

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.529 of 2016**

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Shambhu Kumar & Ors.

.... Appellant/s

Versus

Sita Devi Dokania & Anr.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Manoj Kumar

For the Respondent/s : Mr.

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

2 11-08-2016 Heard the learned counsel, Dr. Manoj Kumar for the
petitioners.

Perused the order dated 03.06.2016 passed by the learned
Munsif II, Bhagalpur in Title Eviction Suit No.4 of 2002 whereby
the learned Court below rejected the application filed under Order
47 Rule 1 C.P.C. for review of the order dated 03.05.2016. The
Court below considered the conduct of the petitioner and then
rejected the application for review by the impugned order.

From perusal of the review application and the reply
thereto, which has been annexed with this civil miscellaneous
application, it appears that the petitioner was directed to produce
evidence since 2011 but when he did not produce evidence, his
evidence was closed and the eviction suit was posted for judgment
after hearing the plaintiff. Thereafter, on the date of the judgment,
application was filed i.e. dated 25.05.2015 praying for stay of the



judgment on the ground that transfer petition has been filed before the District Judge being Misc. Transfer Case No.35 of 2015. However, the suit was transferred to the present court with a direction to the court to dispose of the suit within six months by order dated 29.10.2015. The defendant was directed to argue the case but on each and every date, the petitioner filed application before the Court below for time and ultimately on 15.02.2016, argument of the parties were closed and at this stage, the application has been filed for recall of the order dated 08.08.2014. The evidence was closed on 08.08.2014 whereas the recall application was filed on 25.03.2016 i.e. one year and seven months after the closure of the evidence that too when argument was concluded. The said application was rejected on 03.05.2016. The order was never challenged before the superior court. A review application was filed. The Court below considered all these aspects of the matter and has rejected the same by the impugned order. Here also, the original order is not under challenge i.e. the order dated 08.08.2014 nor the subsequent order dated 03.05.2016. The review order has only been challenged. This shows the intention of the petitioner who is trying to abuse the process of the Court for the purpose of delaying the disposal of the suit and he has been able to drag the proceeding i.e. eviction suit of the year

2002.

The Hon'ble Supreme Court in the case of **Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors., (2011) 8 Supreme Court Cases 249** has held that "if the dilatory tactics is adopted by a litigant and consequently resulted in harassment of opposite party, wastage of court's time and thereby the wrongdoer is benefited under the existing system of administration of civil litigation penal cost must be awarded." At paragraph 52 of the judgment, the Supreme Court has given guidelines for curbing the delay of civil suits wherein one of the conditions is that "imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties."

In view of the above facts and circumstances of the case considered by the Court below that since 2011, the petitioner instead of examining the witnesses has been able to delay the proceeding which is eviction suit on the ground of fixed term tendency by filing frivolous applications.

Therefore, this civil miscellaneous application is dismissed with cost of Rs.10,000 to be paid by the present

petitioner to the respondent in the Court below within one month
failing which the Court below shall realize the same through the
process of the Court.

(Mungeshwar Sahoo, J)

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