

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.15 of 2017

In
Civil Writ Jurisdiction Case No.14802 of 2013

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1. Laldhari Vishwakarma Son of late Munna Mistry, Resident of Village- Nawada, P.S. Phulwarisharif, District- Patna.
 2. Ramanand Vishwakarma sons of Late Munna Mistry resident of village - Nawada, PS - Phulwarisharif, District - Patna.

... .. Petitioner/s

Versus

1. Lallu Vishwakarma Son of late Brahmdeo Vishwakarma, Resident of Village- Nawada, P.S. Phulwarisharif, District- Patna.
2. Ramautar Vishwakarma Both sons of Late Brahmdeo Vishwakarma
3. Udit Vishwarkarma
4. Sheo Narayan Vishwakarma Both sons of Late Lal Bihari Vishwakarma All residents of village - Nawada, PS - Phulwarisharif, District - Patna.
5. Pappu Vishwakarma son of Late Satya Narayan Vishwakarma @ Late Champa Devi resident of village - Nizampur, PO - Sorangpur, PS - Janipur, District - Patna, Pin - 801505.
6. Guriya Devi wife of Sri Om Prakash daughter of Late Satya Narayan Vishwakarma & Late Champa Devi resident of Mohalla - Chakchanda, Ward No. 3, Station Road, Khushrupur, PO and PS - Khushrupur, District - Patna.
7. Aarti Kumari minor daughter of Late Satya Narayan Vishwakarma & Late Champa Devi at present residing under the guardian resident of village - Nizampur, PO - Sorangpur, PS - Janipur, District - Patna, Pin - 801505.
8. Bharat Vishwakarma son of Late Lal Bihari Vishwakarma resident of village - Nawada, PS - Phulwarisharif, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ravindra Kr Sinha No.2
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 28-08-2019

The present petition has been filed for review/recall of
the order dated 08.12.2016 passed by a coordinate Bench of this
Court in CWJC No. 14802 of 2013, whereby and whereunder the



order passed by the learned Court of Munsif-1st, Patna dated 17.06.2013 passed in Title Suit No. 18 of 2001, has been upheld.

The writ petition bearing CWJC No. 14802 of 2013 was filed by the review petitioner against the order dated 17.06.2013 passed in Title Suit No. 18 of 2001, whereby and whereunder the learned Munsif-1st, Patna had been pleased to recall DW-1 for the purposes of marking exhibits qua the documents which have already been filed long back along with the list of documents but could not been exhibited on account of the defendants being unable to appear at the time of examination-in-chief of the DW-1 held on 15.03.2007.

The learned counsel for the review petitioner has submitted that the learned court of Munsif-1st, Patna by an order dated 22.06.2007 had already rejected the prayer of the defendant no. 2 to permit them to exhibit the documents filed on 15.03.2007 and the said order having been challenged before this Court in CWJC No. 20032 of 2010 was upheld, hence the learned trial court, by the impugned order dated 17.06.2013 could not have directed for recall of DW-1.

Having heard the learned counsel for the petitioner and having considered the materials on record, I find that firstly the order dated 22.06.2007 passed by the learned trial court, though mentioned in the writ petition bearing CWJC No. 14802 of 2013,



was not brought on record of the case, hence the effect thereof could not be appreciated, nonetheless the petitioner has now produced the said order dated 22.06.2007 in the present review petition and this Court is being now persuaded to review the order dated 08.12.2016, passed by this Court, however, this Court finds that the said order dated 22.06.2007 was well within the knowledge of the petitioner herein but still he had failed to bring the same on record of the writ petition, hence the petitioner is estopped from relying upon the same in the present review proceedings in view of the bar under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Even if the said order dated 22.06.2007 passed by the learned court below is considered to be of any relevance, by the said order, the learned court below had only rejected the prayer of the defendant no. 2 regarding exhibiting of documents in the suit, however, by the impugned order dated 17.06.2013, impugned in the writ petition, the learned court below has only recalled DW-1 for further examination/cross examination since the case is still at the evidence stage, hence the scope of the order dated 22.06.2007 and the one order dated 17.06.2013 passed by the learned court below is absolutely different and the order dated 22.06.2007 cannot be said to be a bar to the passing of the order dated 17.06.2013 by the learned court below. Now, coming to the order dated 04.05.2011 passed in CWJC No. 20032 of 2010,



the writ petition which is said to have been filed against the order dated 22.06.2007, passed by the learned court below, it would be suffice to state that a coordinate Bench of this Court had directed as follows; “However, the trial court shall consider the points raised by the petitioner, in accordance with law.”

Thus, the defendant of the connected suit was granted liberty to raise appropriate issues before the learned court below, which was done by the defendant and accordingly, the learned court below has considered the same and passed the impugned order dated 17.06.2013, which in no view of the matter, can be said to be illegal or arbitrary and even the review petitioner has not assailed the same on merits.

In such view of the matter, there is no merit in the present petition, accordingly, the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.10.2019
Transmission Date	

