

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 838 of 2019

1. Daman Das, S/o Late Purushottam Satnami Aged About 69 Years R/o- Village Guna, Tahsil And District Mungeli Chhattisgarh.
2. Smt. Chameli Bai, W/o Damandas Aged About 55 Years R/o- Village Guna, Tahsil And District Mungeli Chhattisgarh.
3. Yuvraj, S/o Damandas Satnami Aged About 30 Years R/o-Village Guna, Tahsil And District Mungeli Chhattisgarh.
4. Pramoshan, S/o Damandas Aged About 27 Years R/o- Village Guna, Tahsil And District Mungeli Chhattisgarh.

---- Petitioners

Versus

1. Kaushal Prasad, S/o Damandas Satanami Aged About 45 Years R/o- Village Guna, Tahsil And District Mungeli Chhattisgarh.
2. Manoj Kumar, S/o Damandas Satanami Aged About 35 Years R/o- Village Guna, Tahsil And District Mungeli Chhattisgarh.
3. Smt. Susheela, W/o Badrinarayan Satnami Aged About 49 Years R/o Village-Khektara (Hardi), Tahsil Lormi, District Mungeli Chhattisgarh.
4. Smt. Chandkali, W/o Rajendra Satnami Aged About 42 Years R/o - Gajiya Nawagaon, Tahsil Mungeli, District Mungeli Chhattisgarh.
5. Smt. Chitrarekha, W/o Rakesh Satnami Aged About 38 Years R/o- Village Sambalpur, Tahsil Nawagarh, District Bemetara Chhattisgarh.
6. Smt. Manisha, W/o Kaushal Satnami, Aged About 30 Years, R/o- Village Kodiya, Tahsil Nawagarh, District-Bemetara, Chhattisgarh.
7. State of Chhattisgarh Through - Collector Mungeli, District-Mungeli, Chhattisgarh.

---- Respondents

For petitioner	:	Mr. Siddharth Dubey, Advocate.
For respondents No.1 to 6	:	Mr. Anand Shukla, Advocate.
For respondent No.7/State	:	Mr. Sudhir Sahu, Panel Lawyer.

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

17/02/2020

Heard.

1. This petition has been brought being aggrieved by the order dated 22.6.2019 (Annexure P-1) passed by the District Judge, Mungeli in M.J.C. No.8/2019 dismissing the appeal filed by the petitioner.
2. A civil suit was filed by respondent Kaushal Prasad and others against the petitioners and others, which was decided *ex-parte* against the petitioners on 30.4.2016 by the Court of learned 2nd Civil Judge Class-I, Mungeli and decree was passed against the petitioners. The petitioners filed an application under Order 9 Rule 13 of the CPC before the same Court praying for setting aside of the *ex-parte* judgment and decree passed against them. The Court below rejected the said application of petitioners vide order dated 28.2.2019 against which an appeal bearing MA No.8/2019 has been preferred before the learned District Judge and the same also came to be dismissed vide order impugned.
3. It is submitted that the learned District Judge as well as the trial Court both have committed error in passing the order of dismissal on the application of the petitioners filed under Order 9 Rule 13 of CPC. The petitioners had engaged a counsel to appear on their behalf in the civil suit filed against them. The said counsel never informed them about the proceedings in the civil case and on the contrary, the said counsel misguided the petitioners because of which *ex-parte* decree dated 30.4.2016 was passed without their knowledge and behind their back. The petitioners are illiterate persons and as soon as they came to know about *ex-parte* decree, they immediately filed application for setting aside of the same, mentioning therein the reasons for their non-appearance. It is submitted that the petitioners have shown sufficient cause for their non-appearance on the date of passing of *ex-parte* judgment, but the same have not been appreciated by the Court in proper manner, which has resulted in rejection of application. Hence, it is prayed that this petition be allowed and the impugned order be interfered with.

4. Learned counsel for respondents opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by the trial Court as well as appellate Court in passing the impugned orders. Delay has not been properly explained, therefore, there is no reason to interfere with the orders passed by the Courts below.
5. I have heard both the parties and perused the documents along with petition.
6. On perusal of the judgment dated 30.4.2016 passed by the trial Court, it is found that the petitioners had been represented through a counsel, who had also filed written statement on their behalf and based on which the issues were framed. However, the petitioners did not give appearance in the later stage of the trial because of which the trial Court proceeded ex-parte against them.
7. After filing of application under Order 9 Rule 13 of CPC, the petitioners side had produced evidence in which they have stated on oath regarding the ground which is mentioned herein above. The learned trial Court has held that subsequent to *ex-parte* judgment and decree, notice was issued to the petitioners by the revenue Court in another proceedings and in which also they did not appear and similarly they also did not appear in the civil Court. There is no appreciation of the reason given for non-appearance by the petitioner in the whole order. The learned District Judge has also passed a lengthy order in the miscellaneous appeal filed and held that the evidence brought by the petitioner regarding the cause of delay does not appear to be viable and the appeal was dismissed.
8. The petitioners side had filed copy of statement of petitioner No.1 and one of his witness namely Kaushal Das. Petitioner No.1 has stated reason, as he has mentioned in this petition and also in the application filed under Order 9 Rule 13 CPC. His statement remained unrebutted in his cross-examination, therefore, on what basis the appellate Court has held that the statement of petitioner No.1 before the Court was not reliable is not clearly visible in the impugned order. In view of aforesaid observations, this Court is of the view that the learned trial Court has

not at all appreciated the evidence regarding the reasons for non-appearance of the petitioners side and the appellate Court has given a finding without any reasoning for the same.

9. On appreciation being made by this Court of the evidence that was presented before the trial Court, it is found that the petitioners have successfully explained the cause for their non-appearance on the date when the case was called for hearing before the trial Court. As it is a civil case and the dispute between the parties has to be adjudicated completely for the purposes of complete resolution of dispute, therefore, a lenient view ought to have been taken by the trial Court as well as the appellate Court, which is necessary and in the interest of justice. Thus, the impugned order and the order of the trial Court both suffer from infirmity which are against the provision of law as well as the principles of law laid down and therefore the same are required to be interfered with.
10. Resultantly this petition is allowed at motion stage. Both the orders passed by the Courts below are set aside. The application filed by the petitioner under Order 9 Rule 13 of CPC before the trial Court is allowed and the *ex-parte* judgment and decree dated 30.4.2016 passed in Civil Suit No.S-02A/2015 is also set aside. The parties are directed to appear before the trial Court on 7.4.2020. The trial Court is directed to allow the petitioners to represent their case since the stage they were proceeded *ex-parte* and make an effort to conduct the trial and dispose of the case expeditiously.

Sd/-

(Rajendra Chandra Singh Samant)
Judge