

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3955 of 2013

=====

Mohan Mandal Son Of Late Shyam Sundar Mandal Resident Of Village
Brahmsthan, P.O. And P.S. Bariarpur, District- Munger

.... Petitioner.

Versus

Sitaram Mandal Son Of Late Shyam Sundar Mandal Resident Of Village-
Brahamasthan, P.O. And Police Station- Bariarpur, District- Munger

.... Respondent.

=====

Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

4 19-01-2016

Heard the learned counsel for the petitioner.

No body has appeared for the respondent to
whom the notice earlier issued has been validly served.

The order under assail in the present writ
application under Article 227 of the Constitution of India has
been passed on 15.01.2013 in Eviction Suit No. 02/2012 whereby
the court below has rejected the petition dated 24.09.2012 filed by
the petitioner for recall of the order dated 13.09.2012 by which the
suit was fixed for ex parte hearing.

From the facts stated in the application as well
as in the petition in the court below it appears that the suit for
eviction has been filed against the present petitioner as defendant.
The summons were issued and validly served on the petitioner.



However, the petitioner did not appear even thereafter and consequently by order dated 13.09.2012 the learned court below has passed the order for proceeding ex parte against the defendant. It also appears from the impugned order that the petitioner did not produce any medical certificate/documents to corroborate his submission that he was ill. However, such certificate has been filed before this Court and annexed as Annexure-4 to the writ application. The learned counsel for the petitioner has submitted that the said certificate could not be produced before the learned court below due to the mistake of the counsel for the petitioner.

No body has appeared on behalf of the respondents and no counter affidavit has been filed controverting the averments made in the writ application.

After considering the submissions and perusal of the materials on record, it is manifest that the suit for eviction has been filed by the plaintiff who is own brother of the defendant. The proceeding of the suit has been fixed as ex parte against the defendant-petitioner by order dated 13.09.2012. The learned court below has also recorded the finding that the summons had been validly served upon the defendant and he became aware of the pendency of the suit against him. It also transpires from the impugned order that the petitioner did not produce the medical

certificate in support of the ground for illness. However, the interest of justice demands that a civil litigation as far as possible be decided after hearing both the parties on merits and the court should avoid proceeding ex parte, unless the extreme circumstances are present. In the present facts and circumstances of the case, it appears that though the petitioner has committed laches by not promptly appearing before the court, he should be granted an opportunity to contest the suit on merits. The learned counsel for the petitioner has also submitted that the proceeding of the suit has been stayed in pursuance to the order of this Court.

The writ application is, therefore, allowed and the impugned order is set aside but in order to balance the equities the petitioner is directed to pay the cost of Rs. 5,000/- to the respondent. The said cost shall be a condition precedent for the petitioner to appear in the suit and contest the same. The cost must be deposited by the petitioner in the court below within a period of four weeks from today.

The writ application is, accordingly, allowed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--