

**In the Court of Sub-Judge-I,
Madhubani
Title Suit No. 429 of 2015/C.I.S. No. 4291 of 2015
Pratibha Devi and Ors. Vs. Durga Devi**

ORDER

20.12.2019 Today date is fixed for order. Both sides are absent.

Defendant Durga Devi filed a petition on dated 13.12.2018 to recall the P.W.2.

Learned counsel for the defendant submitted that on dated 16.11.2018 the suit was fixed for adducing for evidence by the plaintiff. That the defendant is a *pardanasin* lady and the case is being looked after by her husband. That on dated 16.11.2018, the husband of the defendant had gone out of Jaynagar in connection with his business and, therefore, no one could come to court to give instruction and filing of the case to the lawyer of the defendant and, therefore, proper step could not be taken in the suit on behalf of the defendant. That the defendant has come to know that on 16.11.2018 the evidence examination-in-chief of P.W.2 was filed in the court and the said witness was discharged on the same day.

Plaintiffs filed a rejoinder dated 24.04.2019 in which he stated that petition filed by the defendant is not maintainable and fit to be rejected.

Heard both sides and perused the case record. From perusal of the same it transpires that the suit was filed in the year 2015 and presently it is running for plaintiff evidence. From perusal of the case record it also transpires that in the suit issue has been framed on dted 13.07.2017 and after that suit was running for plaintiff evidence. On dated 16.11.2018, P.W.2 Gauri Sankar appeared in the Court and filed his affidavit but no one turned up for

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(Continued.....)

his cross-examination. Therefore, the above witness was discharged by the Court. Although, defendant was given sufficient opportunity to cross the P.W.2 but is well settled law that party must be given opportunity to contest the suit for just and proper adjudication of the case on merit. Therefore, in the interest of justice the petition filed by the defendant on dated 13.12.2018 is hereby allowed at the cost of Rs.700/- (rupees seven hundred) and plaintiff is directed to produce P.W.2 Gauri Sankar for cross-examination on the next date.

Case is fixed on 06.03.2020 for plaintiff evidence.

Dictated

Rakesh Kumar Tiwari
Sub-Judge-I, Madhubani