

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 43 of 2014

1. Smt. Manisha Sharma W/o Ashok Kumar Sharma, aged about 40 years, Occupation-Teacher, R/o Shanichari Bazar, Durg, District Durg C.G.

---- Appellant (Plaintiff)

Versus

1. Leela Ram Meghwani S/o Late H.M. Meghwani, aged about 50 years, R/o Gali of Sadani Darbar, Sindhi Colony, Durg, P.O. Durg, Distt. Durg C.G.

---- Respondent (Defendant)

For Appellant:
For Respondent:

Shri P.R. Patankar, Advocate.
Shri B.P. Singh, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

22/07/2016

1. With the consent of the parties, the matter is heard finally.
2. Challenge in this appeal is to the order dated 20.1.2014 passed by the 6th Additional District Judge, Durg in MJC No.29/2013 dismissing the application filed by the plaintiff/appellant herein under Order 9 Rule 9 CPC for restoration of Civil Suit No.61B/2011 dismissed in default vide order dated 10.1.2013.
3. Brief facts of the case are that on 22.5.2009 the plaintiff/appellant herein has filed a suit against the defendant/respondent herein for recovery of Rs.2,70,000/-. Written statement on behalf of the defendant/respondent was filed on 22.7.2011. On 10.1.2013 the matter was fixed for hearing on the application for notice to produce documents, however, on that date neither the plaintiff/appellant nor her counsel appeared before the Court and therefore the suit has been dismissed for want of prosecution vide order dated 10.1.2013 (Annexure P-3). The plaintiff/appellant filed an application under Order 9 Rule 9 CPC for setting aside the order dated 10.1.2013 and restoration of civil suit to its original number. The trial Court vide order impugned dismissed the said application on the ground that sufficient cause has not been shown by the plaintiff for her absence. It is

this order which has been assailed by the plaintiff/appellant in this appeal.

4. Counsel for the appellant submits that as on 10.1.2013 the appellant was not well and the counsel engaged by her had gone out of the station, there was no representation on behalf of the plaintiff. He further submits that in the application filed under Order 9 Rule 9 CPC, which was supported by the affidavit of appellant, also it has been specifically mentioned by the appellant that on account of ailment the plaintiff/appellant could not attend the Court on the relevant date. He further submits that even the defendant/respondent has not filed any formal objection to this application. However, the trial Court has not taken into consideration the aforesaid aspects of the matter and dismissed the application for restoration of civil suit. He further submits that the trial Court should have adopted liberal approach while deciding the restoration application and should have allowed the same. He further submits that the appellant has already deposited court fee of Rs.22,600/- and if the suit is not restored to its original number, the appellant would suffer an irreparable loss. He undertakes that in future the appellant would be careful and while setting aside the order impugned if a direction is issued to the trial Court for early disposal of the civil suit itself then the appellant will ensure her representation before the trial Court on each and every date.
5. Counsel appearing for the respondent has formal objection to the proposition as put forth by the counsel for the appellant. However, he submits that restoration of civil suit may be ordered subject to payment of cost by the appellant.
6. I have heard learned counsel for the parties and also perused the impugned order and documents annexed with the appeal.
7. In the instant case on 22.5.2009 the appellant has filed the suit for recovery of money and also paid the court fee of Rs.22,600/-. On 10.1.2013 the matter was fixed for arguments on the application for notice to produce the documents, however, on that date neither counsel for the plaintiff/appellant nor the plaintiff/appellant appeared before the Court and the suit came to be dismissed for default. Thereafter, the plaintiff/appellant filed application for restoration within limitation by showing cause for her non-appearance as her counsel had gone out of station and she fell sick on the relevant date. This application was supported by the affidavit of the

plaintiff/appellant. In these circumstances, I am of the opinion that the cause shown by the appellant for her non-appearance is sufficient cause and the finding recorded by the trial Court holding that the cause shown is not sufficient is erroneous and liable to be set aside. It is settled position that the approach of the Court in such matters should be to advance the cause of justice and not the cause of technicalities. For the absence of a party in the case the other side can be compensated by adequate costs and a case, as far as possible, should be decided on merits.

8. Accordingly, the appeal is allowed. The order passed by the trial Court on 20.1.2014 rejecting the plaintiff's/appellant's application under Order 9 Rule 9 CPC is hereby set aside. Civil Suit No.61-B/2011 is restored in its original number, subject to payment of cost of Rs.2,000/- by the appellant to the respondent herein. The trial Court shall now proceed to decide the suit in accordance with law on its own merit after affording an opportunity of being heard to all the parties and the suit be decided expeditiously preferably within a period of one year from the next date of hearing. The parties shall appear before the Court below concerned on 23.8.2016 and it is expected from them to cooperate in early disposal of the suit.
9. Record of the Court below be sent back forthwith.

Sd/-
(Pritinker Diwaker)
Judge

roshan