

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.90 of 2016

- T. Vekanna S/o Shri T. Malenna, Aged About 57 Years Bharat Kirana Stores Street No. 22, Jone 1, Khursipar, Bhilai, Tah. And Distt. Durg, Chhattisgarh

---- Petitioner

Versus

1. Ravindra Singh S/o Shri Ram Chandra Singh, Aged About 41 Years R/o Bengali Colony, New Khursipar, Bhilai, Tah. And District Durg, Chhattisgarh
2. Shakha Prabhandhak Bharti Telinet Ltd. Nagar Nigam Bhilai, Supela Karyalaya Ke Pass, Tah. And Distt. Durg, Chhattisgarh
3. Sambhagiya Bharti Telinet Ltd., Ring Road No.1, Telibandha, Raipur, Chhattisgarh, Pradhan Karyalay Bharit Telinet Ltd. Kutumb Ambines H/ 12, Mehroli Road, New Delhi 110030

---- Respondents

For Petitioner

– Mr. Punit Ruparel, Advocate.

For respondent No.1

– Mr. Rishikant Mahobia, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-06-2021

1. This petition under Article 227 of Constitution of India has been brought being aggrieved by the order dated 28.11.2008 passed by 5th Civil Judge, Class-II, Durg, C.G. in M.J.C. No.20/2008 and the order dated 23.10.2015 passed in Miscellaneous Appeal No.2A/2009, dismissing the prayer of the petitioner/plaintiff for restoration of the Civil Suit, which was dismissed in default.
2. The petitioner had filed a Civil Suit praying for relief of specific performance of contract along with other reliefs. It was registered as Civil Suit No.71A/2000. This suit was dismissed on 17.09.2004, on account of absence of the plaintiff and his counsel. The petitioner filed application under Order 9 Rule 9 of C.P.C., which has been dismissed

vide order dated 28.11.2008 by the Court of Fifth Civil Judge, Class-II, Durg, C.G. The appeal preferred against this order has been dismissed by the Court of Third Additional District Judge, Durg vide order dated 23.10.2015.

3. It is submitted by the learned counsel for the petitioner that the reason for absence of the petitioner and his counsel was bona-fide. The learned counsel for the petitioner was not cooperating with the petitioner and the Court was aware of this fact and had ordered the petitioner to engage another counsel. The petitioner had engaged another counsel, who was making preparation to file amendment application on 17.09.2009. The petitioner and his counsel both had informed the Court about the proposed filing of the application and they were present in the Court, even then the Civil Suit of the petitioner was dismissed in default. It is further submitted that the order of dismissal of suit in default passed by the trial Court is totally erroneous and impractical, it is not sustainable. The learned trial Court and the appellate Court both have committed error in not allowing the application under Order 9 Rule 9 of C.P.C. for restoration of the Civil Suit.
4. Reliance has been placed on the judgment of Supreme Court in the case of **Malkiat Singh and Anr Vs. Joginder Singh & Ors.** reported in (1998) 2 SCC 206.
5. Learned counsel for respondent No.1 opposes the submissions and submits that the trial Court and the appellate Court both have not committed any error in rejecting the application filed by the petitioner/plaintiff under Order 9 Rule 9 of C.P.C., therefore, no interference is called for.
6. Heard learned counsel for both the parties and perused the record present.
7. Considered on the submissions. On perusal of the record of the trial

Court in Civil Suit No.30A/2001, it is found that on a number of occasions, the petitioner/plaintiff was given last opportunity for presenting the evidence. On the date of hearing, the case was first called at 12:35 pm in the afternoon, when the plaintiff and his counsel both were not present, the case was then called for the second time at 01:45 pm in the noon, again the plaintiff and the counsel both were not present and then the case was dismissed for non-prosecution.

8. The learned trial Court has proceeded in making an inquiry on the application filed, in which the petitioner/plaintiff has made similar statement that he was present along with the counsel in the Court. The order sheet of the Court on 17.09.2004 does not mention about the appearance of the petitioner or his counsel. The petitioner has instead of satisfying the Court regarding the bona-fidy of his absence at the time, when the case was called for hearing, he has made an attempt to show that it was the Court itself which was at fault for not recording his appearance. The order sheet of a Court has sacrosanct value and truthfulness of any order sheet cannot be challenged or rebutted by making a plain statement. Therefore, I find that the petitioner has taken a wrong approach. Hence, I am of this view that the learned trial Court and the appellate Court both have not committed any error. This Court exercising jurisdiction under Article 227 Constitution of India cannot interfere with the finding of fact, which has been recorded by the Courts below. Hence, in my view this petition is not fit to be allowed, which is dismissed.

9. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge