

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12845 of 2015

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1. Surajuddin Mian @ Serajuddin S/o late Sadiq Miya
 2. Nasruddin Miya S/o late Sakur Miya
 3. Sarfuddin Miya S/o Late Mkul Miya, All resident of Village- Bindwal Post Office, Badram, Post Office- Badram,P.S Hussainganj, District Siwan.

... .. Petitioner/s

Versus

1. Diljan Dhobi S/o late Mongljan Dhobi, resident of Village- Bindwal, Post Badram, PS. Hussainganj, District Siwan.
2. The State of Bihar through Collector, Siwan.
3. The Collector, Siwan.
4. Nijamuddin s/o late Sadiq Miya, All resident of Village- Bindwal Post Office, Badram, Post Office- Badram ,P.S Hussainganj, District Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 11-12-2018

The defendants of Title Suit No. 337 of 2010 pending in the court of Sub-Judge-VI, Siwan have filed this writ application for quashing the order dated 14.05.2015 whereby and whereunder, the prayer of the petitioners to recall the order dated 19.12.2012 fixing the suit for ex parte hearing was refused.

Heard learned counsels for the petitioners. Nobody appeared for the respondents.

The respondent no. 1 filed the aforesaid Title Suit No.337 of 2010 against these petitioners and respondent nos. 2 to 4. The notices were issued against the petitioners and on account



of non-appearance of these petitioners, the suit was fixed for exparte hearing as per order dated 19.12.2012.

On going through the impugned order and documents on record, I find that the suit was admitted for hearing on 03.06.2010. The plaintiff was directed to file requisites for appearance of defendants. The plaintiffs-respondents filed requisites for notice through registered post only. The court below without waiting service report, ordered for notices through publication in daily newspaper on the prayer of the plaintiff as per order dated 04.08.2010. The matter relating to notice through publication in newspaper remained pending for two years and it was published in daily newspaper "Aaj" and its cutting was filed in the Court on 04.10.2012.

It has been submitted that the newspaper in which the notice was published was not in circulation in the locality where the petitioners were residing. The petitioners neither received postal notice nor any notice through court process was issued. The petitioners learnt about the pendency of suit from one of the witnesses who was examined by the plaintiff in course of exparte hearing. The petitioners thereafter appeared and filed a petition on 16.06.2014 to recall the order fixing the case for exparte hearing. The case was adjourned to 14.7.2014 for rejoinder. The case was



further adjourned on 11.08.2014, 10.10.2014 and 15.12.2014 as the court remained vacant. The petitioners filed written statement on 28.01.2015.

The above facts show that the court below has not considered the submission of petitioners for not filing the written statement at the earliest opportunity. The court below without waiting service report, has ordered for publication in daily newspaper. According to the learned counsel for the petitioners, the said paper had no circulation in the locality. The petitioners have already filed their written statement and are willing to contest the case.

In view of above discussions and also for the ends of justice, the impugned order refusing to recall the ex parte hearing is set aside and this writ application is allowed. The court below is directed to give an opportunity to the defendants to contest the case after accepting their written statement.

(Sanjay Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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