

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 640 of 2019**

1. Govind Ram Basantani S/o Shri Nihalchand Basantani, Aged About 75 Years Occupation Business, R/o Beladula, Sindhi Colony, Raigarh, Tahsil And District Raigarh, Chhattisgarh. **--- Defendant No. 1**

2. Ashok Basantani, S/o Shri Govind Basantani Aged About 53 Years Occupation Business, R/o Beladula, Sindhi Colony, Raigarh, Tahsil And District Raigarh, Chhattisgarh. **--- Defendant No. 2**

---Petitioners**Versus**

1. Gopalji Mandir Trust Through Mahant Ram Gopal Das Guru Bramhin Baldev Das, Aged About 55 Years Occupation Servarakar, Gopalji, Mandir, R/o Gopalji, Mandir, Beladula, Raigarh, Tahsil And District Raigarh, Chhattisgarh. **--- Plaintiff**

2. Municipal Corporation Raigarh Chhattisgarh Through Its Commissioner Municipal Corporation Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Roop Naik, Advocate
For Respondent No. 2	:	Mr. Rajesh Ranjan Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20/08/2019**

1. By way of the present writ petition under Article 227 of the Constitution of India, petitioners/defendants No. 1 and 2 are challenging the order dated 20/06/2019 whereby learned District Judge, Raigarh has allowed the application filed by the respondent No. 1/plaintiff under Order 9 Rule 9 read with Section 151 of CPC for restoring civil suit No. 93-A/2012, which was dismissed for want of

prosecution on 29/09/2012 due to the absence of respondent No. 1/plaintiff before the trial Court.

2. Mr. Roop Naik, learned counsel for the petitioners/defendants No. 1 and 2 would submit that learned trial Court is absolutely unjustified in allowing the application Order 9 Rule 9 of CPC filed by respondent No. 1/plaintiff for restoration of civil suit No. 93-A/2012, as no sufficient cause has been shown by the respondent No. 1/plaintiff for not appearing before the trial Court when the case was called up for hearing on 29/09/2012 and even the application under Order 6 Rule 17 of CPC filed by the respondent No. 1 for amendment, which was allowed on 17/10/2016 should not have been granted by the trial Court as the said application is barred by limitation, and as such, the impugned order deserves to be set aside.
3. I have heard learned counsel for the petitioners, considered his submissions and went through the records with utmost circumspection.
4. Respondent No. 1's \ plaintiff's civil suit bearing No. 93-A/2012 was dismissed for want of prosecution on 29/09/2012 due to non-appearance of plaintiff before the trial Court. On 24/11/2012, respondent No. 1/plaintiff filed applications under Section 9 Rule 9 of CPC seeking restoration of civil suit No. 93-A/2012. Thereafter, an application under Order 6 Rule 17 of CPC was filed by respondent No. 1/plaintiff seeking amendment in application under Order 9 Rule 9 of the CPC which was earlier filed by him. The amendment application filed by respondent No. 1/plaintiff was ultimately allowed on 17/10/2016. Learned trial Court, after giving elaborate and valid

reasons, came to the conclusion that respondent No. 1/plaintiff has shown sufficient cause for not appearing before the trial Court when the matter was called up for hearing on 29/09/2012 as well as for delay in filing the application under Order 9 Rule 9 of CPC seeking restoration of the civil suit. Learned trial Court has also shown sufficient and good ground for allowing the amendment application filed by respondent No. 1/plaintiff on 17/10/2016 against which the earlier filed writ petition (227) No. 757/2016 was not entertained by this Court. I do not find any perversity in the finding of sufficient cause recorded by learned trial Court.

5. The Supreme Court, in the matter of ***N. Balakrishnan Vs. M. Krishnamurthy***¹, has clearly held that “sufficient cause” has to be construed liberally especially when the delay is not deliberate and *mala fide*. In view of that, I do not find any good ground to interdict the discretionary order passed by the trial Court restoring the civil suit to its original number for hearing and disposal.
6. The writ petition deserves to be and is accordingly dismissed without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

¹(1998) 7 SCC 123