

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1212 of 2023

Md. Irfan @ Irfanul Haque, Son of Late Wasimul Haque, Resident of Qutubuddin Lane, Sabzibagh, P.S.- Pirbahore, District- Patna, Pin Code- 800004.

... .. Petitioner/s

Versus

Humaira Ayisha, Wife of Shakeel Qureshi, Resident of Qutubuddin Lane, Sabzibagh, P.S.- Pirbahore, District- Patna, Pin Code- 800004.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Gayadutta, Advocate Mr. Abinash Kumar, Advocate Mr. Kumar Satya Kirti, Advocate
For the Respondent/s	:	None.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-04-2025

Present learned counsel for the petitioner. However, no one appears for the respondent. Perusal of record shows even on the previous date of hearing, learned counsel for the respondent sought time for filing counter affidavit along with other relevant documents. Office note shows neither counter affidavit nor other relevant documents have been filed by the respondent. It seems the respondent wants to linger the matter and, therefore, the matter is put up for hearing and disposal.

2. Heard learned counsel for the petitioner.

3. The petitioner is aggrieved by the order dated 16.10.2023 passed by the learned Sub Judge-I, Patna in Title Eviction Suit No. 38 of 2020 whereby and whereunder the learned trial court confirmed the order dated 16.01.2023 by



which the prayer of the plaintiffs has been allowed for correcting the evidence of P.W.1, namely Salimmuddin.

4. The learned counsel for the petitioner submits that the petitioner is defendant before the learned trial court in Title Eviction Suit No. 38/2020 which has been filed by the respondent. In the said title suit, the examination-in-chief of P.W.1, namely Salimmuddin was filed. In paragraph 4 of the examination-in-chief, it has been deposed by the witness that the monthly rent has been fixed at Rs.1700/-. After filing of the examination-in-chief by way of affidavit, an application has been filed by the plaintiff on 05.01.2023 for correction of typographical error in para 4 of the examination-in-chief of P.W., namely Salimmuddin in mentioning the rent amount as Rs.17,00/- instead of Rs. 17,000/-. The learned counsel further submits that the learned trial court allowed the application filed by the plaintiff and further allowed the plaintiff to correct the figure of Rs.1700/- to Rs.17,000/- in paragraph 4 of the deposition of P.W.1, namely Salimmuddin. Since it was a palpably illegal order, the defendant/petitioner filed an application for review of the said order dated 16.01.2023, but again the learned trial court did not consider the facts and circumstances properly and held that it allowed the amendment in the deposition after matching the amount from the plaint. The



learned trial court further held that no new grounds have been brought to the notice of the court for interfering with the impugned order and holding that the court has already given the permission for amendment which has been done and as it comes under the purview of Order 47 Rule 4 (2) (b) of the Code of Civil Procedure, rejected the review application filed on behalf of the petitioner. The learned counsel further submits that both the orders are illegal in the sense that the affidavited examination-in-chief of P.W.1, namely Salimmuddin was ordered to be amended on prayer being made by the plaintiff. If there was any error in the examination-in-chief, the prayer could have been made for recalling the witness for re-examination, but the court considering the pleadings of plaintiff for taking a view that the examination-in-chief should be amended is an erroneous exercise of jurisdiction as the court was not vested with any such power. Similarly rejection of the review application was also without any merit as the learned trial court tried to justify the illegality already committed vide order dated 16.01.2023. Thus, learned counsel submits that the impugned orders are not sustainable and the same be set aside.

5. I have given my thoughtful consideration to the submission of the learned counsel for the petitioner and I find merit in the contention of learned counsel for the petitioner for



the reason that if the evidence of witness has been filed on record by way of affidavit, it is for the witness to make a prayer for correction if the witness was not put on dock. It was not open for the plaintiff to move application seeking correction in the evidence of his witness because the plaintiff could not substitute himself in place of witness though the plaintiff could have sought reexamination of the witness to clarify this point. But the plaintiff could not seek correction in the affidavit of examination-in-chief in this manner. For this simple reason, the impugned orders are completely erroneous orders and the learned trial court refusing to review its order compounded the confusion.

6. Therefore, the orders dated 16.01.2023 and 16.10.2023 passed by the learned Sub Judge-1, Patna in Title Eviction Suit No. 38/2020 are set aside.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2025
Transmission Date	NA

