

(2019) 10 CHH CK 0199
Chhattisgarh High Court
Case No: Civil Revision No. 66 Of 2019

Govind Ram Basantani And Ors

APPELLANT

Vs

Gopalji Mandir Trust And Ors

RESPONDENT

Date of Decision: Oct. 23, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 115, Order 9 Rule 13

Hon'ble Judges: Sanjay Agrawal, J

Bench: Single Bench

Advocate: Roop Naik, Avinash K. Mishra, R. R. Sinha

Final Decision: Dismissed

Judgement

Sanjay Agrawal, J

1. This revision petition has been preferred by Defendants No.1 & 2 under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') questioning the legality and propriety of the order dated 20.06.2019 passed by the District Judge, Raigarh (C.G.) in Miscellaneous Civil Suit No.83/2016 by which, the trial Court, while allowing the application preferred under Order 9 Rule 13 of CPC by the plaintiff, has set aside the ex parte judgment and decree dated 06.11.2012 passed in counter claim of the defendants. The parties to this Revision Petition shall be referred hereinafter as per their description in the Court below.

2. Shri Naik learned counsel for the applicants submits that the order impugned as passed by the trial Court allowing the plaintiff's application under Order 9 Rule 13 of CPC by setting aside the said ex parte judgment and decree is apparently contrary to law. While inviting attention to the order

sheet of the trial Court dated 29.06.2012, it is contented that the trial Court while dismissing the plaintiff's suit for non-prosecution proceeded ex parte

and after considering the evidence led by the defendants, decreed their counter claim on 06.11.2012. According to him, the plaintiff has failed to show

sufficient cause for his non-appearance on 29.06.2012, as such, the trial Court ought not to have allowed the said application for setting aside the said

ex parte judgment and decree.

3. I have heard learned counsel for the Applicants and perused the entire papers annexed with this memo of revision petition carefully.

4. A suit was instituted by the plaintiff claiming declaration of title and injunction with regard to the property in question described in plaint 'Schedule-

A'. It was registered as Civil Suit No.93-A/2012. While contesting the said suit, defendants have raised their counter claim by submitting inter alia that

a license has been granted to them for construction of the house and have claimed the relief of injunction restraining the plaintiff from interfering with

regard to the alleged construction. The suit instituted by the plaintiff was dismissed in default on 29.06.2012 and a counter claim as instituted by the

defendants was decreed ex parte on 06.11.2012.

5. Upon knowing the delivery of the said ex parte judgment and decree on 09.11.2012, an application enumerated under Order 9 Rule 13 of CPC

supported by an affidavit has been made. It is alleged therein that the plaintiff was assured by his counsel that he would be called whenever his

presence is needed in the matter and an affidavit filed by his counsel would show that his brother-in-law was ill seriously on 06.11.2012, therefore, he

could not appear in the matter in time as he was in Bilaspur alongwith his brother-in-law for his treatment on 11.11.2012.

6. The aforesaid application has been contested by the defendants.

After considering the submissions of the parties, it was observed by the trial Court that plaintiff was not aware regarding the date of hearing when his

suit was dismissed in default on 29.06.2012, as he was neither informed by his counsel nor was aware regarding the delivery of the said ex parte

judgment and decree. While considering further the affidavit of his counsel, it was observed that the cause shown by the plaintiff for his non-

appearance on the date of hearing when the suit was dismissed in default was sufficient. As a consequence, the alleged ex parte judgment and decree passed on 06.11.2012 has been set aside vide order impugned dated 20.06.2019.

7. From perusal of the reasons assigned in the application for setting aside the said ex parte judgment and decree and that by considering further the affidavit of plaintiff's counsel, vis-a-vis the observations of the trial Court, it appears that the cause shown by the plaintiff for his non-appearance in the suit was bona fide and, I do not find any deliberate mistake on his part or any of his malafide intention behind it.. Accordingly, I do not find any infirmity in the order impugned allowing the application filed under Order 9 Rule 13 of CPC so as to call for any interference in the same.

8. In view of the foregoing discussions, the revision petition is, accordingly dismissed at admission stage itself. No order as to costs.