

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.430 of 2017

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Binod Kumar Patawari @ Binod Kumar Parottai, Son of Late Multan Chand
Patwari, Resident of village - Salmari, Police Station Salmari, District - Katihar

.... Appellant/s

Versus

Arun Kumar Prasad @ Arun Kr. Prasad, Son of Late Raja Ram Sah, resident of
Arun Katra, Mahatma Gandhi Road, Police Station Katihar, District - Katihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Najeeb Ahmad, Adv.

For the Respondent/s : Mr. Sarvendra Kumar Verma, Adv.

: Mr. Jaiverdhan Narayan, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-07-2017

Heard learned counsel for the parties.

By the impugned order, the learned court below has turned
down the prayer of the defendant-tenant in a suit for eviction on the
ground of personal necessity for recall of the witness i.e. P.W.-5
(plaintiff) for cross examination.

The suit has been filed for eviction of the defendant on the
ground of personal necessity. It also transpires from the impugned
order that on several dates the plaintiff, who was being examined
P.W.-5 in the suit, was present and partly cross examined but the



defendant on one pretext or other did not conclude his cross examination and ultimately the learned court below discharged the said witness and closed the evidence.

Learned counsel for the petitioner did not support the conduct of the defendant-petitioner but has made the submission that an opportunity be granted to the petitioner to cross examine the P.W.-5, who is plaintiff, after imposing cost and conditions upon the petitioner. Learned counsel for the plaintiff-respondent, however, has opposed the prayer and has submitted that the petitioner has evidently been adopting the dilatory tactics in view of the nature of the suit being the eviction suit.

After considering the submissions and the perusal of the materials on record including the impugned order, this Court is inclined to grant one opportunity to the defendant-petitioner to cross examine the P.W.-5 (plaintiff). However, in order to balance the equity and taking into view the conduct of the defendant-petitioner so far, this Court after partly modifying the impugned order directs that the defendant-petitioner be granted one opportunity to cross examine the P.W.-5 on condition of the payment of cost of Rs. 10,000/- to the plaintiff-respondent. After the receipt/production of a copy of this order the learned court below accordingly after deposit of the cost shall fix one date when the P.W.-5 would be present and his cross



examination by the defendant must be completed on that date itself. If the defendant-petitioner adopts dilatory tactics, the learned court below will discharge the said witness and proceed with the suit in accordance with law.

The present application is, accordingly, disposed of with aforesaid directions.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
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