

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.832 of 2015**

Satyanarayan Rathi S/o Shri Radha Kishan Rathi, Aged About 60 Years R/o Behind T V S Showroom, Raipur Road, Dhamtari, Tahsil & District Dhamtari Chhattisgarh Civil & Revenue District Dhamtari Chhattisgarh.....**(Defendant No. 8)**

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

1. Nand Kishore Rathi S/o Shri Kanhaiya Lal Rathi, Aged About 54 Years R/o Gujarati Colony, Dhamtari, Tahsil And District Dhamtari Chhattisgarh.....**Plaintiff**
2. Dr. Roshan Upadhyay S/o Shri Ramakant Upadhyay, Aged About 38 Years R/o Industrial Ward Dhamtari, Tahsil & District Dhamtari Chhattisgarh.....**Defendant**
3. Dr. Smt. Rashmi Upadhyay, W/o Shri Roshan Upadhyay, Aged About 33 Years R/o Industrial Ward Dhamtari, Tahsil & District Dhamtari Chhattisgarh.....**Defendant**
4. L. S. Dili, (Formar Tahsildar, Dhamtari), Presently Posted In The Office Of District Collector Dhamtari Chhattisgarh.....**Defendant**
5. Manrakhan Lal Sinha, S/o Shri Mansharam Sinha, Retired Maal Jamadar, R/o Gokulpur, Tahsil & District Dhamtari Chhattisgarh.....**Defendant**
6. Deleted- (Samari Bai)
7. G.D. Wahile, (Former Tahsildar), R/o Near Nathuram Pathshala, Marathapara, Dhamtari Chhattisgarh.....**Defendant**
8. State Of Chhattisgarh, Through The Collector, Dhamtari, District Dhamtari Chhattisgarh.....**Defendant**

---- **Respondents**

Shri Hari Agrawal, counsel for the petitioner.
 Shri Arvind Dubey, counsel for respondents 2 & 3.
 Shri RK Pali, respondent No.5.
 Smt. M. Asha, Panel Lawyer for the State/respondent No.8.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****11.3.2016.**

Heard.

2. Brief facts as required for the instant petition is that Civil Suit No.15B/2014 (Nandkishore Rathi vs. Dr. Roshan Upadhyay & Ors.)

is pending before Additional District Judge (FTC), Dhamtari and the present petitioner is defendant No.8 in the said suit. The petitioner/defendant No.8 was served with notice of the said civil suit on 27.02.2015 and on the same date the Court proceeded ex-parte against the petitioner. An application dated 07.7.2015 under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (for short 'the Code') was filed by the petitioner against the ex-parte order. After hearing the application dated 07.7.2015, the Court below vide order dated 02.9.2015 held that as defendant No.8 failed to demonstrate reasonable cause for delay in filing the said application and also there is no any documents filed in support of the said application, it would not be appropriate to allow the said application. With this, the Court below rejected the interim application under Order 9 Rule 7 of the Code. Against the said order, the petitioner/defendant No.8 preferred the instant petition wherein he has taken the ground that he has shown sufficient cause for his non appearance on 27.02.2015 and despite the cause mentioned in para 2 & 3 of the application, the Court below has not considered the above facts, hence, it is submitted that the order passed by the trial Court dated 02.9.2015 may be quashed and the application under Order 9 Rule 7 of the Code may be allowed. The petitioner/defendant No.8 may be given an opportunity to take part with the trial of the case as per law i.e. opportunity to file written statement and other opportunity under the law.

3. Heard learned counsel for the parties present, perused the instant petition, impugned order dated 02.9.2015 and the application dated 07.07.2015.

4. On behalf of the petitioner, learned counsel supported the entire ground taken and submitted that as the petitioner has shown sufficient cause for his non appearance, he may be granted opportunity in the matter by allowing in the instant petition and relief as prayed may be given.

5. On the other hand, learned counsel for respective respondents present at the time of the hearing opposed the petition orally.

6. On perusal of the impugned order dated 02.9.2015 and the application dated 07.7.2015, it appears that the notice was served to the petitioner on 27.02.2015 and on the same date the Court proceeded ex-parte against the petitioner. The petitioner submitted that the summon received was mixed along with other documents in relation with his business. That is why he was not aware of the date of the hearing and as he was out for his business and during perusal of the documents in relation with his trade and other material he came to know regarding the summon on 30.7.2015 and thereafter he enquired from his counsel then only he came to know that the Court proceeded ex-parte on 22.7.2015. Without any further delay, on 07.7.2015, the petitioner filed the application under Order 9 Rule 7 of the Code. On perusal of the above facts, order passed and interim application goes to show that the petitioner/defendant No.8 has shown sufficient cause for his non appearance on 27.02.2015. The Court below committed illegality while not considering the above facts. Hence, the order passed by the Court below requires interference. Reasonable opportunity be given to the petitioner to

take part in the proceedings on the said civil suit by allowing him to file his written statement and to defend him as required under law.

7. With the above, in the considered view of this Court, the petitioner has shown sufficient cause for his non appearance, hence order dated 02.9.2015 is hereby quashed and application under Order 9 Rule 7 of the Code is hereby allowed. Ex-parte order dated 27.02.2015 against the petitioner/defendant No.8 is hereby set aside. The petitioner is directed to submit his written statement if he wish so on or before 31.3.2016 positively and the trial Court is further directed to allow the petitioner to take part to defend him in the matter as per the law. Needless to mention if the petitioner/defendant No.8 failed to file the written statement before the court below on or before 31.3.2016, then opportunity to file written statement shall be closed.

8. With the above observation and direction, the petition allowed. No order as to cost.

Certified copy today itself.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE