



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 251 of 2024

1 - Rajkumar Agrawal S/o Late Babulal Agrawal Aged About 55 Years R/o Ramsagarpara, Raipur, Tahsil And District Raipur (C.G.) (Plaintiff)

... **Petitioner(s)****versus**

1 - Smt. Indrani Bai Wd/o Itwari Ram Balmiki R/o Kodpar, Tahsil Kurud, District Dhamtari (C.G.) (Defendant)

---- **Respondent(s)**

For Petitioner	:	Mr. A.D. Kuldeep, Advocate
For Respondent	:	None appears though served.

Hon'ble Shri Justice Rakesh Mohan Pandey**Order on Board****06.08.2025**

1. The petitioner has filed this petition seeking the following relief(s):-

“10.1 That this Hon'ble Court may kindly be pleased to set-aside/quash the impugned order dated 12.01.2024 and further be pleased to restore the civil suit no. 146-B/2018 to the file of the trial Court for further hearing, in accordance with law

10.2 That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”

2. Mr. Kuldeep, the learned counsel appearing for the petitioner, would submit that Civil Suit No.27/2019, the parties being Rajkumar Agrawal Vs. Smt. Indrani Bai was decided by the learned Trial Court



vide order dated 25.06.2022 whereby the civil suit filed by the petitioner was dismissed for want of prosecution. The petitioner moved an application under Order 9 Rule 9 read with Section 151 of the CPC assigning reasons, and the said application was rejected by the learned Civil Judge, Class-II, Raipur, in Miscellaneous Civil Suit No.27/2019 vide order dated 25.06.2022. He would contend that against the said order, the petitioner preferred an appeal under Order 41 Rule 1 of the CPC instead of Order 43 Rule 1 of the CPC before the learned Appellate Court. He would further contend that an application under Order 41 Rule 27 of CPC was also moved. Mr. Kuldeep would also submit that the appeal preferred by the petitioner was dismissed on the ground that, against the rejection of an application under Order 9 Rule 9 of CPC, an appeal under Order 41 Rule 1 of CPC is not competent, though it was registered as Miscellaneous Appeal No.30 of 2022. He would pray to set aside the order passed by the Appellate Court dated 12.01.2024.

3. Despite the service of notice, there is no representation for the respondent.
4. I have heard the learned counsel appearing for the petitioner and perused the documents placed on the record.
5. It is a well settled principle of law that mentioning an incorrect provision of law in an application would generally not render the application invalid or subject to automatic dismissal.
6. The petitioner committed a mistake by mentioning Order 41 Rule 1 of



CPC while filing the appeal against the rejection of an application under Order 9 Rule 9 of CPC; rather, he should have mentioned Order 43 Rule 1 of CPC, but the learned Appellate Court should have considered the essence and intent of the appeal preferred by the petitioner. The appeal preferred by the petitioner was registered as a Miscellaneous Appeal, and thus, the Court below was aware of the fact that the appeal was preferred according to provisions of Order 43 Rule 1 of CPC, but by adopting a rigid and technical approach, the appeal was dismissed.

7. The Hon'ble Supreme Court in the matter of ***Pruthvirajsinh Nodhubha Jadeja (D) by Lrs Vs. JayeshKumar Chhakaddas Shah & others*** reported in **2019 (9) SCC 533** in para 8 held as under:-

"8.It is well-settled law that mere non-mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court."

8. Taking into consideration the facts discussed-above and the law laid down by the Hon'ble Supreme Court, the order dated 12.01.2024 is hereby set aside. Learned Appellate Court is directed to treat the appeal preferred by the petitioner under Order 43 Rule 1 of CPC and decide it fresh on its own merits after affording the opportunity of hearing to the parties.

9. The record of the Court below be returned forthwith.

Sd/-

(Rakesh Mohan Pandey)
Judge



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Head Note

Mentioning of incorrect provision is not fatal to the application if the power to pass the order is available with the Court.