

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 294 of 2021

1. Dharamu, aged about 52 years S/o Late Nandu.
2. Smt. Mutana Bai alias Sonai Bai D/o Late Nandu.
3. Vishnu Kurre S/o Narayan Kurre, aged about 48 years.
4. Krishno Ram (wrongly mentioned Real Name is Kisanu Kurre) S/o Narayan Kurre, aged about 35 years.
5. Narendra Kurre S/o Narayan Kurre, aged about 32 years.
6. Ghanshyam Kurre S/o Narayan Kurre, aged about 30 years.

All Caste Satnami R/o Village Pipardula, Tehsil Bilaigarh, District Baloda Bazar (C.G.)

---- Petitioners

Versus

1. Smt. Dashoda Bai, aged about 48 years D/o Late Aajo Ram W/o Ras Ram, Caste Satnami, R/o Pipdula (wrongly mentioned actual place is Pipardula) Teh. - Bilaigarh, Present Address R/o Bilaspur Sub Tehsil Bathagaon, Tehsil Bilaigarh, Distt. Baloda Bazar (wrong address true address village Chhota Bilaspur, P.S. Sarsiwa Tehsial Bilaigarh, Distt. Baloda Bazar (C.G.).
2. Radha Jatvar W/o Tikvendra Jatvar Caste Satnami R/o Piperdula Bilaigarh, Distt. Baloda Bazar.
3. State of Chhattisgarh through Collector Baloda bazar (C.G.).

---- Respondents

For Petitioners	:	Mr. Uttam Pandey, Advocate
For Respondents/State	:	None.

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

28/06/2021

1. Heard on admission.
2. This petition under Article 227 of the Constitution of India has been

brought being aggrieved by the order dated 16/03/2021 passed in Civil Suit No. 10A/2015 pending in the Court of Civil Judge Class-II Bhatgaon, District Baloda Bazar.

3. It is submitted by the counsel for the petitioners that the petitioners are defendants in the said civil suit. The learned trial Court has proceeded *ex-parte* against these petitioners. Hence, the petitioners moved an application under order 9 Rule 7 of the CPC praying for set-aside the *ex-parte* proceeding and grant an opportunity to produce evidence in trial. This application has been rejected by the impugned order. It is submitted that this order is arbitrary and erroneous as the petitioners' opportunity has been closed and because of this, they may suffer injustice. Hence, this petition may be admitted and appropriate order may be passed.
4. Considered on the submission. On perusal of the impugned order, it is found that on 10/03/2021, the case was fixed for hearing on which the petitioners could not make their appearance. The reasons assigned in the application under Order 9 Rule 7 of the CPC was that the petitioners' had to attend last rites due to death of their relative.
5. Order 9 Rule 7 of the CPC provides that the defendant has to show a good cause for not appearing before the Court. The application was moved with reasons to set-aside *ex-parte* proceedings. This application was contested by the plaintiff on other grounds. However, cause of non-appearance that is mentioned in the application, was not challenged by the plaintiff. Hence, it has been a good case in which the application under Order 9 Rule 7 of the CPC should have been allowed.
6. Consequently, this petition is dismissed at motion stage. The

impugned order so far it relates to rejection of the application under Order 9 Rule 7 of the CPC is set-aside. One opportunity is granted to the petitioners to produce evidence before the trial Court. The learned trial Court is directed to fix a date for the evidence of the petitioners/defendants in the month of July and that shall be the only date for producing of the defence witnesses. Further proceeding of the disposal of the case shall be done in accordance with law.

7. With the above observation, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant
Judge