

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.172 of 2016**

1. Motilal S/o Nanhu, aged about 60 years,
2. Gopilal S/o Late Nanhu, aged about 55 years,
3. Girdhari S/o Late Nanhu, aged about 50 years,

All are R/o Village Govindpur, Tahsil-Khadganwa, Distt. Korea (CG)

----Petitioners**Versus**

- 1(a) Buddhu S/o Tilla, aged about 55 years,
- 1(b) Bhorelal S/o Tilla, aged about 50 years,
- 1(c) Mangal S/o Tilla, aged about 47 years,
- 1(d) Munni Lal S/o Tilla, aged about 44 years,
- 1(e) Manohar S/o Tilla, aged about 40 years,

All are R/o Govindpur, P.s. & Tahsil-Khadgaon, Distt. Korea (CG)

2. Rajjan S/o Late Raghunath, aged about 40 years,
3. Shankar S/o Dutwar, aged about 45 years,
4. Dewan Sai S/o Late Raghunath, aged about 38 years,

Respondents No.2 to 4 are R/o Village-Govindpur, Tahsil Khadganwa, Distt. Korea (CG)

- 5(a) Ramchandra @ Randhanwa S/o Late Bhajan Lal, aged about 35 years, R/o Village-Budhar, Post-Budhar, P.s. & Tahsil-Patna, District Korea (CG)

6. State of Chhattisgarh through the Collector, Korea, Baikunthpur, Distt.Korea (CG)

---- Respondents

For Petitioners	:	Mr.Vivek Tripathi, Advocate
For Res.No.2 to 4	:	Mrs.Rajnana Jaiswal, Advocate
For State	:	Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/08/2017

1. Suit was filed by the respondents/plaintiffs for declaration of title and possession, in which the petitioners/defendants appeared till 3.7.2008 through their counsel, but written statement was not filed and thereafter they remained ex-parte on 1.8.2008 and ex-parte decree was passed on 14.5.2009, thereafter, the petitioners/defendants filed an application under Order 9 Rule 13 of the CPC along with an application under Section 5 of the Limitation Act for setting aside the ex-parte decree, which was rejected by the trial Court by order dated 25.6.2010, against that order, the defendants filed Misc. Appeal before the Appellate Court. The Appellate Court upheld the order of the trial Court by the impugned order, against which, this writ petition has been filed.
2. Learned counsel for the petitioners would submit that the trial Court has not held that there was no sufficient cause for non-appearance when the suit was called up for hearing, but merely impressed with the fact that for seven years written statement was not filed and therefore, no case for setting aside ex-parte decree is made out. In fact, their counsel did not inform them while remaining absent on the date of hearing and no notice was given to them by their counsel before deciding not to appear, therefore,

the decree is liable to be set aside. He would rely upon the judgment of the Supreme Court in the matter of **Sushila Narahari and others Vs. Nandakumar and another**¹.

3. On the other hand, learned counsel appearing for respondents No.2 to 4 would support the impugned order and submit that deliberately the petitioners/defendants themselves absent from suit, therefore, their application under Order 9 Rule 13 of the CPC has rightly been rejected by the trial Court.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. It is correct to say that the petitioners/defendants appeared in the civil suit after due service of summons, they appeared till 3.7.2008 but proceeded ex-parte on 1.8.2008, on that day, neither their counsel appeared nor the defendants appeared personally. It is their case that counsel did not inform them about his decision not to appear in the suit and on account of that, the suit proceeded ex-parte.
6. In the matter of **Sushila Narahari and others** (supra), the Supreme Court has held that withdrawal of

¹ (1996) 5 SCC 529

Vakalatnama by counsel should be with notice to the litigant concerned. It was observed as under:-

“4. A reading of the facts leaves us with no doubt that the advocate has derelicted his duty to inform the client by registered post if there was any non-cooperation on behalf of the appellants. Consequently, when the suit had come up for trial, he has withdrawn his vakalatnama without notice to the respondents. The trial Court set the appellants exparte and decreed the suit for specific performance. The application for condonation of delay of 40 days was filed. The Court refused to condone the delay. In view of the above, we find that she is well justified in filing the application with the delay. The delay is accordingly condoned. The ex-parte decree is set aside. The trial Court is directed to give opportunity to the appellants to cross-examine the witness examined by the respondents of the suit and also adduce evidence on her behalf. The trial Court is further directed to dispose of the matter as expeditiously as possible, preferably within one year from the date of receipt of the copy of the order. ”

7. In the case in hand, counsel stopped appearing without noticing the petitioners and therefore, ex-parte decree came to be passed on 14.5.2009. The defendants have made sufficient cause for setting aside ex-parte decree dated 14.5.2009.
8. Accordingly, application under Section 5 of the Limitation Act is allowed and delay in filing the application for setting aside ex-parte decree is condoned, consequent thereto, application under Order 9 Rule 13 of the CPC is also allowed and ex-parte decree dated 14.5.2009 is set aside. Civil Suit is restored to its original number for hearing and

disposal in accordance with law. Parties are directed to appear before the trial Court on **8th September, 2017**.

The trial Court is directed to conclude the hearing of the suit within three months from the date of receipt of copy of this order as the suit was filed on 8.7.2001.

9. The writ petition is allowed to the extent indicated hereinabove. The plaintiffs will be entitled for cost of ₹ 5000/- from the petitioners/defendants which will be paid on the next date of hearing before the trial Court.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-