

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 44 of 2017

Derha Ram S/o Shobhe Ram Lodhi, Aged About 45 Years R/o
Village Arang, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Derha Ram S/o Itwari Lodhi, Aged About 60 Years R/o Village Arang, Tahsil Arang, District Raipur, Chhattisgarh
2. Virendra S/o Shri Raghav Soni, Aged About 40 Years R/o Soni Para Arang, Tahsil Arang, District Raipur, Chhattisgarh
3. State Of Chhattisgarh, Through Collector, Raipur, District Raipur, Chhattisgarh

---- Respondents

For appellant – Shri K.P. Sahu, Advocate.
For respondent No.2- Ms. Rashi Tiwari, Advocate.

For Respondent No.3/State –Shri Sameer Behar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

01/11/2018

Heard.

1. Instant appeal is against the order dated 25/01/2017 whereby an application under Order 9 Rule 9 of CPC and the application under section 5 of the Limitation Act was dismissed. The said applications were filed to restore a civil suit.
2. Perusal of the order would show that the civil suit was filed by Derha Ram/appellant herein for specific performance of contract. While suit was pending out of an interim order civil revision bearing No.90/2009 was preferred before the High Court. The High Court by an order dated 3/11/2009 had stayed the proceeding till the next date of hearing. Consequently, the case pending before the court below was awaiting order of the High Court. It is stated that the original civil suit was being conducted by one R.K. Tiwari, Advocate and after stay was granted by the

High Court plaintiff/appellant was instructed not to come to the court as and when stay is vacated he would be informed. Subsequently, R.K. Tiwari, Advocate breathed his last. Thereafter, when enquiry was made from the each and every court and eventually on inspection on 6/08/2013 it revealed that case has been dismissed for want of prosecution. It was stated that civil revision was dismissed by the High Court on 9/07/2012. Thereafter, on 7/12/2012 suit was dismissed for want of prosecution as the plaintiff could not appear.

3. No representation is made on behalf of respondent No.1.
4. Learned counsel for respondent No.2 would submit that they are formal party.
5. After perusal of the order and the record, it appears that sufficient reason exist to set aside the dismissal which the court below did not consider in the proper prospect. When any revision preferred out of an interim order and stay has been granted by the High Court, it is not expected from the parties to appear on each and every date of hearing and therefore non-appearance appears to be bonafide.
6. In a result, in order to advance cause of justice on merit the order dated 25/01/2017 is set aside and also the dismissal order dated 7/12/2012 is set aside and the application to restore the suit under Order-9 Rule-9 CPC is allowed. Parties shall appear before the trial court on 26th November, 2018. It is further made clear that if the defendants failed to appear then further notice by ordinary and registered post as contemplated to notice the parties under CPC shall be followed.
7. With such observation, the appeal stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE

