

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1390 of 2017

Smt. Janki Devi, Wife of Late Dayabant Pathak, Resident of Village -Pali,
Police Station-Ghanshyampur and District-Darbhangha.

... .. Petitioner/s

Versus

1. Ram Lakhan Mukhiya, Son of Late Kebal Mukhiya, Resident of Village -Meswai, P.O.-Pali, Police Station-Ghanshyampur, District-Darbhangha.
2. Ram Chandra Mukhiya, Son of Jhauuli Mukhiya, Resident of Village -Meswai, P.O.-Pali, Police Station-Ghanshyampur, District-Darbhangha.
3. Anjani Kumar, Son of not Known, Sub Divisional Officer, Biraul, District-Darbhangha.
4. Rakesh Kumar, Son of Not Known, the then Station Officer, Ghanshyampur Police Station, Datbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Girish Chandra Jha, Advocate
For the Respondent/s : Mr. Krishna Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

10 12-01-2026 Heard learned counsel for both the parties.

2. The present Civil Miscellaneous application has been filed for setting aside the order dated 17.03.2017 passed by learned Sub Judge, (Biraul), Darbhanga in Misc. Case No. 10 of 2016 whereby and whereunder the learned court below has dismissed the Misc. Case No. 10 of 2016 for default on 24.02.2016, which was filed for restoration of Money Suit No. 03 of 2011.

3. Learned counsel for the petitioner submit that petitioner has filed the Money Suit No. 03 of 2011 against the defendant respondent in which despite of direction by the court,



format of publication was not filed for issuance of service against the defendant/respondent and due to which his case was dismissed as default vide order dated 24.02.2016. To set aside the aforesaid dismissed order plaintiff/petitioner filed Misc. Case no. 10 of 2016 which was also dismissed in which it was held by the trial court that there is no such provision to restore any case dismissed under order 7 rule 11 and there is a provision to file fresh suit.

4. From perusal of the order dated 24.02.2016, it transpired that vide order dated 13.06.2014 plaintiff petitioner was directed to file format of publication so that substituted service be made against defendant/respondent which was not filed and on repeated call none appeared on behalf of the plaintiff/petitioner. Hence, the suit was dismissed for default. In order to restore the aforesaid money suit no. 03 of 2011 plaintiff/petitioner filed petition under Order 9 Rule 13 CPC and Section 151 of CPC, which is not correct provision of law because no ex-parte decree was passed in the aforesaid money suit. The correct provision was to file Misc. Case under Order 9 Rule 4 which has not been filed in this case by the plaintiff/petitioner. So, plaintiff petitioner has adopted a wrong procedure and court has also indicated the wrong procedure in his impugned order i.e. Order 7



Rule 11 CPC. Both the above mentioned procedural sections are legally and factually wrong and not applicable in the facts of the case.

5. So, in the aforesaid facts and circumstances, plaintiff petitioner is directed to file appropriate petition under Order 9 Rule 4 to restore the aforesaid Money Suit No. 03 of 2011 before the Trial court. The trial court shall take all necessary endeavor to pass appropriate order within a period of three months in accordance with law. Both the parties are also directed to cooperate in the trial. The appeared defendant who are respondent second set in this Misc. Case is also directed to cooperate in the aforesaid case/proceeding before the learned Trial Court.

6. Accordingly, the instant application stands disposed of.

(S. B. Pd. Singh, J)

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