

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 60 of 2019**

Deepesh Jain S/o Harish Chand Jain Aged About 36 Years R/o Ward No. 3, Post And Tahsil Dongargaon District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- **Appellant**

Versus

1. Khem Singh S/o Bhagchand Aged About 62 Years R/o Village - Sevta Tola Post And Tahsil - Dongargaon District - Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. State Of Chhattisgarh, Through - Collector - Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

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For the Appellant	:	Shri Sanjay Agrawal and Shri Akhand Pratap, Advocates
For the Res. No.1	:	Shri Hemant Kumar Patel, Advocate
For the State	:	Shri Praveen Shrivastava, P.L.

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board

21/11/2019

1. This Miscellaneous Appeal has been preferred by appellant against the order dated 23/04/2019 passed in Miscellaneous Civil Suit No. 109/2018 passed by the Additional District Judge (F.T.C.) Rajnandgaon (C.G.), whereby and whereunder he rejected the appellant's application under Order 9 Rule 4 & 9 of Code of Civil Procedure (for short, 'CPC').
2. Appellant had filed a civil suit for the specific performance of the contract registered as Civil Suit No. 37-A/2016. The case was pending before the Additional District Judge (F.T.C.) Rajnandgaon, on 06/09/2018 the suit was dismissed in default.
3. Being aggrieved, appellant had preferred an application under Order 9 Rule 4 & 9 of CPC which was also rejected.
4. As per application filed by the appellant under Order 9 Rule 4 & 9 of CPC vide Annexure A/5 collectively. Appellant's counsel Shri Praveen

Chandrawanshi was busy in another case and appellant himself was present at Manpur, therefore, he could not appear before the trial Court on 06/09/2018. Said application was supported by an affidavit of Shri Praveen Chandrawanshi, Advocate and appellant himself.

5. Looking to the above mentioned facts and circumstances of the case, after due consideration this Court finds that on 06/09/2018 when the case was called for hearing counsel for the appellant and appellant himself were absent due to just and sufficient ground. Thus miscellaneous appeal is allowed and impugned order dated 23/04/2019 is set-aside subject to payment of Cost of Rs. 2000/- upon the appellant which would be payable to the High Court Bar Association for Library purpose. Said civil suit is restored in its original number. Trial Court to dispose of the case in accordance to law and procedure as soon as possible.

Sd/-
(Sharad Kumar Gupta)
Judge

Kamde