

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 91 of 2019**

Order Reserved On : 18/10/2021

Order Passed On : 01/11/2021

- Bagas Ram Verma S/o Lt. Shri Gaindu Ram Verma Aged About 50 Years R/o Village - Rahud, P.S. And Tah. - Khairagarh, District Rajnandgaon Chhattisgarh. At Present R/o - Sisly Matale Gali Ward No . 05, Rajnandgaon Tah. And District Rajnandgaon Chhattisgarh... (Judgment Debtor/ Applicant)

---- **Appellant****Versus**

- Sanjay Kumar S/o Lt. Shri M.L. Kannoje, Aged About 40 Years Occupation - Government Service, R/o Gandhi Chowk, Ward No. - 33, Tah. And District Rajnandgaon Chhattisgarh....(Decree Holder/ Non Applicant),

---- **Respondent**

For Appellant : Shri Rakesh Thakur, Advocate.
For Respondent : None though served.

Hon'ble Shri Deepak Kumar Tiwari, J**C A V Order**

1. The appellant has preferred this present Appeal against the order dated 30.1.2019 passed by the 1st Additional District Judge, Rajnandgaon in MJC No.13/2017 whereby the application under Order 9 Rule 13 of the CPC moved by the appellant has been rejected.
2. Facts of the case are that the respondent herein has filed the civil suit viz. Civil Suit No.2-B/2014 against the appellant for recovery of amount. The said suit was decided ex-parte on 18.11.2016 without giving opportunity to the appellant.

3. It was the stand of the appellant that in the proceeding before the trial Court, he was supposed to appear, however, his counsel was appearing. It was further pleaded by the appellant that he was not aware about the date of hearing on 18.11.2016 and his counsel also could not appear. Because of misunderstanding the ex-parte order has been passed. He came to know about the ex-parte order on 2.12.2016 and applied for certified copy on the same day and filed an application under Order 9 Rule 13 of the CPC.
4. The respondent has also filed his reply to the said application and denied the averment of the appellant and pleaded that the appellant has intentionally not appeared before the trial Court when the matter was called for recording the plaintiff's evidence. He further pleaded that the application of the appellant is false and fabricated and as such, the application should be dismissed.
5. The trial Court has dismissed the application of the appellant filed under Order 9 Rule 13 of the CPC holding that the appellant has not assigned or shown any cogent reason to remain ex-parte in the civil suit and also did not appear on the subsequent dates also. The appellant was having sufficient time to recall the ex-parte order.
6. Heard learned counsel for the appellant and perused the record.
7. Considering the facts of the case, the plaint was instituted on 02.01.2014 for recovery of loan amount, and defendant has also submitted his written statement and contested the suit, and on the date of hearing on 18.11.2016, defendant's contention is that his counsel could not appear because of misunderstanding, his counsel has noted wrong date in his diary, hence exparte order has been passed, he came

to know about the ex parte decree on 02.12.2016 and applied for certified copy and filed application under Order 9 Rule 13 of the C.P.C. for setting aside the Ex parte decree passed on 18.11.2016. Appellant has also filed affidavit in support of his application. The Plaintiff/Non applicant has opposed his application.

8. In the matter of [United Bank of India v. Naresh Kumar](#), {A.I.R. 1997 S.C. 3} it was observed as under:-

"there is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible, a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable."

9. In **G.P. Srivastava vs Shri R.K. Raizada & Ors** {(2000) 3 SCC 54} it has been observed thus :-

"7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be

stretched to rely upon other circumstances anterior in time. If “sufficient cause” is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.”

10. Therefore, looking to the facts and circumstances, this court is of the view that the appellant has established the sufficient cause for his non appearance as his counsel has noted wrong date in his diary and so he has also not informed him, hence the application under Order 9 Rule 13 of Code of Civil Procedure is deserves to be allowed and accordingly allowed.

11. Resultantly, the Appeal is allowed, and the impugned order dated 30.01.2019 passed in M.J.C. No. 13/2017 by first Additional District Judge, Rajnandgaon & exparte decree passed in C.S.No. 2B/2014 dated 18.11.2016 are hereby set aside on payment of costs of Rs. 5,000/- to the other side.

12. The parties are directed to appear before the trial court for further directions on **26.11.2021**.

Sd/-
(Deepak Kumar Tiwari)
Judge