

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17359 of 2015

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Gauri Devi

.... Petitioner/s

Versus

Shiv Shankar Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Praveen Prakash

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 24-08-2016 Heard learned Senior Counsel Mr. Surendra Kumar Singh for the petitioner and learned counsel Mr. Sanjay Kumar Tiwari for the respondent.

In this case notices were issued to the respondent on 15.12.2015. After notice the respondent has appeared.

It appears that the earlier Title Suit No.31 of 1998 was decreed ex-parte. The present petitioner filed application under Order 9 Rule 13 CPC for setting aside the ex-parte on the ground that no notice was served on her. The said application was allowed by the court below and the ex-parte decree was set aside. Thereafter it appears that the suit was dismissed for default on 05.07.2010. However, it was restored to its original file after about two years. The court below by the impugned order dated 05.10.2015 refused to recall the order dated 05.03.2014 whereby the petitioner's evidence was closed.

From perusal of the impugned order, it appears that the court below has considered these grounds and also held that sufficient opportunity was granted which would be evident from paragraph 3 of the impugned order.

However, in view of the submission of the learned counsel for the petitioner that the petitioner will conclude her evidence within three months from today and is ready to compensate the respondent for the delay and laches on the part of the petitioner, this writ application is allowed and the order dated 05.10.2015 and the original order closing the evidence of the petitioner is hereby set aside. The petitioner is granted three months time to conclude her evidence subject to payment of cost of Rs.2,000/- to be paid by the petitioner to the respondent in the court below within one month from today. In no case the period granted by this Court shall be extended by the court below. If the cost is deposited, the same may be allowed to be withdrawn by the respondent. If the cost is not deposited, the petitioner shall be debarred from examining further witnesses.

(Mungeshwar Sahoo, J)

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