

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 850 of 2019

1. Aman Jari, S/o. Late Lalit Jari, Aged About 38 Years, R/o. Akashwani Marg Nayapara, Near Civil Court, Jagdalpur, Chhattisgarh.
2. Munmun Jari, D/o. Late Lalit Jari, Aged About 31 Years, R/o. Plot No. A-203 Virasat Apartment, Avanti Vihar, Raipur, Chhattisgarh.
3. Aayush Jari, S/o. Late Lalit Jari, Aged About 27 Years, R/o. Akashwani Marg Nayapara, Near Civil Court, Jagdalpur, Chhattisgarh.

---- Petitioners

Versus

1. Santosh Sahu, S/o. Late Ghasiya Sahu,
2. Sukhchand Sahu, S/o. Late Ghasiya Sahu,
Both are R/o. Himachal Ice Cream Gali, Ravigram Telibandha, Raipur, Chhattisgarh.
3. Geetanjali Grih Nirman Sahkari Samiti Maryadit, Raipur, Through-President, Geetanjali Grih Nirman Sahkari Samiti Maryadit, Geetanjali Nagar, Raipur, District : Raipur, Chhattisgarh.

-----Respondents

For Petitioners : Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

19/11/2019

1. This petition has been brought being aggrieved with the order dated 23.08.2019, passed by the learned District Judge, Raipur in Misc. Civil Appeal No.56 of 2018.

2. It is submitted that the petitioners are the plaintiffs in Civil Suit No.81-A/2007, pending before the Court of 9th Civil Judge Class-II, Raipur. The date on 10.05.2018 was fixed for submission of reply by the petitioners on the application filed by the defendant No.2 under Order 1 Rule 10 (2) of read with Section 151 of C.P.C. There was no requirement of personal appearance of the petitioners/plaintiffs, however, due to non-appearance of their counsel, the trial Court has dismissed the civil suit for non-appearance on the same date. The petitioners then filed an application under Order 9 Rule 9 of C.P.C., before the trial Court itself, which was dismissed vide order dated 07.08.2018. This order was challenged in the miscellaneous appeal before the learned District Judge, in which the appeal of the petitioners has been dismissed again.
3. On perusal of the impugned order and other documents filed along with the petition, it is found that the date on 10.05.2018 was fixed for submission of reply by the plaintiffs to the application under Order 1 Rule 10 (2) read with Section 151 of C.P.C. filed by the defendant No.2.
4. The order of dismissal of any suit for non-appearance can be made only according to the provisions that are present in the Civil Procedure Code. The Order 9 Rule 2 provides for dismissal of the suit when the plaintiff fails to pay costs. Order 9 Rule 3 provides that when neither party appears at the time, the suit is called for hearing, the Court may make an order that the suit be dismissed. Similarly Order 9 Rule 5 provides that when the summons to defendants are returned unserved and the plaintiffs fails to make payment of process fee for summons within 7 days and lastly the provision under Order 9 Rule 8 provides

that when only defendant appears and the plaintiff does not appear, when the suit is called for hearing, the suit may be dismissed for non-prosecution.

5. These are the only provisions in which the suit can be dismissed and specifically the dismissal for non-prosecution is provided only under Order 9 Rule 3 as well as under Order 9 Rule 8 of C.P.C. In both the provisions, the emphasis is on the word 'hearing', which says that the non-appearance of the plaintiff should be there when the suit is called for 'hearing'.
6. According to the Code of Civil Procedure itself, the hearing begins under the provisions of Order 18 i.e. when the case is fixed for examination of witnesses. Therefore, the date fixed in the civil suit, was only for filing of reply to an interlocutory application filed by the defendants which can not be regarded as date of hearing. Therefore, the order of dismissal of suit for non-appearance by the trial Court and the same which has been upheld in the appellate order are totally against the provisions of law and without application of mind, which is also a failure to exercise proper jurisdiction vested in the Courts below.
7. Therefore, the petition is disposed off at motion stage. The impugned orders of the Courts below are set-aside and the suit filed by the petitioners/plaintiffs is restored to its original file. The petitioners are directed to give their appearance before the trial Court on 5th of December, 2019.

Sd/-
(Rajendra Chandra Singh Samant)
Judge