

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 397 of 2021

1. Hemant Kumar Kose, S/o. Devendra Kumar Kose, aged about 29 years
2. Devendra Kumar Kose, S/o. Late Shadiram Kose, aged about 52 years,
3. Mahendra Kumar Kose, S/o. Late Shadiram Kose, aged about 48 years,

All are R/o Village - Karela (Upervah), Post Upervah, Tahsil Ghumka, District Rajnandgaon Chhattisgarh.

---- Petitioners

Versus

1. Geeta Kose, W/o. Late Motilal Kose, aged about 52 years,
 2. Ku. Rameshwari Kose, D/o. Late Motilal Kose, aged about 33 years,
 3. Ku. Lata Kose, D/o. Late Motilal Kose, aged about 31 years,
 4. Ku. Asha Kose, D/o. Late Motilal Kose, aged about 30 years,
- No.1 to 4 all are R/o. Village Katulbord, Hari Nagar, Durg Tahsil and District Durg Chhattisgarh.
5. State of Chhattisgarh, Through : The Collector, Durg District Durg Chhattisgarh.

---- Respondents

For Petitioner : Mr. Rahul Mishra, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

19/08/2021

1. This petition has been brought being aggrieved by the order dated 30.03.2021, passed in M.J.C./Civil No. 02/2021, by the Sixth Civil Judge Class-2, Durg, District – Durg (C.G.), by which the application under Order 9 Rule 13 of C.P.C. filed by the petitioners has been dismissed.
2. The respondents had filed a Civil Suit No. 44-A/2009 against the petitioners praying for reliefs of declaration and other reliefs. The suit

was decreed ex-parte against the petitioners on 11.01.2013. The petitioners then filed an application under Order 9 Rule 13 of C.P.C. on 29.04.2013 praying to set-aside the ex-parte judgment and decree against them. This application was registered as M.J.C. No. 3/2013. During the pendency of that proceeding in MJC, the same was dismissed on 22.10.2019 for want of prosecution on account of absence of both the parties. Subsequent to that the petitioners have again filed an application under Order 9 Rule 13 of C.P.C. praying to set-aside the impugned order dated 22.10.2019, which has been registered as M.J.C. No.2/2021, in which, the prayer was made to restore the proceeding in M.J.C. No.3/2013. The learned trial Court has by the impugned order held that the order dated 22.10.2019 regarding dismissal of the M.J.C. No.3/2013 is not a decree, therefore, the application under Order 9 Rule 13 of C.P.C. was not maintainable and the same was dismissed.

3. Considered on the submissions. There appears to be a misunderstanding and mistake in mentioning the correct provision of law. The proceeding, which has been dismissed by the Court, can be restored on the application made by one of the parties subject to the satisfaction of the Court regarding sufficient cause or good cause as the case may be. As the M.J.C. No.3/2013 was not a civil suit, therefore, the proceeding as provided under Order 9 of C.P.C. shall not be applicable, but prayer can be made by one of the parties under Section 151 of C.P.C. for restoration. Mentioning a wrong provision of law should not be made a ground for dismissal of any application. The application filed by the petitioners should have been treated as an application under Section 151 of C.P.C. simply making prayer for restoration of M.J.C. No.3/2013. Hence, this petition is

allowed at motion stage. The impugned order dated 30.03.2021, passed in M.J.C/Civil No. 02/2021 is set-aside. The learned Court below is directed to consider on the application filed by the petitioners as application filed under Section 151 of C.P.C. for restoration of M.J.C. No.3/2013 and pass order in accordance with the law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram