NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 351 of 2015

- Rajshree Homes Pvt. Ltd. Through Its Director Namely Shri Devendra Kumar Agrawal, S/o Daulatram Agrawal, At Present Director Namely Sapna Singhania, W/o Ramesh Kumar Singhania, Through Its Power Of Attorney Holder namely Ramesh Kumar Singhania, S/o Nathulal Singhania, Aged About 50 Years, R/o 205 Samta Colony Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh

---- Applicant

Versus

1. Raipur Nirman Pvt. Ltd. Through Director Shri Alok Singh, Aged About 40 Years, S/o Late Dharamveer Singh R/o Near Anupam Garden, G.E. Road, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh

2. M. Premshankar Rao S/o Shri M. Balbhadra Rao Aged About 59 Years R/o House No. 415, Civil Lines, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh

---- Respondents

For Applicant : Shri Manoj Paranjpe, Advocate
For Respondent No. 1 : Shri Ankur Agrawal, Advocate
For Respondent No.2 : Shri Adhiraj Surana, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board By

07/08/2015

1. Heard.

2. This M.C.C. is filed for recalling of the order dated 06/04/2015 passed in M.A. No. 12/2015. The primary ground which is raised in this M.C.C. is that the respondent/applicant though had filed the power in original M.A. on 30/03/2015, however, since the name was not displayed in the cause-list, therefore, he could not enter

appearance when the case was called for hearing, consequently the order has been passed on 06/04/2015. Learned counsel for the applicant further submits that on the second half of the day the information was given to counsel who appeared for the appeal out on first half, however, the appearance could not be procured, consequently the order continued ultimately the petition to recall the order dated 06/04/2015 is filed.

3. Learned counsel further submits that though the sale deed was made in respect of the same subject property for which the suit for specific performance was filed no reference was made to such fact and deliberate avoidance of the fact was made since the name of counsel was not displayed in the cause list.

4. Learned counsel for the respondent No.1 Raipur Nirman Pvt. Ltd. opposes the submission. He submits that during the period of the existing agreement of sale within 90 days consideration for another sale-deed was received by the seller and subsequent sale-deed is made.

5. Since the primary objection is about no opportunity of hearing was given to applicant despite the power was filed by the counsel and the name was not displayed in cause list, it leads the examine the records of original M.A. I have perused the case file of M.A. No. 12/2015 which shows that the power was filed on behalf of respondent-applicant in the M.A. on 30/03/2015, however the name was not displayed in cause list, the reason stated by the appellant since the name of counsel was not displayed in cause-list no appearance was made on behalf of respondent No. 2 appears to be correct. The perusal of the record shows that sale-deed was

attached which shows that M. Premshankar Rao one of the respondent had executed a sale-deed to Rajshree Homes Pvt. Ltd. and the copy of the plaint shows that the suit for specific performance simplicitor with permanent injunction was prayed for.

6. Admittedly the name of the counsel for respondent in original M.A. was not displayed in the cause list, therefore exparte order were passed in M.A. on 06/04/2014. These facts have been brought on notice by the counsel for applicant on an application to recall the order. Apparently there appears a mistake is committed by the court as name of counsel who filed the power was not displayed. Resulting certain facts which were required to be highlighted were not brought to the notice of the court for the reasons best known to the then appellant and deliberate ommission/commission was made. Since, no appearance was made on behalf of respondent so the Court passed the orders on submission of appellant as practically it is not possible for Court to examine such detail to check the case file to find out whether power was filed or not as the Court acted upon the appearance shown in the cause-list.

7. It is settled principles that no party should suffer for the mistake of the Court. Naturally as the name was not displayed in cause list the concerned counsel could not appear to representation of the case on behalf of them resulting into such order of injunction dated 06/04/2015. The then appellant also conveniently avoided to place facts and the order of injunction has passed.

8. In a result, after examination of case file I deem it proper to adjudicate the appeal on merits after hearing both the parties. In a consequences the order dated 06/04/2015 passed in M.A. No. 12 of

2015 is recalled. The M.A. No. 12 of 2015 is listed for hearing. The Registry is directed to list the M.A. for further hearing.

9. As the irregularity happened to pass the order dated 06/04/2015 for want of display of name of Advocate, who had already filed the power, the Registrar is directed to submit a report to this Court stating the reasons thereof.

Sd/-

(Goutam Bhaduri)

Judge

Kamde