

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 194 of 2020

1. Smt. Pratibha Mallick W/o Manmath Mallick, Aged About 47 Years, R/o Village P. V. 116, Tahsil Pakhanjore, District U. B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh
2. Vivek Mandal S/o Vimal Mandal, Aged About 45 Years, R/o Village P.V. 116, Tahsil Pakhanjore, District U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh(Defendants)

---- Petitioners

Versus

1. Smt. Vibharani Mandal W/o Vimal Mandal, Aged About 63 Years, R/o Village P.V 116, Pakhanjore, Tahsil and Thana Pakhanjore, District U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh(Plaintiff)
2. Prashant Sarkar S/o Late Chitranjan Sarkar, Aged About 45 Years, R/o Shubhpalli, Tahsil Pakhanjore, District U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh
3. Smt. Geetarani Sarkar W/o Nimai Sarkar, Aged About 50 Years, R/o Village P.V. 116 Pakhanjore, District U. B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh
4. Tandra Saha W/o Vashudev Saha, Aged About 51 Years, R/o Village P.V. 116 Pakhanjore, District U. B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh
5. Sub Divisional Officer (R) Pakhanjore, District - U.B. Kanker Chhattisgarh., District : Kanker, Chhattisgarh
6. The State of Chhattisgarh, Through Collector, District U.B. Kanker Chhattisgarh. (Defendants), District : Kanker, Chhattisgarh(Defendants)

---- Respondents

For Petitioners – Shri Parag Kotecha, Advocate.

For State/Respondents 5 and 6 – Shri D.P. Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 19-11-2019 passed by Civil Judge Class 2, Pakhanjore, District U.B. Kanker in Civil Suit No.7A/2018 by which the application filed by the petitioners for setting aside ex-parte proceeding in the civil suit against them was dismissed.
2. The petitioners are defendants in Civil Suit No.7A/2018 pending before

the Court below. Because of the non-appearance of the petitioners the trial Court ordered ex-parte proceeding against the petitioners on 18-06-2018. The petitioners had reasonable cause for their non-appearance on the date of hearing and also there are reasons present why the application could not be filed within time. The trial Court has not afforded any opportunity to the petitioners for presenting the reasons for delay. Therefore, it is prayed that they may be granted one opportunity and the impugned order be interfered with.

3. Learned counsel for the State/respondents No.5 and 6 makes formal objection.

4. Considered on the submission made and also perused the documents present along with the petition. The learned trial Court has dismissed the application under Order 9 Rule 7 of the CPC only on one ground that the application was filed belatedly. As it appears that the petitioners intend to defend themselves in the civil suit and they also have presented that there had been reasons for the non-appearance and non-filing of the application for setting aside the ex-parte proceeding in time, therefore, I am of this opinion that the petitioners should be granted one opportunity to present their case in a proper manner before the trial Court.

5. Accordingly, the petition is disposed off at motion stage. The impugned order is set aside. The petitioners are given opportunity to file application for condonation of delay before the trial Court mentioning reasons for the delay in filing the application and it shall be upon the trial Court to consider the same in accordance with merits and also in accordance with law and if required then also reconsider on the application filed by the petitioners under Order 9 Rule 7 of the CPC.

Sd/-

(Rajendra Chandra Singh Samant)
Judge