

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1570 of 2016

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1. Chandan Kumar, S/o Surendra Jha, R/o Vill- Narghoghi, P.S.- Sarairanjan, Distt.- Samastipur.
 2. Braham Deo Rai, S/o Late Bindeshwar Rai, R/o Vill.- Rampur Bishunpur, P.S. Warisnagar, Distt.- Samastipur.
 3. Ghanshyam Kumar Ishwar, S/o Late Rewati Raman Ishwar, R/o- Vill- Shadipur Ghat, P.S.- Khanpur, Distt. Samastipur.

... .. Appellant/s

Versus

Shushma Devi, Wife of Late Rabindra Kumar Thakur, R/o Vill.- Bhuidhara, Adarshnagar, P.S. Samastipur (Mufassil), Distt. Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mukesh Kumar
For the Respondent/s : Mr. Sandip Kumar

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 07-12-2018 Heard both sides.

The petitioners have filed this petition against the order dated 19.09.2016 passed by learned Sub Judge-II, Samastipur in Title Suit No. 273/2014 by which the petition of the petitioners for recalling the order fixing the suit for ex parte hearing and accepting written statement of the petitioners has been rejected.

From perusal of the order itself, it appears that after publication of notice, copy of which was filed by the plaintiff on 11.05.2015, the suit was fixed for ex parte hearing on 12.06.2015 but the petitioners/ defendant appeared on 08.07.2015 and filed petition for recalling the order dated



12.06.2015 fixing the case for ex parte hearing but no order was passed. The petitioners filed the same petitions on 06.08.2015 and 14.09.2015 but the court without recalling the case fixing for ex parte hearing debarred the petitioners from filing written statement on 26.06.2015 and dismissed the petition for recalling the order fixing the suit ex parte hearing. The petitioners again filed petition on 08.02.2016 after filing written statement on 08.01.2016 for accepting the written statement after recalling the order dated 26.11.2015 but the petition of the petitioners has been rejected. I find that before appearance of the petitioners the suit was fixed for ex parte hearing on 12.06.2015 and the petitioners appeared on 08.07.2015. They immediately after their appearance filed petition for recalling the order fixing the suit for ex parte hearing but the court instead of passing any order on the petition of the petitioners for recall of the order fixed the case for ex parte hearing and debarred the petitioners from filing written statement on 26.11.2015 on the ground that petitioners did not file written statement within three months from the date of their appearance and when the petitioners filed petition for recalling the order fixing the suit for ex parte hearing, the same was rejected. I find that petitioners have shown reasonable explanation for not filing the written



statement and the learned Sub Judge has illegally and erroneously debarred the petitioners from filing written statement. The petitioners had earlier filed petition for recalling the order dated 12.06.2015 fixing the suit for ex parte hearing but the court did not pass any order on that petition and debarred the petitioners from filing written statement.

Accordingly, the order dated 19.09.2016 passed by learned Sub Judge-II, Samastipur in Title Suit No. 273/2014 is set aside. The written statement filed by the petitioners is accepted. This Civil Misc. petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

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