

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
ON THE 09th OF MARCH, 2022

MISCELLANEOUS PETITION No.730 of 2018

Between:-

**NYAZ AHMAD S/O LATE NISAR AHMAD,
AGED ABOUT 56 YEARS, R/O BUDHAR, P.S.
AND TEHSIL BUDHAR, DISTRICT SHAHDOL
(M.P.)**

.....PETITIONER

(BY SHRI BHANU PRATAP YADAV - ADVOCATE)

AND

**SARFRAJ AHMAD S/O LATE NISAR AHMAD,
AGED ABOUT 63 YEARS, BUDHAR, P.S. AND
TEHSIL BUDHAR DISTRICT SHAHDOL (M.P.)**

.....RESPONDENTS

This petition coming on for order this day, the court passed the following :

ORDER

The petitioner-defendant is aggrieved by order dated 13.12.2017 (Annexure P/1) passed by the First Civil Judge, Class-I, Budhar, District Shahdol in C.S. No.12-B of 2017, whereby, the application under Order IX Rule 7 of the Code of Civil Procedure for setting aside the *ex-parte* order dated 27.03.2017 has been rejected.

This Court while issuing notice to the respondent on 19.02.2018 directed that further proceedings pending before the trial Court shall remain

stayed and the said stay is in operation till date. Despite service of notice, none appears for the respondent-plaintiff.

The learned counsel appearing for the petitioner-defendant submits that the respondent-plaintiff had filed a suit for compensation against the petitioner-defendant and the petitioner-defendant engaged a counsel, who was appearing before the trial Court. When the matter was listed on 27.03.2017 for filing of the written statement, neither the petitioner nor his counsel could appear and, therefore, the trial Court had proceeded *ex-parte* against the petitioner. The petitioner-defendant submitted an application under Order IX Rule 7 of the Code of Civil Procedure along with the written statement for setting aside the *ex-parte* order, which was opposed by the respondent-plaintiff. The learned trial Court vide impugned order dated 13.12.2017 has rejected the said application. Hence, the petitioner is in the instant writ petition.

The learned counsel appearing for the petitioner-defendant submits that because of inadvertence, his lawyer could not appear on 27.03.2017 and appropriate explanation was given in the application that on earlier date, the file of the concerned court was not available, therefore, the petitioner-defendant was informed that the date would be notified later on. Since the petitioner-defendant engaged a lawyer, therefore, he was under a bonafide impression that unless his lawyer asks him to remain personally present, he was not required to remain present on each date. He also submits that there is no deliberate delay on his part and he has already filed his written statement.

Taking into consideration the overall facts and circumstances of the case, the reason of non appearance of the petitioner-defendant on 27.03.2017 appear to be bonafide and sufficient. The application under Order IX Rule VII of the CPC for setting aside order having been filed at the earliest, the impugned order dated 13.12.2017 (Annexure P-1) passed by the First Civil Judge, Class-I, Budhar, District Shahdol in C.S. No.12-B of 2017, is set aside. The written statement is directed to be taken on record. The learned trial Court should proceed accordingly and shall dispose of the case preferably within a period of six months from the date of the communication of this order.

With the aforesaid directions, the present petition stands disposed off.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

pp.