

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 26 of 2016

1. Ajay Verma S/o Shobharam Verma, aged about 33 years, R/o Village Narayanpur, Tahsil and District Narayanpur, Chhattisgarh

---- Appellant

Versus

1. Devashish Bhadra S/o Sonatan Bhadra (dead) through Smt. Deepa Bhadra W/o Late Devashish Bhadra, aged about 52 years, R/o Village Narayanpur, Tahsil Narayanpur, District Narayanpur, Chhattisgarh
2. Chief Executive Officer, Janpad Panchayat Narayanpur, Tahsil & District Narayanpur, Chhattisgarh
3. Raghunath Kuldeep S/o Somaru Kuldeep, R/o Village Narayanpur, Tahsil & District Narayanpur, Chhattisgarh
4. President Janpad Panchayat Narayanpur, Tahsil & District Narayanpur, Chhattisgarh
5. Tahsildar, Narayanpur, Tahsil & District Narayanpur, Chhattisgarh
6. State of Chhattisgarh, Through: Collector Narayanpur, Tahsil & District Narayanpur, Chhattisgarh

---- Respondents

For Appellant – Mr. Rajendra Kumar Patel, Advocate.

For Respondent No. 1 – Mr. Shobhit Koshta, Advocate.

For Respondent No.3 – None, though served as per office note dated 20-10-2016.

For Respondents 5 and 6 – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

25-10-2016

1. Heard the M.A. on motion.
2. Learned counsel for the appellant submits that the matter pending before the Court below was dismissed for want of prosecution on 12-01-2010. Thereafter, he had filed an application for restoration of the said matter, the same was dismissed on 17-08-2010. Against the impugned order of the Court below passed on 17-08-2010 in Misc. Civil Appeal No.7/2010, the appellant had preferred Misc. Appeal before this Court. This Court vide order dated 10-01-2012 passed in Misc. Appeal No.82/2010 by disposing of the said Misc. Appeal allowed the appeal and set aside the impugned order dated 17-08-

2010 subject to payment of cost of Rs.500/- payable to the respondents within 2 months from the date of order of this Court dated 10-01-2012. After payment in stipulated time, this Court directed the first appellate court to restore the Misc. Case No.7/2010 thereafter as the appellant not complied with the order of this Court by paying cost of Rs.500/- to the respondents within 2 months from the date of the order, i.e., 10-01-2012, the Court below vide order dated 25-01-2016 dismissed the Misc. Suit No.2/2012 wherein it is held as the appellant not complied with the order passed by the High Court, hence, it would not be appropriate to permit for deposit of cost as directed. Hence, quashed the proceedings on non-compliance of the order of this Court. Against the said order dated 25-01-2016, the appellant has preferred the instant Miscellaneous Appeal under Order 43 Rule 1 of the Code of Civil Procedure, 1908.

3. Learned counsel for the appellant would submit that as the original matter is not disposed of on its merit, on account of non-payment of the cost within the stipulated period, the said Misc. Suit No.2/2012 is dismissed. The impugned order dated 25-01-2016 be set aside and Misc. Appeal No.7/2010 may be restored for its disposal in accordance with law.

4. Learned counsel for the appellant would further submit that the non-payment of cost is bonafide and on account of confusion. Hence, the order dated 25-01-2016 may be set aside.

5. Perused the documents annexed along with the instant M.A.

6. On due consideration, it appears that this Court vide order dated 10-01-2012 in para 7 directed that :-

"7. In view of above, the appeal is allowed and the impugned order is set aside subject to payment of cost of Rs.500/- payable to the respondents within a period of two months from today. The first appellate Court is directed to restore the miscellaneous case No.7/2010. As the

parties have appeared before this Court, there is no need to issue notice to the respondents. The first appellate Court shall proceed to decide the miscellaneous case in accordance with law on its own merit."

It goes to show that the order of this Court was very clear that the appellant was required to pay cost of Rs.500/- to the respondents within a period of two months from the date of that order. The appellant never came to this Court for extension of time. With this, the Court below had no opportunity to comply with the order passed by this Court.

7. On due consideration, I do not see any illegality or impropriety or incorrectness in the order impugned as the Court below complied the order of this Court and not proceeded further as the appellant failed to comply with the orders of this Court and the same cannot be held as bonafide or under confusion.

8. The instant MA is liable to be and therefore is dismissed summarily at the motion stage itself.

9. The MA dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE