

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 319 of 2019

1. Deepak Dey S/o Late Shiv Kumar Aged About 54 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.
2. Dinesh Dey S/o Late Shiv Kumar Aged About 51 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.
3. Dilip Dey S/o Late Shiv Kumar Aged About 38 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.
4. Nitish Dey S/o Late Shiv Kumar Aged About 36 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.
5. Ashok Dey S/o Late Shiv Kumar Aged About 34 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.

---- Petitioners/ Plaintiffs

Versus

1. Sumiran Dey S/o Late Shiv Kumar Aged About 58 Years R/o Village Makdi Khuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh.....(Respondent No. 1)
2. Shila Jaiswal W/o Late Ram Narayan Aged About 66 Years R/omajhapara Kanker, District North Bastar Kanker Chhattisgarh..... (Respondent No. 2)
3. Nirmala Jaiswal W/o Pankaj Jaiswal Aged About 36 Years R/omajhapara Kanker, District North Bastar Kanker Chhattisgarh..... (Respondent No. 3)
4. State Of Chhattisgarh Through Collector, Kanker, District North Bastar Kanker Chhattisgarh.
5. Ashish Dey S/o Late Shiv Kumar Aged About 32 Years R/o Village Makdikhuna, Tahsil And P. S. Kanker, Civil And Revenue District North Bastar Kanker Chhattisgarh. (Plaintiff No.6 in original suit, here respondent No.5 as not Cooperating)

---- Respondents

For the Petitioner	: Shri Akash Kumar Kundu, Advocate.
For Respondents No.1	: Shri Vivek Kumar Tripathi, Advocate.
For Respondent No.4/ State	: Shri Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-04-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 17.1.2019 passed by the Court of District Judge, North Bastar, Kanker in Misc. Civil Appeal No.11 of 2018, dismissing the appeal filed by the petitioners.
2. It is submitted by counsel for the petitioners that the petitioners had been diligently prosecuting Civil Suit No. 34-A of 2012 filed by them as plaintiffs, which was fixed for hearing on 8.5.2017. The petitioners could not give appearance on that date because of the reason, that petitioner No.1 – Deepak Dey, who was actually prosecuting the civil suit had to go out of station for necessary and unavoidable reasons and he could not give instructions to his younger brothers and also to his advocate, therefore, the civil suit was dismissed for non-prosecution. It is further submitted that petitioner No.1, then filed an application under Order IX Rule 9 of the CPC before the trial Court, which was mechanically dismissed by order dated 13.7.2018 holding that the reason mentioned is not bonafide. Thereafter, the appeal preferred before the Court of learned District Judge, mentioned herein-above has also been dismissed for the same reason. It is also submitted that the impugned order is unsustainable as the petitioner had presented sufficient cause for his non-appearance on the date of hearing which should have been considered and entertained by the trial Court and also by the Appellate Court.
3. Reliance has been placed on the judgments of Supreme Court in the case of **Rafiq and Anr. vs. Munshilal and Anr.** reported in **1981 AIR 1400** and in the case of **Raj Kishore Pandey vs. State of U.P. and Others**, in **Civil Appeal No.450-452 of 2009**, decided on 27.1.2009, in

which it has been held by the Supreme Court that the consideration on the existence of sufficient cause is the discretionary power with the court, but such discretion has to be exercised on sound principles and not on mere technicalities. It is further submitted that the impugned order and the order of the trial Court both are not sustainable, hence, the petition be allowed and the relief be granted for restoring the civil suit of the petitioners.

4. Learned counsel for the respondents opposes the submissions and submits that the application under Order IX Rule 9 of the CPC was filed after the expiry of limitation period for filing such application. There is a specific provision in Limitation Act, 1963 under Article 122 providing for limitation of 30 days for filing application for restoration from the date of dismissal. Hence, the application filed was time-barred. Further, the reason mentioned in the application was not sufficient and bonafide in any respect, therefore, neither the trial Court nor the Appellate Court have committed error in passing the orders. Hence, the present petition is without any substance, which may be dismissed.
5. Heard counsel for both the parties and perused the documents produced alongwith the petition.
6. Considered on the submissions. Order IX Rule 9 of the CPC provides that the plaintiff whose suit has been dismissed has to satisfy this Court that there was sufficient cause for non-appearance. In the case of **Raj Kishore Pandey** (supra), the Supreme Court has observed in paragraph 10, which is as follows:

‘10. xxxxx

The High Court has not appreciated these facts. In our opinion, whether the applicant has made out sufficient cause or not, in the application filed, the court is required to look at

all the facts pleaded in the application. No doubt, the consideration of the existence of sufficient cause is the discretionary power with the court, but such discretion has to be exercised on sound principles and not on mere technicalities. The approach of the court in such matters should be to advance the cause of justice and not the cause of technicalities. A case as far as possible should be decided on merits and the party should not be deprived to get the case examined on the merits.'

7. In the case of **Collector Land Acquisition, Anant Nag and Anr. vs. Mst. Katiji and Ors.**, reported in **1987 AIR 1353**, in which the Supreme Court has observed in paragraph 3, which is as follows:

'The legislature has conferred the power to condone delay by enacting [Section 51](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.'

8. The objection raised by the respondents' side is not in place as the trial Court has not rejected the application on the ground that the application being barred by limitation, but on the ground that the Court did not find the grounds presented by the petitioners are bonafide and same is the view of the Appellate Court. It is a case in which a liberal approach was required to be taken as has been directed in the above settled principles by the Apex Court, hence, I am of this view that the petition deserves to be allowed. The petition is allowed and disposed off at motion stage. The impugned order and the order of the trial Court dated 17.1.2019 are

hereby quashed. Civil Suit No.34-A of 2012 filed between the parties in this case is restored to its original number before the trial Court. The parties are directed to give appearance before the trial Court on **13.5.2021**.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi