

(1947) 09 PAT CK 0021
In the Patna High Court

Babu Lal Sahu and Others

APPELLANT

Vs

Hakim Tamizuddin and Others

RESPONDENT

Date of Decision : 22-09-1947

Acts Referred:

Citation : AIR 1948 Patna 238

Hon'ble Judges : Sinha, J

Bench : Division Bench

Judgement

Sinha, J.—This application in revision is directed against the orders, of the learned Munsif of Begusarai expunging the defendant 10 from the suit and refusing to recall that order when the plaintiffs appeared to show cause against the order expunging that defendant. It appears, with reference to the order-sheet of the suit, that on 19th June, 1946, both parties applied for time and one Bhutoo Mian, karpardaz of defendant 10, filed certain documents, as per list; but the Court ordered, notwithstanding that, that the summons had not been properly served on that defendant. The plaintiffs were directed to file processes for fresh service on the said defendant 10. On 19th July 1946, the order sheet says that the summons to newly added defendant, that is to say, defendant 10, was served, but it was not proper. Therefore, the plaintiffs were directed to take fresh steps for service on the defendant. On the 3rd of August, the plaintiffs applied for time to take necessary steps, and, on the 6th, the plaintiffs made an application supported by an affidavit that substituted service be, effected against the said defendant. The Court passed orders after hearing the parties on 7th August 1946, allowing the plaintiffs application for substituted service, but gave them only three days' time, that is till 10th August 1946, to take the necessary steps. This order did not indicate that travless steps were taken by that date, the name of defendant 10 would be expunged from the record. On 6th September 1946; the plaintiffs applied for time to take the necessary steps for substituted service against that defendant. The Court ordered that defendant 10 be expunged (as ?) requisite steps had not been taken.

2. In my Opinion, the Court below has acted against the provisions of Rule 5 of Order 9, Civil P.C. In the first place, the Court gave the plaintiffs only three days" time to take the necessary steps for substituted service. That in itself was wholly insufficient. The Court did not indicate in, its order sheet that it was what is here called a peremptory order.

3. In my opinion the Court below would have exercised a sound judicial discretion if it had allowed" the plaintiffs" prayer for time to take the necessary steps in the matter. Not having done so, the plaintiffs again applied to the Court for recalling that order on 20th November 1946. This delay must partly be attributable to the intervening Puja holidays. I am informed that the requisite steps for service on defendant 10 have already been taken.

4. In those circumstances, I would set aside the orders of the learned Munsif expunging the name of defendant IP from the record, and direct that the plaintiffs should be given an opportunity of having defendant 10 before the Court after due service of the summonses. There will be no Order as to costs in this Court.