

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.197 of 2017

1. Sukhdev Das, S/o. Premdas, aged about 40 years,
 2. Mahesh Das, S/o Premdas, aged about 38 years,
 3. Manik Das S/o Premdas, aged about 35 years,
 4. Sanik Das S/o Premdas, aged about 33 years,
Rajmen, D/o. Manjatan (Since died) through her legal heirs
- All above are R/o Village Dwarika Nagar Police Station Jayanagar,
Tehsil Surajpur, District Surguja (CG)

--- Applicants

Versus

1. Yashoda Bai, D/o Jaklu Panika, aged about 37 years, R/o village Podipa, Tehsil Ambikapur, Post Latori Police Station Ghandhi Nagar, District Surguja (CG)
 2. Ishwar Prasad S/o Nandeshwar aged about 35 years
 3. Vinod Kumar S/o Nandeshwar Aged about 25 years
- Respondent No.2 & 3 are the R/o Village Dwarika Nagar Tehsil Surajpur, District Surguja (CG)
4. State of Chhattisgarh, through Collector Surguja, Ambikapur (CG)

--- Respondents

For Applicants	:	Mr.Manoj Paranjape, Advocate
For Respondents No.1 to 3	:	Mr.D.N.Prajapati, Advocate
For Respondent No.4	:	Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board25/04/2019

1. The plaintiffs' suit for declaration of title and permanent injunction filed on 16.12.94 was dismissed by the trial Court for want of prosecution on 29.6.2001 as his counsel pleaded no instructions on behalf of the plaintiff. She filed an application under Order 9 Rule 9 of the CPC for restoration of her civil suit, which was rejected by the trial Court and upheld by the Misc. Appeal Court in appeal preferred by the plaintiff under Order 43 Rule 1(c) of the CPC, against which, this civil revision has been preferred questioning the order rejecting

application under Order 9 Rule 9 of the CPC as well as the order passed in Misc. Appeal affirming the original order.

2. Mr. Manoj Paranjape, learned counsel for the petitioners, would submit that the plaintiff's counsel before the trial Court did not issue any notice for pleading no instructions on behalf of the plaintiff on 29.6.2001, but pleaded no instructions and consequently suit was dismissed for want of prosecution since the plaintiff's counsel did not inform the plaintiff right in time before pleading no instructions, that constitutes sufficient cause within the meaning of Order 9 Rule 9 of the CPC and the trial Court as well as the Misc. Appeal Court both are absolutely unjustified in rejecting the application, as such, the orders dated 29.6.2001 & 13.1.2010 passed by the trial Court and order dated 23.9.2017 passed by the Misc. Appeal Court deserve to be set aside and the suit be restored to its original number for hearing and disposal in accordance with law from the stage where it was dismissed.
3. On the other hand, Mr. D. N. Prajapati, learned counsel for respondents No. 1 to 3, would support the impugned order and submit that both the Courts below are justified in rejecting the application, as such, the instant civil revision deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. It is not in dispute that the case was fixed for the defendants' evidence on 29.6.2001, on that day, counsel of the plaintiff Shri

K.K.Agrawal pleaded on instructions on behalf of the plaintiff and suit was dismissed for want of prosecution, but there is no material on record to hold that Shri Agrawal intimated the plaintiff by registered post of his intention to plead 'no instructions' in her behalf before pleading no instructions and it is nobody's case that the counsel informed plaintiff after he has reported no instructions to the Court. However, law in this regard is very much settled by catena of judgments rendered by Their Lordships of the Supreme Court.

6. In the matter of Tahil Ram Issardas Sadarangani and others v. Ramachand Issardas Sadarangani and another¹, the Supreme Court has held that where the counsel pleads no instructions without intimating the client then, fresh notice ought to have been sent to the party concerned and held as under:-

“4. It is not disputed in the present case that on March 15, 1974 when Mr.Adhia, advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr.Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.”

7. The principle of law laid down in Tahil Ram Issardas Sadarangani (supra) has been followed and relied upon subsequently by the Supreme Court in the matter of Malkait Singh and another v. Joginder Singh and others² in which counsel for the appellant therein pleaded no instructions and he was proceeded *ex-parte* by

¹ 1993 Supp (3) SCC 256

² (1998) 2 SCC 206

trial Court and *ex-parte* decree was passed without notice to appellant therein who were not present when counsel pleaded 'no instructions'. The Supreme Court did not approve the fact of passing *ex-parte* judgment without issuing fresh notice to the appellant therein and held as under:-

“A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial Court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel pleaded no instructions.”

8. In Sushila Narahari and others v. Nandkumar and others³, the Supreme Court has held that an advocate should not withdraw from the case without notice to his client while setting aside *ex-parte* decree. The Supreme Court held as under:-

“A reading of the facts leaves us with no doubt that the advocate has derelicted his duty to inform the client by registered post if there was any non-cooperation on behalf of the appellants. Consequently, when the suit had come up for trial, he had withdrawn his vakalatnama without notice to the appellants. The trial Court set the appellants *ex parte* and decreed the suit for specific performance. The application for condonation of delay of 40 days was filed. The Court refused to condone the delay. In view of the above, we find that she is well justified in filing the application with the delay. The delay is accordingly condoned. The *ex parte* decree is set aside. The trial court is directed to give opportunity to the appellants to cross-examine the witness examined by the respondents of the suit and also adduce evidence on her behalf. The trial court is further directed to dispose of the matter as expeditiously as possible, preferably within one year from the date of receipt of the copy of the order.”

9. In the present case, admittedly the plaintiff's counsel Shri Agrawal did not inform the plaintiff before pleading no instructions on his behalf

3 (1996) 5 SCC 529

before the trial Court on 29.6.2001 and the trial Court also did not take any pain to issue fresh notice to the plaintiff before proceeding further and before dismissing the suit for want of prosecution, as such, principle of law laid down by Their Lordships of the Supreme Court in Tahil Ram Issardas Sadrangani (supra) and Malkait Singh (supra) squarely apply to the facts of the present case.

10. At this stage, it would be appropriate to notice Order 9 Rule 9 of the CPC which provides as under:-

“9. Decree against plaintiff by default bars fresh suit.”-(1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

11. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that learned counsel for the plaintiff did not inform by registered post to the plaintiff that he is not going to appear before the trial Court on 29.6.2001, but he pleaded 'no instructions' without intimating the plaintiff resulting into dismissal of suit for want of prosecution. Even the trial Court did not issue fresh notice to the plaintiff as her counsel has pleaded no instructions before the trial Court. The fact of reporting 'no instructions' to the trial Court without informing the plaintiff by the plaintiff's counsel which led to dismissal

of the plaintiff's suit constitutes sufficient cause within the meaning of Order 9 Rule 9 of the CPC. The trial Court ought to have allowed the application filed by the plaintiff under Order 9 Rule 9 of the CPC.

12. In view of above, the orders dated 29.6.2001 & 13.1.2010 passed by the trial Court and order dated and 23.9.2017 passed by the Misc. Appeal Court are hereby set-aside. Civil Suit No.50/09 is restored to its original number for hearing and disposal in accordance with law. The trial Court is directed to dispose of the suit within three months from the date of receipt of a copy of this order as suit was filed on 16.12.94.

13. The civil revision is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-