

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 394 of 2004**

1. Ashish Kumar Gupta age 48 years s/o Late Ramnarayan Gupta, Teacher, r/o New Sabji Mandi Road, Manendragarh.
2. Aditya Kumar Gupta, S/o Late Ramnarayan Gupta, age 55 years, r/o Manendragarh, c/o Ashish Kumar Gupta, s/o Late Ramnarayan Gupta, r/o Manendragarh, Distrit Korla, C.G. (Defendants)

---- Appellants**Versus**

- Jainarayan Agrawal s/o Late Seth Natthuram Agrawal, age 45 years, Businessman, r/o Bajarpara, Manendragarh, Distt. Korla, C.G. (Plaintiff)

---- Respondent

For Appellants	:	Shri Syed Mazid Ali, Advocate.
For Respondent	:	Smt. Pritha Ghoshal, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11/04/2017**

1. This appeal is being disposed of finally with the consent of the parties.
2. By way of this miscellaneous appeal preferred under Order 43 Rule 1 (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short), the appellants/defendants have assailed the order dated 01.03.2004 passed by the Additional District Judge, Manendragarh, District Korla, in M.J.C.No.8/2003, whereby the application filed by the appellants under Order 9 Rule 13 of the Code of 1908 has been rejected.
3. The undisputed facts of the case are that the plaintiff Jainarayan Agrawal had instituted a suit for declaration of title and possession in relation to the residential plots bearing Kh.Nos.162, 163, 164, 165 and 166 and a house, which is situated on a portion of the said plots. The said suit was registered as C.S. No.8-A/1998.
4. The defendants (appellants), upon receiving summons of the suit, appeared

and submitted their written statements.

5. After considering the pleadings of both the parties, the trial Court has framed the issues and the matter was fixed for evidence on 08.04.2003. On the said date, when the case was fixed for evidence, the defendants remained absent, therefore, they have been proceeded ex parte and after recording the evidence of the plaintiff and his witnesses, the trial Court has decreed the suit ex parte, by its judgment and decree dated 10.04.2003.

6. For setting aside the aforesaid ex parte judgment and decree, the defendants have moved an application under Order 9 Rule 13 of the Code of 1908 on 21.04.2003 by submitting, inter alia, that defendant No.1 is a heart patient and suffering from high blood pressure as well. It was also submitted therein that when the case was fixed for evidence, their counsel was also not well, and because of that neither he nor counsel could appear in the matter.

7. The aforesaid application was contested by the plaintiff/respondent Jainarayan Agrawal by submitting his reply and stated that the reasons as assigned by the appellants are not proper and correct as defendant No.1 was not suffering any of such diseases. He further submitted that even on the said date when the case was fixed for evidence he was performing his duty as a teacher in the Primary School, and therefore, the reasons as assigned are not at all tenable and, in fact, the same have been made in an ulterior motive just to get the ex parte decree set aside. The application filed by the appellants, therefore, deserves to be rejected.

8. Upon considering the rival submissions of the parties, the trial Court, by its impugned order dated 01.03.2004 has rejected the said application filed by the appellants by observing that the reasons as assigned by them are not correct and consequently while maintaining the said ex parte judgment and decree, the application filed under Order 9 Rule 13 of the Code of 1908 was rejected.

9. I have considered the rival submissions of the parties and perused the order impugned carefully.

10. From perusal of the record, it is evident that the appellants have entered into the witness box and produced relevant medical certificates. Pertinently to be mentioned here that these medical certificates have not been controverted by the respondent/plaintiff. It is also clear from the record that the application seeking for setting aside the ex parte judgment and decree was filed on 21.04.2003, i.e., within the period of 11 days after the delivery of the said ex parte judgment and decree

dated 10.04.2003. Thus, the application was filed well within the prescribed period of limitation of 30 days. In such circumstances, the trial Court should have examined the said application in a liberal manner in order to advance the substantial justice to the parties as the primary function of a court is to adjudicate the dispute on merits between the parties and to advance substantial justice. However, from perusal of the record, it appears that the trial Court, instead of adopting a liberal approach, has dismissed the said application. The order impugned is, therefore, liable to be and is hereby set aside.

10. In view of the aforesaid facts, the order impugned dated 01.03.2004 passed by the Additional District Judge, Manendragarh, Dist. Korla (C.G.) passed in M.J.C. No.8/2003 is set aside. The matter is remitted back to the trial Court for its adjudication in accordance with law. The parties are directed to appear before the concerned Court/Additional District Judge, Manendragarh on 28th June, 2017, who in turn shall decide the matter after providing sufficient and reasonable opportunity of hearing to the parties.

11. For the foregoing, the miscellaneous appeal is allowed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge