

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 612 of 2013**

Order Reserved on : 12.7.2016

Order Passed on :19.09.2016

- Rakesh Singh S/o Shri Premsingh Thakur Aged About 40 Years
R/o Mohalla Chantapara, Bilaspur, Tahsil, Civil & Revenue
District Bilaspur C.G.

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

- Sri Ram Mandir Balkhandidas Baba Trust, Bilaspur, Through
President Shri Moolchand Khandelwal, S/o Lt. Mousaji
Khandelwar, R/o Vyapar Vihar, Bilaspur, Tahsil, Civil & Revenue
District Bilaspur C.G.

---- **Respondent**

For Petitioner : Shri Ayodhya Prasad Dubey, Adv. with Shri R.K. Tiwari, Advocate.
For Respondent : Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. In this writ petition under Article 227 of the Constitution of India, the petitioner has assailed the legality, validity and correctness of the order passed by the appellate Court on 22.7.2013 dismissing the petitioner's appeal which in turn was preferred against the order passed by the trial Court on 23.1.2012 dismissing the petitioner's application under Order 9 Rule 13 CPC for setting aside the ex-

parte decree.

2. The petitioner was defendant in Civil Suit No.83-A/2001 instituted on 6.5.1996 by the respondent-Sri Ram Mandir Balkhandidas Baba Trust (henceforth 'the Trust') for the petitioner's eviction from the suit shop situated at Shyam Talkies, Bilaspur. On petitioner's absence despite service of notice by publication in the newspaper, the trial Court passed the ex-parte decree on 18.1.2002. The petitioner thereafter preferred an application under Order 9 Rule 13 CPC on 12.2.2002 for setting aside ex-parte decree. In this application for setting aside ex-parte decree the petitioner averred that he has never received notice of the suit, therefore, the decree has been passed without hearing him, which deserves to be set aside. The respondent contested the said application on the plea that despite repeated notices and thereafter substituted service by way of publication in the newspaper, the petitioner remained absent, therefore, the trial Court has no other option but to pass ex-parte decree which does not suffer from any illegality or irregularity.
3. I have heard learned counsel for the parties and perused the record.
4. Order sheets of the trial Court would reflect that the suit was filed on 6.5.96. The trial Court issued notice to the petitioner by ordinary

as well as by registered mode for more than 25 times. However, notice always remained or returned unserved. It is also recorded by the trial Court in its order whereby the application for setting aside ex-parte order has been rejected that when the notice was issued for hearing on 20.8.99, the suit premises was closed, therefore, the notice was pasted but it was returned with endorsement that notice remained unserved. Thereafter, the plaintiff moved an application on 20.8.99 for substituted service by publication. On 17.11.2000, the trial Court dismissed the application. However, similar application was again moved which was allowed by the trial Court on 8.11.2001 for hearing on 20.12.2001. When despite service by publication in “*Dainik Bhaskar*” newspaper the petitioner remained absent, he was proceeded ex-parte on 11.1.2002 and ex-parte evidence was recorded on 17.1.2002 and the judgment was delivered on 18.1.2002. Thus, it is apparent that the petitioner/defendant remained unserved as he avoided service of notice for about 5 years and moreover, he did not appear before the trial Court despite service of notice by publication. Therefore, the trial Court as well as the appellate Court rejected his application for setting aside ex-parte decree.

5. In **Surya Dev Rai Vs. Ram Chander Rai**¹, **Shalini Shyam Shetty Vs.**

¹(2003) 6 SCC 675

Rajendra Shankar Patil², and Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal³ the Supreme Court 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 High 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. This Court has examined the entire record to find out whether the Courts below have committed any such illegality or perversity while

² (2010) 8 SCC 329

³ (2013) 9 SCC 374

passing the impugned order so that jurisdiction under Article 227 of the Constitution of India can be invoked in favour of the petitioner. However, nothing could be found in the record to substantiate that the impugned order suffers from any such illegality or perversity needing correction under Article 227 of the Constitution. Moreover, it cannot be lost sight of that the petitioner is a tenant and was successfully avoiding service of notice and remained absent despite service by publication, therefore, otherwise also, he is not entitled for protection under extraordinary jurisdiction.

7. For the foregoing, the Writ Petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve