

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 111 of 2017**

1. Hasanand @ Chhotu Kodwani, Aged about 40 years, S/o Late Chetan Das Kodwani
2. Smt. Vidya Kotwani, W/o Late Chetan Das Kodwani, Aged about 85 Years,

Both are R/o Municipal House No. 42/876, Katora, Tahsil, Police Station, Civil Line - Raipur, District - Raipur (C.G.)

---- Appellants**Versus**

Ikbal Singh Budhreja, S/o Late Shri Chunnilal Budhreja, Aged About 8 Years, R/o House No. 9, New Panchsil Nagar, Civil Line, Police Station Civil Line, Raipur, District Raipur (C.G.)

---- Respondent

For Appellants : Mr. A.D. Kuldeep, Advocate.

For Respondent : Mr. Prafull N. Bharat, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****02/09/2019**

1. The miscellaneous appeal is preferred against the order passed by 2nd Additional District Judge, Raipur (C.G.) in M.J.C. No. 42/2017 dated 9th October, 2017 which is arising out of the judgment/decreed dated 2nd December, 2016 passed by 2nd Additional District Judge, Raipur (C.G.) through which the said Court rejected the application filed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-party judgment/decreed passed against the present appellant dated 2nd December, 2016.
2. The respondent/plaintiff filed a civil suit for recovery of Rs. 15,15,000/- against the appellant/defendant before the trial Court which is registered as Civil Suit No. 618/2016. The

appellant did not appear before the said Court after summon that is why ex-parte decree was passed. The appellant herein filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 which is registered as M.J.C. No. 42/2017 and after hearing the parties, the said Court rejected the same.

3. Learned counsel on behalf of the appellants submits that the appellants have not received notice of the trial Court that is why they did not appear, but the trial Court rejected their application for setting aside the said decree which is unjust and unfair, therefore, the same should be reversed and appellants be provided opportunity of hearing in the interest of justice.
4. On the other hand, learned counsel for the respondent submits that the appellants did not appear before the trial Court even after receiving the summon, therefore, they cannot be benefited of their own wrong.
5. The question for consideration of this Court is whether the summon was not duly served to the appellants or they were prevented by any sufficient cause from appearing when the suit was called on for hearing. It is clear that summons were ordered to be served through ordinary and registered mode. Summons through ordinary mode was served to appellant No. 1 who is son of appellant No. 2. As per the report, summon was served along with copy of plaint. After receiving summon and copy of the plaint, it was for the appellants to defend the case, but they did not appear before the Court which issued the summons. After getting

the summons, the appellants were under obligation to defend the case, but they choose not to defend the case that is why the decree was passed after recording evidence and hearing of respondent side.

6. From perusal of the record, it appears that 3 cheques were issued by the appellants in favour of respondent which was dishonoured that is why suit was filed for recovery of the amount for which cheques were dishonoured. After assessing the entire evidence, the trial Court recorded finding in favour of the respondent. When appellants have selected not to defend the case, they cannot say that sommon was not served or they have been prevented by any sufficient cause for not appearing before the trial Court.
7. The trial Court has discussed the entire issues in the said miscellaneous case and after going through the entire record, this Court has no reason to record contrary finding what is recorded by the Court. When appellants were in fault, they cannot be benefited for their own fault. Arguments advanced on behalf of appellants is not sustainable. This miscellaneous appeal has no force and it is not a case where issues required full consideration.
8. Accordingly, this miscellaneous appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge