

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.516 of 2024

Manish Kumar Singh @ Bhulawan Singh Son of Rama Singh, Resident of Village- Bhaluahiya, P.O.- Ruphara, P.S.- Chiraiya at Present P.S.- Shikarganj, District- East Champaran, Presently Mukhiya of Gram Panchayat- Ruphara, Block- Chiraiya, District- East Champaran.

... .. Petitioner

Versus

1. The Block Development Officer Chiraiya- Cum- Returning Officer of Panchayat Election 2021 Chiraiya at P.O. and P.S.- Chiraiya, District- East Champaran.
2. The District Returning Officer- cum- District Magistrate, East Champaran, Motihari.
3. Kaushal Kishore Singh, Son of Laxmi Narayan Singh, Resident of Village- Bhagwatpur Bhaluahiya, P.O.- Ruphara, P.S.- Chiraiya at Present P.S.- Shikarganj, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan, Advocate
For the Respondent/s	:	Md. Zeeshan Kalim, AC to Standing Counsel 20
For the Res. No. 3	:	Mr. Madhurendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 02-12-2024

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

02. The present civil miscellaneous petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 05.04.2024 passed by the learned Munsif-cum-Election Tribunal, Sikrahna at Dhaka in Election Case No. 01 of 2022, whereby and whereunder the application of the petitioner dated 05.04.2024 filed for recall of the order dated



02.02.2024 has been rejected.

03. Learned counsel for the petitioner submits that in Election Case No. 01 of 2022 filed by the respondent no. 3 evidence of the defendant/petitioner was closed and thereafter during course of argument, the petitioner filed an amendment application on 19.03.2024 seeking amendment in his written statement and vide order dated 20.03.2024, certain amendments in the written statement have been allowed and thereafter, the petitioner moved an application for filing supplementary affidavit of his evidence but the learned trial court rejected the application of the defendant/petitioner and the said order is not sustainable. Learned counsel further submits that the amendment in the written statement would be meaningless if the petitioner is not allowed to support the same by adducing evidence on the point of amended averments. The petitioner has not delayed the proceeding at any stage and the learned trial court has wrongly observed that the application dated 05.04.2024 has been filed in order to delay the disposal of the election petition. Learned counsel further submits that the petitioner is ready to adduce evidence on a single date subject to imposition of appropriate cost and in the interest of justice, the impugned order dated 05.04.2024 be set-aside and the petition



dated 05.04.2024 filed by the petitioner for recalling the order dated 02.02.2024 be allowed.

04. Learned counsels for the respondents vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondent no. 3 submits that the application dated 05.04.2024 is not supported by cogent reasons and is also not maintainable as barred by the statutory provisions. The learned trial court has rightly observed that if such applications are allowed, the evidence would never end and the matter could never be disposed of. The election petitions are to be disposed of in the time bound manner. Learned counsel further submits that once the evidence has been closed, the same could not be re-opened to allow the petitioner to fill up the lacunae in his case. Learned counsel further submits that whatever amendment has been allowed to be incorporated in the written statement, there is no requirement of supporting the same through further evidence since the amendments are mostly correction of typographical error in spelling of words and the correct usage of words apart from certain amendment by which the averment about petitioner not having knowledge of criminal cases prior to filing of the nomination in the election has been deleted. The natural inference would be that the petitioner of



this case was having prior information about criminal cases pending against him and still he did not disclose about the criminal cases in his election paper. Thus, learned counsel submits that the impugned order is proper and valid and there is no need for any interference.

05. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

06. Order 18 Rule 17 of the Code of Civil Procedure allows the court to recall any witness who has been examined but the same is the provision to enable the court to arrive at a proper finding in order to adjudicate the issue before it. It is not permissible for the parties to seek recall of the witnesses who have already been examined, if something is found a miss in the evidence. The learned trial court is correct in observing that the statute does not provide for recall of witness in such manner. But, in the present case, certain amendments have been allowed in favour of the petitioner. If the petitioner is not allowed to adduce the evidence on the point of facts stated in the amendment, the court may find it difficult to arrive at a just and proper conclusion at the time of disposal of the election petition. Only on this short point, I think the petitioner could be allowed to supplement his evidence, of course subject to right of the



other-side for rebuttal including further cross-examination. Therefore, the impugned order dated 05.04.2024 is simply set aside and the petition of the petitioner dated 05.04.2024 for recall of the order dated 02.02.2024 is allowed subject to payment of cost of Rs. 10,000/- to the defendant/respondent no. 3 by the petitioner on the first date of hearing before the learned trial court after receipt/production of a copy of this order. The petitioner is directed to adduce his evidence on a single date fixed by the learned trial court while granting ample opportunity to other-side for rebutting/controverting the evidence. It has also come in the submission of the parties that the argument was also closed after the closure of the evidence. Therefore, the learned trial court is directed to dispose of the election petition before it within a month of recording of the evidence of the defendant/petitioner.

07. With the aforesaid direction/observation, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

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

