

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 84 of 2018**

- Bhogilal S/o Damrudhar Aged About 52 Years Caste - Teli, Occupation - Labour, R/o Tamnar, Tahsil Tamnar, District Raigarh, Chhattisgarh.

---- Appellant**Versus**

1. Gomti Bai D/o Late Padamlochan Aged About 50 Years Caste Teli, Occupation Agriculturist, R/o Gram Post Tahsil, Tamnar, District Raigarh, Chhattisgarh.
2. Ghasiram S/o Puran Aged About 65 Years Caste Teli, Occupation Agriculturist, R/o Gram Post Tahsil, Tamnar, District Raigarh, Chhattisgarh.
3. Jindal Private Limited Through Vivek Dadu, S/o B.M. Dadu, Aged About 40 Years, Caste Agrawal, R/o Village And Post Tamnar, Tahsil Tamnar, District Raigarh, Chhattisgarh.
4. State Of Chhattisgarh, Through : The Collector, Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Punit Ruparel, Adv.
For Respondent No. 4/State	:	Mr. Vimlesh Bajpai, G.A.
For Respondent No. 3	:	Mr. Shailesh Tiwari, Adv. on behalf of Mr. Sourabh Sharma, Adv.
For Respondents No. 1 & 2	:	None, though served.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****28/06/2021**

1. The appellant has preferred this appeal being aggrieved by the impugned order dated 09.08.2018, passed by the First Additional District Judge, Raigarh, District Raigarh, C.G. in Miscellaneous Civil Suit No. 23/2018, whereby the application filed under Order 9 Rule 9 r/w Section 151 of CPC was dismissed.
2. Brief fact of the case is that the appellant/plaintiff had filed the suit for declaration of title over suit land and declaration of sale deed dated 08.05.2007 as void. The suit was replied by respondents/defendants No. 1 and 2 and subsequently the case

was fixed for evidence of appellant/plaintiff on 19.07.2017. The appellant/plaintiff contacted his counsel for evidence before the Court whereas, the counsel of the appellant/plaintiff stated that today no evidence would be recorded, the counsel has also told that he will convey the next date of hearing. On being inquired from another counsel, he came to know on 23.02.2018 that his case was dismissed for want of prosecution on 19.07.2017. The appellant/plaintiff immediately moved an application on 23.02.2018 for certified copy of the impugned order, which was received on 28.02.2018, and he filed an application under Order 9 Rule 9 r/w Section 151 of CPC for restoration of the Civil Suit to its original number.

3. Learned counsel for the appellant has argued that appellant had been diligently pursuing his case. Non appearance by the appellant on 19.07.2017 was neither deliberate nor intentional. Learned counsel submits that on 19.07.2017 the appellant was present along with the witness for evidence but his counsel asked to him that no evidence would be recorded today and told him to get information about next date of hearing on telephone. It is also submitted that the plaintiff continued his effort to get the information about his case but no information could be get by his counsel. It is contended that appellant should not suffer due to lapse on the part of his counsel. Learned counsel has contended that there is no fault on the part of the appellant and the trial Court failed to consider the aforementioned facts while dismissing the application. In support of his contention, learned counsel for appellant has referred to the judgment dated 01.10.2013 of this Hon'ble Court passed in MA No. 1002/2006 (*Smt. Preetam Kaur Wd/o Late Mohan Singh Ajmani vs. Nagar Palika Parishad Pithaura*).

4. On the other hand, learned counsel appearing for the respondents has contended that appellant was not pursuing his case in diligent manner. It is contended that non appearance was deliberate and appellant was lingering the matter and is harassing the respondents.

5. I have heard learned counsel for the parties and perused the material on record.

6. The stand of the appellant/plaintiff is that due to fault of his previous counsel in not informing the appellant about the date of hearing, the case was dismissed in default. The appellant has given detail reasoning as to how he came to know about the dismissal of the case. The application under Order IX Rule 9 read with section 151 CPC was supported with affidavit of the appellant. In reply to the said application, the respondent No. 3 has submitted that it is not admissible that the appellant had appeared on 19.07.2017. If the appellant was present on the said date then there was no occasion for counsel to say that no evidence would be recorded.

7. Order 9, Rule 9 CPC provides as under :

R. 9. Decree against plaintiff by default bars fresh suit.-

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

8. A bare perusal of the Order 9 Rule 9 CPC would show the suit dismissed can be set aside if sufficient cause is shown by the appellant/plaintiff for his non-appearance, when the case is called on for hearing.

9. In case of **Raj Kishore Pandey v. State of Uttar Pradesh and Others**, reported in (2009) 2 SCC 692, Para 8 held as under :

8. 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.

10. In case of **Rafiq and Another v. Munshilal and Another**, reported in (1981) 2 SCC 788, the supreme Court held that the obligation of the party is to select his advocate, brief him, pay the fees and trust the learned Advocate to do the rest of the things. It is thus a duty of lawyer to attend the proceeding. The Supreme Court held as under :

3. *“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.”*

11. The reasons given by the appellant in the application cannot said to be false or an afterthought. It is settled law that the word "sufficient cause" should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputed to a party. In the present case, the affidavit of the appellant supported with application under Order IX Rule 9 read with section 151 CPC does not show that

there was any negligence on his part. Application is moved after coming to know that suit has been dismissed for non appearance. Thus, I find that the appellant/plaintiff for his non-appearance on 19.07.2017, when the suit was called up for appellant's/plaintiff's evidence is sufficient cause and finding recorded by the trial Court holding that the cause shown is not sufficient is erroneous and liable to be set-aside.

12. In view of the above discussion, the impugned order is set aside and the application of the appellant/plaintiff under Order IX Rule 9 CPC r/w section 151 of CPC is allowed subject to payment of costs of Rs. 5000/- by the appellant/plaintiff before the concerned trial Court. The suit is directed to be restored to its original number. Costs be paid within four weeks.

13. Further, it is directed to the Court below to make all the endeavour for deciding the case as expeditiously as possible, preferably within a period of six months, from the date of receipt of copy of this order.

Appeal stands allowed accordingly.

Parties to appear before the learned trial court on 09.08.2021.
Trial court record be sent back forthwith.

**Sd/-
(Rajani Dubey)
JUDGE**