

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.170 of 2013

1. Shiyjee Prasad Seth Son Of Late Roshan Ram Seth R/O Village Andp.O.-New Bhojpur, P.S-Dumaron, Distt-Buxar.

.... Petitioner/s

Versus

1. Brahmeshwar Singh @ Barmeshwar Singh Son Of Late Shukul Singh R/O Village-Parman, P.O.-Naya Bhojpur, P.S.-Simari, Distt-Buxar

2. Bhubneshwar Singh Son Of Late Shukul Singh R/O Village Andp.O.-New Bhojpur, P.S-Dumaron, Distt-Buxar.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. SHASHI SHEKHAR DWIVEDI, SR. ADV, MR. RANJAN KUMAR DUBEY, ADV, MR. S.N. SHUKLA, ADV.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-08-2016

Heard Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the petitioner.

2. The present revision application has been filed assailing the order passed by the appellate court below whereby the appellate court has reversed the order passed by the trial court which dismissed the miscellaneous case filed by the petitioner under Order 9 Rule 13 C.P.C for setting aside the ex parte decree.

3. On 19.09.2007 an ex parte decree was passed in the



suit for specific performance of contract against the defendant-opposite parties. The decree holder thereafter filed Execution Case No. 2 of 2007. The case of the petitioner is that it was only after receiving the notice of the execution case the knowledge of the ex parte decree passed in the suit of specific performance could be gathered. It is further case of the petitioner that thereafter he made enquiries and obtained the certified copy of the ex parte decree and judgment. However, the Miscellaneous Case No. 02 of 2007 under Order 9 Rule 13 C.P.C for setting aside the ex parte decree was filed on 28.07.2008 with the assertion that after obtaining the certified copy of the ex parte judgment and decree the petitioner fell ill and therefore, the miscellaneous case could not be filed promptly and within time.

4. The trial court after hearing the parties dismissed the miscellaneous case holding that the defendants could not establish sufficient cause for non-appearance and explain the delay in filing the miscellaneous case after getting the knowledge of the ex parte judgment and decree. In appeal, however, the appellate court below has reversed the order passed by the trial court after holding that the defendants were not served with the summons in the suit and also accepting the explanation furnished by the defendants for the delay in filing the miscellaneous case.



5. Mr. Dwivedi, learned senior counsel has submitted that the appellate court below has committed error of jurisdiction and material irregularity in reversing the findings of the trial court. It has been contended that the petitioner could not explain the delay of belated filing of the miscellaneous case under Order 9 Rule 13 C.P.C and the medical document produced by him was not even proved and corroborated by examination of the Doctor. It has been further submitted by pointing out the dates that the defendant-opposite parties cannot be said to have acted diligently even after getting the knowledge of the ex parte decree and judgment and therefore, also the impugned order passed by the appellate court below is vitiated.

6. After considering the submissions and perusal of the impugned order passed by the appellate court below as well as the order passed by the trial court, it is manifest that a finding of fact has been recorded by the appellate court below that the summons in the suit filed by the plaintiff-petitioner was not served upon the defendant-opposite parties and there was no cogent evidence supporting the service of summons. During the course of submission on behalf of the petitioner, it could not be shown or established that the said finding is perverse or unreasonable in any manner and not based upon the evidence and materials on record. The main thrust of



the submission on behalf of the petitioner is upon belated filing of the miscellaneous case under Order 9 Rule 13 C.P.C. However, the appellate court below has also considered the said aspect and has exercised its jurisdiction in accepting the explanation furnished by the defendant-opposite parties.

7. After considering the reasonings assigned by the appellate court below, this court does not find that the appellate court below has committed any error of jurisdiction or material irregularity in passing the impugned order.

8. The revision application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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