

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 09.12.2019

Order Passed on : 28/01/2020

W.P.(227) No. 840 of 2019

1. Dinesh Kumar S/o Late Shri Sachidanand Aged About 54 Years Bureau Chief Durg, Central Chronicle, G. E. Road, Raipur Chhattisgarh

---- Petitioner

Versus

1. J.K. Lakshmi Cement Limited Malpurikhurd Village And Tahsil Dhamdha, District Durg Chhattisgarh
2. Dinesh Kumar Mehta S/o B. R. Mehta Senior Vice President, J. K. Lakshmi Cement Limited Malpurikhurd Village Durg District Durg Chhattisgarh
3. R. Ajit Former Chief Executive Officer, Central Chronicle, House No. 105, C.G. Kalpatru, Amlidih, Raipur District Raipur Chhattisgarh
4. K. N. Kishore Former Resident Editor, Central Chronicle, Housing Board Colony Suddu, District Raipur Chhattisgarh

---- Respondents

For Petitioner : Petitioner-in person along with Ms. Usha Menon, Advocate.

For respondents No.1 & 2 : Mr. N. Naha Roy, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. This petition has been brought being aggrieved by the order dated 03.05.2019 passed by the Court of First additional District Judge, Durg in Civil Suit No.6B/2014, dismissing the application filed by the petitioner under Section 151 of Cr.P.C.
2. Learned counsel for the petitioner submits that petitioner is a journalist

connected with English Daily newspaper, Central Chronicle. The respondent filed two Civil Suit which were registered as 6B/2014 and 63B/2013. The petitioner was served with notices through registered post in Case No.63B/2013 only and he was ignorant about the another Civil Suit No.6B/2013, as no summons were served upon the petitioner in parallel suit No.6B/2013. The Court ordered issuance of summons in the month of February, 2017. The summons were returned unserved with note that petitioner has left India. The learned Court without making any verification and without considering this fact that no affidavit was filed for the non-service of summons started proceeding ex-parte against the petitioner.

3. It is further submitted that petitioner came to know that the ex-parte proceeding in Civil Suit No.6B/2013 in the month of November, 2017 then he made a complaint to the Chief Justice with an affidavit. On the advice received from the office of Chief Justice, the petitioner appeared in the Court and filed an application on 14.05.2018. The learned trial Court has made an erroneous observation that the application should have been filed in the another case No.63B/2013 in which the petitioner has alleged that fraud has taken place.
4. It is also submitted that the petitioner was regularly appearing on the dates of hearing and contesting the case No.63B/2013. The respondents did not care to inform the Court regarding his appearance in the parallel suit and thereafter the service of summons upon the petitioner has also been manipulated in which, it is reported that he has left India, therefore, it is a clear case where the respondents have committed perjury and fraud against the petitioner in which the inquiry is necessary to be made.
5. Relying on the judgment of Supreme Court in **A.C. Narayanan Vs.**

State of Maharashtra & Anr. reported in ***AIR 2014 SC 630***, in which it was held that before taking cognizance in any complaint case, it was necessary to prima-facie establish that the Power of Attorney existed in favour of the person who was filing complaint on behalf of the complainant. In the present Civil Suit, respondent No.2 has no such authorization for filing civil Suit. On the point of perjury, reliance is placed on the judgment of Supreme Court of India ***Re: Suo Moto Proceedings against Mr. R. Karuppan, Advocate Vs. Re: Suo Moto Proceedings against Mr. R. Karuppan, Advocate*** reported in ***(2001) 5 SCC 289*** in which the Hon'ble Supreme Court has held that the Court was prima-facie satisfied with the respondent in that case by filing affidavit in support of the writ petition making a wrong statement. This is also a similar case.

6. It is submitted that in the ***Lieut Swaran Singh Bhindra Vs. Surinder Kaur*** reported in ***16 (1979) DLT 32***, the case before the High Court was this that the husband had filed a Civil Suit for the judicial separation from his wife which was decided ex-parte against the wife. The wife filed an application under Order 9 Rule 13 of C.P.C. before the trial Court and on the basis of the evidence brought by her, the trial court set aside the ex-parte decree. The Delhi High Court has noticed two manipulation of service of notice upon the respondent and observed that it is a case of alleged forgery. Hence, it is submitted that this is also a similar case where the respondents have manipulated the service of notice upon the petitioner.
7. Reliance has been placed on the judgment of ***M/s South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik*** reported in ***(2008) 14 SCC 632***. Reliance has also been placed on the judgment of ***T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors.*** reported in ***2004***

(3) SCC 392 and it is submitted that the learned trial Court has erroneously dismissed the application of the petitioner. Hence, petition may be allowed and appropriate orders be passed.

8. Learned counsel for the respondent No.1 & 2 opposes the submissions made and submits that the petitioner has made a contemptuous statement against the Courts in which he should be proceeded against. It is submitted that in the Civil Suit No.6B/2013 the order sheet dated 28.02.2017 mentions that the registered notice was served upon the petitioner and another defendants regarding which delivery report was produced before the Court and because of their non-appearance, then the proceeding was ordered to be taken ex-parte. Thereafter, on appearance of the petitioner in the Civil Suit, he has been given opportunity to participate in the trial. The learned trial Court has not committed any error in passing the impugned order in fact the application has been filed in the wrong Civil Suit which should have been filed in the Civil Suit No.63B/2013.
9. It is further submitted by the learned counsel for the respondent No.1 and 2 that respondent No.2 has authority to file the Civil Suit for her being the principal officer of the respondent industry, although there is no such definition in the C.P.C., but it defined in the Section 35 of the Income Tax Act. Therefore, the petition is totally without any substance which may be dismissed.
10. In reply, it is submitted by the petitioner in person as well as the learned counsel representing him that the respondent No.2 has no Power of Attorney to file the Civil Suit.
11. I have heard learned counsel for the both the parties and perused the documents placed on records.

12. The petitioner had filed application under Section 151 of C.P.C. before the trial court making a mention regarding the complaint made to the Chief Justice of the High Court and the response given, it is stated that in the application, the petitioner has given appearance in the Civil Suit No.6B/2013, after service of summons upon him through registered post he has made allegation that in the Civil Suit No.63B/2013, the respondents had committed forgery to convince the trial Court that the service has been made upon the petitioner and others and have procured the order of ex-parte proceedings. Therefore, on that basis, inquiry may be made against the respondents to consider proceeding against them under Section 340 of Cr.P.C. this application was opposed by the respondents. The learned trial Court has decided this application vide order dated 03.05.2019 making a specific mention that the petitioner was required to file such application in the Civil Suit No.63B/2013 in which he is making allegation regarding the fraudulent service of summons upon him and others and therefore, his application filed in the Civil suit No.6B/2013 is not maintainable which was dismissed accordingly.

13. After considering on the submissions made by both the sides and perusing the documents filed, I am of this view that the learned trial Court has not committed any error in holding that the application filed under Section 151 of C.P.C. has been filed by the petitioner in the Civil Suit No.6B/2013, in which he is himself giving appearance and there is no such allegation from his side that any fraudulent service has been made. The allegation of fraudulent service very clearly pertains to the proceeding in the Civil Suit No.63B/2013 and the inquiry, if any, is considered to be made on the allegations made by the petitioner that shall be done in the Civil Suit No.63B/2013 itself and not in the Civil Suit

No.6B/2013, therefore, this petition appears to be misconceived. Hence, on this point, I do not find any error in the order passed.

14. As regards, the other submissions of the petitioner that the respondent No.2 does not have the competence to file the Civil Suit, that is an objection which has to be raised in the Civil Suit itself before the trial Court and the trial Court has competence to decide on this point raised in accordance with the provisions of Code of Civil Procedure. The other allegations regarding perjury and fraud are directly connected with the application under Section 151 of C.P.C. which has been correctly decided by the learned trial Court. Therefore, the petitioner is needed to file such application before the Court in the Civil Suit concerned regarding which he has made allegations regarding the fraudulent service of summons upon him. Therefore, there is no need to consider on this point in this petition. After consideration and on the basis of the observations made hereinabove, it is held that this petition is without any substance, which is dismissed.

15. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge