

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.904 of 2016

=====

1. Shankar Sah, s/o Sri Jagdish Sah, resident of village - Nifatpur Kachora,
P.S. - Baisi, Distt. – Purnea Petitioner

Versus

1. Mosmat Sago Devi @ Sago Sah W/o Late Hari Prasad Sah resident of
village - Nifatpur Kachora, P.S. - Baisi, Distt. - Purnea. at present residing
at village - Malharia, P.S. - Baisi, Distt - Purnia.

2. Sri Jagdish Sah S/o - Late Lakshman Sah

3. Sri Satya Narayan Sah S/o - Late Lakshman Sah both residents of Village
- Nifatpur Kachora, P.S. - Baisi, Distt. – Purnea Respondents

=====

Appearance :

For the Petitioner : Mr. Pramod Kumar Mallick, Adv.

For the Respondent 1st Set : Mr. Ram Pravesh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

5 04-12-2017

Heard both sides.

The petitioner filed this civil miscellaneous petition for setting aside the order, dated 07.04.2016, passed in Title Suit No. 222 of 2013 by which the learned Sub Judge, Baisi, Purnia, rejected the petition of the petitioner-defendant for recalling the order, dated 27.08.2015, fixing the suit for ex parte hearing and to accept the written statement of the defendant, who was duly prevented on account of ignorance of the pendency of the suit and that's why they did not appear earlier in the suit.

The learned counsel for the petitioner submits that the petitioner never received summons, of course, substituted service of notice also issued by publishing the notice in the newspapers, but, the petitioner had gone outside the State to earn his livelihood. The petitioner would suffer irreparable loss if he was not allowed to contest the suit.

On the contrary, the learned counsel for the respondents submits that the petitioner did not appear in time even



though he had knowledge about the pendency of the suit.

Having considered the submissions and on perusal of the order, I find that the petitioner is the defendant in the suit and the suit was fixed for ex parte hearing although the petitioner did not receive any summon. If the petitioner is not allowed to contest the suit, he would suffer irreparable loss and that would cause injustice to the petitioner. A party of a suit should be allowed to contest the suit. Thus, I find that the learned Sub Judge committed jurisdictional error in rejecting the petition of the petitioner for recalling ex parte hearing the suit and allowing him to contest the suit.

In the result, the order, dated 07.04.2016, passed in Title Suit No. 222 of 2013 is set aside and the petitioner is allowed to contest the suit by filing written statement and, thus, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

SA/-

U	√		
---	---	--	--

