

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.218 of 2019**

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Bhikhar Rai aged about 55 years S/o Late Ramdeo Rai Resident of Village-
Basti Khoajpur,P.O- Pastara, P.S- Baligaon, District- Vaishali

... .. Petitioner

Versus

Mahanth Srikant Sharan Das, Chela of Mahanth Sri Ramanand Das, Resident
of Village,P.O and P.S- Patepur,District- Vaishali

... .. Respondent

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Appearance :

For the Petitioner : Mr.Satya Prakash Sinha, Advocate
For the Respondent : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 11-04-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 02.01.2019 passed in Eviction Suit No. 5 of 2008 by the learned Munsif-II, Hajipur, Vaishali whereby the petition under Order 18 Rule 17 of the Code of Civil Procedure dated 10.09.2018 filed by the defendant-petitioner for examining the witness, namely, Naval Kishore Rai has been rejected.

2. Learned counsel for the petitioner has submitted that the order passed by the learned Munsif is not sustainable in law as on the date so fixed, the witness Naval Kishore Rai could not attend the court due to ailment. He has submitted that the court below ought to have allowed the



application filed by the petitioner in order to arrive at a just decision in the case.

3. The facts of the case, in brief, are that in an eviction suit filed against the petitioner in the year 2008 by the respondent, the case was running for evidence on behalf of the defendant since 07.12.2011. On behalf of the defendant altogether 18 witnesses were examined. On 23.12.2016, the defendant was given last opportunity to produce witness. Again, on 07.07.2017, he was given last chance to produce evidence. Once again, vide order dated 10.08.2017, learned Munsif directed him to produce all his witnesses within next four dates. However, the defendant did not produce any witness either on 10.08.2017 or on 11.08.2017 or on 17.08.2017. An application was filed on his behalf on 24.08.2017 to adjourn the case. Hence, the case was adjourned to 14.05.2018. Even on 14.05.2018, he did not produce any witness. Resultantly, the defendant evidence was closed. However, on the prayer of the defendant, once again, a last opportunity was given to the defendant to produce witness on payment of cost of Rs.500/-. Lastly, on 16.08.2018, the evidence on behalf of the petitioner was again closed.

4. It is in the background of the aforesaid facts, the learned Munsif rejected the application of the petitioner.



Apparently, sufficient opportunities were granted to the defendant to produce his witnesses before the court. However, the defendant is trying to delay the disposal of the suit on one pretext or the other.

5. Order 18, Rule 17 of the Code of Civil Procedure enables the Court, at any stage of a suit, to recall any witness, who has been examined and put such questions to him as it may think fit. Such power can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit. The power is discretionary and should be used sparingly to enable the court to clarify any doubts it may have in regard to evidences led by the parties. The defendant has not pleaded that the evidence sought to be adduced through Nawal Kishore Rai would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication.

6. The power under Section 151 or Order 18, Rule 17 of the Code of Civil Procedure is not intended to be used merely for the asking. Such an application cannot be allowed if the same lacks bona fide or filed as a protracting tactic. The court has a duty to curb protracting tactic of a party. If the application is found to be mischievous, or frivolous, it should be rejected with heavy costs.



7. Here, in the present case, the defendant had sufficient opportunity to examine Nawal Kishore Rai earlier but he did not do so. The object of his application is merely to protract the eviction suit. Hence, the court has rightly rejected the application.

8. Hence, looking at the conduct of the defendant, in the court below, I am of the opinion that the order impugned does not require any interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2019
Transmission Date	NA

