

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.923 of 2017

Vishwanath Prasad, Son of Rameshwar Prasad, Resident of Mohalla-
Marufganj, Burndil Kothi Road, P.S.- Malsalami, District- Patna.

... .. Petitioner/s

Versus

1. Smt. Renu Devi, Wife of Sri Shankar Prasad.
2. Smt. Sarika Ranjan, Wife of Sri Shyam Sundar.

Both are Resident of Mohalla- Dalhatta, P.S.- Malsalami, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

2 25-04-2023 Heard learned counsel for the petitioner.

2. This Civil Miscellaneous application has been filed against the order dated 06.02.2017 passed in Title Suit No. 18 of 2007 by the learned Munsif, Patna City whereby the learned Court below has rejected the petition dated 23.01.2017 filed by the defendant/petitioner for recalling the order dated 15.11.2016 by which the learned Court below had closed the evidence of the defendant/petitioner.

3. The brief facts of this case are that the plaintiffs respondents have filed Title Eviction Suit No. 18 of 2017 for



evicting the petitioner from the suit premises on the ground of personal necessity and default of monthly rent. On notice the petitioner appeared and filed his written statement and contested the suit denying the landlord-tenant relationship between the plaintiffs / respondents and the petitioner. Issues were framed and evidences were laid by the parties. On 15.11.2016, the evidence of the petitioner was closed. The recall petition filed on behalf of petitioner has also been rejected.

4. Learned counsel for the petitioner submits that the learned Court below has passed the orders mechanically without applying judicial mind that unless the tenant adduce his evidence no correct findings can be given by the learned Court below and if the impugned order is allowed to stand the petitioner shall suffer substantial loss and there will be failure of justice to the petitioner. He further submits that due to illness the petitioner was unable to appear and produce his evidence on the date fixed and the same was not deliberate to delay the disposal of the case.

5. Having heard the learned Counsel for the petitioner and on perusal of material on record, it appears that the evidence of the plaintiff was closed on 02.07.2008 and since then the case record was coming for evidence on behalf of defendant and



even after expiry of eight years defendant has not completed his evidence. The learned Court below in the impugned order recorded that last chance to adduce evidence to the defendant was given on 21.04.2015 and again the learned Court allowed the defendant / petitioner to adduce evidence on cost of Rs. 300/- vide order dated 02.06.2015 but defendant neither adduced evidence nor paid cost lastly vide order dated 12.06.2015 closed the evidence of the defendants and case record was fixed for argument. Thereafter on petition of defendant / petitioner recalled the order dated 12.06.2015 vide order dated 17.08.2016 with direction to deposit the cost and complete the evidence on next consecutive dates but defendant did not comply the order on 30.08.2016, 16.09.2016, 19.10.2016 and ultimately again the learned Court below closed the evidence of the defendant on 15.11.2016.

6. The learned Court below observed that defendant is adopting the delaying tactics and does not want to dispose of the case. Sufficient opportunities have been provided to the defendant / petitioner but he failed to adduce his evidence. He is literally abusing the process of the Court.

7. The learned Court below in the impugned order discussed the conduct of the petitioner and given reason for



rejecting the recall petition of the petitioner. Despite the sufficient opportunities the petitioner failed to adduce his evidence in more than 8 years period after closure of evidence of plaintiff on 02.07.2008 in eviction suit and the learned trial Court rightly observed that the petitioner is abusing the process of the Court.

8. As discussed above, this Court does not find any illegality in the impugned order.

9. Accordingly, this Civil Miscellaneous Application is dismissed.

(Sunil Dutta Mishra, J)

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