

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.145 of 2018

=====

Ram Lagan Rai @ Ramlagan Singh S/o Late Timal Gope @ Timal Singh,
Resident of Village- Jethuli, P.O.- Kacchi Dargah, P.S.- Fatuha, District-
Patna.

... .. Petitioner/s

Versus

Krishna Gope S/o Darogha Gope, R/v- Jethuli, P.S.- Fatuha, P.O.- Kachi
Dargah, Distt- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Bhartiya, Adv.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 11-08-2022 Heard learned counsel for the petitioner.

2. Petitioner is defendant in Title Eviction Suit No. 24/1989 filed by respondent/plaintiff before the learned trial court at Patna City for a decree of eviction of the defendant from the tenanted house fully described in Schedule-1 of the plaint and further for a direction to the defendant to deposit arrears *pendente lite* and future rent under Section 15 of the Bihar Building Control Act, 1988 and in case of default the plaintiff/respondent prayed for a decree for payment of rent.

3. The petitioner is aggrieved by order dated 26.08.2017 passed by learned Munsif, Patna City by which the petition dated 13.07.2017 filed by the petitioner for recalling the orders dated 15.05.1991 and 07.08.1990 by which the defendant tenant was debarred from filing his document and his written



statement was not accepted.

4. The petitioner/defendant filed his written statement on 25.08.1989 but the same was defective and the defendant/petitioner was given various opportunities to remove the defect as pointed out in the written statement. In spite of several opportunities provided to the petitioner/defendant, he did not take any step and accordingly, the trial court proceeded *ex parte vide* order dated 04.05.1991. The petitioner/defendant again filed a petition dated 13.06.1991 for recalling the order dated 15.09.1991 and 07.08.1990 but the same was never pressed and the suit proceeded for recording of evidence of the plaintiff. At this point, the record of the case was transferred to the court of learned ADJ-IX, Patna in connection with Title Suit No. 260/1984 and the same returned back in the concerned court on 26.07.1999. The witnesses adduced on behalf of the plaintiff were cross-examined by the defendant/petitioner but the defendant did not take any step to press the petition to recall the earlier order and after lapse of 25/26 years, the petition dated 13.07.2017 has been filed for recalling of the order dated 15.05.1991 and 07.08.1990.

5. The learned trial court while rejecting the petition filed by the petitioner after 25/26 years has come to the finding



that the case in hand is the best example of the abuse of the process of court and the petitioner in abuse of the process of the court and by adopting dilatory tactics has filed a petition for recall of the order passed in 1991 and 1990 i.e., after 25/26 years.

6. Learned counsel for the petitioner submits that the delay has caused due to fault of the lawyer.

7. Having heard learned counsel for the petitioner and after going through the impugned order, it appears that in a suit for eviction filed in the year 1989, the defendant/petitioner adopted dilatory tactics due to which the suit remained pending for about last 33 years, the petitioner filed a petition in the year 2017 for recall of the order passed in 1991 and 1990 after a lapse of 25/26 years. The learned trial court has come to the conclusion that the petition for recall has been filed in abuse of the process of court and rejected the same.

8. In view of the above fact and circumstances taken into consideration in totality, I am of the considered opinion that the plea of the lawyer's fault taken by the petitioner is not sustainable. Accordingly, in my view, the learned trial court has not committed any material irregularity and jurisdictional error while passing the order impugned. Hence, this application is



dismissed.

(Anil Kumar Sinha, J)

perwez

U			
---	--	--	--

