

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.115 of 2016

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Sunil Kumar Sah

.... Appellant/s

Versus

Sachidanand Prasad & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagjit Roshan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

- 3 06-02-2017 1. Heard the learned counsel for the petitioner. No one appeared for respondent in spite of service of notice.
2. Perused the impugned order dated 16.02.2016 passed by learned Sub Judge, Patori, Samastipur in Title Suit No.243 of 2008 whereby the evidences of the plaintiff-petitioner was closed and the subsequent order dated 14.03.2016 whereby the recall application was rejected.
3. It appears that the petitioner filed a list of witness in the Court below seeking permission to examine witnesses. The Court below allowed the application on payment of cost of Rs.500/-. The petitioner then filed an application for recall of the order whereby cost was awarded. During the pendency of this application for recall of cost part, attendance of witness also filed but the Court below closed the case of the petitioner. The petitioner then filed application for



recall of the order closing the evidence but the Court below rejected the said application also by a cryptic order saying that earlier evidence has been closed, therefore, the recall application is rejected. According to the learned counsel for the plaintiff-petitioner, no witness has been examined on behalf of the plaintiff and if this is the fact then naturally if the impugned orders are allowed to stand, it will occasion failure of justice and the suit filed by the plaintiff petitioner will be dismissed because of no evidence in support of the pleading. However, it appears that there is laches on the part of the plaintiff-petitioner.

4. Accordingly, I direct that the Court below shall allow the plaintiff-petitioner to examine witnesses as directed earlier by the Court below itself whereby the Court below imposed cost of Rs.500/- on payment of further cost of Rs.1000/- in addition to the earlier cost to the respondent in the Court below. The cost must be deposited in the Court below within two months failing which the Court below shall proceed according to law.

5. Thus, this Civil Misc. application stands allowed and the impugned order is modified to the extent indicated above.

Sanjeev/-

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(Mungeshwar Sahoo, J)

