

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13824 of 2012

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Chandeshwar Rai

.... Petitioner/s

Versus

Nawal Kishore Sharma & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

5 17-10-2017

Heard the learned counsel for the petitioner.

This application has been filed for setting aside the order dated 18.02.2012 whereby the learned Sub Judge IX, Muzaffarpur has recalled the order whereby the case was fixed for ex parte hearing against the defendant on 05.09.2011.

According to the learned counsel for the petitioner, the case was fixed for ex parte hearing on 05.09.2011 and thereafter the defendant appeared on 18.02.2012 and filed application for recall of the ex parte order. The learned court below by the impugned order, without considering the fact that the intention of the defendant is to delay the disposal of the suit and that he had got knowledge about the pendency of the suit, has allowed the application filed by the defendant and recalled the order. The learned counsel further submitted that if the impugned order is allowed to stand, the petitioner shall be prejudiced because the defendant will further delay the disposal.



Perused the impugned order. It appears that in 2011, the case was fixed for ex parte hearing and just within one year the defendant appeared and filed the application for recall of the order giving reasons and the court below accepted the reasons given by the defendant and found that the written statement had also been filed by the defendant. Considering this aspect of the matter, the court below recalled the ex parte order and to compensate the plaintiff, has also awarded cost of Rs.2,000.

In view of the above facts and circumstances of the case, when the written statement has already been filed and the learned trial court on being satisfied recalled the ex parte hearing, there is no question of exercising of supervisory jurisdiction under Article 227 of the Constitution of India arises. The impugned order neither can be said to be illegal, irregular or it suffers from jurisdictional error or it occasioned failure of justice. On the other hand, if it is set aside and the order whereby the case was fixed for ex parte hearing is allowed to stand, it will occasion failure of justice.

Thus, in my opinion, no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this writ application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)