

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 604 of 2016**

Kamla Bai, wife of Sukhdev, aged about 36 years, Caste-Gond, resident of Golpur, at present Kanker, Tahsil & District North Bastar Kanker (C.G.)Plaintiff

---- PETITIONER**Versus**

1. Lakhan, son of Somnath, aged about 38 years, resident of Village-Pandri, Kanker, District – North Bastar Kanker (C.G.)

2(a). Chandrabati, wife of late Radhe, aged about 36 years,

(b). Gopal, son of Radhe

Both are resident of Village-Badedongar, District – North Bastar, Kanker (C.G.)

3. Ramji, son of Somnath, aged about 58 years, resident of Narayanpur, District -Bastar (now District Narayanpur) C.G.

4. State of Chhattisgarh, through the Collector, District North Bastar, Kanker (C.G.)Defendants

..... RESPONDENTS

For Petitioner : Mr. D.N. Prajapati, Advocate.
For Respondent No.4/State : Mr. Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/10/2016**

Heard on admission.

(1) The petitioner/plaintiff filed a civil suit No.6-A/999 before the trial Court. That was dismissed for want of prosecution vide order 05.09.2005. The application for restoration, registered as M.J.C. No.18/2005, was dismissed by the trial Court vide order 07.01.2010

finding no sufficient cause for her non-appearance on 5.9.2005.

(2) The petitioner/plaintiff preferred appeal there-against before the appellate Court. The appellate Court, by its order dated 27.01.2015, set aside the order dated 07.01.2010 and the suit was restored to its original number subject to payment of process fee for issuance of summons to the defendants No. 2 to 3, but as the petitioner could not deposit the process fee for issuance of summons to defendants No. 2 & 3, the trial Court vide order dated 08.07.2016, dismissed the restoration application for non-compliance of the order dated 27.01.2015 under Order 9 Rule 2 of the CPC, against which this writ petition has been filed questioning the same.

(3) Mr. Prajapati, leaned counsel appearing for the petitioner would submit that order dated 08.07.2016 rejecting the application for restoration of civil suit is unsustainable and bad in law and it is liable to be dismissed.

(4) At this stage, it would be appropriate to notice Order 9 Rule 4 of the CPC, which reads as under:-

“4. Plaintiff may bring fresh suit or Court may restore suit to file.- Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for [such failure as is referred to in rule 2], or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.”

(5) Petitioner/plaintiff's suit has been dismissed under Order 9 Rule 2 of the CPC. He has two alternative remedies. Firstly, he may

prefer fresh suit (subject to law of limitation); or he may apply for an order to set the dismissal aside setting aside the order dated 8.7.2016 showing sufficient cause for his failure to pay process fee for serving the respondents No. 2 & 3.

(6) Be that as it may, if the petitioner prefers application under Order 9 Rule 4 of the CPC for setting aside the order 8.7.2016, the trial Court shall consider and decide the said application expeditiously after noticing the other side in accordance with law.

(7) With the aforesaid observations, the writ petition stands finally disposed of.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-