

IN THE COURT OF SMTI PRIYANKA SAIKIA, MUNSIFF

NO. 2, SONITPUR, TEZPUR, ASSAM

Case No: Misc(J) case No. 22/2019

(I/c Title Suit : 133/2018)

Munindra Kumar Bhuyan –vs- Pulak Jyoti Bhuyan

26.10.2022

Both parties are represented.

Heard both parties.

Perused the case record and petition no. 192/2019 dated 28.01.2019 wherein Proforma defendant No.3,4,6 & 7 have prayed for vacating ex-parte order dated 01-12-2018 passed by this Court in T.S. 133 of 2019.

It is seen that the said petition has been filed under Order IX Rule 13 read with Section 151 of CPC.

After going through the record I am of the opinion that the petition ought to be filed under Order IX rule 7 of C.P.C for setting aside ex-parte order but the counsel for the petitioners has mentioned the wrong provision on the head of the petition.

It appears that due to a typographical error the said petition filed on behalf of the Proforma defendant No.3, 4, 6 & 7 reads the relevant provision to set aside the ex-parte order as Order IX Rule 13 and not correctly as Order IX Rule 7.

In the said petition, proforma defendant No.3, 4, 6 & 7 have submitted that the registered address of the proforma defendants are totally false and fictitious and incomplete and the present address of proforma defendant No.3 is giving in this petition.

The petitioners also submitted that proforma defendant No.3 is an old lady suffering from multiple ailments and proforma defendant No.6 has received the notice but due to her old age ailment she was totally ignorant about to appear of the said suit. Further it is submitted that proforma defendant No.7 was absent at home and suffering in fever and high blood pressure and therefore she could not come to appear before this court.

The learned advocate for the plaintiff objected the petition and submitted that the ground assigned in the petition is not tenable. It is also submitted that the provisions of the petition is not correct. It is thus submitted that the petition is liable to be rejected.

I have also perused the case-record.

Order IX Rule 7 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 nonappearance, 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.

Upon perusal it appears to me that the aforesaid petition has been filed within the limitation period and the reason assigned by the petitioners is found tenable under the law.

It is settled principal of law that procedure is hand maiden of substantial justice. So, mere entering the wrong sections of law does not exclude the petitioners from seeking any relief and it would not be appropriate to reject the prayer of the petitioners on the ground that she has cited wrong provisions of law in her petition. However, the conduct of the petitioners are very irregular so in the interest of justice, I am setting aside the order dated 01.12.2018 passed in the connected Title Suit No. 133/2018 is vacated for the interest of justice.

With the above observation and order, the instant Misc. (J) Case stands disposed of on contest.