

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5946 of 2015

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Ram Prasad Sah & Ors

.... Petitioner/s

Versus

Birkhu Sah & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 24-08-2016 Heard learned counsel Mr. Amar Nath Jha for the

petitioners.

It appears that in this case notices were issued on the respondents by terms of order dated 28.01.2016. In spite of service of notice on the respondents nobody is appearing to oppose the prayer of the plaintiffs-petitioners.

This application has been filed by the plaintiffs-petitioners for setting aside the order dated 28.01.2015 passed by Subordinate Judge-IV, Araria in Title Suit No.85 of 2011 whereby the court below rejected the application filed by the petitioners for receiving the necessary and relevant documents and for marking the same as exhibit in the suit, on the ground that the suit is at the stage of argument and at this very belated stage the application has been filed.

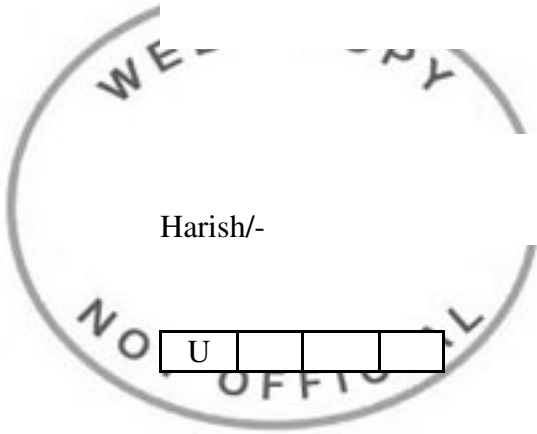
From perusal of the impugned order, it appears that the

court below has not at all considered the fact as to whether the documentary evidences, which are sought to be produced at the stage of argument, are relevant for determination of the real controversy between the parties. Primarily the application has been rejected on the ground of delay only.

The Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy, (2011) 11 Supreme Court Cases 275** has held that no doubt Order 18 Rule 17A of the CPC has been deleted by the C.P.C. (Amendment) Act in the year 2002 (22 of 2002) but then for doing complete justice the Court has the jurisdiction under Section 151 CPC and that jurisdiction can be exercised to deal with any particular procedural aspect which is not provided expressly or impliedly in CPC, if ends of justice so warrant and to prevent abuse of process of Court, the Court in appropriate cases can exercise its discretion to permit reopening of evidence even when arguments have been concluded and case has been reserved for judgment.

The court below has not considered the case in the above light and, therefore, this writ application is allowed. The impugned order dated 28.01.2015 passed by Subordinate Judge-IV, Araria in Title Suit No.85 of 2011 is hereby set aside. The matter is remanded back to the court below for passing a fresh

order considering the law laid down by the Supreme Court
aforesaid after hearing the parties.



(Mungeshwar Sahoo, J)