

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.223 of 2021

- Akhilesh Kumar Pathak S/o Late Suraj Prasad Pathak Aged About 49 Years R/o Near Gandhi Chowk, Juna Bilaspur, Thana City Kotwali, District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Surendra Khanduja S/o Late Mulkraj Khanduja Aged About 65 Years R/o Behind Shiv Takies, Infront Of Anand Hotel Street, Thana City Kotwali, Tahsil & District Bilaspur Chhattisgarh
2. Brijmohan Lal Sharma S/o Gyarsi Lal Sharma Aged About 69 Years R/o Dayalband, Bilaspur, Tahsil And District Bilaspur Chhattisgarh
3. State Of Chhattisgarh Through The District Collector Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Mr. Neeraj Choubey, Advocate.

For respondent No.1 & 2 : None.

For respondent No.3 : Mr. Ashish Tiwari, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23/06/2021

1. This petition under Article 227 Constitution of India has been brought being aggrieved by the order dated 10.03.2021 passed by 5th Additional District Judge, Bilaspur, District- Bilaspur, C.G. in Miscellaneous Civil Appeal No.82/2019 by dismissing the appeal.
2. It is submitted by the learned counsel for the petitioner that petitioner had filed a Civil Suit praying for relief of permanent injunction, which was registered as Civil Suit No.151-A/2012. The hearing in the case was fixed on 26.08.2013, on that date, the petitioner and his counsel both

were absent, therefore, the suit was dismissed for non-prosecution.

3. The petitioner had a bona-fide reason for his non-appearance on that date because he was out of station for business purposes, as he was a business man. Learned counsel for the petitioner was engaged in another Court, therefore, he gave appearance at 4:00 pm and he came to know that case was already dismissed for non-prosecution. The application for restoration of the Civil Suit under Order IX Rule 9 of C.P.C. was immediately filed by the petitioner side, which was contested by the respondent and the order dated 01.11.2019 in M.C.C. No.74/2014 was passed by the trial Court, dismissing the application of the petitioner.
4. The appeal was preferred before the Court of Fifth Additional District Judge, Bilaspur, C.G. which was registered as Miscellaneous Civil Appeal No.82/2019, this appeal has been decided by the impugned order and the prayer for restoration of the Civil Suit has been again rejected by the appellate Court.
5. Relying on the judgment of Supreme Court in the case of ***Mahendra Rathore Vs. Omkar Singh*** reported in AIR 2002 SC 505. It is submitted that the Courts should adopt justice oriented approach in cases of condonation of delay.
6. No one appeared on behalf of respondent No.1 and 2, although the notices were served upon them.
7. Learned State counsel appearing for respondent No.3 has formal objection.
8. Considered on the submissions and perused the documents filed along with the petition. This fact is to be noted that the application for restoration of Civil Suit was immediately filed by the petitioner. Order IX

Rule 9 of C.P.C. provides that to set aside dismissal of a suit, the plaintiff has to satisfy the Court that there was sufficient cause for his non-appearance when the case was called for hearing. The reason that has been assigned by the petitioner regarding him being out of station and regarding the engagement of his counsel, who did not appear before the trial Court when the case was called, cannot be simply thrown aside. The counsel atleast had the duty to appear before the Court and make some statement whatsoever, but in this case, it appears that the learned counsel also failed to attend the Court on that date, before the case was dismissed. By virtue of being engaged as a counsel, the counsel has a duty towards his clients to appear on his behalf as and when the case is called at whatever stage. Hence, it appears that in this case, the counsel has also failed the parties that is the petitioner by not giving appearance in the Court in time, when it was called for hearing.

9. As it is clearly the view of the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** reported in (2013) 12 SCC 649 that there should be a liberal, pragmatic, justice oriented, non-pedantic approach in the matters of condonation of delay and the Courts are not suggested to legalize injustice but are obliged to remove injustice. Although this view has been expressed in the matter of condonation of delay, but the same principle is applicable here also. The manner in which the petitioner has prosecuted the application under Order IX Rule 9, thereafter, the Miscellaneous Appeal and by the filing of this petition before this Court, clearly shows that the petitioner has keen intention to prosecute the Civil Suit filed by him. Therefore, the dismissing of a Civil Suit only for technical reason would therefore cause injustice to the petitioner. Hence, I am of this view that this petition deserves to be allowed. The

petition is allowed. The impugned order and the order of the trial Court dated 10.03.2021 both are set aside. The prayer of the petitioner under Order IX Rule 9 of C.P.C. is allowed. The Civil Suit No.151-A/2012 is restored to its original number. The petitioner is directed to give appearance before the trial Court on 26.07.2021 for orders on further proceedings.

10. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika