

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.643 of 2016**

=====

1. Kishori Chauhan
2. Arjun Chauhan
3. Ram Babu Chauhan, All are sons of late Gyuni Chauhan, resident of village- Dharampur, P.O- Mohamadpur, P.S- Phulwari Sharif, Dist- Patna.
.... Appellant/s

Versus

1. Naresh Chauhan son of late Laxman Jamadar, resident of village- Dharampur, P.O- Mohamadpur, P.S- Phulwari Sharif, Dist- Patna.
.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rajendra Prasad
For the Respondent/s : Mr. Uday Prasad

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

3 29-11-2017 Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 14.06.2016 passed in Title Suit No. 735 of 2013 by the learned Sub-Judge-II, Patna whereby the petition dated 08.09.2014 to recall the order dated 06.06.2014 by which the suit was fixed for ex parte hearing against the defendants/petitioners has been dismissed.

The learned counsel for the petitioners submits that on 16.05.2014 the learned counsel for the defendants/ petitioners prayed for time to file written statement but thereafter the plaintiff came to the defendants to settle the dispute outside the court. The defendants/ petitioners requested the plaintiff not to pursue the suit while negotiation was afoot for resolving the dispute outside the court but suddenly the suit was fixed for ex parte hearing on 06.06.2014 and when the defendants filed a petition on 08.09.2014 for recalling the order dated 06.06.2014 the same has been dismissed without any cogent reason and on the ground that in spite of publication of notice in the daily newspaper the



defendants did not appear and file written statement. If the order is allowed to remain the defendants shall suffer irreparable loss. It is further submitted that plaintiff did not deny the facts in his rejoinder filed to the petition dated 08.09.2014 that negotiation was afoot for settlement of the dispute.

On the other hand, the learned counsel for the respondent/ plaintiff submits that the order does not suffer from any illegality as the petitioners did not appear in court nor filed written statement.

It appears from the records that on 16.05.2014 itself the learned counsel for the defendants prayed for time and immediately thereafter it is stated that the plaintiff approached the defendants to resolve the dispute outside the court and this fact has not been dispute by the plaintiff in his rejoinder to the petition dated 08.09.2014 filed for recall of the order dated 06.06.2014. Therefore, I find that the order suffers from illegality and it will cause irreparable loss to the defendants and that shall occasion failure of justice, if the suit fixed for ex-parte hearing is not recalled.

Considering the facts aforesaid, the order dated 14.06.2016 is set aside. Consequently, the defendants are allowed to file their written statement within one month from the date of receipt/ production of a copy of this order, subject to deposit of cost of Rs. 500/- in the court below which shall be paid to the plaintiff.

This Civil Misc. petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

