THE HIGH COURT OF MADHYA PRADESH
MP No.6633/2019
Balram Dandotioya Vs. Hariom and others

Gwalior, Dated :22/01/2020

Shri N.K. Gupta, Senior Advocate with Shri Sanjay Sharma, Advocate for petitioner.

Shri D.D. Bansal, Advocate for respondent no.1.

This petition under Article 227 of the Constitution of India has been filed against the order dated 6/11/2019 passed by 17th Additional District Judge, Gwalior in Civil Suit No.22-A/2013, by which the application filed by the petitioner under Order IX Rule 17 CPC for setting aside the *ex parte* proceedings has been rejected.

The counsel for the respondent/plaintiff has submitted that the plaintiff has filed a suit for specific performance of contract and in the year 2011 the petitioner was proceeded *ex parte.* However, it is submitted that in order of avoid any further complication, the respondent has no objection in case if this petition is allowed and the order dated 6/11/2019 passed by the trial court thereby rejecting the application for setting aside *ex parte* proceedings is set aside. However, it is submitted that looking to the delay in filing the application for setting aside the proceedings as well as looking to the fact that much water has already flown, an exorbitant cost of Rs.1,00,000/- be imposed.

Heard learned counsel for the parties.

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It is the case of the respondent that the petitioner as well as the respondent no.2 are the real brothers and in order to avoid any further complication he has no objection if the application filed by the petitioner under Order IX Rule 7 CPC is allowed.

In view of the concessional statement made by the counsel for the respondent no.1, this Court is of the considered opinion that the prayer for setting aside *ex parte* proceedings can be considered subject to payment of cost. From the impugned order, it is clear that the case is already fixed for recording of defence witness. Thus, it is clear that during the last more than eight years much water has already flown under the bridge. Since the application filed under Order IX Rule 7 CPC is being allowed on the basis of the concessional statement made by the counsel for respondent no.1, therefore, this Court in order to strike balance between the parties thinks it appropriate to allow this petition on the following conditions:-

1. The petitioner shall file his written statement latest by 6/2/2020.
2. The petitioner shall not seek any adjournment on any ground at any stage of the trial.
3. Since the application under Order IX Rule 7 CPC has been filed after a considerable delay of eight long years,

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therefore, his prayer can be considered only on payment of cost. Accordingly, the order dated 6/11/2019 passed by 17th Additional District Judge, Gwalior in Civil Suit No.22-A/2013 is hereby set aside, subject to payment of cost of Rs.1,00,000/-.

4. It is made clear that in case if the petitioner fails to deposit the cost on or before 6/2/2020 or fails to file his written statement within the stipulated time, then this order shall automatically lose its effect.

With aforesaid observations and directions, the petition is finally **disposed of.**

(G.S. Ahluwalia)
Judge

Arun*

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