

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 87 of 2017**

K. Ratnam, son of K. Semmal, aged about 32 years, resident of Bachel, near Primary Hospital, House No. 7, Ward No.3, Occupation-Driver in NMDC, Tahsil-Dantewada, District Dantewada (C.G.)Applicant

---- Petitioner

Versus

Smt. K. Shailja, wife of K. Ratnam, aged about 31 years, resident of behind Ambedkar Parak, Kirandul, Quarter No. Type-I/28-A, Tahsil-Kuakonda, District Dantewada (C.G.)Non-applicant

---- Respondent

For Petitioner: Mr. Goutam Khetrapal, Advocate.
For Respondent: Mr. Kshitiz Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/03/2017**

Heard.

(1) Petitioner/Plaintiff's suit for grant of divorce filed under the provisions of Indian Divorce Act came to be dismissed for non prosecution on 13.11.2015. He preferred application under Order 9 Rule 7 of the CPC for restoration of the suit on 11.12.2015 showing sufficient cause for not appearing on 13.11.2015 when his suit was dismissed in default.

(2) The trial Court, by its impugned order dated 5.11.2016, rejected the application for restoration filed by the plaintiff holding that he deliberately avoided his presence on the date when his suit was called up for hearing and dismissed for non prosecution, against which the

instant writ petition has been filed challenging the same.

(3) Learned counsel for the petitioner would submit that sufficient cause has been shown for not appearing on the date when his case is called out for hearing and the same was dismissed for non-prosecution and he is not deliberately avoiding his presence for hearing of the suit and, therefore, the suit ought to have been restored to its original number.

(4) On the other hand, counsel for the State opposes the writ petition and supports the impugned order.

(5) I have heard learned counsel appearing for the parties and gone through the record with utmost circumspection.

(6) The fact remains that application for restoration was filed on 11.12.2015 i.e. well within the period of limitation provided for restoration of the suit and the cause shown by the petitioner/plaintiff appears to be sufficient as he is resident of Bacheli and the suit was pending in Dantewada and the distance between Bacheli and Dantewada is 100 kms. In the considered opinion of this Court, the application for grant of divorce has to be decided on merits, however and sufficient cause has been shown by the plaintiff/petitioner for not appearing on the date when his suit was called up for hearing and the suit was dismissed for non-prosecution, therefore, the writ petition filed under Article deserves to be allowed.

(7) Accordingly, the writ petition is allowed. Impugned order dated 05.11.2016 is set aside subject to cost of Rs.5,000/- payable to the respondent/wife. The Civil Case No.01/2016 is restored to the original

file of Additional District Judge, Fast Track Court, Dantewada.

(8) Parties are directed to appear before the trial Court on 27th March, 2017. The parties are directed to co-operate in the trial.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-