

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18045 of 2015

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Tarkeshwar Prasad @ Talkeshwar Prasad

.... Petitioner/s

Versus

Smt. Madhuri Bhadani & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 11-07-2016 Heard the learned counsel, Mr. Kumar Laliteshwar Prasad Singh, for the petitioner and the learned counsel, Mr. Anil Chandra, for the respondent.

Perused the order passed by the Court below dated 01.09.2015 passed by Sub Judge III, Gaya in Eviction Suit No.1 of 2013.

The learned counsel for the petitioner submitted that in fact no notice was served on him. When he came to know about the suit, he appeared and filed application on 6.7.2015 for recall of ex.-parte order but the Court below held that the petitioner has the knowledge about the pendency of the suit, therefore, rejected the application. According to the learned counsel, he is ready to pay the cost to compensate the plaintiff for delay, if any.

On the other hand, the learned counsel for the respondent vehemently opposed the prayer and according to him in fact in

eviction suit, the tendency of the tenant is to delay the disposal of the eviction suit. This is also not eviction suit and, therefore, intentionally the petitioner did not appear in spite of the fact that notice was published in the Hindi Newspaper, Prabhat Khabar.

From the facts, it appears that the suit is of the year 2013. From perusal of the order, it appears that the Court below has considered each and every materials to the effect that registered cover notice was issued and it is not the case of the defendant petitioner that the address mentioned in the notice is wrong. The notice was published in Prabhat Khabar on 20.06.2013. However, since it is eviction suit and the Court below has granted opportunity to the petitioner to participate in the proceeding and allowed him to cross-examine the witnesses of the plaintiff, in my opinion, for the ends of justice the petitioner may be allowed to file written statement within one month from today but this will be subject to payment of cost of Rs.7500/- to the plaintiff respondent in the Court below within one month. If this cost is paid / deposited within the aforesaid period, the Court below shall accept the written statement, if it will be filed within the aforesaid period.

If this condition is not complied with by the petitioner, the Court below shall proceed to decide the eviction suit. Accordingly, the order dated 01.09.2015 passed by Sub Judge III,

Gaya, in Eviction Suit No.1 of 2013 is modified to the extent indicated above.

This writ application is thus disposed of with the aforesaid direction and observation.

The Court below shall see that in future no unnecessary adjournment is granted on the prayer of any party for delaying in the suit.

(Mungeshwar Sahoo, J)

Sanjeev/-

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