

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.23 of 2017

Subodh Kumar

.... Appellant/s

Versus

Sunita Kumari

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 18-01-2017 1. Heard the learned counsel, Mr. Pramod Kumar Singh, for the petitioner and the learned counsel, Mr. Devendra Kumar Sinha, for the respondent.

2. Perused the impugned order dated 13.12.2016 passed by Sub Judge IV, Patna in Eviction Suit No.62 of 2009 whereby the learned Court below rejected the application filed by the present petitioner for recall of all the 12 witnesses examined by the plaintiffs for their cross-examination recording finding that because of delaying tactics of the defendant, one year period granted by the Supreme Court to dispose of the suit has been elapsed and the Court below found that because of willful laches on the part of the petitioner, cross-examination of witnesses was not done by him and it was his deliberate negligence.

3. It may be mentioned here that it is an eviction suit filed



by the respondent under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 on the ground of default. The said eviction suit is to be tried analogous with partition suit filed by the petitioner being No.383 of 2008.

4. From perusal of the impugned order, it appears that the ground for recall of the witnesses is that due to unknown reason, the plaintiff witnesses could not be cross-examined. It will not be out of place to mention here that the question is not one or two or three witnesses but plaintiff had examined 12 witnesses and the defendant did not cross-examine any of the witnesses. At this stage, after the evidence of the defendant is concluded has filed the application praying for recall of all the witnesses. If such type of conduct of the defendant is allowed to continue then in all suits, the defendant will not cross-examine the witnesses and thereafter he will file application for recall of the witness on the ground of justice or that there is no relationship of landlord and tenant or that the eviction suit is to be tried along with the partition suit together. Thus, in view of the finding recorded by the Court below, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction as it cannot be said that the order passed by the Court below is without jurisdiction, irrational or that the order has been passed in the manner not permitted by law or the



order suffers from jurisdictional error.

5. Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--

