

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.299 of 2016**

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Awadhesh Kumar @ Awadhesh Rai

.... Appellant/s

Versus

Birendra Kumar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kishore Thakur

For the Respondent/s : Mr.

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

2 17-08-2016 Heard the learned counsel, Ms. Madhvi, for the petitioner and the learned counsel, Mr. Manoj Kumar Jha, for the respondent.

The learned counsel for the petitioner submitted that by the impugned order, the Court below refused to recall the order whereby the evidence of the petitioner has been closed without considering the fact that the petitioner being the party only has not been examined. According to the learned counsel, if the petitioner is not examined as witness, it will occasion failure of justice and the petitioner shall be prejudiced.

On the other hand, the learned counsel, Mr. Jha, for the respondent submitted that 18 dates were granted to the petitioner but due to his delaying tactics, the evidence of the defendant was closed.

Perused the order passed by the Court below. Since



the party has not been examined as witness, i.e., the petitioner in the suit and admittedly affidavit, i.e., examination-in-chief has already been filed by the petitioner, therefore, I direct that the evidence of the petitioner may be recorded by the Court below within one month from receipt of a copy of this order subject to payment of cost of Rs.1,000/- to be paid / deposited in the Court below for payment to the respondent within the aforesaid period. This time fixed by this Court, i.e., one month shall not be extended in any way on any other ground. The cost must be deposited with the aforesaid period.

With this direction, the orders passed by the Court below closing the evidence of the petitioner dated 20.02.2016 and refusing to recall the same dated 13.03.2016 in Title Suit No.92 of 2010 is hereby modified and this Civil Misc. Application is accordingly disposed of.

(Mungeshwar Sahoo, J)

Sanjeev/-

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