

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2436 of 2016

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Tara Devi & Anr			Petitioner/s
Versus			
Dr. Gulab Chandra Prasad & Ors			Respondent/s

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with
Civil Writ Jurisdiction Case No.2781 of 2016

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Seema Devi			Petitioner/s
Versus			
Dr. Gulab Chandra Prasad & Ors			Respondent/s

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Appearance :
(In CWJC No.2436 of 2016)
For the Petitioner/s : Mr. Chandra Kant
For the Respondent/s : Mr.
(In CWJC No.2781 of 2016)
For the Petitioner/s : Mr. Chandra Kant
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 27-06-2016 Heard the learned counsel, Mr. Chandra Kant for the petitioners and the learned counsel, Mr. Ranjan Kumar Dubey for the respondent No.1.

Admittedly, the plaintiffs are the petitioners. The evidences of the plaintiffs have been closed on 25.06.2015. It is admitted fact that the plaintiffs were directed to produce evidence by terms of order dated 03.06.2014. It is also admitted fact that plaintiffs have not adduced any evidence. The ground taken by the plaintiffs is that the Advocate engaged by the petitioners died on



18.07.2014 i.e. just 15 days after the plaintiffs were directed to produce evidence and the plaintiffs had no knowledge about the death, therefore, there was delay in producing the witnesses. When the recall application was filed, on these grounds, the Court below has rejected the said application by the present impugned order dated 09.07.2015 passed by Sub Judge IV, Siwan in Title Suit No.297 of 1997.

The learned counsel for the respondents submitted that the original order whereby the evidence of the plaintiff was closed has not been challenged, therefore, in view of the judgment of the Supreme Court, 2013(1) PLJR 335(SC) and the order passed by this Court in CWJC No.20697 of 2012, the writ application is not maintainable.

It may be mentioned here that this Court is exercising supervisory jurisdiction. The Hon'ble Supreme Court in the case of **Shalini Shyam Shetty and another v. Rajendra Shankar Patil, (2010) 8 Supreme Court Cases 329** has held that Article 227 of the Constitution of India can be invoked by the High Court suo motu as a custodian of justice. Therefore, the High Court has the jurisdiction to exercise supervisory jurisdiction if the High Court will find that if the order is allowed to stand, it will occasion failure of justice.

So for maintainability of the writ application is concerned, it may be mentioned here that the application for recall, if allowed, that will amount to recall the original order. Therefore, impliedly the original order is under challenge in the writ application.

So far the decision relied upon by the respondents is concerned, it may be mentioned here that in that case, the order passed in review application was rejected. It may be mentioned here that so far review application is concerned, it is a separate proceeding initiated under Order 47 Rule 1 of the C.P.C. So far recall applications are concerned, the Courts exercised jurisdiction under Section 151 C.P.C. In the present case, since the plaintiffs have not examined any witness and if the order is allowed to stand then naturally it will occasion failure of justice and shall lead to multiplicity of proceedings. Therefore, on this ground alone, the impugned order is liable to be set aside.

Thus, this writ application is allowed. The impugned order is set aside and the plaintiffs are directed to produce their witnesses within 3 months as agreed by the learned counsel for the petitioners.

(Mungeshwar Sahoo, J)

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