

C.M.A. No.28/67 of 2014/2013
(Arising out of C.S. No.67/2012)

Pradeep Kumar Palai, aged about 45 years,
S/o Late Sudarsan Palai of Vill: Kulakundhei Nuagaon,
Po/P.S: Balugaon, Dist: Khurda.

... Petitioner.

-Vrs-

- 1) Bilasini Palai, aged about 63 years, W/o Late Sudarsan Palai of Vill: Kulakundhei Nuagaon, Po/P.S: Balugaon, Dist: Khurda.
- 2) Ramesh Dalai, aged about 51 years, S/o Late Golakh Dalai of Vill/Po: Panchugaon, P.S: Banpur, Dist: Khurda. Opposite Parties.
- 3) Nabakishore Parida, aged about 32 years, S/o Rama Chandra Prida of Vill: Binjhala, Po: Harichandanpur, P.S: Banpur, Dist: Khurda styled in the original suit as Nabakishore Palai, aged about 32 years, S/o Late Sudarsan Palai of Vill: Kulakundhei Nugaon, Po/P.S: Balugaon, Dist: Khurda. ... Proforma Opposite Party.

Counsel for petitioner -- Sri A.K.Hota, Advocate,
and associates.

Counsel for Opp. Parties -- S.K.Mahapatra, Advocate,
and associates.

Date of hearing – 21.10.2014

Date of Order -- 28.10.2014

O R D E R.

This order arises out of a petition filed Under Order 9 Rule-13 of C.P. C by the petitioner Pradeep Kumar Palai.

2. The case of the petitioner, in brief, is that he was the defendant No.1 in the original suit bearing No. C.S. 67/2012. In that suit he had appeared and the case was posted to 01.11.2012 for filing of the W.S by him. On account of his illness he could not file the W.S, so the case was posted to 19.11.2012. But his illness was continuing so he could not appear on that day too and was set exparte. Thereafter the suit was heard exparte and exparte judgment was passed against him on 09.05.2013. So far as his illness is

concerned it was mentioned by the petitioner that he was suffering from acute back and joint pain from 27.10.2012 to 31.01.2013. For that he was undergoing treatment at Balugaon C.H.C. On 01.02.2013 he could recovery from his illness. Only after recovering from the illness he could know about the fact that in this suit he was set exparte and the suit was decided on exparte. Thereafter he filed this Misc case on 17.06.2013 because for Summer Vacation the court was closed from 20.05.2013 to 16.06.2014. Citing the aforesaid reason the petitioner prayed to set aside the exparte judgment and decree passed against him on 09.05.2013 and to restore the suit.

3. On the other hand the O.P. No.1 filed her show cause on the ground that the petitioner has not shown sufficient cause in his petition to set aside the exparte decree passed by the court. Further the plea taken by the petitioner regarding his illness is a cock bull story having no truth in it. Rather the petitioner had obtained a forged medical document basing upon a forged O.P.D register. To substantiate it, It is mentioned in the show cause that she had obtained the copy of the O.P.D register from the Balugaon C.H.C. which reveals that the said entry bearing No. 3367 dated 27.10.2012 vide which the petitioner is said to be treated as an indoor patient in Baluaon C.H.C is a manipulated one. It has further mentioned by the O.P No.1 that the petitioner is intentionally harassing her which can very well be seen from his conduct in the original case No. 67/12. In that suit after appearing he had taken several time for filing of the W.S but did not file the same. Rather on 19.11.2012 he did not appear and was set exparte along with defendant No.2. Thereafter the suit was posted to 3.12.12 & 11.12.12 for evidence. On 11.12.12 the evidence of one witness was recorded by the court. Subsequently the case was posted to 08.01.2013, 28.01.13, 25.02.13 and

lastly on 23.04.13 on which date the argument was heard and judgment was passed on 09.05.2013. Although the petitioner claimed that he was treated at Hospital till 31.01.2013 but he did not appear in the court for setting aside of the ex parte order till 9.5.2013. and the reason for his non- appearance till 9.5.2013 from 01.02.2013 was not explained by him. More over it is the claim of the O.P No.1 that the petitioner has also no good ground to succeed in the original suit because he is not the adopted son of late Sudarsana Palai and falsely claims himself as the son of Sudarsana Palai . Rather he is the son of Late Ganesh Palai. For this the O.P. No.1 relied upon one sale deed executed by the petitioner on 7.1.2011 vide R.S.D No.11101100044 in favour of one Sanjay Kumar Sarangi by mentioning therein that he is the son of Ganesh Palai. Citing the aforesaid facts she prayed to dismiss the petition filed by the petitioner.

4. To substantiate his claim the petitioner examined himself in the court as P.W.1 and produced the medical certificate and got it marked as Ext.1. While being examined as P.W.1 he also took the same plea mentioned in the said petition that from 27.10.2012 to 31.01.2013 he was suffering from illness and was treated at C.H.C. Balugaon. For that he could not appear in the court and the case was set ex parte. To substantiate the same he relied upon the medical certificate issued by the M.O, CHC, Balugaon marked as Ext.1 and submitted that his non- appearance was never intentional. Rather after knowing about the fate of the suit he filed this application after opening of the court which was closed due to Summer vacation. Citing the aforesaid reasons he prayed to set aside the ex parte decree. Although he has stated about his illness but he did not mention either in his petition or in his affidavit submitted as a part of his examination

in chief the date on which he came to know about the passing of ex parte judgment in C.S No. 67/12 which is necessary so as to find out whether this petition was filed within time or not. However in his cross examination para-14 he stated that on 20.05.2013 he came to know about the ex parte judgment passed by the court from his Advocate. The O.P No.1 during her examination as O.P No.1 reiterate the same thing which was claimed by her in her show cause. In addition to that she filed the copy of the O.P.D register obtained by her under R.T.I. Act along with the certified copy of the registered sale deed No.11101100044. In addition to the aforesaid two witnesses on the application of the O.Ps the O.P.D register was produced in the court by Rabindra Kumar Padhi and was examined as Court witness No.1 and through this witness relevant portion of the O.P.D register was marked as Ext.C.

5. The present petition filed by the petitioner U/o 9 Rule 13 C.P.C. Which reads as follows: " In any case in which a decree is passed ex-parte against a defendant, he may apply to the court by which the decree was passed for an order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; provided that where the decree is of such a nature that it can not be set aside as against such defendant only it may be set aside as against all or any of the other defendants also. Provided further that no court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had

notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

As per the said provision the petitioner has to satisfy the court fact that he was prevented by any sufficient cause from appearing in the court when the suit was called upon for hearing. The concept of sufficient cause has not been described anywhere. There is also no strait jacket formula to indicate what exactly construes sufficient cause. To find out the meaning of sufficient cause the peculiar circumstances of each case has also to be taken into consideration. It is also a settled principle of law that liberal approach should be taken to construe, the meaning of sufficient cause. So that a right of party can be effectually adjudicated. But at the same time the Predigament of other party must also to be taken into account who in this case is a 63 years old widow lady. It is also to be seen whether the intention of the petitioner was malicious or not. From the petition, show cause, the oral evidence led by both parties and the documents relied upon by both the parties it reveals that the petitioner had claimed that due to his illness he could not appear in the court and was set exparte. And in his absence the exparte judgment was passed. To substantiate his claim he produced the medical certificate issued by the Medical officer, CHC Balugaon;. On the other hand the O.P No.1 claimed that it is a forged one and basing upon that forged document- Ext.1 was issued. In this regard the counsel for O.P. No.1 brought the attention of the court to the relevant portion of the O.P.D register which shows that one "Pardeпта Palai, aged about 45 years R/o Kulakundhie Nuagaon" was treated in the said hospital and the name of the present petitioner is "Pradeep Kumar Palei". That part the said entry is also overwritten and corrected. The name was corrected, the age was changed

from 35 years to 45 years, the address was also corrected and superaded. So the O.P raised credibility over the said entry. On scrutiny of the said entry the contention raised by the counsel of O.P No.1 seems to be genuine. At this juncture the learned counsel appearing for the O.P No.1 relied upon the judgment of the Hon'ble court decided between Durga Prasad Agrawalla and another – versus- Sri Binoyendranath Banarjee (dead) after him Ranjan Banarjee and others fortified in (2014) (1)CLR-284 wherein the Hon'ble Court has held that “ He who seeks justice must come with clean hands in a judicial proceedings. Resorting to forgery amounts to fraud on court, which avoids all judicial acts, ecclesiastical or temporal. Fraud or collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence”. That apart as revealed from the case record he was set exparte on 19.11.2012 and the case was decided exparte on 9.5.2013. In between the suit was posted on 3.12.2012, 11.12.2012, 8.1.2013, 28.01.2013, 25.02.2013 and on 22.4.2013. Even if Ext-1 is believed to be genuine he was treated at Balugaon Hospital till 31.01.2013 and was discharged from the Hospital on 01.02.2013. After his discharge also the case record was posted on 25.02.2013 and 22.04.2013 for argument. He could have appeared in the court and filed a petition to set aside the exparte order but he did not do that. And no sufficient reason was also shown by him for his non-appearance in the court for the aforesaid period. Adding to it as mentioned earlier he had not mentioned in his petition or in his examination in chief the date of his knowledge about it . In this contest in can be said that it was the duty of this petitioner to enquire about the proceeding soon after his recovery but he did not enquire it.. More over the claim of the O.P No.1 is that the petitioner is not the real adopted son of her and her husband. To substantiate the plea she

relied upon the the sale deed produced and marked by her as Ext. B where in the petitioner mentioning himself as the son of Late Ganesh Palei had sold a land to another . On the other hand he was contesting the suit claiming himself as the adopted son of the O.P. No.1 and her husband. Citing the aforesaid facts of production of forged document , non explanation of delay after his so called recovery along with the conduct of the petitioner as shown in the said sale deed it was proved by the O.P No.1 that if the petition of the petitioner is liberally accepted it will nothing more then futile exercise and abuse of the process of the court. In this regard the counsel for the O.P No.1 relied upon judgment passed by the Hon'ble Court fortified in 106 (2008)CLT-571.

So considering the aforesaid facts I am of the opinion that the petitioner has not able to show sufficient cause for his non- appearance in the court when the suit was called upon for hearing.

. Hence it is ordered.

O R D E R.

The Misc. Case is dismissed on contest against the opposite parties without cost.

Senior Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 28th day of October, 2014.

Senior Civil Judge, Banpur.

List of witness examined for the petitioner:-

P.W.1 Pradeep Kumar Palei.

List of witness examined for the O.P.

O.P.W.1 Bilasini Palei.

List of witness examined for the Court.

C.W.1. Rabindra Kumar Padhi.

List of documents proved by the petitioner. :-

Ext-1 Medical certificate.

Et.1/a Signature of P.W.1 on Ext.1.

List of documents marked on behalf of the O.P.

Ext-A R.T.I. Copy.

Ext.B Certified copy of sale deed no. 94/12.

Ext.C Register of O.P.D.

Ext.C/1 Sl. No. 3367 dtd. 27.10.2012.

Senior Civil Judge, Banpur.