

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 36 of 2002

1. Shashtri Shikshan Samiti, Hardi Bazar, Tahsil Katghora, District Korba, Chhattisgarh.
2. Shri Bodhram Kanwar, aged about 55 years, son of Muritram, Chairman, Shastri Shikshan Samiti, Hardi Bazar, Tahsil Katghora, District Korba, Chhattisgarh

---- Appellants

Versus

Smt. Sushila, aged about 44 years, Wife of Shri Balmukund Bhardwaj, Occupation Teacher, Resident of Village Hardi Bazar, Tahsil Katghora, District Korba, Chhattisgarh

---- Respondent

For Appellants	: Shri Ram Kumar Tiwari, Advocate.
For Respondents	: None.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

24/06/2016

1. This appeal is directed against the order dated 06.07.2001 passed in Miscellaneous Appeal No. 13 of 1999 by the 4th Additional District Judge, Bilaspur, whereby the learned trial court has rejected the application filed by the Appellants under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter called 'the CPC') for setting aside the ex-parte judgment and decree dated 08.12.1995 passed in Civil Suit No. 7-B/1992 (Smt. Sushila Bai v. Shashtri Shiksha Samiti & Another).
2. Briefly stated facts of the case are that the Respondent-Sushila Bai filed a suit for recovery of Rs. 60,000/- from the Appellants herein on the ground that the Appellants had engaged her as a Teacher in the school but had not paid her salary for more than two years and therefore, she claimed Rs. 60,000/- on account of her

salary. This suit was filed in the year 1990. The Appellants who were the defendants in the said suit were duly served. They also engaged a counsel to appear on their behalf. However, the counsel did not appear and on 24.08.1992 the Appellants/Defendants were proceeded ex-parte and the plaintiff's evidence was recorded on 08.12.1995. Thereafter, the ex-parte decree of Rs. 60,000/- alongwith interest was passed in favour of the Respondent/Plaintiff on 08.12.1995. On 13.10.1999, i.e. after more than three years, the Appellants filed an application for setting aside the ex-parte judgment and decree dated 08.12.1995 which has been dismissed by the learned Trial Court on 06.07.2001. Hence, this appeal.

3. I have heard learned counsel for the Appellants.

4. The main grounds urged by the Appellants is that the Appellants had engaged a counsel and the counsel connived with the Respondent/Plaintiff and purposely remained absent. It is also alleged that on many occasions, the Appellants tried to contact the counsel but the counsel told that the suit has been dismissed. This is not a case where the Appellants allege that there was negligence on the part of their counsel. In fact, this is a case where the Appellants allege that their counsel in fact committed a very serious offence by colluding with the other side to get a decree passed against them. It is further the case that the Appellants only came to know about this fact on 12.10.1999 and thereafter, they approached the Court immediately. There is no explanation why no action was taken against the counsel. In a case of this nature, the party was free to file a suit against the counsel also both for damages and recovery of the amount decreed in favour of the Respondent/plaintiff.

5. It is very easy for a party to raise allegation of this nature. But the allegation must be substantiated with proper evidence. There is no such material on record. The suit was filed on 05.02.1990. The case was proceeded ex-parte

judgment and decree was passed on 08.12.1995. Thereafter, the application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree was filed on 13.10.1999 i.e. after more than three years. There is a gross negligence on the part of the Appellants. The Appellant No. 1 is a Society. The immediate action that should have been taken was to obtain a certified copy of the judgment and decree when it was informed by their counsel that the suit was dismissed. There is no explanation why no such attempt was made to obtain the certified copy of the judgment and decree when it is alleged that the counsel had informed the Appellants that the suit was dismissed.

6. In these circumstances, I do not find any irregularity in the order passed by the Court below. The appeal is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE