

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1112 of 2016**

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1. Saurabh Kashyap Son of Late Parmeshwar Prasad Gupta Resident of Village - Makhdumpur, Police Station - Danapur, Post Office - Khagaul, District - Patna, presently residing at 315, P.P. Colony, Police Station - Patliputra, District - Patna.

.... .... Petitioner/s

Versus

1. Md. Shamshad Ahmad Son of Nezamul Haque Resident of Village - Zamaluddin Chak, Police Station - Danapur, Post Office - Khagaul, District - Patna.

... Plaintiff/Respondent

2. Smt. Chandramani Devi Wife of Ravindra Nath Rai Resident of Muhallah - Jai Prakash Nagar, Police Station - Digha, Post Office - Dighaghat, District - Patna.

.... .... Defendant/Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR**

**JHA**

**ORAL ORDER**

3      11-12-2017                      Heard Mr. S.S.Dvivedi, learned senior counsel appearing on behalf of the petitioner-defendant No.1 and Mr. Mohit Raj, learned counsel appearing on behalf of respondent No.1. None appears on behalf of respondent No.2.

Petitioner-defendant No.1 has filed this petition against the order dated 06.08.2016 passed by Sub Judge III, Danapur in Title(P.) Suit No.30 of 2008.

The learned counsel for the petitioner submits that petitioner was defendant No.1 in the suit. The petitioner examined one witness and thereafter on advice of his learned counsel he filed a petition under Order VI Rule 17 on 31.07.2014. The



petition remained pending. The Court heard the petitioner in part and the case was adjourned to next date for further hearing. It is further submitted that thereafter by the administrative order Title Suit No.30 of 2008 was transferred to the Court of Sub Judge III, Danapur and the learned Sub Judge III, Danapur closed the evidence of the petitioner on 13.01.2016. The petitioner filed petition for recalling the order dated 13.01.2016 and for passing order on the amendment petition filed by the petitioner but by the impugned order, the petition of the petitioner has been rejected. The petitioner being aggrieved by the aforesaid order assailed the order and submitted that there is no fault on the part of the petitioner. Some dates of course were given to the petitioner to adduce evidence. Petitioner also examined one witness but thereafter petitioner filed petition for amendment of the petition. The case was running for hearing on the amendment petition but all of a sudden, the evidence of the petitioner was closed and when the petitioner filed the petition for recalling the aforesaid order closing the evidence of the petitioner and passing order on amendment petition, the same petition was dismissed on the ground that sufficient opportunity was given.

The learned counsel for the respondents has however submitted that the case was adjourned at many dates at the instance of the defendant No.1 after imposing cost even then the



defendant No.1 did not examine any witness.

Having heard both sides and on perusal of records, I find that of course, some times were given to the defendant-petitioner to examine evidence but defendant examined one witness as P.W.1 and thereafter filed petition for amendment of the written statement. Amendment petition was partly heard and the case was adjourned to next date for hearing on the amendment petition but no further hearing was made on amendment petition. In the meantime, the record of Title Suit No.30 of 2008 was transferred to the Court of Sub Judge III and without passing any order after hearing on the amendment petition, the learned Sub Judge closed the evidence of defendant No.1.

Therefore, I find that learned Sub Judge has committed jurisdictional error in dismissing the petition of the petitioner for recalling the order dated 13.01.2016 closing the evidence of the petitioner without passing order on the amendment petition filed by the petitioner. Accordingly, the order dated 13.01.2016 is set aside and the learned Sub Judge is directed to proceed further in accordance with law after passing necessary order on the amendment petition.

Accordingly, this civil miscellaneous petition is allowed.

Saurabh/-

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**(Prabhat Kumar Jha, J)**

