

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.21 of 2017

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1. Vinay Kant Thakur, Son of Late Mahakant Thakur, Resident of village - Pindagri Chak, P.S. Kamtaul, District - Darbhanga, at present Address Qr. No. 126, defence Colony, P.S. Kankarbagh, District - Patna

.... Petitioner/s

Versus

1. Shiv Kumari Devi, Wife of Devendra Mistry, Resident of village - Naubatpur, P.S. Naubatpur, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-08-2018

Heard both sides.

This civil revision petition has been filed against the order dated 13.01.2017 passed in Misc. Case No.1469 of 2014 whereby the petition filed by the petitioner for setting aside ex parte decree passed in Eviction Suit No.1 of 2013 has been dismissed.

The brief facts which is relevant is that the plaintiff filed Eviction Suit No.1 of 2013 against the petitioner-defendant for eviction of the petitioner-defendant from the suit premises which was decreed ex parte vide judgment dated 29.05.2014. The case of the petitioner is that in the aforesaid eviction suit neither notice through Nazarat nor through registered cover was ever served upon the petitioner and the petitioner had no knowledge about the pendency of



the eviction suit and he was prevented from contesting the suit.

Learned counsel for the petitioner submits that the learned court below has wrongly relied upon Ext. 'C' produced on behalf of opposite party in Misc. Case to come to the conclusion that the notice by registered post was served upon the petitioner. It has been contended that there was no order in the entire proceeding in the suit for service of notice upon the petitioner either through registered cover or by taking steps for substituted service and, therefore, in absence of such any order, the receipt of registered cover by the petitioner as claimed by the opposite party was of no substance. It has further been submitted that process server was entirely in collusion with the plaintiff of the eviction suit. From perusal of the order of the eviction suit, it would appear that the suit was filed on 22.01.2013 which was admitted on 07.02.2013. The plaintiff submitted talbana etc. which was issued on 11.02.2013. The case was fixed for awaiting service report on 01.03.2013 and thereafter on many dates till 23.10.2013. On 01.11.2013 counsel for the plaintiff prayed for ex parte proceeding of the case. On such a report from Nazarat was called for regarding service of notice on 01.11.2013, 25.11.2013, 11.12.2013 and 20.12.2013. On 10.01.2014, notice was returned from Nazarat due to death of process server and as such, it was directed for re-issuance of notice which was issued on 21.01.2014 and the case



thereafter was fixed for awaiting service report and the same returned unserved on refusal as alleged on 04.03.2014. Thereafter, the case was fixed for hearing on service report. On the affidavit filed by the husband of the plaintiff on 22.04.2014, the suit was fixed for ex parte hearing and eventually on 29.05.2014, the suit was decided and judgment was passed ex parte without ascertaining the proper service of notice on the defendant-petitioner. When the learned counsel for the opposite party confronted about the maintainability of this civil revision in view of the fact that the petitioner filed petition under Order IX Rule 13 for setting aside the ex parte judgment passed in eviction suit, learned counsel for the petitioner submits that by a Division Bench judgment of this court reported in **1992(2) PLJR 91(Santosh Singh and Ors. vs. Ram Chandra Sah and Ors.)**, it has been held that if eviction suit is tried in summary procedure as contained in Section 14 of the B.B.C. Act, there is no provision for ex parte hearing rather the suit is decided on account of non-appearance of the defendant under Section 14(4) of the B.B.C. Act. To set aside the judgment and order passed under Section 14(4) of the B.B.C. Act, a petition under Section 151 of the C.P.C. is maintainable and thus, this civil revision against the order passed by the learned court below to set aside the judgment and decree passed under Section 14(4) of the B.B.C. Act is maintainable.



On the contrary, learned counsel for the opposite party submitted that the defendants knowingly and intentionally did not appear in the eviction suit filed for evicting of the defendants from the suit premises. The order passed under Order IX Rule 13 C.P.C. is appealable and, therefore, the revision petition is not maintainable. It is further submitted that learned court below has categorically held that the notice was properly served upon the defendant but the defendant did not appear. Only thereafter, the suit was decided ex parte.

So far as the first contention of the learned counsel for the opposite party about the maintainability of this civil revision petition is concerned, admittedly, in view of the provisions as contained in Section 14 of the B.B.C. Act, if the defendant did not appear, the provisions as contained in Section 14(4) of the B.B.C. Act provides for decision of the suit on the basis of the uncontroverted assertions of the plaintiff and Section 14(4) of the B.B.C. Act does not speak about the ex parte judgment and decree. The Division Bench of this Court in the case of Santosh Singh(supra), 1992(2) PLJR91 has held that a petition under Section 151 of the C.P.C. for setting aside the judgment and decree passed under Section 14(4) of the B.B.C. Act is maintainable and, therefore, I find no force in the submission of the learned counsel for the opposite party that the present civil revision



petition is not maintainable.

On the basis of the submissions of both sides, the second question arises for consideration whether the defendant got notice of the pendency of the suit and he was duly served notice through registered post as it is apparent that the learned Munsif held that notice was served on the defendant through registered cover and the postal receipt was marked as Ext. 'C'. The process server submitted report about the refusal of acceptance of notice. Learned Munsif has held that on the address, on which registered post was sent in the execution case, on the same address the registered post and ordinary notice were sent to the defendant and on such facts, learned Munsif come to the conclusion that the defendant concealed the fact about the receipt of notice but from perusal of the order passed in the eviction suit, it transpires that there is no order of issuance of notice through registered cover. Even during the pendency of the eviction suit, the Court did not pass any order with regard to the fact holding the process server report that the notice served on the defendant was validly served. Therefore, I find that the findings of the learned Munsif that defendant had knowledge about the pendency of the suit is erroneous and not sustainable.

Accordingly, I set aside the order dated 13.01.2017 passed in Misc. Case No.1469 of 2014 and this civil revision petition is



allowed and the judgment and decree passed in Eviction Suit No.1 of 2013 is also set aside with a direction to the court below to expeditiously decide the suit preferably within six months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.08.2018
Transmission Date	

