

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.170 of 2017**

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Md. Sultan Ahmad

.... Petitioner/s

Versus

Afshan Rahman & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Kumar Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 31-01-2017 Heard the learned senior counsel, Mr. T.N.Maitin for the

petitioner.

Perused the impugned order dated 02.01.2017 passed by
Sub Judge VIII, Gaya in Misc. Case No.11 of 2016 whereby the
learned Sub Judge has allowed the application under Order 9 Rule
13 C.P.C. filed by the respondents.

It appears that the Title Suit No.12 of 2007 was decreed.
The defendants-respondents filed application under order 9 Rule
13 C.P.C. alleging that she was prevented by sufficient cause from
not appearing in the case when it was called on for hearing.

From perusal of the impugned order, it appears that both
the parties adduced their respective evidences and they also
produced documentary evidences. Medical prescriptions were also
produced on behalf of the applicant of miscellaneous case. On the
basis of the evidences, the learned Sub Judge by the impugned



order came to the conclusion that the applicant i.e. respondent herein was prevented by sufficient cause from not appearing in the case when the case was called on for hearing and set aside the decree passed in the Title Suit No.12 of 2007. In the impugned order, it appears that the court below has considered various decisions cited either by the applicant or by the opposite party in the miscellaneous case and then after considering the legal position as well as after considering the oral and documentary evidences has conclusively recorded the above finding.

The Hon'ble Supreme Court in the case of **Jai Singh and Ors. vs. Municipal Corporation of Delhi and Anr., (2010) 9 Supreme Court Cases 385** has held that "the High Court cannot lightly or liberally act as an appellate court and reappraise the evidences. Generally it cannot be substituted its own conclusion for the conclusion reached by the courts below or the statutory/quasi judicial tribunal." The Hon'ble Supreme Court also held that "the supervisory jurisdiction cannot be exercised like a "bull in a china shop" to correct all errors of judgment of a court or tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."



In view of the above settled proposition of law, it cannot be said that the order passed by the court below is arbitrary, irrational or it has been passed in the manner not permitted by law or the order suffers from jurisdictional error and thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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