

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.625 of 2017**

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Hriday Narayan Choubey, S/o Ram Krit Choubey, resident of village-
Sotwan, Police Station Ramgarh (Kuchia) , District - Kaimur Bhabhua

... .. Petitioner/s

Versus

1. Satya Narayan Choubey, S/o Late Lachhman Choubey,
2. Ram Prasad Sharma, S/o Late Mohan Sharma,
3. Ram Bachan Sharma, S/o Late Mohan Sharma,
4. Sighasan Sharma, S/o Late Mohan Sharma,
5. Vijay Sharma, S/o Late Mohan Sharma,
All are residents of village - Satwan, Police Station - Ramgarh (Kudhani),
District - Kaimur Bhabhua

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rang Nath Choubey, Advocate
For the Respondent/s	:	Mr.Ravi Shankar Sahay, Advocate Mr. Sanjeet Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 28-03-2024

Heard learned counsels for the respective parties on
the point of admission and I intend to dispose of the instant
petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner
under Article 227 of the Constitution of India for setting aside
the order dated 08.02.2017 passed by the learned Additional
District Judge-4th, Kaimur at Bhabua in Probate Case No.15 of
2012/15 of 2016 whereby and whereunder the learned
Additional District Judge dismissed the petition of the petitioner
dated 11.01.2017 filed for recalling the order dated 04.01.2017



by which the evidence of the plaintiff/petitioner was closed.

3. The learned counsel for the petitioner submits that the petitioner filed a case for probate of Will of one Laxmi Pandey vide Probate Case No. 19 of 1988. The respondents appeared and challenged the Will. While the evidence of the petitioner as plaintiff was being recorded after recording of the evidence of two witnesses, on 04.01.2017, the evidence of the plaintiff/petitioner was closed. The petitioner filed a petition on 11.01.2017 for recalling the order dated 04.01.2017 which has been rejected by the learned trial court vide the impugned order dated 08.02.2017.

4. The learned counsel for the petitioner further submits that the learned trial court committed an error in not considering the fact that the petitioner was ill on 04.01.2017 as it was season of extreme cold and the petitioner being an old man fell ill. The learned trial court also did not take into consideration the fact that there was no deliberate act on part of the petitioner. For the disposal of the case on merits, it was essential to examine the plaintiff and certain documents were also to be marked as exhibits at the instance of this petitioner/plaintiff. The learned trial court took into consideration the past conduct of the plaintiff/petitioner in not



producing his evidence on certain dates and that the evidence of the defendants have started in the matter and did not accept the contention of the petitioner about his non-appearance on the date fixed, i.e., 04.01.2017. The non-consideration of these facts make the order of the learned trial court illegal and not sustainable in the eyes of law.

5. The contention of the learned counsel for the petitioner is vehemently opposed by the learned counsel appearing on behalf of the respondents. The learned counsel for the respondents submits that the plaintiff was given a long rope and on 16 dates fixed in the case, the plaintiff failed to produce a single witness. Thereafter, on much coercion by the learned trial court, two witnesses were produced on behalf of the plaintiff and last opportunity was given to him and, thereafter, his evidence was closed on 04.01.2017. The learned counsel further submits that the plaintiff does not want the matter to be disposed of and has been lingering on the matter. The learned trial court has taken note of conduct of the plaintiff and considering the fact that it was an old case and the plaintiff produced the witness only after strict direction, it rejected the petition of the plaintiff for recalling the order closing the evidence of the plaintiff. The learned counsel further submits



that none of the witnesses have been examined on behalf of the defendants and after the passing of the impugned order, no defendants witnesses have been examined due to the pendency of the present civil miscellaneous petition. Thus, learned counsel submits that there is no infirmity in the impugned order and the same needs to be sustained.

6. Without going into the merits of the case and only taking into note of the fact that the learned trial court got swayed in passing the impugned order by the conduct of the plaintiff in not examining his witness on a number of dates and also due to the fact that the matter has been fixed for evidence of the defendants, the learned trial court has not recorded any finding about the acceptability of reasons given by the plaintiff for his non-appearance on the date fixed in the matter, i.e., 04.01.2017 or whether the learned trial court considered the explanation unsatisfactory for non-appearance on 04.01.2017.

7. Furthermore, since none of the witnesses of defendants have been examined after passing of the impugned order, I do not think much prejudice could be caused to the defendants if the petition for recall of the order for closure of the evidence of the plaintiff is allowed. However, for putting the other side to undue harassment, I think the other side should be



adequately compensated in terms of money.

8. In the light of the aforesaid discussion, the impugned order dated 08.02.2017 passed by the learned Additional District Judge-4th, Kaimur at Bhabua is set aside subject to payment of cost of Rs.5,000/- to the defendants/respondents to be paid on the first date fixed before the learned trial court. At the same time, the learned trial court is directed to record the evidence of the plaintiff on a single day and it would further take steps for disposal of the matter before it within next six months from the date of receipt/production of a copy of this order.

9. In the result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2024
Transmission Date	NA

