

IN THE COURT OF MUNSIF, NARKATIAGANJ WEST CHAMPARAN

T.S NO- 286/2019

DEEPAK KUMAR TULSYAN.....PLAINTIFF

VS.

SMITA UTTAM & OTHERS.....DEFENDANTS.

DATE	ORDER	REMARKS
18.05.2024	<p>Attendence filed on behalf of both parties.</p> <p>Case called out for hearing on the point Petition filed by Defendant no-1 on dated 13/09/2023 under order 9 rule-7 of CPC.</p> <p>The present petition is filed on behalf of Defendant no-1 under order 9, rule-7 on dated 13.09.2023 for setting aside of Ex-parte order dated 19/05/2023. Plaintiff filed rejoinder petition on dated 18/10/2023.</p> <p>The learned counsel of Defendant submitted that Defendant no-1 has appeared today and upon perusal of record ld. Defendant counsel came to know that all the process of appearance has been concluded by the court and Paper publication has also been done and there after Ex-parte proceeding has been initiated against the all the Defendants. further stated that Defendant no-1 Smita Uttam used to live with her husband outside district and due to which she does not receive any notice or summon compliance from the court and also about paper publication she did not know as she live with her husband out-side district. She further stated that she just 2-3 days before she came to know about the present suit and today she appeared in the court. Defendant no-1 further stated that she want to contest the suit and prayed for recall of Ex-parte order dated 19/05/2023.</p> <p>On the other side plaintiff file rejoinder of aforesaid petition on dated 18/10/2023 and stated that this petition is not maintainable and defendant have all knowledge about the suit and by knowingly she does not appeared in the court. Plaintiff further stated that Defendant no-1 does not live with her husband outside the district rather she lives at her village.</p>	

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<p>Continue 18.05.2024</p>	<p>further stated that Defendant no-1 has not given any reasonable cause for his non-appearance so petition dated 13/09/2023 is not maintainable and prayed for Rejection of it.</p> <p>Heard the Learned Advocate for both the parties.</p> <p>Perused the petition under discussion and Rejoinder filed by other side. Upon perusal it appears that Defendant no-1 Smita Uttam husband namely sanjay kumar is a assistant professor, Department of Psychology, presently posted at Samastipur collage since 01/07/2022 and Defendant no-1 Living with her husband at there. So she did not appeared in this case as she did not get any notice or summon compliance issued by the court.</p> <p>It appears that due to Unavoidable circumstances the Defendant no-1 could not remain present.</p> <p>Rule-7 of order-9 Provides the procedure in cases where the defendant was absent in the previous hearing but appears in the subsequent hearing and gives a reasonable or good cause for his absence in the previous hearing. It provides that in a situation where court has adjourned the hearing of suit Ex-parte and the defendant provides a good cause for his absence .</p> <p>In the case of Arjun singh V.Mohinder Kumar , (1964) SCR (5)946 the supreme court held that if the defendant is able to show any good or Reasonable cause for his absence on the fixed day of hearing , he will not be Penalised or forbidden to participate in further proceeding. However, he can not claim his position back as it was at the commencement of the trial.</p>	
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<p>Continue 18.05.2024</p>	<p>Rule-9 of order-9 CPC is based on the principle that the defendant has a right to defend himself until the suit is completely decided by the court, and this must be understood liberally as held in East India Cotton Mfg.Co.Ltd- V. S.P Gupta (1985)DRJ348.</p> <p>Accordingly, after perusal of the petition and rejoinder and fact and circumstances of the case and with Referance to above discussed case law. it appears that due to unavoidable circumstances the Defendant no-1 could not remain present. Thus, there is sufficient ground to set aside the ex-parte order. Hence, this application dated 13/09/2023 filed by Defendant no-1 is allowed with cost of 2500/- and Ex-parte order passed vide order dated 19/05/2023 is set-aside and Defendant no-1 is hereby permitted to take part in the suit proceeding as provided in order-9 Rule-7 of CPC.</p> <p>Put up on dated 14/06/2024 for further proceeding.</p> <p style="text-align: center;">MUNSIF NARKATIAGANJ</p>	
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