

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 289 of 2015

Devendra Gupta S/o Geetaram Gupta Aged About 36 years Occupation
Business R/o Guptapara Kawardha, Police Station Kawardha, Civil and
Revenue Distt. Kabirdham Chhattisgarh

---Petitioner

Versus

Bunty @ Manish Tiwari S/o Jawaharlal Tiwari Aged about 45 years
Occupation – Business R/o Rajnagar, Rajnandgaon Marg, Distt. -
Kabirdham, Chhattisgarh.

---- Respondent

For petitioner : Shri Ajit Singh, Advocate.

Order On Board

08/07/2015

Heard.

Learned counsel for the petitioner submits and is also reflected from the records of service of notice that notice was served on the father of the respondent which amounts to service in terms of provisions contained in Order V Rule 15 CPC. Accordingly, the matter can be heard finally.

2. Learned counsel for the petitioner submits that the Court below dismissed the suit for want of prosecution due to non-appearance of the counsel on 23.6.2014. Thereafter, an application under Order IX Rule 4 read with Section 151 CPC was moved clearly stating the reason for non-appearance. The court below has however, not appreciated the reasons assigned and has rejected the application which has resulted in serious miscarriage of justice as the plaintiff is deprived to seek adjudication on the merits of the case.

3. A perusal of the order dated 23.01.2015 shows that though the Court below noted the reason assigned in the application due to which representation could not be made, those reasons have been rejected by the Court below mainly swayed by the earlier proceedings. The reasons assigned for non-appearance has not been disbelieved. There is no material to show that the application for restoration lack bonafide. The plaintiff/petitioner sought decree of specific performance based on a written agreement. Therefore, in these circumstances, I am of the view that the Court below ought to have allowed the application and restored the suit to allow the petitioner to give an opportunity to establish his case on merits.

4. In the result the impugned order is set aside. The suit is restored to its original number in accordance with law.

Sd/-

(Manindra Mohan Shrivastava)

Judge