

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 49 of 2015

1. Mathura Ratnakar S/o Late Ratan Lal Aged About 30 Years R/o Hardi (Hari), Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
2. Ganga Bai D/o Late Ratan Lal Aged About 27 Years R/o Village : Hardi (Hari), Tahsil Nawagarh, At Present Ward No. 14, Janjgir, District-Janjgir-Champa, Chhattisgarh

---- Appellant/s

Versus

1. Krishna Kanhaiya S/o Late Ratan Lal Suryavanshi Aged About 41 Years R/o Hardi (Hari), Tahsil Nawagarh, District- Janjgir-Champa, Chhattisgarh
2. Kavita Devi W/o Dharam Das Aged About 31 Years R/o Hardi (Hari), Tahsil Nawagarh, District Janjgir-Champa, Chhattisgarh
3. State Of Chhattisgarh Through : The Collector, Janjgir, District- Janjgir-Champa, Chhattisgrh

---- Respondents

Shri N.K.Chatterjee, counsel for the appellant/s.

Shri B.L.Sahu, counsel for the respondent No.2.

Shri Neeraj Sharma, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/11/2015

Heard.

This appeal is directed against impugned order dated 01/04/2015 by which, petitioner's application under Order 9 Rule 9 CPC was rejected.

2. Learned counsel for the petitioner submits that the impugned order has caused serious miscarriage of justice. The petitioner could not appear on the date of hearing as the petitioner was on duty during Board examination. On this specific ground, prayer for adjournment was made. The Court below, however, hastily rejected the application on the ground that the reason assigned for adjournment is not supported by any document. He submits that by rejecting the application, petitioner's opportunity to contest the case on merits has been closed for all times to

come.

3. On the other hand, learned counsel for the respondent opposes the prayer and submits that the Court below has rightly rejected the application because the petitioner failed to appear before the Court below and filed application for adjournment with flimsy grounds without support of any documents on the ground of Board Examination duty.

4. Taking into consideration the submission of learned counsel for the parties, I am of the view that the Court below has rejected application without considering the grounds urged for adjournment in its proper perspective. Dismissal of suit, therefore, was challenged by moving application under Order 9 Rule 9 CPC. The matter was listed for evidence for the first time before the Court. The application for adjournment clearly stated that as the petitioner is required to attend duties due to Board examination, he is unable to attend proceedings yet application was rejected. Therefore, the impugned order cannot be sustained and therefore set aside. The matter is remanded to the Court below for due consideration of petitioner's application under Order 9 Rule 9 CPC after affording opportunity of adducing oral and documentary evidence and in accordance with law as early as possible.

5. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge