

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18590 of 2013

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Indal Mahto Son Of Late Bilash Mahto Resident Of Village Hari Bela, P.S
Bathnaha, District : - Sitamarhi

.... Petitioner

Versus

Mostt. Sunita Devi Wife Of Late Pramod Kumar Singh Resident Of
Village Singhwahani, P.S. :- Sonbarsa, District :- Sitamarhi

.... Respondent

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Appearance :

For the Petitioner : Mr. Nirmal Kumar Sinha-3, Advocate

For the Respondent : Mr. Ashok Kumar Sinha No.2, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 29-01-2018 This application has been filed to set aside the order dated 10.04.2012 passed by Sub Judge-Ist, Sitamarhi in Title Suit No.16 of 2011 whereby and whereunder the court below refused to recall the order dated 21.01.2012 and accept the written statement of this petitioner filed on 23.02.2012.

2. Heard learned counsel for the petitioner as well as the respondent.

3. It appears that the petitioner did not appear before the court below in spite of notices published in daily newspaper and consequently the case was fixed for ex-parte hearing against the petitioner on 29.07.2011. The petitioner appeared before the court below on 12.08.2011 and on his prayer, the ex-parte hearing was recalled subject to payment of cost of Rs.600/-. The defendant



was also permitted to file written statement after deposing the cost. It has been submitted that the petitioner remained ill for about five months and so he could not file written statement resultantly the case was fixed for ex-parte hearing. The respondent in his rejoinder filed before the court below has not denied about the illness of the petitioner as asserted in the petition to recall the said order.

4. In view of the above facts and for the ends of justice, the impugned order dated 10.04.2012 whereunder the court below rejected the petition filed by this petitioner on 23.02.2012 and refused to accept the written statement is set aside. The court below is directed to give an opportunity to the petitioner to contest the suit after accepting his written statement subject to payment of cost to the respondent to the tune of Rs.3,000/- before the court below. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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