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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.579 of 2016

Lokesh Garg, aged about 47 years, S/o Late Madan Lal Garg, R/o 8, Shanti Nagar, Jagdalpur (C.G.), at present Bhatagaon Chowk, Ring Road No.1, Raipur, District Raipur (C.G.)

(Plaintiff/Appellant)

---- Petitioner

Versus

1. Manish Garg, aged about 44 years, S/o Late Madan Lal Garg, R/o 8, Shanti Nagar, Jagdalpur, District Bastar (C.G.)

2. Smt. Shiv Kumari Garg, aged about 79 years, W/o Late Madan Lal Garg, R/o 8, Shanti Nagar, Jagdalpur, District Bastar (C.G.)

3. Smt. Prachi Garg, aged about 40 years, W/o Manish Garg, R/o 8, Shanti Nagar, Jagdalpur, District Bastar (C.G.)

4. Smt. Neeta Gupta, aged about 54 years, W/o Prateek Kumar Gupta, R/o Bhuteshwar Road, P.S. Moti Nagar, Sagar, District Sagar (M.P.)

5. Dr. Neera Goel, aged about 52 years, W/o Dr. Vipin Goel, R/o Recovery Hospital, New Plasiya, Indore, District Indore (M.P.)

6. Smt. Shikha Agrawal, W/o Dr. Dulichand Agrawal, aged about 51 years, R/o New Adarsh Nagar, Durg, District Durg (C.G.)

7. Smt. Ranju Goel, aged about 50 years, W/o Pradip Goel, R/o Near Natraj Hotel, Main Road, Shahdol, District Shahdol (M.P.)

8. Smt. Asha Rani Agrawal, aged about 48 years, W/o Vijay Agawal, R/o Geetanjali Nagar, Bilaspur, District Bilaspur (C.G.)

9. Smt. Mani Gupta, aged about 47 years, W/o Dr. Rajendra Gupta, R/o Risali, Bhilai, District Durg (C.G.)

10. State of Chhattisgarh, Through Collector, District Bastar (C.G.)

(Defendants)

---- Respondents

For Petitioner:	Mr. Jitendra Pali, Advocate.
For Respondents No.1 to 9:	Mr. Manoj Paranjpe, Advocate.
For State/Respondent No.10:	Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/12/2016

1. The petitioner is plaintiff before the trial Court. He filed a suit for declaration and injunction but ultimately, the matter was fixed for framing issues but issues could not be framed and on 16-4-2015, for want of plaintiff's appearance, the suit was dismissed. The plaintiff on 24-4-2015 filed an application for restoration of suit which was also dismissed by order dated 22-3-2016 finding no sufficient cause for non-appearance when the suit was called for hearing against which he filed an application under Order 43 Rule 1(c) of the CPC which was also dismissed by the impugned order against which this writ petition under Article 227 of the Constitution of India has been filed.

2. Mr. Jitendra Pali, learned counsel for the petitioner/plaintiff, would submit that the petitioner though has shown sufficient cause for non-appearance when the suit was called for hearing on 16-4-2015 but yet, the trial Court did not restore the suit and rejected the application under Order 9 Rule 9 of the CPC and at least by imposing cost, the suit could have been restored, as the dispute is between brothers and sisters.

3. Mr. Manoj Paranjpe, learned counsel for the defendants / respondents No.1 to 9, would submit that temporary injunction was granted in favour of the petitioner / plaintiff and taking benefit of that injunction, he did not appear before the trial Court and got the suit dismissed and unnecessarily dragging the defendants / respondents in different proceedings. He

would further submit that the order rejecting the application for restoration of suit and the order rejecting the application under Order 9 Rule 9 of the CPC has rightly been passed by the trial Court.

4. I have heard learned counsel for the parties and perused the impugned order and also copies of other documents with utmost circumspection.

5. It is not in dispute that the petitioner and the respondents are brothers and sisters and there is dispute of family property between the parties. When the suit was dismissed, it was at initial stage. Even otherwise, suit for declaration of title and injunction has to be decided on merits. Application for restoration of suit was filed within eight days from the date of dismissal of suit and as such, after going through the application, I find that sufficient cause has been shown and the respondents can be compensated by way of cost as they are required to contest the application under Order 9 Rule 9 of the CPC and the suit.

6. In the matter of **N. Balakrishnan v. M. Krishnamurthy**[1] the Supreme Court has held that sufficient cause has to be construed liberally and unless the delay is mala fide or destroying rights of the parties, ordinarily, the courts should condone the delay for setting aside the ex parte order.

7. After hearing learned counsel for the parties, taking into consideration that the suit is for declaration of title and

1 (1998) 7 SCC 123

injunction, the parties are brothers and sisters and sufficient cause has been shown for non-appearance of the plaintiff when the suit was called, the impugned order is set aside subject to payment of cost of Rs.5,000/- to the defendants and further subject to the condition that suit alone would be restored to its original number, not the interim order, if any. Cost of Rs.5,000/- shall be paid to the defendants within a period of one month from the date of appearance before the trial Court. The plaintiff is free to make fresh application for injunction, if so desired. Parties should cooperate and the suit shall be decided within six months from the date of receipt of a copy of this order before the trial Court. The petitioner / plaintiff shall not seek unnecessary adjournment.

8. The writ petition stands disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma