

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1151 of 2018

Chandrika Mahto, Son of Nathuni Mahto, Resident of Motitola, P.O.- Belwa More, P.S.- Chautarwa, District- West Champaran, Presently resident of Bilaspur, P.O.- Harinagar, P.S.- Ramnagar, District- West Champaran.

... .. Petitioner/s

Versus

1. Most. Anar Devi, Wife of Late Sukat Mahto, Resident of Bilaspur, P.O.- Harinagar, P.S.- Ramnagar, District- West Champaran.
2. Ramawati Devi, Wife of Nirmal Kushwaha, Daughter of Late Sukat Mahto, Resident of Malkauli Patkhauli, P.S.- Bagaha, District- West Champaran.
3. Maya Devi, Wife of Balkhandi Kushwaha, Daughter of Late Sukat Mahto, Resident of Semras Bazar, P.S.- Semra, District- West Champaran.
4. Parwati Devi, Wife of Motilal Kushwaha, Daughter of Late Sukat Mahto, Resident of Denmarwa, P.S.- Ramnagar, District- West Champaran.
5. Jamwanti Devi, Wife of Bhuti Kushwaha, daughter of Late Sukat Mahto Resident of Pipra Kothi, P.S.- Valmikinagar, District- West Champaran.
6. Shyam Sunder Mahto, Son of Late Ramagya Mahto, Resident of Village- Belaspur, P.S.- Ramnagar, Distt- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyendra Rai, Advocate
For the Respondent/s	:	Mr. Prabhakar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 20-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been
filed under Article 227 of the Constitution of India against the



order dated 31.01.2018 passed in Miscellaneous Appeal No. 03 of 2014 by the learned Additional District Judge, 2nd, Bagaha, West Champaran whereby the Miscellaneous Appeal preferred against the order dated 03.03.2014 passed by the learned Munsif, Bagaha, West Champaran in Miscellaneous Case No. 22 of 2007 filed under order IX, Rule 13 has been dismissed.

3. The brief facts of the case are that Title Suit No. 98 of 99 was filed by the husband of respondent no. 1 in which the petitioner was defendant who has filed his written statement. In 2006, the evidence of the plaintiff was going on and the petitioner to earn his livelihood, went to Chandigarh and requested his younger brother to do *pairvi* in the case.

4. However, his brother left doing *pairvi* from 15.09.2006 and not informed the petitioner. When the petitioner came back to his village in last week of August 2007 then he came to know that his brother has left doing *pairvi* in the case, he got information from his advocate that the evidence of plaintiff was closed on 25.01.2007 and the date was fixed on 02.02.2007 for evidence of the petitioner/ defendant and on that date the evidence of defendant was closed. On 07.06.2007, the learned trial court passed *ex parte* judgment against the petitioner/ defendant and decree was prepared on 15.06.2007.



5. The petitioner filed the Miscellaneous case being Miscellaneous case No. 22 of 2007 under Order IX Rule 13 of CPC for setting aside the *ex parte* judgment and decree passed in the Title Suit. The said Miscellaneous Case was dismissed by the learned trial court vide order dated 03.03.2014 and the petitioner against the said order filed Miscellaneous Appeal No. 03 of 2014. It has also been dismissed vide impugned order dated 31.01.2018 against which the present Miscellaneous Application has been filed.

6. Learned counsel for the petitioner has submitted that the learned court below failed to appreciate that because of genuine reason the petitioner could not appear on the date fixed and accordingly, the *ex parte* order was fit to be set aside. The date of evidence of the petitioner/ defendant was fixed on 02.02.2007 and on the same date without giving any further opportunity the evidence of the defendant was closed. He has further submitted that the learned Appellate Court below also failed to appreciate the same and dismissed the Miscellaneous Appeal which is liable to be allowed.

7. *Per contra*, learned counsel for the respondents submits that while deciding the matter, learned court below does not find any sufficient evidence in support of the claim



made by the petitioner and his brother in cross-examination admitted that he does not have any concern with his brother as they are living separately and has no concern with the case in particular. The petition of the petitioner is not bonafide but filed with a view to prolong the litigation.

8. Lastly, he has submitted that impugned order is reasoned order and is not liable for any interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution.

9. As per provision of Order IX Rule 13 C.P.C., the *ex parte* decree can be set aside by the Court in case, the Court is satisfied that the summons have not been duly served or the party was prevented by the sufficient cause from appearing before the Court when the suit was called for hearing.

10. It is well settled that approach of the Court while dealing with an application under Order IX, Rule 13 C.P.C. would be liberal and elastic rather than narrow and pedantic. However, in case the matter does not fall within four corners of Order IX Rule 13 C.P.C., the Court has no jurisdiction to set aside *ex parte* decree.

11. In order to determine the application under Order IX, Rule 13 C.P.C. the test which has to be applied is



whether defendant honestly and sincerely intended to remain absent when the suit was called for hearing or sufficient cause is there because of which the defendant could not be blamed for his absence. There should be a reasonable defence. “Sufficient cause” is an elastic expression and the Court, in its discretion, has to consider the sufficient cause in the facts and circumstances of every individual case.

12. Having heard the learned counsel for the parties and on perusal of the material on record, it appears that in the Title Suit, petitioner appeared on 18.02.2006 and filed his written statement. Thus, it is clear that he had the knowledge of the Title Suit No. 98 of 99. The petitioner has not made the *pairvi* on 15.09.2006 and also on 02.02.2007 and has not made his *pairvi* till the passing of the judgment, the court found that there was no sufficient reason for not appearing the petitioner before the trial Court.

13. In view of the facts and circumstances of the case, this Court does not find any jurisdictional error or illegality in the impugned order which is a well reasoned order and is not liable to be interfered by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.



14. This Civil Miscellaneous Application is,
accordingly, dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	04.07.2023
Uploading Date	20.07.2023
Transmission Date	

