

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 132 of 2019

1. Gulab, S/o. Late Arjun, aged about 39 years,
 2. Prakash, S/o. Late Arjun, aged about 37 years,
 3. Aasha Bai, D/o. Late Arjun, aged about 39 years,
 4. Manglin Bai, Wd/o. Late Arjun, aged about 69 years,
- All are R/o. Village Beltukri (Kasoudi), Through- Jairamnagar,
Tahsil - Masturi, Civil and Revenue District- Janjgir-Champa,
Chhattisgarh.

---- Petitioners

Versus

Panna Bai, Wd/o. Late Ramesh Yadav, aged about 59 years, R/o.
Chandani Chawk, Purena, Bhilai, Civil and Revenue District- Durg,
Chhattisgarh.

---- Respondent

For Petitioners	: Mr. Parasmani Shrivastava, Advocate
For Respondent	: Mr. Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/07/2021

1. The present petition under Article 227 of the Constitution of India has been brought being aggrieved by the impugned order dated 23.01.2017, passed in M.J.C. No. 26 of 2017, by the 1st Additional District Judge, Bilaspur, District – Bilaspur, dismissing the application under Order 9 Rule 9 of C.P.C. filed by the petitioners praying for restoration of the application under Order 9 Rule 13 of C.P.C.

2. Respondent had filed a civil suit No.3-B/2009, which was decreed in her favour on 16.11.2009. Late defendant Arjun Yadav had filed an application for setting-aside the ex-parte judgment and decree against him that application was dismissed in non-prosecution on 20.08.2014. The petitioners, who are the legal representatives of the defendant Arjun Yadav in Civil Suit No.3-B/2009, filed an application under Order 9 Rule 9 of C.P.C. in the year 2016-17 praying for restoration of application under Order 9 Rule 13 of C.P.C. The learned Court below has held in the impugned order that the present petitioners have not taken any interest in the prosecution of the proceeding under Order 9 Rule 13 of C.P.C., therefore, the application for restoration of that proceeding M.J.C. No.22/2013 was dismissed.
3. It is submitted by the learned counsel for the petitioners that their father Arjun Yadav expired on 13.01.2014, therefore, he was not in a position to give appearance, before the Court, hence, the dismissal of the MJC No.22/2013 is erroneous and illegal. Therefore, the application under Order 9 Rule 9 of C.P.C. was fit to be allowed, which may be allowed in this petition and relief be granted to the petitioners.
4. Counsel for the respondent opposes the petition and the submissions made in this respect. It is submitted that the learned Court below has not committed any error in passing the impugned order. The application was filed by the petitioners after a long delay without any proper explanation. Further the petitioners in this case had earlier filed a Miscellaneous Appeal No.32 of 2017 before this Court, which was disposed off on 09.03.2017. The

petitioners had challenged the execution proceeding in that case, which shows that the petitioners had knowledge about the decree against their father Arjun Yadav. The application under Order 9 Rule 9 of C.P.C. has been filed for the purpose of taking benefit in the execution proceeding, hence, it was not fit to be allowed. This petition may also be dismissed.

5. I have heard the learned counsel for both the parties and perused the documents placed on record.
6. Considered on the submissions. On perusal of the impugned order and other documents present, it is found that deceased defendant had been callous in challenging the ex-parte judgment and decree against him, which was passed on 16.11.2009 by filing application under Order 9 Rule 13 in the year 2013, which was then again dismissed on 20.08.2014 due to non-appearance of the applicant/defendant i.e. Arjun Yadav. As it is informed that Arjun Yadav has expired on 13.01.2014 in that case, the proceeding under Order 9 Rule 13 had already abated and because of the fact of abatement, the order of dismissal on 20.08.2014 can be regarded as final closure of that proceeding.
7. On perusal of the order of this Court in Miscellaneous Appeal No. 32/2017 dated 09.03.2017, it is found that the petitioners had been challenging the execution proceeding against them, in which the petitioners were granted liberty to raise all the issues before the Executing Court, which had been raised in the miscellaneous appeal, therefore, I am of this view that the application filed under Order 9 Rule 9 of C.P.C. was already delayed and the reasons

mentioned for dismissal in the impugned order are proper, therefore, I do not find any need for interference in the impugned order.

8. In view of the forgoing discussion made here-in-above, the present petition is found to be without any substance, which is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram