

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 131 of 2017

- Jivan Lal Kaushik (Lodhi) S/o Late Rajjulal Lodhi, R/o Kalika Nagar Tifra, Nagar Panchayat/ Post Tifra, Tahsil & District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Revanlal Lodhi, S/o Late Rajjulal Lodhi, Aged About 43 Years, R/o Sadakpara, Bhadam, Post Ganiyari, P. S. Kota, Tahsil Takhatpur, District Bilaspur Chhattisgarh.
2. Dinesh Kumar Lodhi, S/o Late Rajjulal Lodhi, Aged About 28 Years,
3. Smt. Santoshi Lodhi, Wd/o Suresh Kumar Lodhi, Aged About 35 Years
4. Virendra Kumar Lodhi, (Minor) Aged About 17 Years
5. Priyanka Lodhi, Aged About 14 Years (Minor)

Both R/4 & R/5 were the S/o & Minor Through Mother Smt. Santoshi Lodhi, Aged About 35 Years, Wd/o : Suresh Kumar Lodhi

Resp. No.2 to 5 were the R/o Santoshi Mandir Chowk, Limha, Post Vijaypur, Tahsil Takhatpur, District Bilaspur (Wrongly Mention District Takhatpur In The Cause Title), Chhattisgarh.

6. Smt. Ganag Bai, D/o Late Ganga Prasad, Aged About 35 Years R/o : Bavapara, Raipur, Tahsil & District Raipur Chhattisgarh.
7. Smt. Krishna Bai, Wd/o : Late Rajjulal Lodhi, Aged About 63 Years, R/o : Santoshi Mandir Chowk, Limha, Post Vijaypur, Tahsil Takhatpur, District Bilaspur, Chhattisgarh.
8. Pawan Kumar Sahu S/o : Purruram Sahu, Aged About 43 Years
9. Sharad Kumar Sahu, S/o Purruram Sahu, Aged About 38 Years

Resp. No.8 & 9 were R/o : Pital Chowk, Near Hanuman Mandir, Moka, Bilaspur, Tahsil & District Bilaspur,

Chhattisgarh.

10.State Of Chhattisgarh, Through Collector, District Bilaspur
(Chhattisgarh)

---- Respondents

For Petitioner	Shri Hemant Gupta, Advocate
For Respondent-State	Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

16/02/2017

1. This petition under Article 227 of the Constitution of India would challenge the order passed by the trial Court allowing defendants' application under Order 9 Rule 13 CPC to set aside the *ex parte* judgment and decree dated 17.02.2016.
2. The application under Order 9 Rule 13 CPC was preferred on the ground that the counsel did not inform the defendants about the hearing of the case, therefore, they failed to appear. In response to the said averment of the defendants, the petitioner not only refuted the allegation but also got filed the affidavit of defendants' advocate, wherein he would depose that he had informed the clients about the hearing of the matter, but they failed to appear.
3. Without commenting on the conduct of the lawyer, in my considered view, the trial Court has not committed any illegality by allowing the application for setting aside the *ex parte*

decree. The trial Court, in its judicial discretion and having seen the conduct of the parties throughout the litigation, has come to the conclusion that the reason assigned for delay in moving the application as well as the ground for not appearing on the date of hearing appears to be bonafide. In a petition under Article 227 of the Constitution of India, this Court would not sit over the judgment as an Appellate Court to set aside the finding of bonafides recorded by the trial Court and more so when the impugned order would set aside the *ex parte* decree and allow the parties to contest the suit on merits.

4. In the matter of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**¹, 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

¹ (2010) 8 SCC 329

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.

5. For the foregoing, this Court does not find any substance in this writ petition, it fails and is hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala