

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1543 of 2018**

Reshma Kumari @ Reshma Chand, d/o Renu Begum, resident of Mohalla- Shukla Road, Zohra Lane, ward no.40, Post- H.P.O., P.S.- Town, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. Parveev Saba, d/o Gulam Ali, Resident of Mohalla- Teen Kothiya, P.O.- H.P.O., P.S.- Mithanpura, District- Muzaffarpur.
2. Munna Khan, s/o Late Md. Shakil, resident of Mohalla- Shukla Road, Zohra Lane, ward no.40, Post- H.P.O., P.S.- Town, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr. Arun Kumar Prasad, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER**

4 02-02-2023 Heard learned counsel for the parties.

This application has been filed against the order dated 03.04.2018 passed by learned Sub-Judge, 1st Muzaffarpur in Eviction Suit No. 05/2017 whereby the eviction suit has been fixed for ex-parte hearing as well as against the subsequent order dated 07.08.2018 whereby petition with a prayer to recall the order dated 03.04.2018 has been rejected.

The facts, in brief, are that the plaintiff/respondent filed Eviction Suit No.05/2017 against petitioner/defendant on ground of personal necessity. The Trial Court on paper publication, accepted the valid service upon defendant and vide impugned order dated 03.04.2018 fixed the case for ex-parte



hearing against defendant and adjourned the case for 19.04.2018. The defendant/petitioner appeared on that day and on service of copy of plaint filed petition with prayer to grant leave to contest the suit and also a petition to recall the order dated 03.04.2018 but the same was rejected.

Learned counsel for the petitioner submits that the learned Trial Court failed to appreciate that from perusal of entire ordersheet it does not reflect that there was satisfaction of the Court regarding valid service of summons upon the defendants. He has pointed out that from the perusal of order dated 05.01.2018 it will be evident that there is no service report on record rather on that date plaintiff had filed petition for paper publication which was allowed without following the due process.

Further, he has submitted that when the petitioner came to know about the filing of suit, he appeared in the Court and the impugned orders have been passed without considering that the defendant has not committed any willful laches and thus impugned orders are illegal and not sustainable in law.

Learned counsel for the respondents submits that summon was issued upon defendant but he failed to appear and only appeared after paper publication and passing of order for



ex-parte hearing which shows the delaying tactics of the petitioner.

Every trial is a voyage of discovery in which truth is the quest. Truth alone has to be foundation of justice. The entire judicial system is created only to discern and find out the truth.

The right to be heard in a suit is one of the tenets of principles of natural justice. The service of summons to the party cannot be a mere formality but should, in fact, be reality. When the Court feel satisfied that the summon was duly served, the Court is conferred with a discretion to make an order that the suit be heard ex-parte. The discretion so conferred like all other discretions, has to be exercised judicially, guided by reason and not at whim, caprice or fancy. It requires a conscious application on mind on the part of the Court of satisfy itself on the service of summons. Any default or casual approach on the part of the Court may result in depriving a person of his valuable right to participate in the hearing.

The overriding consideration is that the procedural laws are handmaid of justice; they are intended to facilitate and not to obstruct the course of substantive justice.

In civil litigation costs is a panacea which heals every sole unless the facts and circumstances of a particular case



indicate that the indulgence shown by Court may itself become a source of sores. The object of prescribing procedure is to advance the cause of justice.

In the present case, it appears that summons was not properly served on the defendant/petitioner.

In view of the facts and circumstances of the case and considering the submission on behalf of the parties and in the interest of justice, the impugned order dated 03.04.2018 and 07.08.2018 are set aside subject to cost of Rs. 2000/- to be paid in the Trial Court by the petitioner/defendant no.1 to the plaintiff.

Accordingly, this Civil Miscellaneous Application is allowed with the aforesaid direction.

(Sunil Dutta Mishra, J)

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