



1

MP-3301-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 2nd OF JULY, 2026MISC. PETITION No. 3301 of 2026*DIVYAPRAKASH**Versus**BRIJESH KUMAR AND OTHERS*

.....
Appearance:

Shri Dheeraj Sharma - Advocate for the petitioner.

Shri Aditya Mishra - Advocate for the respondents.

.....

ORDER

By this petition preferred under Article 226 of the Constitution of India, has prayed for the following reliefs:

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to Set aside/quash the order dated 04/05/2026 passed by the learned trial Court, and allow the application filed by the petitioner under Order 9 Rule 7 CPC. Direct the learned trial Court to permit the petitioner to appear and contest the suit on the merits. Pass any other order/orders which this Hon'ble Court may deem fit and proper in the interest of justice. "

2. Heard learned counsel for the parties.

3. Counsel for the petitioner has submitted that the petitioner is 70 years old and was pursuing the legal proceedings and sometime his son is also attending the hearing of the present petition. It is submitted that in the suit proceedings bearing RCS A/1346/2021, the petitioner/defendant did not appear and the Court proceeded *ex-parte* on 13.04.2026. It is further submitted that the petitioner with utmost promptness and without unnecessary delay filed an application under Order 9 Rule 7 of the CPC on



20.04.2026 by praying for setting aside order of ex parte proceedings. The said application is filed within seven days, however, the Court has not considered the same and dismissed the application on 04.05.2026. Therefore, he has submitted that petitioner being a senior citizen and has pursued the proceedings, one more opportunity is required to be granted for participating in proceedings so that he can pursue with the legal remedy, which is already available to him on merit and such hyper technical approach is not required to be taken by the concerned trial Court and prays for interference as now the matter is kept before the trial Court on 06.07.2026, therefore, he prays for interim relief .

4. Learned counsel for the respondents who is appearing on caveat has strongly opposed the same by pointing out that the petitioner himself in his petition in para No.5.3 and 5.4 stated as under:

"5.3 That the petitioner/defendant has appeared in person in the case, and when the matter was listed on 07.04.2026 and 13.04.2026, he was absent due to old age and sudden medical difficulty. The petitioner sent his son, but the trial court did not appreciate his son's presence because he was not a party in the Case.

5.4 Thereafter, when the petitioner/defendant did not appear in the case, he proceeded ex parte on 13.04.2026."

5. Thereafter, he has drawn my attention towards the impugned order whereby, learned trial Court has specifically observed on the last page as under:

"जहां तक प्रतिवादी की ओर से अपने आवेदन पत्र में यह बताया गया है कि वह दिनांक 13.04.2026 को उपस्थित था तो तत्संबंध में यहां यह उल्लेखनीय है कि वह दिनांक 07.04.2026 एवं 13.04.2026 को अनुपस्थित था जिसकी अनुपस्थिति आदेश पत्रिका में स्पष्ट रूप से उल्लेखित हैं। इस प्रकार प्रतिवादी द्वारा अपनी अनुपस्थिति का कोई कारण भी आवेदन पत्र में उल्लेखित नहीं किया है तथा न्यायालय के समक्ष यह आवेदन पत्र प्रस्तुत कर दिनांक 13.04.2026 को अपनी उपस्थिति बताते हुये झूठ बोल रहे हैं। यदि प्रतिवादी उक्त दिनांक को उपस्थित थे तो उनके द्वारा साक्ष्य प्रस्तुत क्यों नहीं की गई इसका भी कोई कारण आवेदन पत्र में नहीं बताया गया है। यहां यह भी उल्लेखनीय है कि इस न्यायालय में कैमरे भी लगे हुये हैं उसके बावजूद उनके द्वारा उक्त दिनांकों को इस न्यायालय में बिना किसी डर



के अपनी उपस्थिति बताई जा रही है। अतः प्रतिवादी की ओर से प्रस्तुत आवेदन पत्र अस्वीकार कर निरस्त किया जाता है।"

6. In his application under Order 9 Rule 7 of the CPC, he has also stated in para 3 as under:

"3- यह कि, प्रकरण मे प्रतिवादी द्वारा दिनांक 13/04/2026 को भी प्रतिवादी माननीय न्यायालय के समक्ष आवेदन पर समय लेने के लिए उपस्थित हुआ था, एवं माननीय न्यायालय के समक्ष समय लेने की प्रार्थना कि गई थी, परन्तु प्रतिवादी कानूनी कार्यवाही की जानकारी न होने के कारण हस्ताक्षर नहीं कर सका एवं न ही प्रकरण की दिनांक 13/04/2026 के आदेश पत्रिका देख सका, इसलिये त्रुटिवश माननीय न्यायालय के द्वारा प्रकरण में दिनांक 07/04/2026 एवं 13/04/2026 को प्रतिवादी की अनुपस्थिति दर्ज की गई है एवं माननीय न्यायालय के द्वारा प्रकरण मे प्रतिवादी के आवेदन पत्र को भी निरस्त कर दिया गया है एवं प्रतिवादी के विरुद्ध एक पक्षीय कार्यवाही करने के लिए प्रकरण को अन्तिम तर्क करने के लिए आज दिनांक को नियत किया गया है।"

7. It is further submitted that the present petition is filed by the petitioner to delay the proceedings by deliberately not proceeding with the matter. By referring to the earlier proceedings of the Court, he has submitted that the petitioner has tried to make out his case by submitting that due to the medical problems the doctor has advised him to attend only one legal proceeding in a day in their Court and, therefore, he had not attended some other proceedings on earlier occasion. He has further submitted that even the petitioner has filed application under Section 24 of the Civil Procedure Code for transfer of the proceedings by making incorrect averments in the application. He has further submitted that the affidavit in support of application filed by the petitioner under Order 9 Rule 7 of the CPC before this Court, the occupation of the petitioner is mentioned as insurance service and in fact he is a practicing Lawyer. Therefore, he has submitted that considering the conduct of the petitioner and considering the fact that he has deliberately not cooperating in the proceedings, no relief is required to be granted in favour of the petitioner.

8. I have considered the rival submission of the parties and I have



also perused the relevant documents, more particularly the impugned order and the averments made in the present petition as well as averments made in the application under Order 9 Rule 7 of the CPC.

Order 9 Rule 7 of the CPC is reproduced below for reference reads as under:

"7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. - Where the Court has adjourned the hearing of the suit ex-parte and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day, fixed for his appearance."

9. Considering the fact that the petitioner is actually practicing Lawyer and with the person who is aged 77 years, after putting certain years in practice, making totally contradictory averments in the plaint before the trial Court as well as before this Court is required to be viewed very seriously. As indicated by the counsel for the respondents that in the application filed under Order 9 Rule 7 of the CPC before the trial Court, it is stated that the petitioner Court could not remain present before the trial Court. However, while perusing the para 5.3 and 5.4 of the present petition, it is specifically mentioned that he could not remain present in the Court. Order 9 Rule 7 of the CPC which requires good cause for his previous non-appearance and for that atleast petitioner should make correct avernments for which he has filed application under Order 9 Rule 7 of the CPC and subsequent proceedings pursuant thereto.

10. From bare reading of the averments in the present proceedings before the trial Court as well as before this Court and reading of the



provisions under Order 9 Rule 7 of the CPC, it cannot be said that the petitioner is able to establish that there is good cause for his previous non-appearance. In fact, he himself has tried to confuse the Court or mislead the Court by making contradictory averments in the proceedings before the trial Court as well as before this Court. It is always expected that the litigant should come with clean hands before the Court by disclosing every facts true and correct and also by producing all relevant material on record. Normally, the Courts are taking lenient view while deciding application under Order 9 Rule 7 of the CPC, without taking much hyper technical view but while considering the fact that the present petitioner is a practicing Lawyer and who has tried to plead his case before the trial Court as well as before this Court in total contradictory manner by narrating the facts in the application before the trial Court as well in the petition before this Court. Otherwise also, on the basis of material available on record, more particularly by referring to the earlier proceedings, it seems that petitioner is trying to play dilatory tactics by not proceeding with the suit proceedings in prompt manner. Therefore, I found no reason to interfere with the order passed by the trial Court viz-a-viz reasons assigned by the trial Court are found to be just and proper. No reason can be considered as perverse or illegal. There is no scope of interference in the matter while exercising supervisory jurisdiction under Article 227 of the Constitution of India. Petition is required to be dismissed.

11. Considering the conduct of the petitioner and in view of the fact that the petitioner has made inconsistent statements in the pleadings and also tried to get undue advantage by way of such pleadings, this Court is of the



6

MP-3301-2026

opinion that heavy cost should be imposed on the petitioner, who is otherwise a practicing Lawyer, well aware about all requirement under the law and cannot be considered as illiterate person having no knowledge of law.

12. In view of the above discussion, the petition is dismissed with cost of Rs.2,500/-(Rupees Two Thousand and Five Hundred Only), which is required to be deposited by the petitioner in the High Court Bar Association, Indore within seven days from today and obtain a receipt.

13. Petition stands dismissed, accordingly.

(SANDEEP N. BHATT)
JUDGE

jyoti