

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23668 of 2012

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Mithilesh Kumar @ Bablu Kumar

.... Petitioner/s

Versus

Sahendra Narayan & Anr

.... 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

3 08-08-2017 1. Heard the learned counsel, Mr. Samir Kumar Sinha, for the petitioner.

2. In spite of service of notice and in spite of the fact that the name of the Advocate on behalf of the respondent is printed in the daily cause list, nobody appeared on behalf of the respondent.

3. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 10.09.2012 and the order dated 21.06.2012 whereby the learned Court below closed the evidence of the petitioner and then refused to recall the said order.

4. The learned counsel for the petitioner submitted that after the evidence of the plaintiff was closed, the defendant petitioner were directed to produce their evidence and the petitioners filed examination-in-chief of 4 witnesses on 21.6.2012



but he could not produce the witnesses on the said date, therefore, the Court below closed the evidence of the defendant. When the petitioner filed application to recall the said order, the Court below rejected the said application on the ground of affidavit has not been filed in support of the application and the provision of law is not mentioned in the application. Subsequently, also again application was filed to recall but on the same ground, the application were rejected.

5. It appears that the defendant and his father who is respondent No.2 herein are the only contesting defendant in the suit filed by the plaintiff respondent. From perusal of the impugned order, it appears that the Court below rejected the application on the ground that there is no affidavit in support of the application and the mandatory provision of law has not been mentioned. It is admitted fact that the examination-in-Chief of 4 witnesses have already been filed by the petitioner. The learned counsel for the petitioner submitted that henceforth he will produce the witnesses of the defendant regularly as and when directed by the Court below and if there is any delay and laches for that purpose, the petitioner is ready to compensate the other side by payment of cost.



6. In view of the above facts and circumstances of the case, if the evidence of the defendant is not reopened, it will occasion failure of justice and, therefore, this impugned order is set aside. The order dated 21.6.2012 is hereby recalled and the petitioner is permitted to adduce evidences subject to payment of cost of Rs.2000/- within one month from today in the Court below. The payment of cost should be made through the Court to the plaintiff-respondent.

7. Thus, writ application is allowed and the impugned order is set aside and the petitioner is directed to produce the witnesses on the date that will be fixed by the trial Court.

(Mungeshwar Sahoo, J)

Sanjeev/-

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