
(2015) 04 JH CK 0102
In the Jharkhand High Court
Case No : WP(C) No. 5012 of 2013

Dhaneshwar Mahto

APPELLANT

Vs

Krishna Kumar Mehta

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 3 JLJR 39

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Ayush Aditya and Shashank Shekhar, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J—Aggrieved by order dated 8.5.2013 in Title Suit No. 142 of 2012 whereby, application seeking recall of order dated 14.3.2013 and the application seeking extension of time have been rejected, the present writ petition has been filed. Title Suit No. 142 of 2012 was filed by one Krishna Kumar Mehta who is respondent in the writ petition. The suit was admitted for hearing on 11.9.2012 and summons were issued to the defendant. The petitioner appeared on 8.5.2013 however, before that, the suit was already set for ex parte hearing vide order dated 14.3.2013. In these facts the petitioner filed aforesaid applications which have been dismissed vide order dated 8.5.2013.

2. The learned counsel for the petitioner submits that order dated 19.2.2013 records that summons was received by the son of the defendant-petitioner herein though, the record indicates that summons were issued on 22.9.2012 only. The petitioner after he came to know about pendency of the Title Suit No. 142 of 2012, promptly appeared on 8.5.2013 and filed application seeking recall of order dated 14.3.2013 and for extension of time. It is submitted that the petitioner who is sole defendant in suit may be granted one opportunity to contest the suit.

3. The learned counsel appearing for the respondent refers to order-sheet in Title Suit No. 142 of 2012 and submits that after the plaintiff filed his evidence on affidavit, the petitioner appeared and filed the aforesaid applications which have rightly been dismissed by the Trial Court.

4. The proceeding in Title Suit No. 142 of 2012 discloses that summons were directed to be issued to the defendant on 11.9.2012 and the case was adjourned on subsequent 3 occasions however, order dated 18.9.2012, 19.12.2012 and 21.12.2012 do not indicate that service report was received by the Court. The Trial Court took note of the service report in order dated 19.2.2013 and adjourned the matter for 14.3.2013 when the suit was set for ex parte hearing against the defendant. Order dated 8.5.2013 indicates that the defendant appeared and filed the aforesaid two applications on the same day, when the Trial Court has taken on record the evidence on affidavit of the plaintiff. Order dated 8.5.2013 whereby, the applications filed by the petitioner seeking recall of order dated 14.3.2013 and application seeking extension of time have been rejected, does not reflect reasons for rejecting the aforesaid applications except, that summons were received by the son of the petitioner. I am of the opinion that the procedure adopted by the Trial Court was erroneous and contrary to the procedure prescribed in the Code of Civil Procedure.

5. In application dated 8.5.2013 seeking recall of order dated 14.3.2013, no ground except, that the defendant had no knowledge of the pendency of the case, has been taken. The petitioner has not disclosed the source of knowledge and date of knowledge of the pendency of the suit. As noticed above, after the case was admitted on 11.9.2012, it was listed on 5 occasions and only on 14.3.2013 the suit was set for ex parte hearing against the defendant. Considering the above facts, I am of the opinion that the petitioner/defendant should be granted one opportunity to file written statement however, subject to payment of cost which is quantified at Rs. 15,000/-. Let written statement be filed by the petitioner/defendant within a period of four weeks, on payment of Rs. 15,000/- to the plaintiff. The writ petition stands allowed, in the above terms.