

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22475 of 2013

=====

1. Smt. Suman Devi, W/O Sri Kameshwar Prasad, Resident Of Village- Bahpur, P.S. Bihita, District- Patna. At Present Residing At Ramjaipal Nagar, Near Pharmacy College Bailey Road Patna, P.S. Danapur, District- Patna

2. Anirudha Patel

3. Abhishek Patel

both Sons of late Kameshwar Prasad

4. Arundhati, D/o late Kameshwar prasad, W/o Sri Gajendra Kumar, Resident of Abhimanyu Nagar, P.S. Rupaspur, District- Patna.

5. Alpana unmarried daughter of late Kameshwar Prasad

All are residents of Village- Bahpur, P.S. Bihta, District- Patna, at Present residing at Ram Jaipal Nagar, near Pharmacy College, Bailey Road, Patna, P.S. Danapur, District- Patna

.... Petitioners

Versus

1. Sri Arbind Kumar, S/O Sri Anuplal Mandal, Resident Of Village- Uttam Place Quarter No. 406, Khajpura, P.S. Sastrinagar, District- Patna

.... Respondent

=====

Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh-1, Advocate

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

7 07-12-2017 This writ application has been filed to quash the order dated 26.07.2013 passed by learned Munsif, Civil Court, Danapur, Patna in Miscellaneous Case No.10 of 2010 whereby and whereunder the learned Munsif set aside the order dated 27.03.2010 passed in Title Suit No.12 of 1997 and restored the suit to its original file.

2. Heard learned counsel for the petitioners and perused the record.

3. The respondent in spite of service of notice did not



appear.

4. It appears that the petitioners filed Title Suit No.12 of 1997 on the file of Munsif, Danapur. The defendant did not appear and suit proceeded ex-parte. The suit was decreed on 13.07.1998. The petitioners filed execution case in which the respondent was noticed. The respondent appeared and filed a Miscellaneous Case No.10 of 2002 on 24.08.2002 under Order 9 Rule 13 of C.P.C. The said miscellaneous case after contest was allowed and ex-parte decree dated 13.07.1998 was set aside and the suit was restored. The petitioners (plaintiffs) filed Civil Revision No.1803 of 2004 before this Court which after hearing was dismissed. After dismissal of the said civil revision, title suit was restored and trial commenced on 25.08.2006. The case was adjourned to several dates for hearing. The respondent in course of trial left taking interest and so the suit again proceeded and it was decreed in favour of the petitioners on 27.03.2010. The court below after hearing both sides allowed the miscellaneous case and set aside the decree as per impugned order dated 18.09.2004.

5. The learned counsel for the petitioners submitted that the respondent had full knowledge and notice about the suit and he deliberately left taking interest in contesting the suit. The ground taken in miscellaneous case was that the respondent engaged



Sri B. Choudhary, Advocate for conducting the case. He was an old man and on account of illness the respondent was not informed about the development in the suit.

6. From the impugned order, it appears that the defendant was debarred from filing written statement and witnesses were examined on behalf of the plaintiffs-petitioners. The court below while allowing the case of respondent has observed that the defendant was prevented from filing the written statement as no copy of plaint was served on him. The court below has, however, imposed a cost of Rs.7,500/- in order to compensate the plaintiffs. If the defendant is not allowed to contest the suit, it will seriously prejudice him and the matter cannot be finally adjudicated on merit.

7. In view of the above facts and circumstances, I am not inclined to interfere with the impugned order as the court below has not committed any jurisdictional error. This application is, therefore, disposed of with a direction to the court below to expedite the trial of the suit without giving unnecessary adjournments to the parties.

(Sanjay Kumar, J)

Harish/-

U			
---	--	--	--

