

1
THE HIGH COURT OF MADHYA PRADESH
MP No.1325/2019
Guddi Bai and another Vs. Ramdas and others

Gwalior, Dated :11/03/2019

Shri Prakhar Dhengula, Advocate for petitioners.

This petition under Article 227 of the Constitution of India has been filed against the order dated 8/2/2019 passed by First Civil Judge, Class-I, Khaniyadhana, District Shivpuri in Civil Suit No.25A/2011, by which the application filed by the petitioners under Order IX Rule 7 CPC has been rejected and the trial court has refused to set aside the *ex parte* order against the petitioner and has permitted the petitioner to participate in the further proceedings.

The necessary facts for disposal of the present petition in short are that the respondents have filed a suit against the petitioners and had also filed an application under Order XXXIX Rule 1 and 2 CPC, which was allowed by order dated 20/11/2012 and an order of temporary injunction was passed against the petitioners. The petitioners being aggrieved by the order of the trial court, filed a Miscellaneous Appeal, which too was dismissed by order dated 4/1/2012.

It appears that the petitioners filed an application under Section 45 of Evidence Act, which was allowed by the trial court. Thereafter, a writ petition No.4655/2013 was filed by the plaintiffs and the further proceedings before the trial court were stayed. It is not out of

THE HIGH COURT OF MADHYA PRADESH
MP No.1325/2019
Guddi Bai and another Vs. Ramdas and others

place to mention here that the petitioners were appearing in writ petition No.4655/2013. Later on, the order of Trial Court was set aside and writ petition was allowed, as a result of which, the interim order of stay also came to an end. Thereafter, the petitioners executed a sale deed. It is also mentioned in the impugned order that during the pendency of the writ petition the petitioners were constantly appearing before the trial court. It appears that on 12/9/2018 the trial was adjourned for arguments on certain applications and on 17/9/2018 the petitioners deliberately did not appear before the trial court and thereafter also they did not appear before the trial court on 26/9/2018, 3/10/2018, 10/10/2018, 23/10/2018, 27/10/2018 and 29/10/2018. On 17/9/2018 a statement was made by the counsel for the petitioners that he has no instructions and accordingly, the petitioners were proceeded *ex parte*. On 10/10/2018 issues were framed and on 27/10/2018 plaintiffs' witnesses, Shishupalsingh, Shankarsingh and Prabhu alias Prabhudayal were examined and thereafter, the case was fixed for examination of the remaining plaintiffs' witnesses. On 15/11/2018 the counsel for the petitioners filed an application under Order IX Rule 7 CPC for setting aside *ex parte* order. It is mentioned in the application that the petitioners were not aware of the date which was fixed before the trial court.

THE HIGH COURT OF MADHYA PRADESH
MP No.1325/2019
Guddi Bai and another Vs. Ramdas and others

Although on 12/9/2018 the counsel for the petitioners had appeared and in spite of the efforts made by the counsel for the petitioners, he could not contact with the petitioners and accordingly, on 17/9/2018 he had pleaded no instructions. Thus, a prayer was made that they may be permitted to cross examine the plaintiffs' witnesses.

The trial court after considering the previous conduct of the petitioners has rejected the application filed under Order IX Rule 7 CPC.

Challenging the order passed by the court below, it is submitted by the counsel for the petitioners that once it was pleaded by the counsel for the petitioners that he has no instruction in the matter, then the court should have issued SPC to the petitioners and thus, the trial court has committed a material illegality by not setting aside the *ex parte* order because the Court had not issued the SPC after no instructions were pleaded by their counsel.

However, when the attention of the counsel for the petitioners was invited towards the observation of the trial court that immediately after the stay order issued by the High Court came to an end, the petitioners thereafter immediately sold the property in question, then he fairly conceded that the petitioners have sold the property, but it is contended that the previous conduct of the

THE HIGH COURT OF MADHYA PRADESH
MP No.1325/2019
Guddi Bai and another Vs. Ramdas and others

petitioners cannot be taken into consideration and the court must consider the conduct of the petitioners on the day when they were proceeded *ex parte*. It is further submitted that the attitude of the trial court was nothing but “revengeful attitude of the Court”.

Heard learned counsel for the petitioners.

It is really shocking that when the previous conduct of the petitioners was brought to the notice of the counsel for the petitioners, then he reacted by saying that if the previous conduct of a party is taken into consideration, then the same would amount to “revengeful attitude of the Court”. The submission made by the counsel for the petitioners cannot be appreciated at all. It is well established principle of law that he who comes to the Court must come with clean hands. Just in order to find out that whether the grounds disclosed by the petitioners were *bonafide* or not, their previous conduct can very well be considered by the trial court. The petitioners have not explained as to why they had sold the property in dispute immediately after the disposal of the writ petition, which was pending before this Court. It is fairly conceded by the counsel for the petitioners that the petitioners were appearing in the writ petition through their counsel. Once the petitioners were aware of the disposal of the writ petition and thereafter they immediately sold the

THE HIGH COURT OF MADHYA PRADESH
MP No.1325/2019
Guddi Bai and another Vs. Ramdas and others

property in dispute and thereafter not contacting their counsel specifically when their counsel had appeared on 12/9/2018 and under these circumstances, it clear that the conduct of the petitioners clearly shows that they were playing the game of hide and seek and thus, it can be safely said that they had not come to this Court with clean hands. Under these circumstances, this Court cannot ignore the previous conduct of the petitioners.

Considering the facts and circumstances of the case, this Court is of the considered opinion that no illegality has been committed by the trial court by rejecting the application filed under Order IX Rule 7 CPC. Admittedly, where the Court refuses to set aside the *ex parte* proceedings, the litigant can always participate in the further proceedings, therefore, by way of a word of caution the trial court has also clarified that the petitioners, if so desire, may participate in the subsequent proceedings.

Under the facts and circumstances of the case, the order dated 8/2/2019 passed by First Civil Judge, Class-I, Khaniyadhana, District Shivpuri in Civil Suit No.25A/2011 is hereby affirmed.

The petition fails and is hereby **dismissed**.

Arun*

(G.S. Ahluwalia)
Judge