

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No.1 of 2012**

Ashok Kumar Shahu, S/o Ram Bharosh Shahu, aged about 32 years,
Occupation Kabadi, R/o Purana Bazaar Para, Surajpur, District
Surguja, Chhattisgarh

---- Petitioner**versus**

1. The Oriental Insurance Co. Ltd., through Divisional Manager,
Divisional Office, In front of High Court, Bilaspur, Chhattisgarh
2. Lilavati, W/o Late Samaylal, aged about 42 years,
3. Ramnaresh Shahu, S/o Late Samaylal, aged about 25 years,
4. Ramkaran Shahu, S/o Late Samaylal, aged about 20 years,
5. Sangeeta Shahu, W/o Ramnaresh Shahu, aged about 23 years,
6. Deepak Kumar, S/o Ramnaresh Shahu, aged about 7 years,
7. Ku. Mamta, D/o Ramnaresh Shahu, aged about 5 years,
8. Ku. Pritea, D/o Ramnaresh Shahu, aged about 3 years,

Respondents No.6 to 8 are minors through mother Sangeeta
(Respondent No.5)

9. Laxandhari, S/o Late Dhaneshar Shahu, aged about 62 years,
10. Rajkumari, W/o Late Laxandhari, aged about 57 years,

All the Respondents No.2 to 10 are residents of Bhaiyathan Road,
Surajpur, Police Station and Tahsil Surajpur, District Surguja, Chhattisgarh

11. Shiva Rajwade alias Shivnarayan, S/o Amarsai, aged about 27 years,
occupation Driver, R/o Village Agaustpur, Police Station and Tahsil
Surajpur, District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For Respondent No.1	:	Shri R.N.Pusty, Advocate
For Respondents No.2 to 8 and 10	:	Shri D.N.Prajapati, Advocate
For Respondents No.9 and 11	:	None

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice Prashant Kumar Mishra

Order on Board**Per Navin Sinha, Chief Justice****21/8/2015**

1. This application has been filed to review the order dated 8.3.2011 in
Miscellaneous Appeal No.945 of 2005. It is barred by delay of 270 days.
I.A. No.1 of 2012 has been filed to condone delay.

2. Learned Counsel for the Petitioner submits that by the impugned order dated 8.3.2011, the liability for payment of compensation has been shifted from the Insurance Company to the Petitioner. No proper notice was issued to the Petitioner before passing of the order and he was therefore denied the opportunity to defend himself. In the cause-title of the miscellaneous appeal, the surname of the Petitioner has been written as "Shahu" while he writes as "Sahu". Further, the District has been mentioned as Surajpur which came to be created much later and at the relevant point of time the District was Surguja. It is therefore apparent that the order is primarily *ex parte* in nature. It may be recalled and the miscellaneous appeal may be heard afresh on merits.

3. Learned Counsel for the Insurance Company, Respondent No.1 who was the Appellant in the miscellaneous appeal, as also the appearing private Respondents submit that the records of the miscellaneous appeal reveal that notice was validly issued. Surajpur fell within the District of Surguja. The notice by ordinary process was served through the District Judge Surguja. The notice was received by his sister-in-law (*Bhai-Bahu*). There is no denial of this fact either in the review petition or the supplementary affidavit filed in support thereof vide I.A. No.2 of 2015.

4. We have considered the submissions on behalf of the parties.

5. The first submission that the name of the Petitioner was wrongly mentioned as "Shahu" instead of "Sahu" merits no consideration at all so long as the Petitioner does not dispute his parentage and the residential address at Surajpur.

6. Surajpur was located within the District of Surguja. It is not the case of the Petitioner that he is not a resident of Purana Bazaar Para of Surajpur which fell in District Surguja. The records reveal that notice by ordinary process was served through the District Judge Surguja. It was

received by his brother's wife named Pranmati. Either in the review petition or in I.A. No.2 of 2015 filed by the Petitioner supplementing the grounds he has maintained complete silence that he had no brother or that his sister-in-law was not named Pranmati and that she had not received the notice on his behalf. There is also no denial that they are not joint in residence. The notice was also sent by registered post acknowledgment due. The A/D card bears the acknowledgment of the Petitioner. There is a presumption of service attached to a notice sent by registered post. It is rebuttable. But, it is for the addressee to lead evidence for rebutting the presumption. A bald denial based on unsubstantiated facts will not suffice.

7. If a person chooses not to enter appearance despite valid service of notice, he cannot urge violation of the principles of natural justice.

8. If that were not enough, the application for condonation of delay is delightfully vague and does not even mention when and on what date the Petitioner was made aware of the order dated 8.3.2011 to explain the extraordinary delay of 270 days.

9. We therefore find no reason to condone delay.

10. The review petition consequently fails and is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Prashant Kumar Mishra)
JUDGE