

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13321 of 2011

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1. Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
 2. The Electrical Superintending Engineer (P), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

.... Petitioner/s

Versus

M/S Vijay Electricals Limited represented by S.S.S. Subramaniam, son of S.S. Vaidyar, G.A. Holder, Bala Nagar, P.O. Bala Nagar, P.S. & Distt-Hyderabad.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Kirti Singh, Advocate Mr. Vinay Kumar Verma, Advocate Mr. Akhileshwar Singh, Advocate
For the Respondent/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate Mr. Sanjeet Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

16 27-04-2016

Heard learned counsel for the petitioners as well as

learned counsel for the respondents.

2. Petitioners are aggrieved by an order dated 21.09.2004 passed by Sub-Judge, 2nd Patna in Money Suit No.131/1995 whereby and whereunder the prayer of the petitioners/defendants to entertain the documents on their behalf has been rejected.

3. It has been submitted on behalf of petitioners/defendants that as they failed to locate the document at an earlier stage, therefore, were not in a position to file the same, apart from the fact that some of the documents were made available before Legislative Assembly as well as before Legislative Council where enquiry was going on against the



plaintiff/respondent. It has also been submitted that at an earlier occasion prayer of petitioners was refused even at this stage but after having judicial pronouncement reported in the case of *Dukhan Rai v. Mahendra Rai* reported in 2007(3)PLJR 8 as well as in the case of *Salem Advocate Bar Association Tamil Nadu v. Union of India* as reported in 2005(4) PLJR 270 (SC), petitioner has reagitated on the background of the fact that 2002 amendment whereunder provision enumerated under Order XVIII Rule 17A has been deleted will not apply on account of pendency of instant Money Suit since before. As such, the learned lower court should have exercised the aforesaid proviso to impart justice as, declining to give an opportunity to the petitioners/defendants will cause not only hardship but will also cost the State exchequer. So, submitted that the order impugned should be set aside and petitioners/defendants simultaneously be given an opportunity to adduce relevant documents.

4. Learned counsel for the respondents/plaintiff opposed the prayer and submitted that four Money Suits were filed at the end of plaintiff whereunder similar kind of consequences have been faced by the petitioners/defendants which were challenged before this Court out of which three petitions have already been dismissed. It has also been submitted that after closure of case of plaintiff, prayer has been made, which if allowed would prejudice interest of the plaintiff as they would not

have an opportunity to explain. Therefore, this petition should also be given the same treatment by way of its dismissal.

5. Gone through the order impugned as well as perceived submissions made on behalf of respective learned counsels.

6. Code of Civil Procedure, more particularly, the orders have been framed for smooth sailing of the suit but, it has been observed repeatedly by the Hon'ble Apex Court that it should not be used to throttle. Presence of both the parties having an opportunity to substantiate their plea by documentary as well as oral evidence is the purpose of trial. It is evident that on account of slackness on the part of defendant/petitioner the document could not be produced at an earlier occasion, even during course of conduction of plaintiff/respondent case, but still petitioner/defendant has to proceed with their case. Therefore, if allowed at the present moment to file document, the lower court will be in a position to allow the respondent/plaintiff to recall witnesses to rebut and further to impart justice, same looks essential.

7. In the aforesaid background, apart from having an opportunity available to the respondent/plaintiff to rebut the respondent/plaintiff should also be properly compensated and for that, opportunity is given to the petitioners/defendants subject to cost of Rs. 5 Lacs.

8. With the aforesaid observation, instant petition is
disposed of.



(Aditya Kumar Trivedi, J)