

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 92 of 2019

Netram, S/o. Baratram, Aged About 35 Years, R/o. Raniroad, Korba,
District Korba Chhattisgarh.

---- Petitioner

Versus

1. Smt. Murti Soni, S/o. Bhogilal Soni, Aged About 80 Years, R/o. Portha, Tehsil Sakti, District -Janjgir-Champa Chhattisgarh.
2. Smt. Pushpa Devi Yadav, W/o. Shri Babulal Yadav, aged about 53 Years, Caste -Yadav, R/o. Purani Basti, Korba, tehsil and District Korba Chhattisgarh.

-----Respondents

For Petitioner : Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/11/2019

1. This petition has been brought being aggrieved by the order dated 16.01.2018, passed by the learned Court of First Additional District Judge, Korba, by which the proceeding in Miscellaneous Appeal No.12/1985 has been closed and the record is deposited in the record room.
2. It is submitted that originally a civil suit No.43-A/1984 was filed by one Jagat Ram against Barat Ram and others. The petitioner is son

of defendant – Baratram, the defendant in that case. The ex-parte judgment was delivered on 15.01.1985 and suit was decreed in favour of the plaintiff. An application under Order 9 Rule 13 of C.P.C. was filed before the same Court by the defendants for setting-aside the ex-parte judgment and decree, but the same was dismissed on 28.06.1985. Miscellaneous appeal under Order 43 Rule 1 of C.P.C. was preferred in the Court of District Judge, which was registered as Miscellaneous Appeal No.12/1985. This miscellaneous appeal was dismissed for want of prosecution on 24.10.1990. Subsequent to that, the defendants filed an application under order 9 Rule 4 of C.P.C. before the Appellate Court for restoration of the Miscellaneous Appeal No.12/1985. This application was dismissed by order dated 08.05.2001.

3. The defendant then filed Miscellaneous Appeal No.539 of 2001 before this Court, which has been disposed off vide order dated 28.07.2010 by setting-aside the dismissal of Miscellaneous Appeal No.12/1985. When the petitioner appeared before the trial Court, he came to know that because of one fire incident that took place on the intervening night of 4th and 5th of March, 1996, all the records of the Court were destroyed in that incident.
4. The learned Court below has in the impugned order made observations regarding previous proceeding and also missing of the record of the Miscellaneous Appeal No. 12/1985, by making a mention that there is no application or document present praying for or with direction for reconstitution of records, therefore, the proceedings in that miscellaneous appeal were closed and the

record of the proceeding was sent to record room.

5. On making a query from the counsel appearing from the petitioner, he submits that, if the, reconstitution of record is ordered, then the petitioner's side can provide to the Court the petition, replies etc. and documents copies in their possession and it can be similarly expected from the other party also.
6. It is a very peculiar circumstances that the petitioner is pursuing for justice and his request has been terminated only for the reason that the record of the said miscellaneous appeal is now missing or destroyed in the fire incident. The learned Court below can not brush aside the responsibility by making the simple mention that there is no order for reconstitution of record, because it is a duty of the Presiding Officer of the Court that every effort is made for considering and deciding the petition of the parties and the Court itself by its own authority or with the permission of the District Judge of the concerned District could have ordered or sought order for reconstitution of record and after doing reconstitution could have proceeded with the hearing in the miscellaneous appeal. It is also pertinent to note that the said miscellaneous appeal has been restored by the High Court in Misc. Appeal No. 539 of 2001 vide order dated 28.07.2010. Therefore, the learned Judge of the Appellate court has instead of going for pursuit with the petitioner's case that it is decided in accordance with law, has taken shortcut, which is not at all permissible.
7. Therefore, this petition is disposed off at the motion stage. The learned Appellate Court is directed to do reconstitution of the record

of the Miscellaneous Appeal No.12/1985 with the help of the parties and their counsel and proceed with the hearing of the miscellaneous appeal as soon as possible preferably within a period of six months.

8. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram