

Item-26.	04-11-2022	FMA 3666 of 2016 CAN 1 of 2016 (old CAN 2948 of 2016)
sg	Ct. 8	Gouri Sankar Mishra Versus Biplab Kumar Panda

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant. The appellant was also not represented on the earlier occasion. The appeal was presented on 29th February, 2016 and thereafter no attempt was made to move this appeal. in view of our earlier direction, we propose to take up this matter on the basis of available record.

The appeal is arising out an order dated 17th February, 2016 passed by the learned Civil Judge (Senior Division), 2nd Court, Contai, Purba Medinipur in a Misc. Judicial Case No. 43 of 2012 arising out of the other Suit No. 86 of 2011.

The appellant filed an application under Order 9 Rule 13 of the Code of Civil Procedure along with an application for condonation of delay. The plaintiff filed a suit for eviction of the defendant/applicant on the ground of reasonable requirement. Although the matter proceeded ex-parte as the defendant did not enter appearance in spite of service of summons. One of the grounds taken in the plaint is that it has been clearly stated that the suit premises was kept under lock and key and the defendant does not require the suit premises for his personal use and occupation whereas the suit property is of the reasonable requirement of the plaintiff. Although the suit was heard ex parte but the decision based on appreciation of the evidence. It was decided on evidence and on merits. It appears before the trial court that since the

defendant was not residing, the trial court passed an order for substituted service of the suit. In the application for setting aside of the ex parte decree, the defendant could not offer any plausible explanation for not accepting the writ of summons or the reason for his continuous absence from the suit premises. Moreover, the appellant alleged that he was sick for which he could not attend court and such explanation was disbelieved as the appellant was unable to prove his illness or incapacity to attend court during trial.

Under such circumstances, we do not find any reason to interfere with the order passed by the learned trial judge. This appeal accordingly stands dismissed. The application is also accordingly dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)