

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.386 of 2019**

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Vivekanand Tiwari, Son of Nityanand Tiwari, R/o Village-Harakhua, P.S.-
Gopalganj, District-Gopalganj

... .. Defendant-Petitioner

Versus

Chandra Bhushan Singh, son of Late Lal Babu Singh @ Babu Lal Singh, R/o
Village-Ramchandrapur, P.S.-Thawe, District-Gopalganj

... .. Plaintiff-Respondent

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Appearance :

For the Petitioner : Mr. Ranjeet Kumar Pandey, Advocate
For the Respondents : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 05-07-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 04.10.2018 passed in Title Suit No.680 of 2015 by the learned Sub Judge-I, Gopalganj whereby an application filed on 03.07.2018 on behalf of the petitioner to recall the order dated 09.10.2017 has been rejected. By order dated 09.10.2017, the trial court had passed order for *ex parte* hearing of the case.

2. The contention of the petitioner is that without appreciating the facts and circumstances of the case and without appreciating the submission made on behalf of the petitioner, the trial court has passed the order dated 04.10.2018. The trial court ought to have considered that it will be in the interest of justice to



allow the petitioner to contest the case and, as such, it ought to have recalled the order dated 09.10.2017.

3. Having heard the petitioner and perused the materials on record, I find that in Title Suit No.680 of 2015 summonses were sent to the petitioner through Nazarat on 27.05.2016. The process server reported on 16.07.2016 that the summonses were served upon the petitioner. Thereafter, registered notice was sent to the petitioner. On perusal of the tracking report of India Post, it was seen that the registered notice was also served upon the petitioner. As the petitioner failed to appear in spite of service of summons and notice through registered post, steps were taken by the court for substituted service also by publishing notice in Hindi daily 'Prabhat Khabar' on 25.05.2017. In spite of the paper publication when the petitioner failed to appear and contest the suit on 09.10.2017, the case was fixed for *ex parte* hearing. After framing of issues, five witnesses on behalf of the plaintiff were examined. Thereafter, on 01.05.2018, an application was filed on behalf of the petitioner for recall of the order dated 09.10.2017, but the same was not pressed as a result of which, it was dismissed for want of prosecution. Thereafter, again, an application was filed on 01.05.2018 for recall of the order dated



09.10.2017, the said application has been rejected by the trial court vide impugned order dated 04.10.2018.

4. Having regard to the facts noted above, in the opinion of this Court, no illegality can be found in the order passed by the trial court whereby the application of the petitioner dated 01.05.2018 has been rejected. The conduct of the petitioner shows that he himself is responsible for the suit being heard *ex parte*. Despite receipt of summons and registered notice through paper publication, he refused to appear before the court and contest the matter and when five witnesses have already examined on behalf of the plaintiff, he has filed an application for recall of the order whereby the case was fixed *ex parte*, but the same was also not pressed was allowed to be dismissed for want of prosecution. Thereafter, another application has been filed seeking recall of the order dated 09.10.2017, which has been rejected by the trial court.

5. The application is devoid of any merit. It is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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