

Court of Civil Judge Junior Division, Shahpur Patory
(Samastipur)

Title Suit No.- 67/ 2022

Binod RaiPlaintiff
Versus
Smt. Maheshwari Devi and others.Defendants

ORDER

01-09-2023

Parties present, record has been produced for order on the petition of the defendant no. 1 dated 20/01/2023 with prayer to recall order dated 09/12/2022 by which the suit proceeded ex-parte against them. Rejoinder to this petition has been filed on 28/03/2023.

It has been submitted by the ld counsel for the petitioner that the Defendant no. 1 has come to know that this suit is proceeded ex-parte against this petitioner vide order dt. 09/12/2022. That after getting information, the defendant appeared in this case. The petitioners are ready to contest the suit. It is therefore, prayed to recall the ex-parte hearing.

The plaintiffs have ardently opposed the prayer of the petitioner and submitted that the petition under reply is vague, vexatious and untenable in law as well as on facts. That the defendant no. 1 has not stated as to from whom they could come to know that the suit is being heard ex parte. They have not stated about non serving of summons. They have not explained their previous non appearance. It is further submitted that in this suit, summons were served through peon, through registered posts and through notice of publication in daily newspaper. That no cogent reasons has been assigned in the petition of petitioner defendant for non appearance in proper time. It is therefore prayed to dismiss the petition under reply.

Upon hearing both side perused the record, it appears that the vide order dated 09/12/2022, the suit has been proceeded ex parte against all non appear defendants. For effective and complete adjudication of this suit, it appears proper to allow the defendant to contest this suit. **The Apex Court in Kailash vs. Nanhku and Ors. (2005 (4) SCC 480).** held that *“In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”*

In the light of aforesaid discussion as well as having regard to the facts and circumstances of this case, the petition of the defendant dated 20/01/2023 is allowed subject to payment of cost of Rs. 700/- (seven hundred rupees) to the plaintiffs, the order dated 09/12/2022 with respect to defendant no.1 is hereby recalled. Put up on 29-09-2023 for further proceedings

Munsif,
Shahpur Patory