

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 531 of 2015

1. M/s Amar Engineering Works 30 Industrial Area Nandani Road, Bhilai Tahsil And District Durg Chhattisgarh Proprietor (Wrongly Written As Partner) Kedar Nath Singhal (Now Died) Through Legal Heirs

(A) Smt. Nirmala Devi Wd/o Late Kedar Nath Singhal Aged About 77 Years R/o 165, New Civic Centre Sector -6, Bhilai, Tahsil And District Durg Chhattisgarh

(B) Dinesh Singhal S/o Late Kedar Nath Singhal Aged About 60 Years R/o 165, New Civic Centre Sector -6, Bhilai, Tahsil And District Durg Chhattisgarh

(C) Neelu Singhal Wd/o Late Kedar Nath Singhal Aged About 52 Years R/o 165, New Civic Centre Sector -6, Bhilai, Tahsil And District Durg Chhattisgarh

(D) Preeti Singhal D/o Late Kedar Nath Singhal Aged About 47 Years R/o 165, New Civic Centre Sector -6, Bhilai, Tahsil And District Durg Chhattisgarh

(E) Reetu Singhal D/o Late Kedar Nath Singhal Aged About 77 Years R/o 165, New Civic Centre Sector -6, Bhilai, Tahsil And District Durg Chhattisgarh

---- Petitioners

Versus

1. Damodar Das Singhal S/o Late Motilal Singhal Aged About 83 Years R/o 30 Industrial Area Nandani Road, Bhiali, Tahsil And District Durg Chhattisgarh

2. Smt. Sarla Devi Singhal W/o Damodar Das Singhal Aged About 78 Years R/o 30 Industrial Area Nandani Road, Bhiali, Tahsil And District Durg Chhattisgarh

---- Respondents

For Petitioners - Shri Raghvendra Pradhan, Advocate

Order On Board

17/07/2015

Heard on admission.

1. This petition, under Article 227 of the Constitution of India, is preferred against order dated 06.07.2015 passed in Misc. Civil Appeal of the defendants, by which, the appeal has been allowed and the order rejecting application under Order 9 Rule 13 CPC has been reversed, allowing judgment debtor's application for setting aside ex-parte decree.

2. Learned counsel for the petitioner argued that learned Lower Appellate Court while allowing the appeal has exceeded his jurisdiction in holding that there was sufficient cause made out for setting aside ex-parte decree. Contention of learned counsel for the petitioner is that the defendant came out with a lame excuse of having some disease, which was not of such an acute nature as to completely disable him from participating in the proceedings. The next contention is that the other defendant being the wife of defendant Damodar Das, has not come out with any sufficient cause as to why she could not appear. It is submitted that even though, she is alleged to have given power of attorney in favour of her husband Damodar Das, she, herself, had been appearing in the trial of the suit. The next submission is that the medical certificates, on which, reliance was placed, merely record certain routine ailments and did not reflect any serious disease. The next contention of learned counsel for the petitioner is that even if it is accepted that the judgment debtor had come to know about the judgment decree on 03.05.2013, there is no explanation why the application for setting aside ex-parte decree was filed on 13.06.2013. It is also submitted that the medical certificate was of the month of July, 2012 and therefore, it could not be assumed that when the ex-parte judgment was passed on 30.11.2012, the defendant continued with the ailment of such a nature as to disable him from participating in the proceedings.

3. After going through the order passed by Learned Lower Appellate Court. I find that the Court below has taken into consideration that the defendant Damodar Das was more than 82 years of age. He came out with the cause that he was suffering from various ailments. Defendant No.2 is his wife who had given power of attorney in his favour. The suit was being defended by him. It was he, who was in touch with the counsel. The Court below has also taken into consideration that the counsel had assured him that he need not come unless he is directed to appear in the Court.

4. Taking into consideration the circumstances, while considering sufficiency of cause, the learned Lower Appellate Court, which admittedly had the jurisdiction to decide the appeal, has held that sufficient cause has been shown. The ex-parte decree was passed on 30.11.2012. According to the judgment debtor, he came to know when he received Court's notice on

03.05.2013, thereafter, application for certified copy was moved and copy was received on 06.06.2013. Application for setting aside ex-parte judgment debtor was filed on 13.06.2013.

5. In view of conspectus of aforesaid circumstances, the Court below has held that sufficient cause has been shown. Sufficiency of cause is essentially in the realm of discretion of the Court. The only requirement of law is that the discretion is required to be exercised judiciously. This having been done by the Court below, I do not find any jurisdictional error warranting interference with the order passed by the Court.

6. The petition is, therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava

J U D G E

Rekha