

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.283 of 2019**

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Hari Narayan Yadav, S/o Late Sita Ram Yadav @ Seeta Ram Yadav, resident of Village-Shiv Narayanpur, P.S.- Kahalgaon (Shiv Narayanpur), Distt.-Bhagalpur

... .. Defendant-Petitioner

Versus

Apurb Kumar, S/o Late Sridev Prasad Ram, resident of Village and P.O.-Mathurapur, P.S.- Kahalgaon (Shivnarayanpur), Distt.-Bhagalpur

... .. Plaintiff-Respondent

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Appearance :

For the Petitioner : Mr. Tarun Prasad Mandal, Advocate
For the Respondent/s : Mr.

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

Date : 26-04-2019

Heard learned counsel for the petitioner and perused the order impugned.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 01.10.2018 passed by the learned Munsif, Kahalgaon, Bhagalpur in Title Eviction Suit No.2 of 2012 whereby a petition filed for recall of the order dated 30.01.2018 closing the evidence of the petitioner has been rejected and the case has been fixed for argument.

3. Learned counsel for the petitioner submitted that in the interest of justice the court below ought to have allowed the application filed by the petitioner for recall of the order dated 30.01.2018 closing the evidence of the petitioner. He contended



that by not allowing the application the learned Munsif has committed gross illegality and the order impugned is fit to be set aside.

4. The facts of the case, in brief, are that on 10.10.2012 a suit for eviction was filed by the plaintiff-respondent on the ground of default as well as personal necessities. The plaintiff alleged that the suit premises was given on rent to the petitioner-defendant at the monthly rent of Rs.800/-. The petitioner-defendant stopped payment of rent after January, 2012 and also failed to maintain the suit premises resulting in deterioration of the building. The petitioner filed written statement on 10.09.2013 denying the pleadings of the plaintiff-respondent. After the evidence on behalf of the defendant-petitioner was closed on 30.01.2018 and the case was pending for argument, the petitioner-defendant filed an application under Section 151 of the Code of Criminal Procedure (for short 'CPC') stating therein that some necessary documents were not available earlier, as they had been kept in a small box and was not in his memory, he may be allowed to bring those documents in evidence. Thus, the order dated 30.01.2018 by which the evidence on behalf of the defendant-petitioner was closed be recalled.



5. After hearing the parties, the court below, vide impugned order dated 01.10.2018, dismissed the said application filed by the petitioner.

6. Being aggrieved by the aforesaid order dated 01.10.2018, the instant application under Article 227 of the Constitution of India has been filed.

7. On perusal of the original application dated 18.04.2018 filed by the defendant-petitioner under Section 151 of the CPC, I find that in the original application a vague prayer was made by the defendant-petitioner that he wants to adduce in evidence certain documents, which were kept in old box. Even the details of those documents were not mentioned. Subsequently, after four months, another petition was filed stating therein that the documents, which the petitioner intends to prove are postal receipts and returned money order receipts of arrears of rent sent to the defendant-plaintiff. Apparently, the prayer made by the petitioner seems to be an afterthought.

8. Considering that the suit is of 2012 and after giving sufficient opportunities to the petitioner to lead evidence, the case was closed and, thereafter, an application was filed, which was completely vague and was supplemented subsequently after four months by stating that certain postal receipts were to be exhibited,



if the court below in exercise of its inherent jurisdiction found no merit in the application, no illegality can be found with the order impugned. It is neither without jurisdiction nor perverse.

9. In that view of the matter, I am not inclined to interfere with the impugned order in the supervisory jurisdiction under Article 227 of the Constitution of India.

10. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	NA

