

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3074 of 2019**

- Babla Khan S/o Shri Chhote Miya Aged About 74 Years R/o Old Basti, Baloda Bazar District Baloda Bazar - Bhatapara Permanent R/o Behind the Primary School, Kasaridih, Durg District Durg Chhattisgarh.....(complainant)

---- Petitioner**Versus**

1. Nitesh Sharma S/o Shri Dinesh Sharma
2. Anand Saraf S/o Shri Kunjilal Saraf

The respondent No.1 and 2 is the Partner of S. S. Infrastructure Limited, both are R/o Hotel Park Plaza, Garden Chowk, Baloda Bazar District - Balodabazar - Bhatapara Chhattisgarh.....(Non-applicant)

---- Respondents

For Petitioner : Shri Vineet Kumar Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06/09/2019**

1. Heard.
2. The instant petition is filed against the order whose date is not clear but it is stated to be passed on 29.01.2019 and filed as Annexure P-1.
3. It is contended on behalf of the petitioner that the petitioner has filed the petition before the Real Estate Regulatory Authority (hereinafter referred to as 'RERA'), wherein after primary verification of the fact, the notices were issued to the respondent on 03.01.2019. Subsequently, the date when was fixed on 17.01.2019 on that the petitioner could not appear before the authorities, which

resulted into dismissal of the case in default. Subsequently, the application was filed for restoration of the case under Section 35 (2) (iv) read with Order 9 Rule 9 CPC, wherein the learned authorities have passed the order of dismissal of the application for restoration, against which the present petition has been preferred. It is stated that while dismissing the application for restoration, the learned authorities instead of evaluating the facts whether there was sufficient cause for non-appearance on 17.01.2019 has given a finding that one more case is pending before the Second Additional District Judge, Baloda Bazar and since the civil case is pending in respect of the land, therefore, no purpose would be served to restore the petition.

4. I have heard learned counsel for the petitioner and perused the documents.
5. The short question which is for consideration in this case is that as to whether the dismissal on 17.01.2019, whether the case could have been restored to its original file, which was dismissed for non-appearance on 17.01.2019. Perusal of the order dismissing the application for restoration of the case would show that the authorities have observed that because of the fact another case is pending before the Second Additional District Judge, Baloda Bazar, therefore, no purpose would be served to restore the petition and virtually verdict on merits were passed. Consequently, the restoration application was dismissed.
6. Persual of the earlier order sheet would show that on earlier occasion on 03.01.2019 notices were issued after prima facie it was found that the averments made by the petitioner are correct, however, the petition was dismissed in default on 17.01.2019. In the application for restoration, the petitioner has averred that on the date when the case was fixed, he came late at about 12.30 pm, wherein he came to know that in absence of the petitioner,

the case has been dismissed. It is stated that the petitioner is a senior citizen aged about 78 years, therefore, he could not appear before the Court on time. The said application is supported by the affidavit. The learned authorities did not accept the averments of the petitioner on the ground that some civil suit is pending. When the petition was dismissed in default, there was no occasion for the authority to go into the merits of the case, since the restoration was only prayed for by showing the reasons for non-appearance which was made on the earlier date.

7. After going through the application filed for restoration, this Court is of the opinion that sufficient reasons were shown that the petitioner is a senior citizen aged about 78 years and he could not come on time and when he appeared in the Court, he came to know that the case has been dismissed in default. Consequently, in order to advance the cause of justice, both the orders i.e. the dismissal order dated 17.01.2019 and the subsequent order dismissing the application for restoration of the case, is set aside. The case is directed to be restored to its original number for adjudication before the learned authorities on merits. The parties shall appear before the RERA on 15th of October, 2019.
8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge