

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 73 of 2017**

Madhusudan, S/o Bhagbali, Aged About 60 Years, R/o Village Haatkongera, Tahsil Kanker, District North Bastar, Kanker, Chhattisgarh.

---- Appellant

Versus

1. Sukhram, S/o Punaaram, Aged About 55 Years, R/o Village Haatkongera, Tahsil Kanker, District North Bastar, Kanker, Chhattisgarh.
2. The State of Chhattisgarh, Through the Collector, Kanker, District North Bastar Kanker, Chhattisgarh.

---- Respondents

For Appellant	: Shri Amit Kumar Sahu, Advocate.
For Respondent No.1	: Shri Parag Kotecha, Advocate.
For State/Respondent No.2	: Shri Devendra Pratap Singh, Deput A.G.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****15.01.2019**

1. This Miscellaneous Appeal has been preferred under Order 43 Rule 1(t) of the Code of Civil Procedure 1908 (for short 'CPC'), questioning the order dated 20.04.2017 passed by Additional District Judge, North Bastar Kanker (C.G.) in Miscellaneous Civil Appeal No. 01/2016, by which, the application filed by the appellant under Order 41 Rule 19 of the CPC has been dismissed.
2. Shri Sahu, learned counsel for the appellant submits that the order impugned as passed by the Court below is apparently contrary to the law. While entertaining the application filed under Order 41 Rule 19

of the CPC, the Court below ought to have adopted the liberal view and particularly when the application was supported by the medical prescription showing that the appellant was not well on the date when the appeal was dismissed in default on 10.03.2016. He submits further that the appellant was pursuing his appeal continuously and that was the only date when he could not appear because of his illness. In such circumstances, the Court below ought to have adopted the liberal view while entertaining the said application. Without considering the application in its proper manner, the Court below has committed an illegality in rejecting the same by way of its order impugned, therefore, it is liable to be set aside.

3. On the other hand, Shri Kotecha, learned counsel for Respondent No.1, while supporting the order impugned, submits that the Court below has rejected the said application after due and proper consideration of the medical prescription attached with the said application. Therefore, the order impugned does not require to be interfered.

4. I have heard learned counsel for the parties and perused the entire papers carefully.

5. A suit for declaration of title, injunction and also for possession has been made by the plaintiff on the ground that the Defendant No.1 has executed an agreement to sale in his favour in the year 1998 by putting him in possession over the suit land. According to him, he paid a sum of Rs. 21,000/- on 14.02.2002 and his name was also recorded in revenue papers with the consent of Defendant No.1. It is pleaded further that without his knowledge, the said defendant has succeeded in deleting his name from the revenue papers and started interfering in his

possession, therefore, he has been constrained to file the suit in the instant nature. The said suit was contested by Defendant No.1. The suit as instituted was ultimately dismissed by the trial Court by its judgment and decree dated 13.02.2015 in Civil Suit No.76-A/2013 by Second Civil Judge, Class I, Kanker. Being aggrieved, the plaintiff has preferred an appeal, which was registered as FA No. 3-A/2015, however, it was dismissed in default on 10.03.2016.

6. Perusal of the record would show that immediately after the dismissal of the said appeal on 10.03.2016, the application enumerated under Order 41 Rule 19 of the CPC for its re-admission has been made by the plaintiff/appellant on 04.04.2016 by submitting inter alia, that on 08.03.2016 he becomes ill and was unable to walk, and therefore, he could not appear on 10.03.2016 when the said appeal was dismissed for non-prosecution. The said application was not only duly supported by an affidavit, but also supported by the medical prescription. Perusal of the record would show further that the reasons as assigned in the said application was not controverted by Defendant No. 1 by way of his affidavit. Therefore, under such circumstances, the Court below ought not to have rejected the reasons assigned in the application for want of specific denial in this regard. As such, the Court below ought to have taken a liberal view while entertaining the said application for re-admission of appeal in order to provide the substantial justice to the parties. Perusal of the reasons assigned in the said application vis-a-vis medical prescription would show that plaintiff was not well on 08.03.2016 and was, therefore, unable to attend the Court, when it was dismissed for his non-prosecution on 10.03.2016.

7. Considering the aforesaid facts and circumstances of the case, the Court below has erred in rejecting the said application by adopting a

hyper technical view. The findings so recorded by the Court below are, therefore, liable to be and are hereby set aside.

8. Accordingly, the appeal is allowed and the First Appeal dismissed in default on 10.03.2016 is restored to its original number, as F.A. No. 3-A/2015 (Madhusudan vs. Sukhram & Others). The matter is accordingly remitted back to the concerned Appellate Court, who in turn, shall decide the said appeal on merits in accordance with law. The parties are directed to appear before the concerned Court on 18th March, 2019.

9. Registry is directed to send back the entire record to the concerned Appellate Court forthwith. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge