

COURT OF MUSIF, PATNA CITY

Title Suit No. 23 of 2018

C.I.S. No. 175/18

ORDER

22.10.2019.

Attendance has been filed on behalf of both sides. Today the case record has been produced for passing the order on the petition filed on behalf of the defendant under Section 151 of CPC. From perusal of the record I find that it has been stated by the learned counsel for the defendant that he do not want to filed any rejoinder in this case but is ready for hearing.

Heard both sides. Learned counsel for the defendant while moving his petition has argued that on the very last date defendant had appeared and got the knowledge that the case has been proceeded ex-parte against him and ex-parte order has been passed against the defendant on 15.07.2019. He, further, has stated that the defendant was out of station and, therefore, could not appeared earlier and make a prayer to recall the order dated 15.07.2019 and to give the opportunity to the defendant to file his written statement. On the other hand, learned counsel for the plaintiff has stated that the defendant has full knowledge of this case as there is personal service of summons on the record and he deliberately with ulterior motive, do not come up before the Court and so he may not be given any chance.

Heard and perused the case record. I find that this case has been proceeded ex-parte on 15.07.2019. I, further, find that there is personal service of summons to the defendant and hence, the service was declared sufficient on 09.05.2019. I also find that one witness, Amit Jaiswal (PW-1) has been examined on 27.07.2019 and on next date i.e., on 16.08.2019 this recall petition has been filed. Service report goes to show that the defendant has full knowledge of this case and no document in support of his contention has been filed by the defendant but it is the settled principle of law that everyone should get an opportunity to participate in the case. Hence, in the interest of justice, the petition of the defendant is hereby allowed but seeing the conduct of the defendant as well as the stage of the case with cost of Rs.1,500/- payable by the defendant to the plaintiff. Put up on 5.11.2019 for further proceeding.

Dictated

Munsif, Patna City.