

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 190 of 2020

- Jeevan Lal S/o Late Daulat Ram, Aged About 62 Years, R/o Village Kenvatara, Tahsil Masturi, Civil and Revenue District Bilaspur Chhattisgarh..(Defendant), District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Smt. Geeta Sahu W/o Shri Bhupendra Sahu, Aged About 28 Years, R/o Village Pachpedi, Tahsil Masturi , Civil and Revenue District Bilaspur Chhattisgarh..(Plaintiff), District : Bilaspur, Chhattisgarh

--- Respondent

For Petitioner – Shri Parasmani Shriwas, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-02-2020

Heard.

1. This petition has been brought challenging the order dated 09-07-2019 passed by the Court of First Additional District Judge, Bilaspur in Misc. Civil Suit No.124/2019 dismissing the application filed by the petitioner under Section 151 of the CPC for restoration of the proceeding for restoring MJC No.164/2017 filed by him, which was dismissed in non-prosecution on 14-02-2019.
2. It is submitted that as soon as the petitioner came to know of the dismissal of the MJC No.164/2017 he moved applicant under Section 151 of the CPC praying for restoration of the MJC mentioned above. The learned Court below has erroneously and arbitrarily without making any enquiry with respect to the reasons for non-appearance of the petitioner dismissed the application by the impugned order.
3. It is submitted that the petitioner intends to prosecute the MJC No.164/2017. The reasons mentioned in the impugned order for dismissal of his restoration application are shown that he had been unable to present

witnesses before the Court below in proceeding filed by him under Order 9 Rule 13 of the CPC. The petitioner was required only to show a good cause for his non-appearance on the date he failed to give appearance, any previous lapses on his part need no consideration in the matter of restoration. Therefore, it is prayed that the impugned order be set aside.

4. Considered on the submission and also perused the document present with the petition. It appears that in the impugned order the reason mentioned by the petitioner for his non-appearance on the date of hearing, i.e., 14-02-2019 has not at all been considered and the order of rejection has been passed on the ground of previous lapses he made in the said proceeding. Therefore, the consideration made in passing the impugned order is not in accordance with provisions under Order 9 Rule 13 of the CPC, hence, it is illegal and arbitrary which is liable to be set aside. Therefore, without notice to the respondent side this petition is disposed off at motion stage. The impugned order is set aside and MJC No.164/2017 is restored. The petitioner is directed to give appearance before the concerned Court on 18th of March, 2020 and it is also directed that the MJC No.164/2017 be enquired and disposed off within a period of three months from the date of appearance of the petitioner before the said Court.

5. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge