

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 86 of 2018**

Khorbahra Ram Yadu, S/o. Shri Sakharam Yadu, aged about 58 years, R/o.
Village- Arasnara, Thana- Nandini Nagar (Ahirwara) Tahsil – Durg, Civil &
Revenue Distt.- Durg (C.G.) Plaintiff

---- Applicant**Versus**

Banshilal Agrawal, S/o. Late Shri Lajpatray Agrawal, aged about 45 years, R/o.
55/6 Nehru Nagar East Bhilai, Thana – Supela Bhilai, Tahsil – Durg, Civil &
Revenue Distt.- Durg (C.G.)Defendant

---- Respondent

For Petitioner : Mr. Sunil Sahu, Advocate.
For Respondent : Mr. Shrawan Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****27/08/2018**

(1) The trial Court, by the impugned order dated 24.04.2018, has allowed the application filed under Order 9 Rule 13 of the Code of Civil Procedure (henceforth “CPC”) by the respondent/defending finding sufficient cause for non-appearance when the case was called out for hearing and thereafter set aside the *ex parte* decree, against which instant writ petition has been filed questioning the same.

(2) Learned counsel appearing for the petitioner would submit that respondent no sufficient cause was shown by the respondent/defendant for not appearing when the case was called out for hearing , as such the trial Court is absolutely unjustified in allowing the application filed under Order 9 Rule 13 of the CPC and no application for condonation of delay was filed in support of the above-said application.

- (3) Per contra, counsel for the respondent/plaintiff would support the impugned order.
- (4) I have heard learned counsel appearing for the parties.
- (5) The trial Court has clearly recorded a finding that sufficient cause has been shown for not appearing when the case was called out for hearing, which, in the opinion of this court, is a finding of fact based on the material available on record. So far as non filing of application for condonation for delay in support of application under Order 9 Rule 13 of the CPC is concerned, it appears that it was a consolidated application for setting aside the ex parte order and condonation of delay. However, ends of justice would be served, if the cost of Rs. 2,000/- is awarded to the applicant/plaintiff for granting the application under Order 9 Rule 13 of the Code of Civil Procedure.
- (6) Accordingly, the civil revision is dismissed with a direction to pay cost of Rs.2,000/- to applicant/plaintiff by respondent/defendant.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

