

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 58 of 2019**

- Lalit Surjan S/o Late Mayaram Surjan Aged About 71 Years Chief Editor, Daily Desh Bandhu, Bhaisthan, Raipur, Police Station And Post Office Raipur, District Raipur Chhattisgarh.

---- Appellant.**Versus**

1. Bindulata Shrivastava D/o Radhakrishan Shrivastava Aged About 61 Years R/o Vinoba Nagar, Bilaspur, Police Station And Post Office Bilaspur, District Bilaspur Chhattisgarh.,
2. Lakhan Singh Secretary Bharat Gyan Vigyan Samit, Bhopal, District Bhopal Madhya Pradesh., District : Bhopal, Madhya Pradesh
3. Smt. Meera Devi Patel W/o Late M.D. Patel, R/o Village Jhanakpur, Post Baramkela, Tahsil Sarangarh, District Raigarh Chhattisgarh.,
4. Gopal Prasad Patel S/o Late M.D. Patel, R/o Village Jhanakpur, Post Baramkela, Tahsil Sarangarh, District Raigarh Chhattisgarh.,
5. Krishna Kumar Patel S/o Late M.D. Patel, R/o Village Jhanakpur, Post Baramkela, Tahsil Sarangarh, District Raigarh Chhattisgarh.
6. Smt. Sarwati Patel D/o Late M.D. Patel, R/o Village Jhanakpur, Post Baramkela, Tahsil Sarangarh, District Raigarh Chhattisgarh.
7. Ashok Agrawal Printer, Publisher, Author And Chief Editor, Dainik Lok Swar Samachar, District Bilaspur Chhattisgarh.

---- Respondents

For Appellant	:	Ms. Priyanka Mehta, Advocate.
For Respondent No.1	:	Mr. Ankit Singhal, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma**ORAL ORDER****01-10-2019**

1. This appeal is preferred under Order 43 Rule 1 (C) of the Code of Civil Procedure, 1908 against the order dated 16-4-

2019 passed by 7th Additional District Judge, Bilaspur, District Bilaspur (CG) passed in M.J.C. Civil No. 95 of 2019 wherein the said court dismissed the application filed under Section 151 of the CPC for cancellation of the order dated 19-4-2017 which was an application filed under Order 9 Rule 13 of the CPC for setting aside the ex parte decree passed in Civil Suit No.3-B of 2004.

2. Non-applicant No.1/plaintiff filed a civil suit against the applicant/defendant for compensation to the tune of Rs.2,00,000/- due to defamation which was registered as Civil Suit No. 3-B/2004. Ex-parte decree was passed on 31-3-2005 because applicant after appearance in the said court did not appear on the date of hearing i.e., 23-2-1999. After passing of ex parte decree he filed an application for setting aside the said decree on 29-6-2005 which was registered as MJC No. 17/2005. The said MJC was dismissed for want of prosecution on 19-4-2017. The applicant filed an application under Section 151 of the Code of Civil Procedure, 1908 for restoration of the application under Order 9 Rule 13 of the CPC on 15-9-2017. It is contended that the applicant's counsel appeared on 8-2-2017 in the said MJC but noted next date of hearing on 18-4-2017. On 18-4-2017 court proceeding was adjourned and case was taken on 19-4-

2017. MJC was dismissed for want of prosecution. It is further contended that the applicant is Chief Editor of Daily Newspaper Deshbandhu and due to discharge of his duties he did not appear in person and his counsel assured him that he would appear on his behalf, therefore, application for restoration was bona fide but the trial court rejected the same contrary to fact and legal aspect of the matter.

3. Learned counsel for the appellant would submit that the reasons shown in the application was bona fide, therefore, application ought to have been allowed. Reliance has been placed in the matter of **Rabindra Singh vs. Financial Commissioner Corporation, Punjab and others, (2008) 7 SCC 663** and **G.P. Srivastava vs. R.K. Raizada and others, (2000) 3 SCC 54**.
4. On the other hand, learned counsel for the respondent No.1 would submit that appellant was never serious about proceeding of the case right from the beginning that is why suit was heard ex-parte and again application for setting aside the ex parte decree is also dismissed for want of prosecution which shows gross negligence on the part of the applicant, therefore, appeal is liable to be dismissed.
5. I have heard learned counsel for the parties and perused the record of the court below.

6. From the record it appears that earlier suit was decreed ex parte for non-appearance of the applicant and after dismissal of the application under Order 9 Rule 13 of CPC, this application is filed after five months of dismissal of said application.
7. The question for consideration of this Court is whether the applicant has shown sufficient cause for restoration of the said application. The test which is applied is whether the applicant honestly and sincerely intended to prosecute the case. The application for restoration of the said petition is filed after five months. It is the case where the party had knowledge about listing of the case. Filing of an application after lapse of time shows that the applicant has not acted diligently and remained inactive for a long. It can be said that the applicant has acted in negligent manner and there was want of bona fide on his part. It is not the case where applicant sincerely intended to contest the case and did its best to do so, therefore, it is the applicant who could be blamed for non-prosecution of the case.. The case laws cited by learned counsel for the appellant do not help as the same are very distinguishable to the facts and circumstances of the present case.

8. Accordingly, the instant appeal is liable to be and hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju