

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1135 of 2018

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Sri Anil Kumar Jha S/o Late Sushil Jha Resident of Village Hussianpur, Tole
Satlakha Post Rahika, P.S. Rahika, District Madhubani.

... .. Petitioner

Versus

Smt. Simmi Jha W/o Sri Sanjay Kumar Jha Resident of Village Murliya Chak,
Post Genaur P.S. Bisfi, District Madhubani.

... .. Respondent

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Appearance :

For the Petitioner	:	Mr. Anant Bhaskar, Adv. Mr. Sanjay Kumar Jha, Adv.
For the Respondent	:	Mr. Yogendra Mishra, Sr. Adv. Mr. Arvind Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 29-08-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 31.05.2018 passed by the learned Sub-Judge-IV, Madhubani in Title Suit No. 161 of 2014 by which an application filed by the petitioner on 11.05.2017 for recall of the order dated 29.05.2015 whereby the case was fixed for *ex-parte* hearing has been rejected.

2. It has been contended by the learned counsel for the petitioner that for want of knowledge the petitioner could not appear before the court below and ignoring the said fact the case was fixed for *ex-parte* hearing. As soon as the petitioner came to know about filing of the suit, he appeared. Since filing of written statement was barred and the case was fixed for *ex-parte* hearing, an application was filed on 11.05.2017 for recall of the order dated



29.05.2015, but the same was dismissed without assigning any reason. The court below failed to appreciate that recalling the order dated 29.05.2015 fixing the suit for *ex-parte* hearing would have served the cause of justice.

3. It would be relevant to note here that on 21.12.2018 when the matter was taken up, while notice was issued to the respondent, further proceedings in Title Suit No. 161 of 2014 pending in the court of Sub-Judge-IV was ordered to be stayed.

4. An interlocutory application vide I.A. No. 01 of 2019 has been filed on behalf of the respondent to vacate the order of stay.

5. In the said interlocutory application, it has been stated that inspite of valid service of summons the petitioner neither appeared nor filed written statement only with a view to prolong the litigation and to unnecessarily harass the respondent. After various adjournments in the case, the learned Sub-Judge posted the case for *ex-parte* hearing on 29.05.2015.

6. In para 12 of the said application the respondent has pleaded that the sole object of the petitioner is to harass the respondent by prolonging the matter on one ground or the other and in order to avoid this situation the respondent would have no grievance if time schedule from the stage of filing written



statement by the present petitioner, framing of issue and disposal of the case is fixed by this Court with a condition that if the petitioner fails to comply with any of the terms settled by this Court, the trial court will resume *ex-parte* hearing.

7. Pressing para 12 of the interlocutory application, learned counsel for the petitioner submitted that the petitioner also wants that the schedule of time be fixed by this Court for early disposal of the case. He submitted that if the petitioner fails to comply with that schedule, the court may proceed *ex-parte* against him.

8. Regard being had to the facts and circumstances of the case as also the pleadings advanced before this Court, with the consent of the parties, the application is disposed of on the following terms :-

- (a) The order dated 31.05.2018 passed by the learned Sub-Judge-IV, Madhubani in Title Suit No. 161 of 2014 is set aside.
- (b) The petitioner is directed to file his written statement within three weeks from today.
- (c) The trial court shall frame issues within three weeks thereafter.



- (d) After framing of issues, the plaintiff-respondent shall lead her evidence within four weeks.
- (e) After closure of the plaintiff-respondent's evidence, the defendant-petitioner shall be required to lead his evidence within four weeks.
- (f) Once the parties lead their evidence, the trial court shall hear arguments on behalf of the parties within three weeks thereafter.
- (g) Once the arguments are completed, the trial court shall be required to pronounce its judgment in accordance with the provisions prescribed under Order XX, Rule 1 of the CPC.

7. In case the petitioner fails to comply with any of the terms referred to above, the trial court shall resume *ex-parte* hearing of the suit.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.09.2019
Transmission Date	

