

Heard Mr. A.K. Goswami, learned counsel for the petitioner.

Challenging the legality and validity of the impugned order dated 9-8-2006, the present revision petition has been filed by the defendant/petitioner.

The plaintiff/respondent filed the Title suit 10/2003, claiming right, title and interest over the suit land and for recovery of possession, ejecting the defendants. After taking several adjournments, the defendant filed the written statement.

Thereafter, when the suit proceeded to the appellate stage, the plaintiff submitted the evidence- in- affidavit of PWs, which were cross-examined and discharged. The suit was fixed on 22-2-2006, but it was adjourned till 2-5-2006 on the prayer of the defendant, to produce DWs for cross-examination. On 2-5-2006, also the case was adjourned on the prayer of the defendant and again on 17-5-2006, the next date was fixed, the suit was adjourned on the prayer of the defendant till 14-6-2006. In 14-6-2006 the suit was adjourned on the ground of illness of the defendant with a cost of Rs. 100/- till 11-7-2006. Similar application was also filed by the learned lawyer of the defendant on 11-7-2006, again the suit was adjourned till 9-8-2006 on the prayer of the defendant. On 9-8-2006 the defendant filed a similar application for adjournment of the suit on the ground of his illness and the learned trial court taking advantage of the conduct of the plaintiff and not accepting the ground of illness as projected by the defendant, in the absence of any supportive medical document, rejected the prayer and expunged the evidences of the defendant/petitioner .

Mr. Goswami referring to Annexure-14, the medical certificate issued by the concerned Doctor, submits that, in fact the petitioner was suffering from sickness on that day, and on that count, he could not appear before the trial court with his witnesses. From the record it appears, that the said certificate was not produced before the trial court and it was procured later on.

Be that as it may, from the records available it cannot be denied that the petitioner was suffering from illness and he could not appear before the trial court with his witnesses on the said date. However, the conduct of the defendant/petitioner as disclosed from the various orders, passed by the learned trial court is not inspiring to grant relief liberally. However for the ends of justice and in view of the grounds projected for non-appearance of the petitioner on the date fixed, the learned trial court is directed to grant a last chance to the petitioner to produce his witness on 3-1-2007, on which date the defendant/petitioner shall produce all his witnesses for cross- examination by the plaintiff . On failure to produce and/or any of the witnesses on that day the learned trial court will close the case for argument giving no further liberty to the defendant/petitioner.

With the aforesaid direction, this revision petition stands closed, subject to payment of Rs. 1,500/- by the defendant/petitioner to the plaintiff. The said amount shall be paid to the plaintiff on the date fixed i.e., on 3-1-2007, and on failure to pay the same, the petitioner would not be entitled to participate in the proceeding for cross-examination of the witnesses.