

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 22 of 2018**

- Kaushilya Patel W/o Leelesh Kumar Patel Aged About 31 Years R/o Village Kumharpara, Champa, Police Station And Tahsil Champa, District Janjgir-Champa, Chhattisgarh, At Present Subham Vihar Colony, Quarter No. 15, Mangala, Tahsil And District Bilaspur, Chhattisgarh,

---- Appellant**Versus**

- Akash Pathak S/o D.K.Pathak Aged About 33 Years R/o Janjgir, Police Station And Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant	:	Shri V.K. Pandey, Advocate
For Respondent	:	Shri Vishwanath Shriwas, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/12/2018**

1. Heard.
2. The present appeal is filed against the dismissal of an application filed under Order 9 Rule 13 CPC which was dismissed on 30.11.2017.
3. Learned counsel for the appellant would submit that the suit for specific performance was filed by the respondent, wherein the appellant was appearing as defendant and ex-parte proceeding was drawn on 26.09.2016. Subsequently, on 04.10.2016 the statement of the witness of the plaintiff were recorded and eventually the decree was passed on 07.10.2016. It is contended

that immediately after the ex-parte judgment and decree dated 07.10.2016 they came to know on 14.10.2016, thereafter, the application under Order 9 Rule 13 CPC was moved on 19.10.2016. It is stated that on 04.10.2016 the brother of the defendant died, therefore, in order to take part in the rituals, the defendant though informed his counsel about the fact to take adjournment, however, the counsel failed to discharge such duty and eventually the ex-parte decree was passed. It is contended that the delay was not exorbitant and it was bonafide on the basis of record, therefore, one opportunity may be granted to the defendant to contest the case on merits.

4. Learned counsel for the respondent/plaintiff opposes the same.
5. Perused the record of the Court below. Perusal of the record would show that on 26.09.2016, the ex-parte proceeding was drawn by the Court below in the main Civil Suit No.32A/16 and the case was fixed for ex-parte evidence on 04.10.2016. On 04.10.2016 also the statements were filed and the case was thereafter fixed for arguments and eventually the judgment and decree was passed on 07.10.2016. The record of the MJC No.14/16 which emanating from the application under Order 9 Rule 13, which was filed on 19.10.2016. In the contents of the application filed under Order 9 Rule 13 read with Section 151 CPC also the similar grounds have been stated that the brother of the defendant died on 04.10.2016 and it was informed to the counsel, however, the counsel failed to inform the Court and get an adjournment on that ground. After going through the contents of the application, it appears that though on 26.09.2016 the ex-parte proceeding was drawn, however, no statement was

recorded and it was only on 04.10.2016 the statement of the witnesses were recorded, therefore, on that date when the case was fixed for evidence, the defendant had the right to cross-examine the witness, for which it was fixed.

6. The reasons as has been assigned by the defendant appears to be genuine as in case of the death of the near and dear, it is a situation beyond the control of any party and some sympathetic and practical view should be taken. Considering the same the reason as has been assigned by the appellant appears to be genuine and no exorbitant delay appears on the face of the record as the ex-parte decree was drawn on 07.10.2016 and the application for setting aside the ex-parte judgment and decree was moved on 19.10.2016. Under the circumstances, taking into the totality of the case, I am inclined to allow this appeal. Accordingly, the application filed under Order 9 Rule 13 read with Section 151 CPC is allowed and the judgment and decree passed in Civil Suit No.32A/2016 is set aside. The parties shall appear before the trial Court on 21st of January, 2019 and the trial Court shall be obliged to proceed further from that date to adjudicate the case on merits.

Sd/-

Goutam Bhaduri
Judge

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