

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.677 of 2016**

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Bijoy Kumar Das @ Vijay Kumar Das & Anr

.... Appellant/s

Versus

Nripendra Narayan Ghosh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ujjwal Kumar Sinha

For the Respondent/s : Mr. Rajan Ghoshrave

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

ORAL ORDER

2 26-09-2016

Heard learned counsel for the petitioners and learned
counsel appearing for the Canara Bank.

2. Perused the impugned order dated 02.05.2016 passed
by the Sub-Judge-1st, Patna in T.S. No. 538 of 2010, whereby the
learned court below rejected the application filed by the present
petitioners, who are defendants in the suit, praying for permitting
the petitioners to adduce evidence in support of the fact for which
after notice under Order 12 Rule 4 C.P.C., the plaintiffs have not
admitted the fact.

3. It appears that the plaintiffs-respondents filed the suit
for the relief that a decree be passed, inter-alia, declaring that the
agreement dated 05.05.2010 and the deed of sale dated 25.05.2016
made between defendant No.3 and defendants Nos. 1 and 2, both
registered before Registrar, Patna be declared null and void by

cancellation of the said agreement dated 05.05.2010 and the sale deed dated 25.05.2010.

4. The defendants-petitioners appeared in the suit on 04 06.2012 and prayed for recall of the order, whereby they were debarred from filing the written statement. The court below recalled the order and allowed the petitioners to file written statement on payment of cost of Rs. 1000/-. The petitioners neither deposited the cost nor filed the written statement, therefore, the case was fixed for *ex-parte* hearing. The evidence of the petitioners has not yet started. At this stage, an application has been filed by the petitioners under Order 12 Rule 4 C.P.C. giving notice to the plaintiffs-respondents to admit certain facts mentioned in the application, which is Annexure-1 to this civil miscellaneous application. The plaintiffs-respondents thereafter filed reply of the notice alleging that all the averments, mentioned in the notice, are not within the purview of Order 12 Rule 4 C.P.C. and therefore the plaintiffs are not obliged to admit the same fact. Thereafter, the petitioners filed application for permission to adduce evidence in support of the fact mentioned in the notice. The plaintiffs thereafter filed objection alleging that the alleged facts, mentioned in the notice, are all leading questions and those

are the facts which are to be decided finally in the hearing of the suit and when the petitioners have not filed written statements and have not contested the suit at their instance, therefore, the application under Order 12 Rule 4 C.P.C. is not maintainable.

5. By the impugned order, the court below rejected the application filed by the petitioners observing that the petitioners had option to file written statement but they did not file the written statement, now, therefore, they cannot be permitted to adduce evidence in support of their case, for which, notice was sent to the plaintiffs for admitting the fact.

6. Learned counsel for the petitioners relied upon two decisions; (i) *AIR 1955 SC 425* and (ii) *AIR 2007 Delhi Page 268* and submitted that even if no written statement is filed by the petitioners then also, the defendants can be permitted to participate in the proceedings. In the present case, the court below, by not allowing the petitioners' application, has refused to allow the petitioners to participate in the proceeding of the suit. The defendants-petitioners have the right to participate in the proceeding and, therefore, they filed the application under Order 12 Rule 4 C.P.C. In view of the aforesaid decisions, the court below should have allowed the application filed by the petitioners

and permitted the petitioners to adduce evidence in support of the fact alleged in the notice, which has not been admitted by the plaintiffs. In such circumstances, the right of the petitioners to prove the fact of notice cannot be taken away on the ground that the written statement has not been filed.

7. So far learned counsel appearing for the Canara Bank is concerned, he has nothing to do in the dispute between the plaintiffs and the present petitioners as Canara Bank is a formal party.

8. Order 12 Rule 4 of the Code of Civil Procedure reads as follows;

“Any party, may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the court otherwise directs.”

Provided that-----.”

In the present case, at our hand, when after notice,



the defendants-petitioners did not appear in the court below, the case was proceeded *ex-parte* against them and the case was fixed for hearing. Thereafter, the petitioners appeared and filed application for recall of the same. The court below recalled the same and allowed the petitioners to file written statement on payment of cost. The defendants-petitioners did not comply the same. Therefore, the case was proceeded *ex-parte* and hearing was fixed. The present notice under Order 12 Rule 4 C.P.C. was filed by the petitioners in February, 2015. The provision as contained in order 12 Rule 4 C.P.C. provides that the notice must be served within 9 days prior to the case is fixed for hearing.

9. Here, admittedly, the application has been filed much beyond the time. It may be mentioned here that the provision has been inserted with intention to curtail the time consumed for the decision of the suit. Here, the petitioners are serving the notice after three years of the date when the case was fixed for hearing. The conduct of the petitioners appears not to assist the Court for expeditious disposal but it appears that they are adopting a dilatory tactics to linger the disposal of the proceeding. So far the decisions, as aforesaid, relied upon by the learned counsel for the petitioners are concerned, it may be



mentioned here that none of these decisions dealt with provision of Order 12 Rule 4 C.P.C. So far the submission of the learned counsel for the petitioners that the defendants-petitioners can be allowed to participate in the proceeding, which is *ex-parte* against them is concerned, there is no dispute about this. The petitioners can very well cross-examine the witnesses of the plaintiffs and demolish the case of the plaintiffs but in the garb of participation, they cannot be allowed to abuse the process of the Court by invoking Order 12 Rule 4 C.P.C. Admittedly, there is no pleading on behalf of the petitioners. If there is no pleading, there is no question of allowing them to adduce evidence arises. Order 12 Rule 4 C.P.C. in the present case is not at all applicable. Notice is annexure-1 to this civil miscellaneous application. From this notice, Annexure-1, it appears that the facts, which are sought to be admitted by the plaintiff, all are, in fact, leading questions. In such circumstances, the plaintiffs-respondents rightly filed the objection refusing to admit the facts alleged by the defendants-petitioners in the notice on the ground that those statements of facts are nothing but the leading questions, which are not within the purview of Order 12 Rule 4 C.P.C.

10. From the aforesaid facts, it appears that not only the

defendants-petitioners intentionally violated the order of the Court in the year 2012 and did not chose to file written statement nor deposited the cost but also have been able to drag the matter by filing this type of frivolous and vexatious applications for last four years.

11. The Hon'ble Supreme Court in the case of *Ram Rameshwari Devi Vs. Nirmalal Devi* reported in (2011) 8 SCC 249 has given guidelines for shortening the civil litigation vide paragraph 52(c). **The Hon'ble Supreme Court held that 'imposition of actual, realistic or proper cost and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigant. Imposition of heavy costs would also control unnecessary adjournments by the parties.'** At paragraph 54, the Hon'ble Supreme Court has held that **'while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees structures of the lawyers and other miscellaneous expenses which have to be**



incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing , photocopy, court fee etc.’ At paragraph 55, again it has been held ‘the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.’

12. In view of the settled principles of law, here, the delaying tactics, which is being adopted by the parties for getting benefit, should be dealt with strongly from the very beginning by the courts so that it will be a lesson to other that in future the same dilatory tactics for the purpose of getting benefit and harassing the other party by abusing the process of the Court would not be adopted. Unless this message is given to the litigants, who are trying to misuse the process of the Court, the delay in disposal of civil cases cannot be shortened and wrong doers will always try to harass the other helpless litigants.

13. In the present case, at our hand, the petitioners intentionally filed such application and it can be said that even an arguable case is made out on behalf of the petitioners, therefore, in my opinion, this is not a case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of

India. Accordingly, this civil miscellaneous case is dismissed with cost of Rs. 10,000/- to be paid by the petitioners to the plaintiffs-respondents within one month from the date of order. The cost must be deposited in the Court within the stipulated period and if it is deposited, the plaintiffs-respondents would be at liberty to withdraw the same. If it is not deposited, the same shall be realized through the process of the Court.

14. In the result, this civil miscellaneous application is dismissed with the aforesaid directions and observations.

Brajesh/-

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(Mungeshwar Sahoo, J)