

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.251 of 2016

In

Civil Review No.240 of 2016

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Ram Kumari Devi, wife of Ram Kumar Roy, resident of Mohalla and Post Office Lalbagh, Police Station town, District Darbhanga Petitioner

Versus

Manju Devi, wife of Adhik Lal, resident of Mohalla and Post Office Lalbagh, Police Station town, District Darbhanga Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date : 15-09-2017

Heard learned Counsel for the petitioner.

2. The petitioner is aggrieved by an order, dated 20.02.2016, passed by learned Sub Judge IV, Darbhanga, in Misc. Case No. 3 of 2011, whereby an application, filed on behalf of the Opposite Party under Order IX Rule 13 read with Section 151 of the Civil Procedure Code, has been allowed and the compromise decree, dated 18.12.2004 and 22/24.12.2004, passed in Title Suit No. 132 of 2002 has been set aside.

3. From the impugned order, I notice that the Opposite Party took specific plea before the Court below that no summons was issued on her in T. S. No. 132 of 2002 and she did not have any knowledge about the judgment and decree passed by the Trial Court, dated 18.12.2004 and 22/24.12.2004. It also appears that



the Opposite Party also took a plea that the petitioner herein fraudulently misused her signatures available on a vakalatnama and a plain paper and got filed the compromise petition.

4. Learned Counsel appearing on behalf of the petitioner, assailing the impugned order, has submitted that the Court below completely failed to apply Article 123 of the Schedule of the Limitation Act and allowed the application under Order IX Rule 13 of the Civil Procedure Code, without condoning the delay. He has further submitted that it was incumbent upon the Opposite Party to have disclosed in her application, Order IX Rule 13 of the Civil Procedure Code, the date on which she got knowledge about the passing of the decree, based on which the question, whether the said application was bared by limitation or not, could have been considered.

5. In support of the submission, learned Counsel for the petitioner has relied on a decision of this Court, in the case of **Firoz Khan and Others v. Bibi Hasina Khanam and Others**, reported in (1994) 1 BLJR 401 (paragraph 5). He has referred to the application, which was filed on behalf of the Opposite Party before the Court below, seeking setting aside the *ex parte* order, to contend that nothing is disclosed as to when did the Opposite Party get information about the passing of the decree. He has,



accordingly, submitted that the Court below ought to have rejected the application for setting aside the *ex parte* decree on the ground of delay in the absence of specific pleading. He has further contended that since the Court below has allowed the application without condoning the delay, the impugned order deserves to be interfered with.

6. I have perused the application filed on behalf of the Opposite Party before the Court below under Order IX Rule 13 of the Civil Procedure Code. There is statement in the said application that she did not have any knowledge about the judgment and decree passed in T. S. No. 132 of 2002, dated 18.12.2004 and 22/24.12.2004. She filed an information application on 23.02.2011 in both the cases, whereafter she got the knowledge about the matter and then obtained certified copy of the record on 25.02.2011. On the basis of these averment made in the application under Order IX Rule 13 of the Civil Procedure Code, the application could not have been treated to be time barred. It further appears that the petitioner had appeared before the Court below in the proceeding under Order IX Rule 13 of the Civil Procedure Code. No plea appears to have been taken dealing with the averments made in the application under Order IX Rule 13 of the Civil Procedure Code to controvert the fact that the Opposite



Party had acquired knowledge about the judgment and decree, on 18.12.2004 and 22/24.12.2004, on 25.02.2011.

7. Further the Opposite Party alleged, in her application seeking setting aside of the *ex parte* decree, of commission of fraud in obtaining the said *ex parte* judgment and decree.

8. In that background, the order impugned does not require any interference.

9. The decision relied on by learned Counsel for the petitioner, in the case of **Firoz Khan** (supra), has no application in the facts and circumstances of the present case inasmuch as there is assertion in the application that the Opposite Party filed information application on 23.02.2011, whereafter she obtained the certified copies of the record on 25.02.2011. The plea that since there is no averment in the application that the Opposite Party must have acquired the knowledge of passing of the decree prior to 23.02.2011 cannot be a ground for interference with the impugned order.

10. This application is meritless and is accordingly dismissed.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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