

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.272 of 2024

Indal Mahto Son of Late Bilash Mahto @ Vilash Mahto, Resident of Ward No. 3, Haribela Hari, Police Station - Bathnaha, District- Sitamarhi.

... .. Petitioner/s

Versus

1. Most. Sunita Devi Daughter of Late Pramod Kumar Singh, Resident of village- Singhwahani, Police Station - Sonbarsa, District- Sitamarhi.
2. Nirmala Devi Wife of Indal Mahto, Resident of Haribela, Police Station - Bathnaha, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Mishra, Advocate
For the Respondent/s	:	Mr.Birendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-09-2024

Heard learned counsel for the parties and I intend to dispose of the petition at the admission stage itself.

2. The present petition has been filed against the order dated 08.11.2023 passed in Title Suit No. 16 of 2011 by learned Sub Judge 6th, Sitamarhi, whereby and whereunder the petition dated 26.07.2023 filed on behalf of the petitioner for permitting him to deposit the cost of Rs.3,000/- has been dismissed with further cost of Rs.200/-.

3. The facts of the case as emerges from the record is that the petitioner is defendant and the matter proceeded ex-parte against him vide order dated 29.07.2011. Ex-parte proceeding was recalled on prayer of the petitioner vide order



dated 12.08.2011 with cost of Rs.600/-. The cost was not deposited and the petitioner was debarred from filing written statement vide order dated 21.01.2012. On 23.02.2012, the petitioner filed an application for recalling of the order dated 21.01.2012, the same was dismissed vide order dated 12.04.2012. Against which the petitioner moved before this Court by filing Civil Writ Jurisdiction Case No. 18590 of 2013 and the learned Single Judge allowed the petition vide order dated 29.01.2018 with direction to the learned court below to give an opportunity to the petitioner to contest the suit after accepting his written statement subject to payment of cost of Rs.3,000/-. However, the petitioner did not deposit the cost of Rs.3,000/- and later on filed an application on 26.07.2023 to permit him to deposit the said cost of Rs.3,000/-. The said petition was rejected vide order dated 08.11.2023 by the learned trial court and the said order has been challenged before this Court.

4. Learned counsel for the petitioner submits that the petitioner is purchaser of the suit land and due to paucity of fund the petitioner could not deposit the cost of Rs.3,000/-. While allowing the petition, this Court did not fix any time limit for deposit of the cost. The petitioner will not be able to



contest the suit if he is not permitted to deposit the cost and file written statement and for this reason the prayer for deposit of cost may be considered sympathetically. Learned counsel further submits that the impugned order may be set aside and the petitioner may be given permission to deposit the cost.

5. Learned counsel appearing on behalf of the respondents vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondents submits that first time the ex-parte hearing of the order was recalled in the year 2011 and thereafter, the petitioner did not deposit the cost and did not file any written statement. Even after the direction of this Court, the petitioner failed to deposit the cost after lapse of more than five years. Learned counsel further submits that during pendency of the suit, the petitioner has transferred the suit land in the name of his wife without permission of the court. Learned counsel further submits that the petitioner is in habit of filing frivolous application and due to his delaying tactics, the suit is still pending.

6. I have considered the rival submission of the parties and facts and circumstances of the case. Admittedly the petitioner was proceeded ex-parte vide order dated 12.08.2011 and the cost of Rs.600/- was imposed for recall of ex-parte



proceeding. The petitioner did not deposit the said cost and was debarred from filing written statement vide order dated 21.01.2012. On further prayer of the petitioner, the petitioner was allowed to file his written statement subject to deposit of cost of Rs.3,000/- vide order dated 29.01.2018. Again the petitioner failed to comply the order passed by learned Single Judge of this Court. Thereafter, the petitioner slept over the matter for five years and in a fine morning woke up from deep slumber and went to file an application seeking permission to deposit the cost. Though, it has been contended by learned counsel for the petitioner that there was no time frame for depositing the cost but when the petitioner was given opportunity to deposit the cost in 2018, any reasonable time would not by any stretch of imagination extend to five years. When indulgence already shown to the petitioner has been misused by him, seeking further indulgence is meaningless and malafide act on part of the petitioner. Moreover, it is also apparent that the petitioner has been making some excuse and dragging the matter to the hilt. It is surprising tht the petitioner has got all the money to approach this Court but no money to pay cost of Rs.600/- imposed in 2011. It appears the petitioner has been deliberately protracting the matter. The Hon'ble



Supreme Court in the case of *Gayathri Vs. M. Girish*, reported in *(2016) 14 SCC 142* has deprecated the tendency of adopting such type of attitude by the unscrupulous litigant. Hence, this Court should not show misplaced sympathy and come down heavily on such type of activities.

7. Therefore, in the light of above discussion and facts and circumstances, I do not find any infirmity in the impugned order dated 08.11.2023 and the same is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2024
Transmission Date	NA

