

cf 1004 (5)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.No. . 375 . OF 2004

PETITIONER
DEFENDANT

KANHAIYA LAL, AGED ABOUT 50 YEARS,
SON OF GOPAL DAS, OCCUPATION!
HOTEL KEEPER, R/o BASTER ROAD,
DHAMTARI TAHSIL AND DISTRICT
DHAMTARI (C.G.)

VERSUS

RESPONDENT
PLAINTIFF

SMT. JUGGA DEVI, AGED ABOUT 66 YEARS,
WIFE OF SHRI RANULAL SANKLECHA,
R/o SADAR BAZAR, DHAMTARI
TAHSIL AND DISTRICT DHAMTARI (C.G.)

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION
OF INDIA FOR THE ISSUANCE OF THE WRIT OF CERTIORARI,
SUITABLE DIRECTION, OR ORDER IN THE NATURE OF WRIT.

आदेश पत्रक

मामला क्रमांक

WP 375/04

सन 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन पापलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>30.9.2004</u> Shri U.R. Koslikey, Advocate appears on behalf of Shri G.S. Agarwal, counsel for the petitioner. Shri H.S. Patel, counsel for the respondent. Heard both the counsel at the admission stage. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the impugned order dated 08.01.2004 passed by learned 2nd Civil Judge Class-I, Dhamtari in Civil Suit No.97-A/92 whereby the application of the petitioner herein filed under Order 9 Rule 7 r/w Section 151 of CPC for setting aside the ex-parte order dated 20.12.2003 was rejected. From perusal of the impugned order it appears that the said suit was fixed for hearing on 20.12.2003, but on that date neither learned counsel for the petitioner herein nor the petitioner himself was present, therefore, order of proceeding ex-parte against the petitioner herein was passed by the learned trial court. On 22.12.2003 an application under Order 9 Rule 7 r/w Section 151 of CPC for setting aside the ex-parte order dated 20.12.2003 was filed on behalf of the petitioner herein in which it was mentioned that the counsel for the defendant/petitioner Shri K.K. Mishra was not present at Dhamtari, as he has gone to Raipur due to some personal work and his junior advocate was not well, therefore, she was also not present in the Court. In support of the application Shri K.K. Mishra, Advocate filed his affidavit. However, learned trial court while rejecting the application observed that as the affidavit	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	of the junior counsel of Shri K.K. Mishra has not been filed therefore, there was no sufficient cause of remaining absent. Learned counsel for the respondent herein submits that the petitioner herein is a tenant, the suit was filed as back as in the year 1992 and he intentionally wants to delay the proceedings, therefore, heavy cost be imposed on the petitioner herein. Having heard learned counsel for the parties, having regard to the facts and circumstances of the case and having regard to the affidavit filed by the counsel for the petitioner herein, I am of the opinion that there was sufficient cause due to which the petitioner counsel was not present before the trial court on the date of hearing, therefore, the ex parte order dated 20.12.2003 passed by the learned trial court deserves to be set aside. Accordingly, the order dated 20.12.2003 is hereby set aside subject to payment of cost of Rs.500/- to the respondent herein within a period of 30 days, failing which the ex-parte order dated 20.12.2003 shall stand, as it is. However, as the suit of party is pending since last more than twelve years, therefore, the trial court is directed to expedite the proceedings of the civil suit. With the aforesaid observation and direction, the petition stands disposed of. Consequently, M.W.P. No.328/04 & I.A. No.1269/204 also stand disposed of. Certified copy as per Rules.	

Sd/-
L.C.BHADOO
Judge

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