

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 649 of 2021

Shubham Traders Proprietor Jitendra Kumar Singh S/o Shri Suresh Prasad Singh, Aged About 42 Years, R/o Cash Cade F, House No. 307, near Aamrapali Society Raipur, Tahsil And District Raipur Chhattisgarh.

---- Petitioner/ Defendant No.1

Versus

1. Krishna Buildcon Private Limited Dhimrapur Chowk Raigarh Chhattisgarh Through Director Anil Kediya, S/o Shri Naersingh Lal Kediya, Aged About -48 Yeas, R/o Vrindavan Colony, Jindal Road, Raighah, Tahsil And District Raigarh Chhattisgarh. (Plaintiff)
2. Singh Construction Proprietor Mirtunjay Singh S/o Shri Rambadan Singh, Aged About-50 Years, R/o P/o. Kodatarai, Tahsil Pussour, District -Raigarh Chhattisgarh. (Defendant No.2)

---- Respondents

For Petitioner	:	Shri Abhishek Saraf, Advocate.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22.11.2021

Heard.

1. This petition has been brought being aggrieved by the order dated 28.9.2021.
2. It is submitted by counsel for the petitioner that in Civil Suit No. B-2 of 2018 pending before the learned trial Court, the order was passed on 22.4.2021 against the petitioner/ defendant No.1 for proceeding *ex parte*. The petitioner filed an application under Order IX Rule 7 of the CPC praying to set aside the order dated 22.4.2021. Learned trial Court has allowed the application but the petitioner has been restrained to present evidence in defence.
3. The petitioner is aggrieved by the order of restraint passed by the learned trial Court in the impugned order. It is submitted that this order of restraint is arbitrary, illegal and thus, unsustainable.

4. Considered on the submissions. Perused the documents filed alongwith the petition. The provision under Order IX Rule 7 of the CPC is reproduced:

'7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit, *ex parte*, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.'

5. According to the language of this provision, after the satisfaction of the Court for allowing the application, the order which may be passed is very clearly provided, that the defendant shall be heard in the civil suit to answer the case against him as if he had appeared on the day the *ex parte* order was passed. Therefore, by allowing the application under Order XI Rule 7 of the CPC the defendant party whose application has been allowed has to be placed on the same footing he would have been on the day he was directed to give appearance in the civil suit and he failed to give appearance. Hence, on the basis of this interpretation of this provision, the petitioner/ defendant No.1 had to be given complete opportunity to defend the case against him, therefore, I am of this view that the impugned order is unsustainable, the petition is allowed and disposed off at motion stage. The impugned order so far it relates to restricting the petitioner from presenting his evidence, to that extent is set aside. Learned trial Court is directed to proceed with the civil suit in accordance with law.
6. With the aforesaid observations, the petition is disposed off.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge

Nimmi