

(2023) 03 CHH CK 0081
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 153 Of 2023

Bhagwan Jha

APPELLANT

Vs

Swami Shri Jugal Kishor Bare Jamt Mandir

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 9 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2023) 03 CHH CK 0081

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Manaynath Thakur

Final Decision : Dismissed

Judgement

1. This Petition has been filed under Article 227 of the Constitution of India being aggrieved by the order dated 18.11.2022 passed by the 2nd Civil Judge, Class-1 Rajnandgaon in Civil Suit No.40-A/12 whereby, the application filed by the Respondent/Plaintiff under Order 9 Rule 9 CPC for restoration of the suit which was dismissed for want of prosecution on 30.09.2016, was allowed.

2. Brief facts of the case are that the Respondent/Plaintiff has filed a Civil Suit for declaration and various other reliefs against the Petitioner and during pendency of the original Civil Suit i.e Civil Suit No.40-A/2002, the Respondent/Plaintiff Mahant Hari Das died and the present Respondent "Mahant Narendra Das Guruji represented him. The suit was initially filed in the year 1993 and thereafter, renumbered as Civil Suit No.40-A/2002 and on the hearing date i.e. 30.09.2016, the Respondent/Plaintiff could not appear, therefore, the said Suit was dismissed for want of prosecution. Later on, the Respondent/Plaintiff has filed an application under Order 9 Rule 9 CPC for restoration of the said suit on 28.02.2017 and also simultaneously filed an application under Section 5 of the Limitation Act to condone the delay in filing the said application, which has been

allowed by the order impugned.

3. Shri Thakur, learned Counsel for the Petitioner submits that the order impugned is not sustainable in law as the Respondent/Plaintiff has failed to give satisfactory explanation for the delay caused in filing the restoration application and the reasons assigned by him appears to be fanciful and contradictory. He further submits that the Respondent/Plaintiff, on one hand, given explanation that after returning from Rajim kumbhmela, he has enquired about the status of the case and on the other hand, he says that he has enquired the same from the Court's Reader and as such, no proper explanation has been given, therefore, the delay caused is deliberate and the Respondent/Plaintiff had pursued the litigation in a manner of gross negligence, therefore, condoning the delay caused in filing the application for restoration by the order impugned whereby, the Civil Suit has been restored, is bad in law. He further submits that whenever a false explanation has been given, no liberal approach has to be taken by the Court for restoration and placed reliance on the order passed in the matter of Virendra Kumar Shukla vs. Rajendra Shankar Shukla and Ors, F.A No.148/2019 dated 28.09.2022 and further placed reliance on Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai reported in (2012) 5 SCC 157, Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others reported in (2013) 12 SCC 649 and Balwant Singh vs. Jagdish Singh reported in (2010) 8 SCC 685 and prays to quash the order impugned. He draws attention of the Court to paras 23 & 24 of Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (supra) which are as under:-

"23. What needs to be emphasised is that even though a liberal and justice - oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

4. Heard learned Counsel for the Petitioner and perused the documents annexed with the Petition carefully.

5. It is well settled that there is no straight jacket formula for describing what is "sufficient cause" so as to grant relief to a party under Order 9 Rule 9 CPC and the same has been left to the wisdom, good sense and discretion of the Courts, therefore, while considering the application, pragmatism in justice oriented

process approach rather than the technical rigidity should be seen. In the judgment rendered in the matter of Kailash vs. Nanhku and Others reported in (2005) 4 SCC 480, it was materially observed at para-28 as under:-

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar (1975) 1 SCC 774 are pertinent:-

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice.

The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence _ processual, as much as substantive."

6. Reverting back to the facts of the present case, considering the fact that the Respondent/Plaintiff has been diligently pursuing the Civil Suit since 1993 i.e. for 20 years and only because he has failed to appear on one single hearing for one or the other reason and has also given an explanation that as the case was fixed for orders on preliminary issue, therefore, the next hearing date could not be obtained by the Counsel and further considering that he has also gone to attend kumbhmela at Rajim and immediately after returning from the said fair, an application for restoration of the Civil Suit along with a delay application has been filed, therefore, this Court is of the opinion that the Respondent/Plaintiff has demonstrated "sufficient cause" for his non-appearance on the said hearing date and as such, there is no error, perversity or illegality in the order impugned, which calls for any interference invoking the powers vested under Article 227 of the Constitution of India.

7. Accordingly, the instant Writ Petition having no substance, is hereby dismissed at the motion stage.