

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.670 of 2023

Mohamad Isha @ Mohammad Isa Son of Late Sadhu Mliyan Resident of Mohalla-Jangaliyan, House No. 114, Ward no.15, Petrol Pump Campus, P.O. and P.S. Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

Ali Imam Son of Late Ali Raza Resident of Mohalla-Jangaliyan, House No.114, Ward No.15, P.O. and P.S. Gopalganj, District-Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Manan Kumar Mishra, Sr. Advocate
		Mr. Akshay Ashish, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-07-2024

Heard learned counsel for the petitioner and learned senior counsel for the respondent, Mr. Manan Kumar Mishra, through video conferencing.

02. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 30.05.2023 passed by the court of learned Sub-Judge VII, Gopalganj in Title Suit No. 916 of 2018 whereby and whereunder the learned Court rejected the application dated 03.05.2023 for recalling the order dated 13.04.2023 closing the evidence of the defendant, the petitioner herein.

03. Learned counsel for the petitioner submits that the petitioner was given an opportunity for adducing witnesses on 28.03.2023. On the next date i.e., on 13.04.2023 the defendant filed petition seeking adjournment but the learned trial court

closed the evidence of the defendant and fixed the matter for arguments. Learned counsel further submits that when the application for recall was moved, the learned trial court *vide* order dated 30.05.2023, took into consideration the previous conduct of the defendant and holding that the defendant was given a number of opportunities and he wanted to linger the matter, it went on to reject the petition. Learned counsel further submits that the defendant ought to have been given further opportunity since seeking time on only one date, his opportunity was closed. The previous conduct of the defendant in such matter could not be material and closure of evidence in this manner would cause irreparable loss to the defendant. Learned counsel further submits that an opportunity be given to the defendant and the defendant would adduce only one-two witnesses in the case and whatever condition is imposed upon the defendant, the defendant would abide by the said condition.

04. Learned senior counsel for the respondent, Mr Manan Kumar Mishra, submits that defendant/petitioner does not deserve any leniency since his sole intention is to delay the title suit. Mr. Mishra pointed out that the petitioner was given a number of opportunities and referred the dates, i.e., 12.01.2021, 03.02.2021, 14.08.2022, 30.03.2022, 13.04.2022,

09.05.2022, 28.03.2022 and 13.04.2023 to stress that several opportunities were given to the petitioner/defendant for adducing his evidence and most of the time with imposition of cost upon the petitioner. Learned senior counsel further submits that in the petition filed for recalling the order no reason was given why the defendant/petitioner did not produce his witnesses on the date fixed on the case. Learned senior counsel further submits that in the light of the aforesaid facts and circumstances the petition is without merit and the same be dismissed.

05. Having regard to the facts and circumstances and rival submission of the parties, this Court finds that the defendant/petitioner has been given a number of opportunities. But it is also a fact that on failure of the defendant/petitioner to adduce his evidence on one date, his evidence was closed. In these circumstances, I am of the view that the defendant/petitioner could be given another opportunity to bring his evidence as the endeavour of the courts should be to allow the parties to bring their complete evidence for final adjudication of the matter. But such liberty must be subject to certain conditions. Therefore, the impugned order dated 13.04.2023 is set aside granting an opportunity to the

defendant/petitioner to adduce his evidence on a single day to be fixed by the learned trial court subject to payment of cost of Rs.10,000/- to the respondent on the first date before the learned trial court. It is further made clear that not more than two witnesses would be allowed and no new documents would be allowed to be brought on record except those documents which are already on record. It is further made clear that the examination and cross-examination of the witnesses would be concluded by taking up the matter on daily basis and preferably within a week or two, at most. It has also been brought to the notice of the Court that argument of the plaintiff was already concluded, hence, after recording the evidence of the defendant, giving opportunity to the parties for argument, the matter would be taken up by the learned trial court for its disposal within one month from the date of closure of evidence of witnesses.

06. With the aforesaid directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.07.2024
Transmission Date	N/A