

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No.4 of 2016**

Feku, S/o late Bodda Suryavanshi (Hindu), aged about 65 years, R/o Village Sirgitti, Thasil & District Bilaspur, C.G.

---- **Petitioner****Versus**

1. Gopal @ Ram Gopal, aged about 54 years, S/o Suritram, Cast – Suryavanshi (Hindu), R/o Village Sirgitti, Thasil & District – Bilaspur, C.G. ... Plaintiff
2. State of Chhattisgarh, through : Collector, Bilaspur, District : Bilaspur
..Defendant No.3.

---- **Respondents**

For Petitioner	:	Shri Hemant Gupta, Advocate
For Respondent No.1	:	Smt. Renu Kochar, Advocate
For Respondent No.2/State:	:	Shri Avinash Singh, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****04/07/2016**

Petitioner is aggrieved by the orders dated 22.6.2013 and 06.11.2015 passed by the trial Court whereby the respondent No.1/plaintiff's application under Order 9 Rule 9 read with Section 151 of the C.P.C. is allowed and the subsequent application under Section 114 read with Section 151 of the C.P.C. filed by the petitioner for review of the earlier order has been dismissed.

2. It is argued that the reason assigned in the application under Order 9 Rule 9 read with Section 151 of the C.P.C. to the effect that the plaintiff was not well on the date when the suit was dismissed for want of prosecution is wholly incorrect, therefore, the trial Court committed serious error and perversity by allowing the application.

3. While allowing the application, the trial Court has observed that ordinarily cases should be decided on merits and not to be dismissed on technical grounds. Even

though there is some discrepancy in the medical certificate, as pointed out by the learned counsel for the petitioner, the fact remains that by the impugned order the order dismissing the suit in default has been recalled and the suit has been restored.

4. In the facts and circumstances of the case it appears that the petitioner would get opportunity to lead evidence to demolish the case of the plaintiff and he is not going to suffer any irreparable loss nor the impugned order has occasioned failure of justice.

5. Applying its earlier decision ***Surya Dev Rai* vs. *Ram Chander Rai*, (2003) 6 SCC 675** and ***Shalini Shyam Shetty* vs. *Rajendra Shankar Patil*, (2010) 8 SCC 329**, the Supreme Court in the matter of ***Sameer Suresh Gupta through PA Holder* vs. *Rahul Kumar Agarwal*, (2013) 9 SCC 374** has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

6. Therefore, in view of law laid down by the Supreme Court in the cases of ***Surya Dev Rai* vs. *Ram Chander Rai*, *Shalini Shyam Shetty* vs. *Rajendra Shankar Patil*, and *Sameer Suresh Gupta through PA Holder* vs. *Rahul Kumar Agarwal* (supra)**

limiting the scope of interference under Article 227 of Constitution of India, this Court does not find any substance in this writ petition.

5. Accordingly, this writ petition fails and is hereby dismissed.

Sd/-
Judge
(**Prashant Kumar Mishra**)

Anjani