

(2001) 09 PAT CK 0012
In the Patna High Court
Case No : C.R. No. 13 of 2001

Bijendra Sharma and Others

APPELLANT

Vs

Ganesh Sharma and Another

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2002) 1 PLJR 125

Hon'ble Judges : P.N. Yadav, J

Bench : Single Bench

Judgement

P.N. Yadav, J.—The instant revision is directed against the order dt. 23.9.2000 passed by Munsif, Jehanabad in title suit No. 54/98 whereby and where under he recalled the order dt. 23.2.2000 fixing the case for ex parte hearing subject to the condition of payment of a sum of Rs. 100/- by the Petitioners-Defendants to the Plaintiffs, however, the prayer for recalling the two witnesses already examined on behalf of the Plaintiffs was refused on the ground that the Petitioners would be permitted to resist the suit from the date of their appearance. The Petitioners are aggrieved with the second part of the order rejecting their prayer for recalling the witnesses referred to above.

2. Order IX Rule VII of the CPC provides that where the Court has adjourned the hearing of the suit ex parte, and the Defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

3. The learned Counsel appearing on behalf of the Petitioners contended that in view of the provisions enshrined in Order IX Rule VII of the CPC Petitioners would be deemed to have appeared on the date fixed by the Court for their appearance and in that view of the matter they could not be denied their right to cross-examine the witnesses examined by the Plaintiff- O.Ps, prior to recall of the order fixing the case for ex parte hearing. The contention seems to be pregnant with

meaning and substance.

4. In the facts and circumstances attending to the case it is deemed, just proper and expedient in the interest of justice that the two witnesses examined by the Plaintiffs before the appearance of the Petitioners should be re-called for their cross-examination. Let the learned, Court below be directed to take steps for recalling the said witnesses for their cross-examination by the Petitioners on such terms and conditions as it may deem fit.

5. With the aforesaid observations, the revision is disposed of.