

(2006) 07 JH CK 0127
In the Jharkhand High Court

Dhelo Mahto

APPELLANT

Vs

Mangar Mahto and Others

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Citation : (2006) 4 JCR 596

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ application the petitioner has prayed for quashing the order dated 7.2.2006 passed by learned Munsif, Hazaribagh in Title Suit No. 44 of 1989 whereby the Court below has rejected the petitioner's petition dated 17.1.2006 for recalling the plaintiff and his witness PW 2 for cross-examination.

2. It has been stated that at the relevant time, the petitioner's counsel was ailing and he could not attend the Court. Subsequently, the petitioner's counsel died after prolonged illness. Another counsel was appointed on his behalf. In course of preparation of the case for argument, it was detected that the plaintiff who was examined as PW 1 and another material witness, PW 2, were not cross-examined on behalf of the defendant-petitioner. A petition, thereafter, was filed for recalling the said witnesses for cross-examination which was rejected by the impugned order.

3. Learned Counsel submitted that there was no wilful laches on the part of this petition and he was prevented from cross-examining the said PWs under the said circumstance beyond his control. It has been submitted that if the petitioner is not given opportunity of cross-examination of the plaintiff who is PW 1 and another material witness, PW 2, he shall be put to suffer irreparable loss and injury. Learned Court below, without considering the said aspect, rejected the petition only on the ground of delay in making the prayer.

4. The respondents have appeared and contested the writ petition. However, no

counter-affidavit has been filed disputing the statements made in the writ petition. Learned Counsel for the respondents submitted that the defendant petitioner deliberately avoided cross-examination of the plaintiff and another witness, PW 2, at the appropriate stage and has filed the petition for recalling the said witnesses for cross-examination, when the suit is finally fixed for argument. Learned Counsel submitted that the petition has been deliberately filed in order to put the respondent to harassment and to delay disposal of the suit.

5. Considering the materials on record and the statements made by the learned Counsel, I find that the petitioner has made out a case that at the relevant time his counsel in the Court below was suffering from severe ailment and subsequently, after prolonged illness he died and in that circumstance, the petitioner was not able to cross-examine the said PW 1 and PW 2. Another counsel was appointed and who detected that the said important witnesses were not cross-examined, while he was preparing the case for argument. Learned Court below failed to take into consideration the said circumstance and has rejected the petition by the impugned order. Learned Court below has not taken into consideration that the petitioner shall suffer irreparable loss and injury if he is not given opportunity to cross-examine the said witnesses one of whom is the plaintiff, himself. Considering the above, this writ petition is allowed. Impugned order dated 7.2.2006 is quashed. The petitioner shall be allowed to cross-examine the PW 1 and PW 2 subject to payment of Rs. 1000/- per witness to the plaintiff in the Court below. The Court below shall fix a specific date for the cross-examination of the witnesses and on that date petitioner shall be given opportunity to cross-examine the said witnesses. No further opportunity shall be given on any ground to the petitioner if he fails to cross-examine the witnesses on the date fixed by the Court below.