



2025:CGHC:34114

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 790 of 2018

1 - Kamla Prasad Jaiswal S/o Ramjanam Jaiswal Aged About 56 Years
Occupation- Agriculture, R/o- Village Kalyanpur, Tahsil- Surajpur,
District- Surajpur, Chhattisgarh.

... Petitioner(s)

versus

1 - Dhola Das S/o Dhanu Das Aged About 47 Years

2 - Bhola Ram S/o Dhanu Das Aged About 44 Years

3 - Namit S/o Dhanu Das Aged About 57 Years

All Caste- Panika, Occupation- Agriculture, R/o- Village Kalyanpur,
Tahsil- Surajpur, District- Surajpur, Chhattisgarh

4 - State Of Chhattisgarh Through- The Collector, Ambikapur, District-
Surguja, Chhattisgarh.

... Respondent(s)

(Cause title taken from CIS)

For Petitioner(s) : Ms. Komal Yadav, Advocate appears on behalf
of Shri Mahesh Pandey, Advocate

For Respondent : Shri Rahul Mishra, Advocate
Nos. 1 to 3

For Respondent : Shri R.C.S. Deo, Panel Lawyer
No. 4/State

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

18.07.2025

1. The petitioner preferred the present petition under Article 227 of the Constitution of India against the order dated 25.07.2018 passed by the Second Additional District Judge, Surajpur in Misc.Civil Appeal No. 04/2017, (Kamla Prasad Jaiswal Vs. Dola Das & Others) by which the appeal of the petitioner has been rejected and maintained the order dated 10.02.2017, passed by the Second Civil Judge Class-I, Surajpur, in Misc. Civil Suit No. 22/15, whereby an application moved by the petitioner under Order 9 Rule 13 of the CPC was rejected.
2. Case of the petitioner/defendant is that the respondent nos. 1 to 3/plaintiffs preferred a civil suit in the year 2002 against the defendant for permanent injunction and declaration of sale deed dated 08.07.1991 as null and void in respect of land bearing Khasra No. 604 area 0.482 hectare situated at Village- Podipa, Surajpur. According to the petitioner/defendant after service of notice he has appeared before the trial Court through his counsel on 11.12.2002. Thereafter, appeared on 19.02.2003 and 16.04.2003. When on 13.08.2003 neither the defendant nor his counsel appeared before the trial Court he was proceeded *ex-parte*. Subsequently, on 23.06.2008, the *ex-parte* decree was passed by the trial Court and the suit filed by the plaintiffs was allowed, whereby the sale deed executed in favour of the defendant on 08.07.1991 was declared as null and void. The defendant came to know about the *ex-parte* decree on 31.03.2009

when the notice was received from the Tehsildar Pilkha for mutation of the suit land in favour of the plaintiffs. Thereafter he obtained certified copy of the same on 28.04.2009 and moved an application under Order 9 Rule 13 CPC for setting aside the *ex-parte* decree. The same was rejected by the trial Court by order dated 10.02.2017. Against the said order the defendant approached the appellate Court by filing Misc. Civil Appeal No. 04/2017, which was also dismissed by the order impugned. Thus, this petition.

3. Learned counsel for the petitioner would submit that the petitioner came to know about the *ex parte* judgment of the trial Court when he received notice issued by the Tehsildar Pilkha on 31.03.2009. Learned counsel would submit that in the application under Order 9 Rule 13 of CPC, the petitioner explained cogent and sufficient reasons before the trial Court as also before the appellate Court, but the same has not been considered and appreciated in its true perspective. According to the petitioner, the default committed by his counsel, could not be shifted upon him. Learned counsel would submit that both the trial Court and the appellate Court have committed an error of law while rejecting the application moved by the petitioner under Order 9 Rule 13 of the CPC. In support of her contention, learned counsel would reliance upon the judgment rendered by the Supreme Court in the matter of ***Bhagmal & Others Vs. Kunwar Lal & Others reported in (2010) 12 SCC 159.***

4. On the other hand, learned counsel appearing for the plaintiffs/respondent Nos. 1 to 3 would support the impugned order passed by the trial Court and the appellate Court. Learned counsel would submit that the ex-parte judgment was passed by the trial Court on 13.06.2008, as the defendant as well as his counsel failed to appear before the trial Court from 2003 onwards. The petitioner moved the application under Order 9 Rule 13 CPC only on 05.05.2009 that too without explaining the plausible reasons. In support of his contention learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Parimal Vs. Veena alias Bharti reported in 2011 (3) SCC 54.***
5. I have heard learned counsels appearing for the parties and perused the pleadings and documents.
6. For the sake of convenience, it would be appropriate to quote Order 9 Rule 13 of CPC-

13. Setting aside decree ex parte against defendant. -

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim] [Added by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f.1.2.1977).J”

7. In the case at hand, the petitioner/defendant has not taken a ground that the summons were not duly served. Where as in the present case the petitioner & his counsel engaged by him appeared and participated in Civil Suit on various dates, however from 13.08.2003 they failed to appear and for which the trial Court proceeded ex-parte. Perusal of the judgment and decree dated 23.06.2008 would show that the defendants remained ex-parte and as such after considering the entire facts and circumstances of the case; after following the due process of law; and also considering the fact that the defendant failed to participate in the proceedings of the Civil Suit, ex-parte judgment and decree was passed.
8. The learned trial Court after considering all the aspects of the matter in detail rejected the application under Order 9 Rule 13 of the CPC. It has also clearly recorded a finding that the defendant was duly served in the suit and even the defendant failed to offer any plausible explanation with regard to delay in filing the subject application. Thereafter, the appellate Court also after going through the material available on record has rightly rejected the Misc. Civil Appeal preferred by the defendant.

9. In **Parimal** (supra) the Supreme Court categorically observed that in order to determine the application under Order 9 Rule 13 CPC, the test has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Order 9 Rule 13 of CPC allows a defendant to approach the Court to set aside an ex-parte decree, which is a decree passed against him in his absence. To succeed, the defendant must demonstrate that the summon was not duly served or that they were prevented by sufficient cause from appearing when the suit was fixed for hearing. However, in the case at hand the defendant/ petitioner utterly failed to establish that he has approached the Court with sufficient cause.
10. Applying the well settled principles of law to the facts of the present case and having considered the impugned orders passed by the trial Court as also the appellate Court; particularly considering the fact that the suit was filed in 2002 and thereafter the defendant entered appearance through his counsel till 2003 and thereafter failed to appear before the trial Court; as also considering the fact that the ex parte judgment was passed on 23rd June, 2008 and the defendant moved the subject application under Order 9 Rule 13 CPC on 5th May, 2009 that too without assigning sufficient and cogent reasons, I am of the considered

view that both the courts have recorded a correct finding of fact based on material available on record. There is no good ground to interfere with the orders passed by the learned trial Court as also the appellate Court.

11. *Ergo*, the writ petition, bearing bereft of merit, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Bibhu Datta Guru)
Judge

Gowri/Shoaib

Head Note

“To succeed in an application under Order 9 Rule 13 of CPC the defendant must satisfy the Court that his absence was due to a justifiable reason & unavoidable circumstances preventing his appearance”

"व्यवहार प्रक्रिया संहिता के आदेश 9 नियम 13 अंतर्गत प्रस्तुत आवेदन में सफल होने के लिये प्रतिवादी को न्यायालय को संतुष्ट करना होगा कि उसकी अनुपस्थिति उचित कारण तथा अपरिहार्य परिस्थितियों की वजह से थी, जो उसे उपस्थिति से रोक रही थी।"