragged the litigation for more than four years after direction of the court below.

In such view of the matter the petitioner could be

examined as witness in this Misc. Case only and only if he paid cost of Rs. 10,000/- to the respondents in the court below within one month from today and if the amount is deposited within one month in the court below the court below shall fix the next date with consent of the parties for the examination of the petitioner.

If, this condition is not fulfilled the court below shall proceed to decide the Misc. Case without examining the petitioner as witness.

If the cost is deposited in the court below the respondents herein are at liberty to withdraw the same in the court below.

Accordingly, this writ application is disposed of with aforesaid direction.

(Mungeshwar Sahoo, J)

siddharth/-

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