

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 567 of 2016

1. Usman Khan S/o Late Mohamad Latif Khan, Aged About 51 Years
R/o Subhash Nagar, Tahsil And District Durg, (Chhattisgarh)
2. Raj Khan, S/o Late Mohamad Latif Khan, (Dead According To
Impugned Order Dated 21/04/2016), R/o Subhash Nagar, Tahsil
And District Durg, (Chhattisgarh)
3. Hafija Khatoon, D/o Latre Mohamad Latif Khan, Aged About 42
Years R/o Subhash Nagar, Tahsil And District Durg,
(Chhattisgarh)

---- Petitioner

Versus

- Smt. Sultana Khatoon W/o Mohamad Imam Khan, Aged About 46
Years R/o Behind Bamleshwari Temple, Daganiya, Raipur,
District Raipur, (Chhattisgarh)

---- Respondent

For Petitioner

Mr. Ravi Kumar Bhagat, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/9/2016

1. Heard.
2. The petitioners/plaintiffs have preferred the instant petition
under Article 227 of the Constitution of India to assail the
legality and validity of the order dated 21.04.2016, whereby, the
trial Court has allowed the defendant's application under Order
9 Rule 7 CPC to set-aside the ex-parte order dated 21.4.2016.

3. It is argued by learned counsel for the petitioners that the reason assigned for failure of the defendant's counsel to appear before the trial Court on the date of hearing is *ex facie* incorrect, inasmuch as, if the counsel was out of station, the defendant should have engaged another counsel or the original counsel should have instructed his juniors to appear for the defendant, therefore, it is a case of sheer negligence on the part of the defendant, which should not have been condoned.
4. Having perused the impugned order, it would appear that the trial Court has applied its judicial mind and discretion to conclude that the defendant has demonstrated good and sufficient case for his failure to appear before the trial Court on the date of hearing, therefore, this Court sitting under Article 227 of the Constitution of India is not entitled to take a different view of the matter to substitute the finding and reasoning assigned by the trial Court. Even otherwise, the trial Court has only set-aside the *ex-parte* order and the trial shall progress on merits, wherein, the petitioners will have all the opportunities to put-forth their case on merits.
5. For the afore-stated reasons, this Court does not find any substance in the writ petition, it fails and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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