

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11536 of 2014

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Md. Sakil Ansari, son of Late Nabi Miya, resident of Village- Nowatoli, P.O. and
P.S.- Pirpainti, District- Bhagalpur. Petitioner/s

Versus

Md. Rustam, son of Late Mustafa Miya, resident of Village- Nowatoli, P.O. and
P.S.- Pirpainti, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-08-2016

Heard Mr. Deepak Kumar Sinha, learned counsel for the
petitioner.

Questioning the legal sustainability of the impugned
order by which the learned court below has rejected the prayer of the
defendant-petitioner for recall of some of the witnesses examined on
behalf of the plaintiff (P.W.5 and P.W. 6) for cross examination, the
present application under Article 227 of the Constitution of India has
been filed.

Learned counsel for the petitioner has submitted that
though the petitioner has cross examined the P.W.5 and P.W. 6 but
after that an amendment in the written statement was prayed and
allowed and therefore the cross examination of those witnesses has
become necessary. It has thus been contended that the learned court

below ought to have allowed the prayer of the defendant-petitioner in view of the provision as contained under Order 18 Rule 17 C.P.C.

After considering the submissions and the perusal of the impugned order, it is manifest that the defendant-petitioner has cross examined the P.W.5 and P.W. 6 and the prayer for recall of those witnesses has been made only on the ground that there has been amendment subsequently in the written statement. The learned court below has rightly come to the conclusion that the averments made are to be established by the parties by leading evidence and that cannot be the sufficient ground for recall of the witnesses. Even otherwise also, the provision of Order 18 Rule 17 grants jurisdiction to the court to recall a witness and put such question which the court deems fit and proper. The defendant-petitioner has already been allowed to lead evidence and establish the fact as pleaded by him in the written statement. This Court, therefore, does not find it a fit case to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The present application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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