
(1991) 01 PAT CK 0022
In the Patna High Court
Case No : Civil Revision No. 1599 of 1990

Mali Ram Mahabir Prasad	Vs	APPELLANT
Smt. Shanti Debi and Others		RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : AIR 1992 Patna 66 : (1991) 39 BLJR 1219 : (1991) 1 PLJR 480 : (1992) 2 RCR(Rent) 156

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi and Sheonath Pd. Sunderka and Sunil Kumar, for the Appellant; Sri Nath Singh and Navniti Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present revision application is directed against the order dated 24-9-1990 passed in Misc. Appeal No. 22 of 1989 by the learned 1st Additional District Judge, Muzaffarpur, by which he has affirmed the order dated 29-4-1989 passed by the Munsif, East Muzaffarpur, whereby he had dismissed the petition filed by the petitioner for recalling or setting aside the ex parte decree.

2. The facts, in short, are that the opposite parties had filed Eviction suit No. 1 of 1987 for eviction of the petitioner from the suit premises. The suit was filed on 6-1-1987 on the ground of personal necessity u/s 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter to be referred to as "the Act" only). Pursuant to the filing of the suit, summonses were issued fixing 20-1-1987 for the appearance of the defendant-petitioner. On 20-1-87 i.e. the date fixed for appearance of the defendant, the non-gazetted employees went on strike completely jeopardizing the functioning of the Court. The strike continued for about a month i.e. up to 21-2-87. It is apparent from the order-sheet of the

suit that because of the said strike the case was not taken up on 20-1-87. The records of the case were thereafter placed for the first time before the learned Munsif only on 10-3-1987. From the order-sheet it is also clear that no judicial order was passed adjourning the case to 10-3-1987. Still the plaintiff appeared on this date and orders were passed for passing ex parte decree of eviction on the ground that the defendant had failed to appear. Accordingly, on 13-3-1987 an ex parte order of eviction was passed and the suit was decreed. The petitioner having learnt about the said ex parte decree, filed an application for setting aside the same.

3. On rejection of the aforesaid petition, the petitioner preferred the Miscellaneous Appeal No. 22 of 1989 giving rise to the impugned order. The appellate court has dismissed the appeal by holding that the petitioner has miserably failed to make out any case of reasonable cause in order to get the decree set aside. According to learned lower appellate court it was a well known fact that even during the period of strike, the courts used to sit either at Ijlas or in chambers and used to give adjourned dates in the cases pending before them. He has further held that the petitioner could have easily ascertained the date by making little effort of inspecting the records and since it was not done, the petitioner was not entitled to the relief claimed by her.

4. I fail to appreciate the reasonings given by the lower appellate court particularly in view of the judicial orders recorded in the eviction suit. Admittedly after passing the first order directing for issuance of summons the case was abruptly taken up for hearing on 10-3-1987. It does not appear from the record that this was the date fixed in the case. There is nothing in the order-sheet of the case to show as to how the plaintiff came to know about this date. Admittedly on 20-1-87 on which date the petitioner was required to appear pursuant to the summons served upon her, the trial court could not take up judicial work because of the strike of the non-gazetted employees. The records were not placed before him and he had not passed any order on that date. In view of the aforesaid strike and because the case was not taken up for judicial consideration, the petitioner could not have appeared in the case pursuant to the summons served upon her.

5. A stand has been taken on behalf of the plaintiff-opposite parties that as per the evidence recorded in the case, some cause-list was posted on the Board of the Court-house indicating therein that the case had been adjourned to a particular date. Rule (4) of the Civil Court Rules provides that at the close of each day a list shall be prepared and posted up in the court-house showing all cases for the hearing or adjourned hearing of which dates have been fixed during the day, and the dates so fixed. The date of the case has to be fixed by passing a judicial order on the order-sheet of the concerned case and only after such date is fixed, it can be shown in the cause-list. Admittedly in the present case no such date had been fixed by passing a judicial order. Further as per Rule (2) of the said Civil Court Rules, every civil court has to maintain a diary in the prescribed

form which, inter alia, contains the adjourned dates. In the present case nothing has been brought on the record to show that any such entry was made in the court's diary.

6. For the above reasons, it was wholly misconceived on the part of the lower appellate court to proceed on the presumptions, which are obviously contrary to the record, that even during the strike period orders for adjournment were always being passed in all cases and the petitioner could have ascertained the date by inspecting the records.

7. Even otherwise, in my view, in abnormal situations like strike in question, which can hardly be resisted by any litigant by applying any amount of skill or ability of his own, the courts should not insist for strict adherence to the procedural law so as to prejudice the interest of such litigants. In legal sense such incidents are well covered by the expression "Acts of God." (See Halsbury's Laws of England, Fourth Edition, Vol. 9, para 458). Therefore, the maxim *Actus Dei Neminis Facit Injuriam* (an Act of God causes legal injury to no one) will have its full application in the present case. Moreover, in the case of *R.A. Arunachala Aiyar Vs. C. Subbaramiah*, a Bench of the Madras High Court has held,

"It is not right in cases of this kind that the man should have his case disposed of without being heard. The Courts are here so that people who have cases can have those cases heard and determined, and it should never be the intention of the court that a man should be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part or something which can be put right, so far as other side is concerned, by making the man to blame pay for it."

8. With utmost respect, I entirely agree with the aforesaid view. In the present case there is neither any material nor any finding to the effect that there was any misconduct or gross negligence on the part of the petitioner, which can be attributed to his non-appearance in the case either pursuant to the summons or on the alleged adjourned date.

9. For the reasons aforesaid, I set aside the ex parte decree and direct the court below that the petitioner be granted fresh opportunity by fixing a date for complying with the requirements of Section 14(4) of the Act and thereafter the Eviction suit may proceed in accordance with law.

10. Accordingly, this application is allowed. However, there will be no order as to costs.