

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 7 of 2019**

Poonamchand Agrawal, S/o Lalchand Agrawal, Aged About 52 Years, R/o Gandhi Ganj, Raigarh, Tehsil, Post And District Raigarh, Chhattisgarh.

---- Applicant

Versus

1. Yashwant Sanwariya, S/o Nanhelal Sanwariya, Aged About 80 Years, R/o Gandhi Ganj, Raigarh, Tehsil Post And District Raigarh, Chhattisgarh.
2. Smt. Savita Sanwariya, Wd/o Late Shri Devendra Sanwariya, Aged About 74 Years, R/o Gandhi Ganj, Raigarh, Tehsil, Post And District Raigarh, Chhattisgarh.

---- Non-Applicants

For Applicant	: Shri Amit Soni appears on behalf of Shri Harshwardhan, Advocate.
For Non-Applicants	: None.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****18.02.2019**

1. Heard on admission.
2. This revision has been preferred by the defendant/tenant under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') questioning the propriety of the order dated 07.12.2018 passed by 3rd Civil Judge Class-2, Raigarh (C.G.) in Civil Suit No.03/2016 by which, the application filed by the plaintiffs

under Order 9 Rule 9 read with Section 151 of the CPC has been allowed while restoring the suit in its original number.

3. Learned counsel for the applicant submits the order impugned as passed by the trial Court is apparently contrary to law. He submits further that in absence of any documentary evidence like medical certificate, the trial Court ought not to have restored the suit in its original number. He submits further that the counsel for the plaintiffs has already attended the case on behalf of the plaintiffs in another matter, therefore, the reasons assigned in the application is apparently not sustainable, and therefore, the trial Court has committed an illegality in allowing the same.

4. I have heard learned counsel for the applicant and perused the entire record carefully.

5. A suit for eviction was made by the plaintiffs, registered as Civil Suit No.198A/2013 and when the matter was listed for evidence on 08.01.2016, it was dismissed in default for non-appearance of the plaintiffs. Immediately thereafter, on 11.01.2016 an application enumerated under Order 9 Rule 9 of the CPC has been made by the plaintiffs by submitting inter alia, that the plaintiffs were not well and informed their counsel on telephone to attend the case. However, the concerned advocate inadvertently failed to appear on the said date and accordingly, the suit was dismissed in default on 08.01.2016. Based upon these facts, an application was made for restoration of the suit. Perusal of the record would shows that although the medical certificates showing alleged illness of the plaintiffs in support of the said application have not been placed on record, however, the same

by itself would not be sufficient to reject the application filed under Order 9 Rule 9 as contended by the counsel for the applicant, particularly, when the application was made immediately 3 days, after the dismissal of the suit. That apart, it is the duty of an advocate engaged for conducting a cause on behalf of the plaintiffs to keep them fully informed of the proceedings in the Court and be present in the Court, when their case is called out. In the instant case, despite the instructions issued by the plaintiffs, the counsel for the plaintiffs due to inadvertence could not appear on 08.01.2016. As a consequence of it, the suit was dismissed in default. However, an appropriate application for the restoration of the suit was made immediately thereafter on 11.01.2016. In such circumstances and particularly, when the concerned advocate has failed to appear on the date when the case was called out, the plaintiffs cannot be held to be blamed for the same. The plaintiffs under such circumstances, cannot be made to suffer merely because the concerned advocate has failed to appear on the said date. Be that as it may, after considering the materials available on record and considering further the evidence of both the parties, the trial Court has arrived to a conclusion that the default of non-appearance of the plaintiffs on the said date was bonafide and there was no malafide intention behind it.

6. Having considered the facts and circumstances of the case, considering further the filing of an application under Order 9 Rule 9 of the CPC on 11.01.2016 immediately after the dismissal of the suit on 08.01.2016 coupled with the findings of the Court below based upon due and proper appreciation of the evidence led by the parties

that the alleged default of the plaintiffs is bonafide and there is no malafide intention behind it, I do not find any infirmity in the order impugned so as to call for any interference in revisional jurisdiction.

7. Accordingly, the revision petition being devoid of merits, is hereby dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Deepti Jha/Vivek