

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 156 of 2020

- Virendra Sethiya S/o Janki Sethiya Aged About 40 Years R/o Near Bazar Village Bakawand, District- Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

1. Smt. Neela Bharti, Wd/o Late Dharman Bharti, Aged About 42 Years, R/o Godaraguda, Village- Sivanaguda Out Post Bakawand, District Bastar, Chhattisgarh (Claimants).
2. Jagman Bharti, S/o Late Dharman Bharti Aged About 16 Years Minor Through Smt. Neela Bharti Wd/o. Late Dharman Bharti (Mother), R/o Godaraguda, Village- Sivanaguda Out Post Bakawand, District - Bastar, Chhattisgarh. (Claimants).
3. Miss Gomati Bharti, D/o Late Dharman Bharti, Aged About 15 Years, Minor Through Smt. Neela Bharti Wd/o. Late Dharman Bharti (Mother), R/o Godaraguda, Village- Sivanaguda Out Post Bakawand, District- Bastar, Chhattisgarh. (Claimants).
4. Range Officer Forest Department Office Bakawand District Bastar, Chhattisgarh.....(Non Applicant No.2 In Original Case).
5. State Of Chhattisgarh Through Collector Bastar Jagdalpur, District- Bastar, Chhattisgarh.....(Non Applicant No.3 In Original Case).

---- Respondents

For petitioner	:	Mr. P.K. Tulsyan, Advocate.
For respondent/State	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

10/02/2020

Heard.

1. This petition has been brought being aggrieved by the order dated 7.11.2019 (Annexure P-1) passed by the Commissioner, Employee Compensation Act, Labour Court, Jagdalpur, District-Bastar,

Chhattisgarh, dismissing the application filed by the petitioner under Order 9 Rule 13 Civil Procedure Code, 1908 (for short' CPC').

2. It is submitted that the petitioner was respondent in Case No.56/2014/WC Act/Fatal before the Commissioner Employee Compensation Act, Labour Court, Jagdalpur. Although he had filed written statement but because of his physical incapacity, he could not appear before the Court in the case, therefore, he was proceeded *ex-parte* and thereafter *ex-parte* judgment was passed on 19.9.2017 against the present petitioner. An application under Order 9 Rule 13 of CPC was filed by the petitioner praying for setting aside of the said *ex-parte* judgment. The learned Court below without giving any opportunity to the petitioner to produce any evidence and other relevant documents in support of his prayer, has arbitrarily decided the application and dismissed it by the impugned order. In support of his submission, the petitioner has placed reliance on the judgment rendered in the matter of Babulal Ramcharan & others v. Chhote Lal Khan, reported in 1976 MPLJ 843.
3. Learned State counsel appearing for respondent No.4 & 5 opposes the petition and submits that the impugned order itself shows that ample opportunities were given to the petitioner for appearing and presenting his case. Further, the ground taken for his non-appearance is not supported with relevant documents showing that he was incapacitated on all the dates that were fixed for hearing. Therefore, no error has been committed by the Court below in passing the impugned order. Hence, the petition be dismissed.
4. I have heard both the parties and perused the documents along with petition.
5. On perusal of the impugned order, it is found that application of the petitioner was decided after filing of application and hearing of arguments only and no inquiry was conducted by allowing opportunity to the petitioner to produce evidence or other supporting documents in his favor. It has been held in the case of Babulal Ramcharan (*supra*) that opportunity to produce evidence should be given before the application under Order 9 Rule 13 is disposed off.

6. Although there is no specific procedure provided under Order 9 Rule 13 of CPC, but the applicant has to satisfy the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing before the Court when the suit was called for hearing. This kind of satisfaction of the Court can be recorded only on the basis of the facts which may be presented in any evidence. When there is any absence of clear provision in law, then the Code of Civil Procedure itself provides for the same under Section 151 of CPC and inquiry can be made accordingly in the interest of justice and also for the complete adjudication of the dispute raised. Therefore, I feel inclined to allow this petition at motion stage.
7. Accordingly, the petition is allowed at motion stage. The impugned order is set aside. The application under Order 9 Rule 13 of CPC is restored. Learned Court below is directed to decide the application afresh on merits, after affording an opportunity to the petitioner and the respondent side to produce evidence. The petitioner is directed to give his appearance before the Court below on 16th March, 2020.

Sd/-

(Rajendra Chandra Singh Samant)
Judge