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CGHC010069962026 2026:CGHC:45389

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 239 of 2026

1 - Harmindar Singh Saini, Son of Mohan Shamsher Singh, Aged About 48 Years, Resident of in front of Hotel Gagan Palace, Laxman Body Workshop, District - Raipur, Chhattisgarh.

2 - Harprit Singh Sanini, Son of Mohan Shamsher Singh, Aged About 46 Years, Resident of in front of Hotel Gagan Palace, Laxman Body Workshop, District - Raipur, Chhattisgarh.

3 - Harbansh Kaur, Wife of Mohan Shamsher Singh, Aged About 68 Years, Resident of in Front of Gagan Palace, Laxman Body Workshop, District - Raipur, Chhattisgarh.

... Petitioners

versus

1 - Smt. Jyoti Shah, Wife of Munish Kumar Shah, Aged About 46 Years, Resident of Shrinagar Road, Gudhiyari, Tahsil and District - Raipur, Chhattisgarh. (Plaintiff)

2 - Munish Kumar Shah, Son of Om Prakash Shah, Aged About 51 Years, Resident of Shrinagar Road, Gudhiyari, Tahsil and District - Raipur, Chhattisgarh.

3 - Jaswant Singh Son of Mahendra Singh, Resident of in front of Gagan Palace, Tatibandh, District - Raipur, Chhattisgarh.

4 - Amarjeet Singh, Son of Mahendra Singh, Resident of in front of Gagan Palace, Tatibandh, District - Raipur, Chhattisgarh.

5 - Smt. Charan Kaur, Daughter of Mahendra Singh, Resident of in front of Gagan Palace, Tatibandh, District - Raipur, Chhattisgarh.

6 - Smt. Amrjeet Kour Daughter of Mahendra Singh, Resident of in front of Gagan Palace, Tatibandh, District - Raipur, Chhattisgarh.

7 - Smt. Kuldip Kaur, Wife of Manjeet Kaur, Aged About 66 Years, Narmada Para, Raipur, Chhattisgarh.

8 - Smt. Raghubir Kaur, Wife Rugubakhsh Singh, Aged About 60 Years, Narmada Para, Raipur, Chhattisgarh.

9 - Smt. Indrajeet Kaur, Wife of Gurughej Singh, Aged About 64 Years, Narmada Para, Raipur, Chhattisgarh.

10 - State of Chhattisgarh Through Collector, Raipur Collector Premises District - Raipur, Chhattisgarh.

... Respondents

(Cause title taken from Case Information System)

For Petitioners	:	Mr. Syed Afaque Hussain Rizvi, Advocate.
For Respondents No.1 and 2	:	Mr. Suraj Patel, Advocate.
For State	:	Mr. Ashutosh Trivedi, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

27-10-2026

1. Heard.

2. The present is writ petition filed by the petitioners under Article 227 of the Constitution of India challenging the order dated 14-01-2026 passed by the learned 4th Additional Judge to the Court of learned First Civil Judge Senior Division, Raipur in Civil Suit No.349-A/2021 whereby the application filed by the petitioners under Order 9 Rule 7 of the CPC has been rejected.

3. Learned counsel appearing for the petitioners would submit that the petitioners are defendants No.1A, 1B and 3 before the learned trial Court where respondents No.1 and 2 are plaintiffs who are prosecuting a suit for declaration of title, permanent and mandatory injunction with respect to the suit property bearing Khasra No. 363/43 area 0.105 hectare situated at Village Tatibandh, Tahsil and District Raipur. During proceeding of the civil

suit the defendants No.1A, 1B and 3 made their appearance and the case was fixed for filing of their written statement. However, on 28-07-2025 they could not make their appearance and they have been proceed ex-parte by the learned trial Court on 28-07-2025. The case was fixed for recording of plaintiffs' evidence on 20-08-2025. On the very next date the defendants have filed an application under Order 9 Rule 7 of the CPC along with another application under Order 6 Rule 17 of the CPC for setting aside the ex-parte order. The said application under Order 9 Rule 7 of the CPC was withdrawn on 18-09-2025 and another duly constituted application under Order 9 Rule 7 of the CPC was filed on the same day, which was decided on 14-01-2026 on the ground that it was filed after about 48 days of the ex-parte order and the defendants have failed to explain plausible reason for their non-appearance on the date when the ex-parte order was passed. He would further submit that on the very next date of the order by which the petitioners were proceeded ex-parte they have filed their application under Order 9 Rule 7 of the CPC, however, due to some technical defect the same was withdrawn and a fresh application was filed on the same day, therefore, it cannot be said that the application was filed after about 48 days, even there is no limitation prescribed under Order 9 Rule 7 of the CPC and it is only when the next date of hearing the party against whom the ex-parte order passed appears and shows their plausible reason, they may be permitted to participate in proceeding. The learned trial Court has not exercised their jurisdiction in a proper manner. He would further submit that the defendants are representing by their counsel and it is only due to miscommunication between their junior and senior counsel, they could not appear in the proceeding and then the defendants have been proceeded ex-parte. There is no any delay in making the application for setting aside the ex-parte order, yet their application has been rejected. Therefore, the impugned order may be set aside and the petitioners may be permitted to participate in the proceeding of the civil suit

before the learned trial Court.

4. On the other hand, learned counsel for the respondents No.1 and 2 opposes the submissions made by learned counsel for the petitioners and has submitted that the learned trial Court has rightly rejected the application holding that it has been filed after about 48 days. He would further submit that though there is no limitation prescribed for filing the application for setting aside the ex-parte order, yet it has to be filed within a reasonable time supported a plausible reason for their non-appearance. In the present case they shifted their burden upon their counsel which is not bonafide, therefore, there is no merit in the present writ petition and the same is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the documents annexed with the present petition.

6. From order sheets annexed with the petition Annexure P/1, it transpires that the petitioners were proceeded ex-parte vide order dated 28-07-2025 and the case was next fixed on 20-08-2025. On 20-08-2025 the order sheet reflects that an application under Order 9 Rule 7 of the CPC has been filed by the defendants, however, the same was withdrawn on 18-09-2025 and on the same day another application was filed for the same, which was decided by the impugned order dated 14-01-2026. The learned trial Court has observed in its order dated 14-01-2026 that the application under Order 9 Rule 7 of the CPC has been filed after about 48 days that too without any plausible reason for their non-appearance.

7. The Order 9 Rule 7 of the CPC prescribes the procedure where defendant appears on day of adjournment hearing and assigns good cause for previous non-appearance, which reads as under:-

> "**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."

8. In the present case the petitioners have been proceeded ex-parte on 28-07-2025 and the next date fixed on 20-08-2025. On 20-08-2025 they have appeared along with an application under order 9 Rule 7 of the CPC which is the mandate of Order 9 Rule 7 of the CPC that very next date the defendants had appeared in the proceeding and prayed for setting aside the ex-parte order.

9. The another limb of their submission is that the petitioners have duly explained their reason for non-appearance which is reflected from the application Annexure-P/3. It is necessary to note relevant part of their explanation offered in the application Annexure- P/3, which reads as under:-

"(2) यह कि, उक्त प्रकरण की पूर्व नियत पेशी दिनांक 28.07.2025 को नियत थी, उक्त प्रकरण में चायकाल के पूर्व कनिष्ठ अधिवक्ता श्रीमति खुशबू ब्रम्हा उपस्थित हुई थी तथा चायकाल के पश्चात् भी उक्त कनिष्ठ अधिवक्ता माननीय न्यायालय के समक्ष उपस्थिति दर्ज करायी, किंतु उपस्थिति दर्ज कराते वक्त अपने पक्षकार के बारे में सही जानकारी माननीय न्यायालय को नहीं दे पायी, जिसके चलते पक्षकारों के असमंजस्य होने से माननीय न्यायालय के द्वारा प्रतिवादीगण के विरुद्ध एकपक्षीय कार्यवाही की गई है।

(3) यह कि, कनिष्ठ अधिवक्ता की उक्त भूल सद्भाविक थी, जो कि क्षमा किये जाने योग्य है।"

10. When the defendants appeared in the proceeding on the very next day after ex-parte proceeding and shown their reason that due to miscommunication between junior and senior counsel, they could not make their appearance before the trial Court in the proceeding, it cannot be said that the defendants have failed to explain any plausible reason for their non-appearance on the date when the ex-parte proceeding was drawn against them.

11. It is settled law that a litigant cannot be suffered due to fault of their counsel as has been held by the Hon'ble Supreme Court in the case of **Rafiq and another v. Munshilal and another**, (1981) 2 SCC 788, that:-

> "2. We have heard Mr. O. P. Rana, learned counsel for the appellant, and Mr. A.K. Sanghi, learned counsel for the respondent. The High Court disposed of the appeal preferred by the present appellant in the absence of the learned counsel for the appellant. When the appellant became aware of the fact that his appeal had been disposed of in the absence of his advocate, he moved an application in the High Court to recall the order dismissing his appeal and permit him to participate in the hearing of the appeal. This application was rejected by the High Court on the ground that though the application was prepared and drafted and an affidavit was sworn on 29th October, 1980, the same was not presented to the court till November 12, 1980 and that there is no satisfactory explanation for this slackness on the part of the learned advocate who was requested to file the application.
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> 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 with 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. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs

amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi.

4. Appeal allowed to the extent indicated with costs in the manner indicated."

12. Considering the material available in the present writ petition and after perusal of the order sheets as also the application filed by the petitioners before the learned trial Court, this Court is of the considered opinion that the learned trial Court has committed an error in rejecting the application filed by the petitioners.

13. Accordingly, the impugned order dated 14-01-2026 is set aside. The application filed by the petitioners under Order 9 Rule 7 of the CPC is allowed and the ex-parte order dated 28-07-2025 is set aside. The petitioners shall be permitted to participate in the proceeding in accordance with law.

14. With the aforesaid observation the present writ petition is **allowed**. However, it is expected that the parties shall cooperate in expeditious disposal of the suit and shall not take unnecessary adjournment in the proceeding.

Sd/-

(Ravindra Kumar Agrawal)

Judge

Aadil