

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1359 of 2016

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Satya Narayan Dharkar

.... Appellant/s

Versus

Ram Chandra Dharkar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nawal Kishor Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 17-09-2018

Heard the learned counsel for the petitioner.

The petitioner has filed this Civil Misc. petition against the order dated 20.06.2016 passed by Munsif, Araria in Eviction Suit No. 2/2011 by which the learned Munsif rejected the petition of the defendant for recalling the order dated 05.04.2016 closing the case of the defendant.

From perusal of the impugned order, it appears that evidence of the plaintiff was closed on 06.04.2015 and suit was posted for evidence of the defendant. On 05.04.2016 the defendant could not produce any witness. Consequently, the evidence of the defendant was closed. Immediately thereafter on 13.04.2016 the defendant filed petition for recall of order dated 05.04.2016 by which the evidence of the defendant was closed but the same has been rejected.

The learned counsel for the petitioner submits that if



the defendant is not allowed to examine his witnesses the same shall occasion failure of justice and will cause prejudice to him. The witnesses of the petitioner/ defendant were present on 16.03.2016 and 29.03.2016 but they were not examined on account of non availability of plaintiff's advocate.

I find substance in the submission of learned counsel for the petitioner that if the petitioner is not allowed to adduce evidence that will cause injustice to the petitioner.

Taking into consideration the facts aforesaid, I find that the learned Munsif has committed jurisdictional error in dismissing the petition of the petitioner. Accordingly, the order dated 20.06.2016 passed by Munsif, Araria in Eviction Suit No. 2/2011 is set aside. The defendant is allowed to adduce his evidence. Thus, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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