

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.614 of 2016**

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Deputy Development Commissioner

.... .... Appellant/s

Versus

Jagdeo Ram & Anr

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sunita Kumari

For the Respondent/s : Mr. Prabhat Kr. Verma- AAG-3  
Ms. Divya Verma, A.C. to A.A.G.-3.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO**

**ORAL ORDER**

- 2      19-09-2016    **1.**            Heard the learned counsel, Smt Sunita Kumar, for the petitioner. Heard the learned counsel for respondent No.2 also.
- 2.**            Perused the impugned order dated 26.04.2016 passed by Addl. District & Sessions Judge, Ist, Madhepura in Misc. Appeal No.7 of 2013 whereby the learned Court below rejected the Misc. appeal and thereby confirmed the order dated 09.05.2013 passed by Civil Judge (Sr. Division No.1), Madhepura in Misc. Case No.45 of 2012 filed under Order 9 Rule 13 CPC by this petitioner.
- 3.**            From perusal of the impugned order, it appears that title suit was filed by the plaintiff respondent against the petitioner as well as the respondent No.2. The petitioner was defendant No.2 in the suit being Title Suit No.138 of 2011. After notice, the defendant No.2 appeared in the case on 03.06.2011. In spite of repeated adjournments and direction, no written statement was

filed. Only applications were filed on his behalf for filing written statement. The Court below, therefore, proceeded to decide the suit according to provision provided under Order 8 Rule 10 CPC and judgment and decree was passed.

4. Against this Judgment and Decree passed under Order 8 Rule 10 CPC, the defendant No.2 petitioner filed an application under Order 9 Rule 13 CPC. The trial Court by the order dated 09.05.2013 passed in Misc. Case No.45 of 2012 rejected the said application recording a finding that it is not maintainable. The appellate Court by the impugned order has also held that it is not maintainable, therefore, the order passed by the Court below is legal and valid.

5. This Court in the case of *Satya Narayan Sah Vs. Brij Gopal Mundra AIR 1991 Patna 60*, has held that **‘the questions of passing ex.-parte decree arises in the circumstances enumerated in Order 9 of the Code. When the defendants after notice have appeared then they are required to file a written statement as required by Order 8 of the Code. Order 8 Rule 10 of the Code provides that where any party from whom a written statement is required under Order 1 Rule 8 fails to present the same within the time permitted or fixed by**



the Court, as the case may be, the Court shall pronounce Judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up. It was experienced that the defendants successfully delayed the disposal of case for years without filing a written statement, therefore, this amendment was introduced in the year 1976 so that the Court would straightway proceed for pronouncing the Judgment in the event of failure of the defendants to file the written statement even after several opportunities given to them. It is, therefore, amply clear that as in the present case, notices had already been served upon the defendant who had also appeared there was no need to fix any date for ex.-parte hearing and the Court could proceed under Order 8 Rule 10 of the Code and pronounce a Judgment followed by a decree. The application filed on behalf of the defendant under Order 9 Rule 13 was, therefore, not maintainable as the decree passed in the present case was not an ex.-parte decree within meaning of Order 9.’ This decision fully applies in the present case.

6. It may be mentioned here that same view has been reiterated by this Court again in *1997 (2) BLJ 618 M/s Basant*

***Takij Vs. Sri Prakash.***

7. In the present case also, the defendant after notice appeared in the case. In spite of repeated adjournments and directions, no written statement was filed and, therefore, the Judgment and decree was passed under Order 8 Rule 10 CPC.

8. In view of the binding precedent referred to above, in my opinion, the Courts below have rightly held that the application under Order 9 Rule 13 CPC in the present facts and circumstances of the case is not maintainable. Thus, this Civil Misc. application is devoid of any merit and accordingly, it is dismissed. If law provides the petitioner may file appeal subject to limitation.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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