

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 04.08.2021

Order Passed on : 12/08/2021

W.P.(227) No. 425 of 2020

1. Chameli Bai, W/o. Manharan, aged about 52 years, R/o. Village Patgawa, Tahsil Pendra, District Bilaspur Chhattisgarh.
2. Manharan, S/o. Jagannath, aged about 55 years, R/o. Village Patgawa, Tahsil Pendra, District Bilaspur Chhattisgarh.

---- Petitioners

Versus

Vimla Bai, W/o. Kalyan Singh Gond, R/o. Village Patgawa, Tahsil Pendra, District Bilaspur Chhattisgarh.

---- Respondent

For Petitioners : Mr. Anish Tiwari, Advocate

For Respondent : Mr. Hemant Gupta, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 13.02.2019, passed by the Additional District Judge, Pendra Road in Miscellaneous Civil Appeal No. 2A/2014, by which the order of the Civil Judge Class-II, Pendra Road, in M.J.C. No.3A/2011, dated 30.04.2014 has been upheld.
2. Respondent No.1 had filed a civil suit against the petitioners, which was registered as Civil Suit No.16-A/2008. It is submitted by the counsel for the petitioners that notices issued to the petitioners/defendants was not duly served upon him. Copy of the notice is filed, which shows the seal of Civil Judge Class-II Pendra

Road, Camp Marwahi, which gives impression that the Court would be sitting in Marwahi. Further the date of hearing is 27.06.2008. Copy of the order-sheet shows that on 27.06.2008, no sitting of the Court was held either in Pendra Road or in Marwahi. On 24.06.2008, the orders were passed for issuance of notice to the defendants and the case was fixed for 14.08.2008 on which date the order-sheet mentions about the service of the summons to the petitioners and on that basis, the ex-parte order was passed. Therefore, it is a clear case of improper service of summons. The learned trial Court has proceeded to hear the case and passed ex-parte judgment and decree against the petitioners.

3. It is submitted that the petitioners then filed an application under Order 9 Rule 13 of C.P.C., before the trial Court for setting-aside the ex-parte judgment and decree against them. But the same has been dismissed by the trial Court vide order dated 30.04.2014. The appeal preferred has also been dismissed by the impugned order dated 13.02.2019. Therefore, the impugned orders are erroneous and against the provisions of law, which are unsustainable. Reliance has been placed on the judgment of Supreme Court in case of **Sushil Kumar Sabharwal Vs. Gurpreet Singh & Ors.**, reported in **AIR 2002 SC 2370** and in case of **Bhivchandra Shankar More Vs. Balu Ganga Ram More & Ors.**, reported in reported in **(2019) 6 SCC 387** and in case of **Bhagmal & Ors. Vs. Kunwar Lal & Ors.**, reported in **AIR 2010 SC 2991**. It is prayed that the impugned order be set-aside and the petitioners be granted relief.

4. Learned counsel for the respondent opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by the learned trial Court as well as by the appellate Court in dismissing the application and the appeal of the petitioners. The enquiry was made on the application under Order 9 Rule 13 of C.P.C., in which the petitioner No.1 has admitted in cross-examination, that she had received the notice and she was informed by the Court peon that the hearing will be in the Court at Pendra Road, and she was also informed about the date of hearing. Therefore, there is clear evidence that the services of summons had been proper upon the petitioners and they have deliberately avoided giving appearance before the Court on the given date. On this basis, there was no ground present to entertain and allow the application filed by the petitioners under Order 9 Rule 13 of C.P.C. The petitioners have the only remedy available to file appeal against the impugned judgment and decree. The petition is without any substance, which may be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Firstly dealing with the service upon the petitioners, the evidence is present to show that the service has been made upon them. The second objection of the petitioners that the seal affixed in notice showed the place of sitting as camp Marwahi and not Pendra Road. Regarding which, admission of the petitioner in her statement in inquiry before the lower Court that she was informed by the Court peon that sitting will be held in the Court at Pendra Road and and there was no hint that sitting was to held in

Marwahi. On this basis, it can be said that the petitioners were not miss-informed, regarding the place of sitting of the Court. Although the seal affixed of the Court mentions of both the places i.e. Pendraroad and Camp Marwahi. Hence, this ground of the petitioners was also not entertainable, which has been rightly not accepted by the trial Court and the appellate Court.

7. The third ground regarding the date holds ground, because certified copy of the notice mentions that the date of hearing shall be 27.06.2008. The admission that have been made by the petitioners in cross-examination in the enquiry statement in this respect that she was informed that the date of hearing is 27.06.2008. On perusal of the record of the Civil Suit No.16-A/2008, the order-sheet shows that on the date of hearing was fixed for 24.06.2008, the learned trial Court ordered for issuance of notice to the respondents and the next date of hearing was fixed for 14.08.2008. Therefore, there was no such hearing fixed on 27.06.2008, regarding which notice was issued and served upon the petitioners. This is major mistake committed in issuance of notice and on this basis it can be said that the petitioners were misinformed regarding the date of hearing.
8. Order 9 Rule 13 C.P.C. provides that the defendant who has ex-parte decree against him has to satisfy the Court, that the summons was not duly served upon him or that he was prevented by any sufficient cause from appearing in the Court. The instant case falls in the first category and it can be held that the summons was not duly served upon the petitioners, because the petitioners were not given the correct information, regarding the date of

hearing. As on the date of hearing mentioned in the notice, the civil suit has not listed before the Court, therefore, the petitioners have proper ground available in their favour and on this basis, the judgment and decree of the trial Court should have been set-aside.

9. Hence, in view of the aforesaid discussion, it is held that the order of the learned trial Court 30.04.2014 and the judgment of the appellate Court dated 13.02.2019 both suffer from grave infirmity, which are liable to be set-aside.
10. Accordingly, this petition is allowed. The impugned orders dated 30.04.2014, passed by the trial Court and the order dated 13.02.2019, passed by the appellate Court are set-aside and the application of the petitioners filed under Order 9 Rule 13 of C.P.C. is hereby allowed. The parties are directed to give their appearance before the trial Court on 06.09.2021.

Sd/-
(Rajendra Chandra Singh Samant)
Judge