

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.84 of 2015

1. Jamila Khatoon, w/o Late Shekh Karimuddin.
2. Akila Khatoon, w/o Amrul Hoda, d/o Late Shekh Karimuddin. Both r/o Amwa Bijaypur, P.O. Dauda Rampur, P.S. Kuchai Kote, District- Gopalganj.

... .. Petitioner/s

Versus

1. Anwar Alam, s/o late Shekh Karimuddin, r/o village- Amwa Bijaypur, P.O. Dauda Rampur, P.S.- Kuchai Kote, District- Gopalganj.
2. Sakila Khatoon, w/o Harun Rashid, d/o Late Shekh Karimuddin, r/o village- Rampur, P.O.- Bathua Bazar, P.S.- Phulwariya, District- Gopalganj.
3. Musmat Gauri Munna, w/o Late Shekh Karimuddin
4. Kunti Begam, d/o Late Shekh Karimuddin
5. Bibi Begum, d/o Late Shekh Karimuddin. R/o village – opp.party 3 to 5 Amwa Bijaypur, P.O.- Dauda Rampur, P.S.- Kuchai Kote, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Shrivastwa, Advocate
For the Respondent/s : Mr. S. Rahman, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 08-02-2019

Heard the parties.

2. This civil revision has been preferred, under Section 115 of the Code of Civil Procedure, against the order dated 23.01.2013, passed by the learned Sub-Judge-VII, Gopalganj in Miscellaneous Case No.04 of 2010, arising out of Title Suit No.446 of 2000.

3. Opposite Party No.1, *Anwar Alam* had brought Title Suit No.446 of 2000 in the court of learned Sub-Judge-VII, Gopalganj. The petitioner and other opposite parties were defendants in the suit. They had already appeared in the suit.



However, since the plaintiff left *Pairvy* of the suit, the suit was dismissed for default on 04.10.2007. Thereafter, the plaintiff filed Miscellaneous Case No.04 of 2010, for restoration of the suit and by the impugned order dated 23.01.2013, the dismissal of the suit has been set aside and the suit has been restored by learned Sub-Judge-VII, Gopalganj.

4. The challenge to the impugned order is on the ground that the explanation of the plaintiff that he was doing job in *Orissa* and the situation which developed in the meantime thereat did not allow him to attend the case was not acceptable. Therefore, there was no reasonable explanation for acceptance of the case of non-appearance and ground for setting aside the dismissal of the suit.

5. The petitioner had contested the miscellaneous case on the ground that the plaintiff was appearing in the same court premise in the referred criminal matter. Hence, it cannot be said that the plaintiff was not appearing in the court, rather he deliberately left *Pairvy* of the case, for the reasons best known to him and the court below should not have accepted the explanation and should not have interfered with the dismissal of the suit.



6. The impugned order would reveal that cost of Rs.1000/- (Rupees One Thousand) has been awarded against the plaintiff.

7. The impugned order would reveal that the civil suit was transferred from the court of learned Sub-Judge-I, Gopalganj to the court of learned Sub-Judge-VI, Gopalganj and thereafter to the court of learned Sub-Judge-IX, Gopalganj, where the same was dismissed for non-prosecution. Nothing has been brought on the record that notice of transfer of the suit was ever given to the plaintiff or his pleader.

8. In the case of *Sri Vishnu Kant Jha V. Sri Dinesh Jha and others* reported in *AIR 1993 Patna 135*, a Division Bench of this Court, considering the identical matter of transfer of the record from one court to another and non-service of notice of transfer to the party affected and held in paragraph-15 of the judgment, which reads as under:

“Further question would arise in this case as to what procedure should be followed in relation to the party who is appearing, namely, who has filed a case through lawyer or is contesting the same through lawyer by filing Vakalatnama in the case. In cases where transfer order has been passed suo motu without giving notice to any of the parties or the same has been passed upon an application filed by any of the parties without giving any notice to other party, in such an eventuality, where a party has appeared in a case through counsel, the Court should give notice of transfer to the counsel of the parties who have already entered appearance. In case, counsel for the parties refuse to accept notice of transfer and show their inability to work before the transferee court, the court would be obliged to sent notice to those parties



whose counsel have refused to accept notices of transfer. If neither such steps are taken nor it is proved that such a party had knowledge of transfer of the case from any other source, then it can be safely said that “sufficient cause” was shown within the meaning of O. IX R. 4, 7, 9 and 13 of the Code and the final order passed by transferee court either dismissing the suit for default or passing ex parte decree of order, would be liable to be set aside on this ground alone.”

9. Apparently, the plaintiff had reasonable cause for non-appearance in the suit due to no notice of transfer. Hence, the impugned order setting aside dismissal of the suit though on different ground cannot be interfered with for the reason that the case is covered by the judgment aforesaid.

10. However, it is evident that litigation was prolonged due to laches on the part of the plaintiff. Hence, the court below should have allowed reasonable cost to compensate for the harassment to the opponents. In my view, just and appropriate cost would be Rs.20,000/- (Rupees Twenty Thousand) payable by the plaintiff to the defendants in the facts and circumstances of the case, as narrated above.

11. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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