

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 304 of 2018

1. Hansraj Peswani S/o Late Shri Gokhumal @ Gurbomal @ Gurabamal @ Gorabumal, A/a 55 Years Caste- Sindhi,
 2. Shri Kundanlal Peswani S/o Late Shri Gokhumal @ Gurbomal @ Gurabamal @ Gorabumal, A/a 52 Years Caste Sindhi,
- Both R/o Ward No. 11, Kharasiya, District- Raigarh, Chhattisgarh.

---- Petitioners

Versus

1. Suresh Kumar Bajpai S/o Shri Shiv Ganesh,
2. Smt. Jyoti Bajpai W/o Shri Suresh Kumar A/a 36 Years,
1 and 2 are R/o Kholi Vikash Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.
3. Shri Narayan Das Peswani, A/a 49 years,
4. Tolaram Peswani, A/a 45 years,
3 & 4 are S/o Late Shri Gokhumal @ Gurbomal @ Gurabamal @ Gorabumal, Caste- Sindhi, R/o Ward No. 11, Kharasiya, District- Raigarh, Chhattisgarh
5. State Of Chhattisgarh, Through Collector, Bilaspur, Chhattisgarh.

---- Respondents

For petitioners - Shri Arvind Shrivastava, Advocate.
For Respondent/State –Shri Adhiraj Surana, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

06/04/2018

1. Heard on application for exemption from filing the certified copy.
2. It is been stated that since Presiding Officer was on leave as such certified copy of the order could not be provided.
3. Perused the application which is supported by an affidavit.
4. On due consideration, same is allowed.
5. Petitioner is exempted to file certified copy in the background of this case.
6. Also heard on admission.
7. Instant petition is against the order dated 22/03/2018 whereby

ex-parte proceedings were drawn against the petitioners/defendants and also against the order dated 3/04/2018 whereby application preferred by the petitioners/defendants under Order 9 Rule 7 read with Section 151 of CPC has been rejected.

8. Learned counsel for the petitioners would submit that on 22/03/2018 case was fixed for evidence before the court below, since counsel of the petitioners/defendants could not enter appearance on the date since in 8 to 9 cases wherein time limit of 10 years have been prescribed, before the court of Additional District Judge, Bilaspur he was conducting cases. Consequently, he could not appear and there has been mis-communication was made in between the power of attorney holder of the defendants as such non-appearance was made and the court below on 22/03/2018 has proceeded ex-parte and right to cross examine the witness have been closed. He further submits that when application was filed under Order 9 Rule 7 read with section 151 of CPC same was dismissed by an order dated 3/04/2018. He would submit that non-appearance was bonafide and it was not a case that deliberate non-appearance was made as counsel was already conducting other cases and was before the court as such court should have considered the same and even a week's time could have been given to cross-examine the witness. He further submits that even if ex-parte proceedings were made petitioners/defendants should have been given a chance of defence witness and to argue the case which too was not provided and directly case was fixed for final argument.

9. Perused the order dated 22/03/2018 wherein it shows that in absence of the defendants/petitioners right of cross examination of the witness was closed and thereafter case was proceeded ex-parte. Order sheet would show that after right to cross-examination was closed ex-

parte proceeding was drawn and without giving any right of hearing of the defence witness directly case was fixed for argument. When application was filed under Order 9 Rule 7 read with 151 of CPC court dismissed the application on the ground that since case was pending for last more than 10 years and there is direction has been given by the High Court to decide the case and observed that it appears that the petitioners were not taking any interest to decide the case and application under Order 9 Rule 7 read with 151 of CPC was dismissed.

10. Perusal of the order dated 22/03/2018 and 3/04/2018 do not inspire the fact that sufficient reasons have been assigned. There is no doubt that court should stop unnecessary adjournment but at the same time cannot ignore the fact if genuine reasons are projected. Order sheet dated 22/03/2018 also appears to be erroneous that right to cross examination was closed and thereafter ex-parte proceeding was drawn and case was again fixed for plaintiff's evidence. In application under Order 9 Rule 7 read with section 151 of CPC it was stated that the petitioners counsel was engaged in conducting 8 cases which was pending before the District Court, Bilaspur and evidence was being conducted and reasons have been assigned that since day to day proceeding was also being continued in such proceeding as such because of the communication gap petitioners could not appear. Said application is also further supported by an affidavit. Considering the entirety of the facts, reading the order dated 22/03/2018 and 3/04/2018, I am of the view that said order of learned court below requires interference as facts of the case points out that no enormous unnecessary deliberate delay is caused. Considering the fact in entirety it is felt expedient that the petitioners should be given opportunity to contest the case on merits. Accordingly, order dated 3/04/2018 is set aside.

11. Consequently, application under Order 9 Rule 7 read with 151 of

CPC is allowed. Ex-parte proceeding against the petitioners is set aside subject to payment of cost of Rs.1000/- to the plaintiff. Further it is directed that the petitioners shall be entitled to cross examine the plaintiff's witness on the next date as and when it is fixed and shall also be entitled to give their evidence. Trial court may further proceed with the trial as expeditiously as possible.

12. With such observation, the petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE