

**In the Court of Sub-Judge-I,
Madhubani
Title Suit No. 19 of 2018/C.I.S. No. (P.S. 7 of 2018)
Ghuran Pandit Vs. Ram Balak Pandit**

ORDER

23.10.2019 Today date is fixed for order. Attendance has been filed on behalf of plaintiff and defendants through their learned counsel.

A petition has been filed on behalf of defendant no. 5 on dated 17.06.2019. Copy of this petition has been served to learned lawyer for the plaintiff.

By this petition learned lawyer for the defendant no. 5 has prayed that this case has been fixed for ex-parte against this defendant no. 5 and he had no knowledge of the suit earlier and when he came to know about the case that the case was fixed ex-parte against him to file this present petition for contesting the suit. It is further stated that the negotiation between both parties regarding compromise of the suit is going on, due to this he could not appear in the suit and the case was fixed ex-parte against this defendant. He prays to recall the ex-parte order dated 05.07.2018.

Learned counsel for the plaintiff opposed this petition by filing reply to this petition on dated 20.07.2019. He submitted that the petition filed by the defendant no. 5 is not maintainable and it is fit to be rejected.

Having heard both the parties and after perusal of the case record it transpires that the defendant no. 5 appeared after issuing personal service of summon. That the case was fixed ex-parte on dated 05.07.2018 one plaintiff witness has been examined during the ex-parte evidence after that plaintiff filed the present petition on dated 17.06.2019. Although defendant had full

Contd..... on Page 2

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(Continued.....)

knowledge of the case due to his personal service of summon but it is well settled law that the parties must be given opportunity to contest the suit for just and proper adjudication of the case on merit. Accordingly, in the light of above said facts and circumstances and interest of justice the above said petition dated 17.06.2019 is allowed after recalling the ex-parte order dated 05.07.2018 with cost of Rs.800/- (rupees eight hundred).

**Later on
23.10.2019**

A petition has been filed on behalf of defendant no. 1 on dated 17.06.2019. Copy of this petition has been served to learned lawyer for the plaintiff.

By this petition learned lawyer for the defendant no. 1 has prayed that this case has been fixed for ex-parte against this defendant no. 1 and he had no knowledge of the suit earlier and when he came to know about the case that the case was fixed ex-parte against him to file this present petition for contesting the suit. It is further stated that he resides at Delhi and when he came at his house then he know about this present suit and after that he filed the present petition. He prays to recall the ex-parte order dated 05.07.2018.

Learned counsel for the plaintiff opposed this petition by filing reply to this petition on dated 20.07.2019. He submitted that the petition filed by the defendant no. 1 is not maintainable and it is fit to be rejected.

Having heard both the parties and after perusal of the case record it transpires that the defendant no. 1 appeared after issuing personal service of

Contd..... on Page 3

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(Continued.....)

summon. That the case was fixed ex-parte on dated 05.07.2018 one plaintiff witness has been examined during the ex-parte evidence after that plaintiff filed the present petition on dated 17.06.2019. Although defendant had full knowledge of the case due to his personal service of summon but it is well settled law that the parties must be given opportunity to contest the suit for just and proper adjudication of the case on merit. Accordingly, in the light of above said facts and circumstances and interest of justice the above said petition dated 17.06.2019 is allowed after recalling the ex-parte order dated 05.07.2018 with cost of Rs.800/- (rupees eight hundred).

Case is fixed on 21.11.2019 for further proceedings.

Dictated

Rakesh Kumar Tiwari
Sub-Judge-I, Madhubani