

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.104 of 2017

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Birendra Kumar Mishra

... .. Petitioner

Versus

Jay Karn Yadav and Ors

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Vivekanand Vivek, Advocate
	:	Mr. Debesh Kumar Poddar, Advocate
	:	Mr. Rang Nath Pandey, Advocate
For the Opposite Parties	:	Mr. Dronacharya, Sr. Advocate with
	:	Mr. Ram Shankar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 26-04-2023

Re: I.A. No. 8889 of 2017

This interlocutory application has been filed under Section 5 of the Limitation Act for condoning the delay in filing the instant Civil Revision Application.

Learned counsel for the petitioner submits that the petitioner is about 78 years old and he was under treatment for Dialed Cardio Myopathy in Ranchi under strict observation of doctor from 16.05.2016 to 15.06.2017 due to which, during this period, he was unable to move and as such, he could not file the instant civil revision application within time.

Vide order dated 11.07.2019, notices were issued to the opposite party nos. 1 and 2 and they appeared through their counsel. Learned counsel for the opposite parties has not raised any objection regarding condonation of delay in filing of the



civil revision application.

In the aforesaid facts and averments made in the interlocutory application, I.A. No. 8889 of 2017 is allowed and condone the delay in filing the instant revision application.

Re: Civil Revision Application 104 of 2017

This Civil Revision Application has been filed against the order dated 05.04.2016 passed by the learned Sub Judge, Gogri, Khagaria in Miscellaneous Case No. 51 of 2007 whereby, the application filed by the defendant no. 1 under Order IX Rule 13 of the Code of Civil Procedure has been allowed and consequently Title Suit No. 51 of 2007 has been restored.

Learned counsel for the petitioner submits that after filing the suit, notices were issued to the defendants. The defendant no. 1 did not appear despite valid service of notice and the suit proceeded ex parte against the defendant no. 1 *vide* order dated 09.09.2008. The defendant nos. 2 and 3 appeared on 29.01.2008 but they did not file their written statement and as such, *vide* order dated 05.08.2008, they were debarred to file written statement and thereafter, five witnesses on behalf of the plaintiff were examined. Besides the oral evidence, the plaintiff has also filed several documents which were marked as exhibits



to decide the issues involved in the suit but neither any document on behalf of the defendants were produced nor the witnesses were cross-examined.

After considering the pleadings and evidence adduced by the plaintiff, the suit was decreed on 03.06.2011 by the Sub Judge-I, Gogri, Khagaria. Thereafter, defendant no. 1 filed a petition on 04.07.2011 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the judgment and decree dated 03.06.2011 passed in Title Suit No. 51 of 2007. Learned counsel for the petitioner submits that the plaintiff filed rejoinder and raised objection stating therein that application under Order IX, Rule 13 of the Code of Civil Procedure is not maintainable either in law or in facts and the application is also barred by limitation in terms of Article 123 of the Indian Limitation Act.

From perusal of the impugned order, it appears that the impugned order which is half page order and it did not contain the basic requirement provided under Order 9, Rule 13 of the Code of Civil Procedure. Order IX Rule 13 provides a remedy for the defendant to apply to set aside the *ex-parte* decree which was passed due to non-appearance of the defendant in the suit. The court only sets aside the *ex-parte* decree when the defendant presents a satisfactory reason in



court or the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. The learned court below has allowed the Miscellaneous Application No. 06 of 2011 without discussing any evidence adduced by the applicant (defendant no. 1) for that the summons was not duly served or that he was prevented by any sufficient cause and also without dealing with the period of limitation for filing application under Order IX, Rule 13 of the Code of Civil Procedure. The said Civil Revision Application was filed on 04.07.2011 and *ex parte* judgment and decree was passed on 03.06.2011. The learned lower court did not discuss about the time period consumed in obtaining certified copy of the *ex-parte* judgment.

In view of the aforesaid facts, the trial court has committed gross error and irregularity in passing the impugned order.

The impugned order is, therefore, set aside with a direction to pass a fresh order in detail in terms of Order IX, Rule 13 of the Code of Civil Procedure, after dealing with the evidences, which were adduced by the parties within three months.

With the aforesaid direction/observation, the Civil



Revision Application is allowed.

(Khatim Reza, J)

Gaurav Kumar/-

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