

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 827 of 2015

1. Chandulal S/o Ramadhar Parganiha, Aged About 67 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Plaintiff

---- Petitioner

Versus

1. Rupeshwar S/o Ramadhar Parganiha, Aged About 38 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
2. Santram S/o Ramadhar Parganiha, Aged About 36 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
3. Ramswarup S/o Ramadhar Parganiha, Aged About 33 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
4. Smt. Janabai Wd/o Ramadhar Parganiha, Aged About 62 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
5. Kumari Chandrabhaga D/o Ramadhar Parganiha, Aged About 40 Years R/o Village Bohardih, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
6. Sanjay S/o Kumar Verma, Aged About 9 Years Minor Through Legal Guardian Father Narendra Kumar Verma Son Of Ramprasad Verma, Resident Of Khamtarai, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
7. Narendra Kumar Verma S/o Ramprasad Verma, R/o Khamtarai, Tahsil Berla, District Durg (Now District Bemetara) (Chhattisgarh).....Defendant
8. State Of Chhattisgarh, Through The Collector, District Durg, Now District Bemetara (Chhattisgarh).....Defendant

---- Respondents

For Petitioner.
For Respondent/State.

: Ms Rupali Chobey, Advocate.
: Shri R. K. Jaiswal, Panel Lawyer.

Order

06/10/2015

Heard.

1. This petition under Article 227 of the Constitution of India has preferred against the Order dated 22.07.2015 by which petitioner's appeal an order of dismissal of suit in default has been dismissed.

2. Learned counsel for the petitioner submits that the petitioner has been deprived of adjudication of his claim on merits by dismissal of his suit for want of prosecution. Learned counsel for the petitioner submitted that the suit was dismissed on 08.03.2007 as the petitioner/plaintiff could not appear due to ill health and engaged counsel also did not appear. Thereafter, an application for setting aside the dismissal order was submitted alongwith an application for condonation of delay. Even though, specific reasons for non-appearance was stated before the Court below, without examining all the grounds on merits, the Court below has dismissed the application only on the grounds of delay. Against that an order, appeal was preferred which too has been dismissed by adopting restricted approach and thereby completely scuttling petitioner's valuable rights to seek judicial redress.

3. After going through the order passed by the learned lower appellate Court, I find that Court below has taken into consideration the grounds raised by the petitioner in his application for setting aside the order of dismissal of suit for want of prosecution. The Court below has recorded that the case was listed for recording evidence on 13.07.2004 but since then for one reason or the other, the plaintiff failed to lead evidence. Even though, last opportunity to lead evidence was granted but the plaintiff again failed to lead evidence or to appear himself or through his counsel. Grounds of illness has been raised but no medical certificate have been submitted.

4. Therefore, taking into consideration the aforesaid aspects of the matter and failure of the petitioner to lead evidence since 2004, dismissal of appeal warrants no interference in exercise of supervisory jurisdiction and power conferred under Article 227 of the Constitution of India.

5. Petition is accordingly, dismissed.

Sd/-

Manindra Mohan Shrivastava

Judge