

(2005) 08 PAT CK 0095

In the Patna High Court

Case No : Civil Revision No. 1036 of 2004

Smt. Nirmala Mishra and Others

APPELLANT

Vs

Sri Ram Janki Jee, Deities and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2005) 4 PLJR 711

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

**Advocate : Surendra Kumar and Amrendra Kr. Srivastava, for the Appellant;
Harendra Kumar and R.D. Prasad, for the Respondent**

Judgement

Dr. J.N. Bhatt, C.J.—After having heard learned counsel appearing for the parties and considering the facts and circumstances, the impugned order is quite unreasonable and perverse requiring interference of this Court by invocation of the provision of Section 115 of the Code of Civil Procedure, 1908 (C.P.C). A Suit being Title Suit No. 230 of 2002 was filed by the respondents-original plaintiffs. Summons of the Suit was served but the original defendant Nos. 1, 2 and 3, petitioners herein, could not appear to contest. The contention of the petitioners has been that summons was sent at a wrong address. Apart from any reason, in an ongoing civil litigation when the defendant party comes and prays for allowing him to present a Written Statement, ordinarily, in the larger interest of justice the permission can be granted as the presence of a party would help to adjudicate the dispute effectually and efficiently. Obviously, once an ex parte order has been passed, ordinarily, the party seeking help and file a Written Statement has also to pray for setting aside an ex parte order against him. However, merely by inadvertence or phraseology in the application it cannot be interpreted that while submitting such an application for presentation of the Written Statement an ex parte order cannot be set aside. The procedural law cannot over ride substantial rights of the party unless the relief sought is contrary to law.

2. In the larger interest of justice, this Revision Application is allowed and the impugned order is quashed and set aside, as well as, the ex parte order recorded by the trial court while giving an application for presentation of the Written Statement suffers from the vice for not passing order of recalling an ex parte order of the trial court. The trial court is directed to proceed with the further proceedings early. There shall be no order as to costs. This Revision is allowed at the stage of admission itself upon merits upon consensus.