

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2774 of 2016

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Arun Kumar Singh @ Lalbabu Singh

.... Petitioner/s

Versus

Shukdeo Mishra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 29-07-2016

Heard learned counsel Mr. Patanjali Rishi for the petitioner and learned counsel Mr. Arbind Kumar Jha for the respondent.

Learned counsel for the petitioner submitted that on the date of order rejecting the amendment filed by the petitioner in the written statement the suit was at the very initial stage but the court below wrongly rejected the amendment application on the ground that the petitioner is withdrawing the admission without considering the fact that in fact it is only an explanation which has already been pleaded in the written statement.

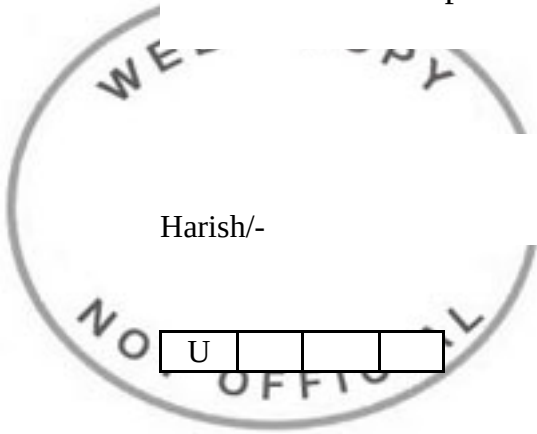
Learned counsel for the respondent submitted that in token of part payment of consideration Rs.35,000/- was paid to the present petitioner. However, the learned counsel for the respondent is also not in a position to dispute that the suit is at the very initial stage.



From perusal of the impugned order also I find that the learned court below nowhere stated about the stage of the suit whether trial has commenced and if commenced on what date, and many witnesses have been examined. However, only proviso to Order 6 Rule 17 of the Code of Civil Procedure has been considered in the last portion of the order. The court below also observed that the petitioner is trying to withdraw the admission. At the time of hearing of this writ application a copy of the written statement was produced before this Court. From perusal of the written statement, it appears that in fact there is statement to the effect that Rs.35,000/- was paid to the present petitioner. Now, this admission is not being withdrawn rather it is being explained by way of amendment that too at the initial stage of the suit.

In view of the above factual position, in my opinion, the court below has erred in saying that the petitioner is withdrawing the admission. Further the court below did not consider the stage of the suit and rejected the amendment application only on the ground of delay from filing the suit. In my opinion, therefore, the learned court below has refused to exercise the jurisdiction vested in it by law. Thus, this writ application is allowed. The impugned order dated 10.10.2015 passed by Subordinate Judge-V, Sitamarhi in Title Suit No.207 of 2002 is

hereby set aside. The amendment application filed by the petitioner for amendment of the written statement is allowed.



Harish/-

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(Mungeshwar Sahoo, J)