

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.87 of 2020

Binod Kumar Patwari @ Binod Kumar Pattar @ Binod Kumar Patawari Son
of Multanchand Patawari Resident of Baniya Tola, P.S. and District- Katihar.
... .. Petitioner/s

Versus

Arun Kumar Prasad @ Arun Kr. Prasad Son of Late Raja Ram Sah Resident
of Village- Arun Katra Mahtama Gandhi Road, Katihar, P.S. and P.O. and
District- Katihar.
... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Najeeb Ahmad, Mr. Thakur Brajesh Singh, Advocates
For the Respondent/s	:	Mr. Ashutosh Tripathi Mr. Vishwajeet Kumar Mishra, Mr. Rohit Kumar Tripathi, Mr. Aakash Chaudhary, Advocates.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 13-09-2022 Heard Mr. Najeeb Ahmad, learned counsel for the

petitioner and Mr. Ashutosh Tripathi, learned counsel for the

respondent.

2. Petitioner is aggrieved by an order dated
13.05.2019 by which the order dated 07.05.2018 has been
recalled and the respondent/plaintiff has been allowed to deposit
the cost of Rs. 500/-.

3. Learned counsel for the petitioner submits that
petitioner is a tenant in the suit for eviction filed in the year
2011 by the respondent/plaintiff. By order dated 23.08.2013 the
documents filed by the plaintiff have been accepted as evidence
subject to deposit of Rs. 500/-. But the plaintiff did not deposit
the cost of Rs. 500/- and after lapse of about five years a petition



dated 05.02.2018 was filed by the respondent seeking permission to deposit the cost amount of Rs. 500/- which was awarded by the trial court *vide* order dated 23.08.2013.

4. Learned counsel for the petitioner submits that there was an inordinate delay on part of the respondent in depositing the cost amount. As such, recall of the order rejecting the prayer of the petitioner to deposit the cost amount after much delay is erroneous. Learned court below did not consider this aspect of the matter that it is absolutely barred by law of limitation. Learned counsel next submits that no extension petition for depositing the cost was filed by Respondent/plaintiff under Section 148 and accordingly, the respondent cannot take advantage on his own lapses.

5. On the other hand, learned counsel for the respondent submits that in fact order dated 23.08.2013 by which documents filed by the respondent were accepted as evidence upon payment of cost of Rs. 500/- was challenged by the petitioner before this Court in CWJC No. 22500/2013. Since the matter was subjudiced before this Court, the respondent waited for outcome of the writ petition filed by the petitioner. The writ petition was dismissed by this Court *vide* order dated 18.11.2017 and subsequently thereafter, the petitioner filed a



petition seeking permission to deposit the cost amount which was rejected and consequently, the petitioner filed a petition for recall of the order rejecting the permission to deposit Rs. 500/-.

6. Learned counsel further submits that order dated 07.05.2018 has been recalled in order to render substantial justice to the plaintiff inasmuch as if relevant documents are not allowed to be taken as a piece of evidence the plaintiff shall suffer serious prejudice whereas the defendant/petitioner shall not be prejudiced due to delayed deposit of the cost.

7. I have heard learned counsel for the parties. It appears from the submissions advanced by the parties and from the documents on record, that the petition for accepting the documentary evidence on behalf of the respondent/plaintiff was allowed by the trial court subject to deposit of Rs. 500/- but that order was challenged by the petitioner before this Court. The matter remained pending before this Court for about four years and was finally disposed in the year 2017. The respondent, thereafter filed a petition seeking permission to deposit a sum of Rs. 500/- which was rejected and subsequently thereof, the recall petition was filed and the learned trial court in its wisdom allowed the respondent to deposit the cost amount of Rs. 500/-.

8. Having considered the aforesaid facts and the



discussions made hereinabove, I am of the opinion that there is no infirmity in the impugned order inasmuch if the recall is not allowed and the respondent is not permitted to deposit the cost of Rs. 500/- a serious prejudice shall be caused to the respondent. It is settled law that the Court should consider and grant substantial justice and not the technical justice to the parties.

9. Accordingly, I do not find any merit in this application, the same is, hereby, rejected.

(Anil Kumar Sinha, J)

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