

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.783 of 2016

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Sheikh Yasin

.... Appellant/s

Versus

Sheikh Hasmul & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Nath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 27-01-2017 1. Heard the learned counsel for the petitioner and the learned counsel for the plaintiff respondent.
2. Perused the impugned order dated 04.09.2015 and 05.03.2016 passed by the Munsif, Kahalgaon in Title Suit No.3 of 2014 whereby the Munsif debarred the petitioner from filing the written statement and then subsequently refused to recall the order dated 04.09.2015 by the order dated 05.03.2016.
3. The learned counsel for the petitioner submitted that the petitioner is the only contesting defendant in the suit. Earlier the suit was proceeding ex.-parte and then the petitioner appeared and filed application for recall of the order fixing the case ex.-parte and the Court below has recalled the order fixing the case ex.-parte hearing on payment of cost of Rs.3000/-. The petitioner was directed to file the written statement but in the meantime the suit was transferred from



Bhagalpur to Kahalgaon and the written statement could not be filed within time prescribed. However, the written statement has been filed on 09.12.2015 and the application for recall was filed by the impugned order dated 05.03.2016, the Court below has rejected the application. According to the learned counsel, if the impugned order is allowed to stand then it will occasion failure of justice and the suit for title will be decided against the petitioner without giving opportunity of hearing to the petitioner.

4. On the other hand, the learned counsel for the respondent submitted that the conduct of the petitioner is to delay the disposal of the title suit. Earlier after recall of the order on payment of cost of Rs.3000/-, the petitioner was directed to file the written statement but within 30 days thereafter also, the written statement was not filed by the petitioner. No reason has been assigned as to why the written statement was not filed within aforesaid period. Subsequently, the case was transferred and then also he intentionally did not appear before the transferee Court only with a view to delay the disposal of the suit and, therefore, the learned Court below has rightly rejected the application filed by the defendant. Therefore, the impugned order needs no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

5. It is not disputed that the petitioner appeared on 21.01.2015



and the written statement has been filed on 09.12.2015, therefore, there is delay in filling the written statement and from perusal of the impugned order also, it appears that the conduct is not above board. The intention of the petitioner appears that he is adopting dilatory tactics. Also, he was awarded cost of Rs.3000/- but then again, he adopted dilatory tactics to harass the plaintiff-respondent and is delaying the disposal of the suit by misusing the provision of law on the ground of justice.

6. However, in my opinion, if the impugned order is allowed to stand then it will occasion failure of justice but considering the conduct of the petitioner, in my opinion, the petitioner is liable to pay exemplary cost to compensate the plaintiff-respondent.

7. Thus, this Civil Misc. application is allowed and the impugned order is set aside subject to payment of cost of Rs.10,000/- by the petitioner to the plaintiff-respondent within two months from today failing which the petitioner shall be at liberty to realize the cost through the process of the Court. On payment of cost, the written statement shall be accepted by the Court below and then Court below shall proceed to decide the suit.

Sanjeev/-

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(Mungeshwar Sahoo, J)