

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 200 of 2018**

- Shabbir Husain S/o Abdul Rahman Aged About 62 Years R/o Beside Of Khaparganj Madarsa Irfaniya, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Abdul Hanif S/o Abdul Mazid Aged About 65 Years R/o Near of Khaparganj Madarsa Irfaniya, Pati Karkhana Bilaspur, Tahsil and District Bilaspur, Chhattisgarh
2. Aslam Hussain S/o Altaf Hussain Aged About 60 Years R/o Khaparganj, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. Through Abdul Hanif S/o Abdul Mazid Aam Muktiyar Prastavait Pakshkar Aslam Hussain Sakin Near Of Khaparganj Madarsa Irfaniya Peti Karkhana, Tahsil, District Bilaspur, Chhattisgarh

---- Respondents

Shri Shabbir Hussain : Petitioner in Person

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/04/2018**

1. Having asked whether the petitioner, who is present in person, wants to engage any counsel, he submits that he is not willing to engage any counsel and himself will argue the case.
2. The present petition is against the order dated 05.02.2018. The background of this issue is that by an order dated 04.03.2017, the suit which was filed by the petitioner was dismissed for non-compliance of the order of the Court, against which a writ petition bearing WP 227 No.260 of 2017 was filed, wherein this Court vide order dated 04.05.2017 has

observed that since the suit has been dismissed for non-compliance of the Court's order as such the petitioner was given the liberty to make an application for restoration of the suit before the trial Court and with such observation the writ petition was disposed of. Subsequently, another writ petition bearing WP 227 No.669 of 2017 was preferred by the petitioner against rejection of an application filed under Order 47 Rule 1 and 2 read with Section 114 and 151 CPC i.e. the application for review before 5th Additional District Judge, Bilaspur to review the earlier order dated 04.03.2017. Admittedly, it appears that the petitioner did not comply with the earlier order of the High Court i.e. the order dated 04.05.2017 passed in WP 227 No.260/2017, whereby he was given liberty to file application for restoration. Consequently, the second writ petition bearing WP 227 No.669/2017 was also dismissed on 21.09.2017 again giving a liberty to the petitioner to file an application for restoration of the civil suit within a fixed period of 15 days from 21.09.2017. Thereafter, as appears that the petitioner submitted that the application was filed for restoration, wherein the prayer was made that the evidence of the proposed defendant namely Aslam Hussain should have been recorded by the Court below.

3. Perusal of the impugned order dated 05.02.2018 would show that an application under Order 9 Rule 9 CPC was filed to set aside the dismissal order dated 04.03.2017 for restoration of the original civil suit bearing No.295-A/2014. In such restoration petition, the evidence of the applicant i.e. the petitioner herein was recorded and the respondent therein stated that they do not want to adduce any evidence. The petitioner having closed his case for evidence he has not prayed to call Aslam Hussain as a witness, therefore, the Court observed that since the

applicant closes his evidence, the Court cannot compel any party to call a witness, if they do not want to adduce evidence. Consequently, I do not find any illegality in the order impugned.

4. The petition has no merits. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu