

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1466 of 2016**

Chandan Kumar

... .. Petitioner/s

Versus

Shri Bal Govind Ram & Ors

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amitabh Sohan
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

4 04-12-2018 Heard learned counsel for the petitioner. Nobody appears on behalf of respondent Nos.1 and 2.

The petitioner is defendant No.1 in the suit. The petitioner filed this civil miscellaneous petition against the order dated 20.08.2016 passed by Munsif III, Patna in Title Suit No.18 of 2012 by which the petition of the petitioner dated 09.06.2015 and 08.09.2015 for recalling the order fixing the case for ex-parte hearing and debarring the petitioner from filing written statement has been rejected.

Learned counsel for the petitioner submits that the petitioner of course appeared in the suit on 28.10.2014 and could not file written statement on account of the fact that the petitioner was under treatment. The petitioner was suffering from Cancer and also from different ailments but without taking into consideration the facts of illness of petitioner, the petition



of the petitioner for recalling the order fixing the case for ex parte hearing and debarring the petitioner from filing written statement has been rejected.

From the facts, I find that the petitioner was prevented from filing his written statement on account of suffering from terminal disease and if the petitioner is not allowed to contest the suit by filing written statement that will occasion failure of justice. Therefore, to avoid failure of justice, I set aside the order dated 20.08.2016 passed in Title Suit No.18 of 2012 and allow the petitioner to contest the suit by filing written statement within two months from the date of receipt of this order. Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

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