

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 87 of 2012**

1. Bhilai Cargo Movers, Through : its Director Ashok Jain, R/o 5 Tara Complex, Power House, Bhilai, District Durg (CG)
2. Abhishek Jain S/o Ashok Jain, aged about 25 years, R/o House No. 3, Road No. 7/B, Phase-I Maitri Nagar, Risali Nawai, P.S.-Nawai, District-Durg (C.G.)

---- Petitioner**Versus**

1. National Insurance Company Limited, Through : Manager, Akash Ganga Complex, G.E. Road, Supela Bhilai, District – Durg (CG)
2. Anil Prasad Gupta, aged about 25 years, S/o Chakradhar Prasad Gupta, R/o Kandaibahra, P.S. Farsabahal, District Jashpur, Present R/o House No.86-A, Maitri Vihar, Radhika Nagar, Supela, PS Supela, District Durg (CG)

---- Respondent

For Petitioners : Shri Saurabh Sharma, Advocate.
 For Respondent No.1 : Shri Shreekumar Agrawal, Sr. Advocate with Shri Anand Gupta, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board**21/08/2015**

1. The present application has been filed to review the order dated 1.3.2011 in MA(C) No.334/2010. By the impugned order, the appeal preferred by the Insurance Company was allowed holding it not liable

to pay compensation shifting liability on the owner of Santro Car with liberty to execute the award against the owner of the car.

2. Learned Counsel for the Petitioners submits that no notice was issued to the petitioners impleaded as respondents No.2 and 3 in the appeal. The notice that was issued was confined to the question for limitation to condone delay. Even if the petitioners did not appear in response to the same, before hearing the matter on merits, notice ought to have been issued again to the petitioners. The petitioners dispute the signatures of Shri Ashok Jain on the service report upon basis of signature verification report obtained from the Bank. The ex-parte order if not interfered will cause grave miscarriage of justice. The appellants were made aware of the ex-parte order in the appeal only when they received notice in the execution case on 17.4.2012. The delay of 368 days in filing the present application therefore stands explained.
3. Learned Counsel for Respondent No.1 has opposed the submission contending that no explanation has been offered why the petitioners did not enter appearance after valid service of notice in the limitation matter. Non-appearance even after knowledge was deliberate only to raise frivolous objections like the present.
4. We have considered the submissions on behalf of the parties and also examined the original records of MA(C) No.334/2010, with regard to service of notice upon the petitioners.

5. Notice was issued to the petitioners on 19.7.2010 in IA No.1/2010 for condonation of delay in filing the appeal. The notice was issued separately to Petitioners No.1 and 2. Both were received by Shri Ashok Jain, Director of the Bhilai Cargo Movers and father of Abhishek Jain. The signatures on both the service reports to the naked eye are same. The service report with regard to Petitioner No.2 states that he was a student studying in Delhi and that notice was received by his father, Ashok Jain. No explanation has been given and there is absolutely no whisper in the review application why they did not enter appearance after valid service of notice even in the limitation matter once they were made aware of the appeal having been filed. Had they entered appearance in response to the notice, they would have received copies of the main appeal and taken appropriate steps to protect their interest. If the petitioners were so callous and negligent for protection of their own interest and thought that they could still reserve liberty for themselves by not appearing in the limitation matter and raising objections at a subsequent stage, the same cannot be considered sufficient ground to condone such extraordinary delay. Once there was valid service of notice, even in the limitation matter and the petitioners were fully aware of the pendency of the Miscellaneous Appeal, as notice specifically stated that it was being served in MA(C) No.334/2010 instituted by National Insurance Company, and they chose not to enter appearance, they did so entirely at their own risk and consequence. It is not open for them now to urge that there has been

violation of principles of natural justice.

6. The explanation for delay of 368 days in filing the Review Application completely collapses if the petitioners were made aware of the pendency of the Miscellaneous Appeal when they received notice on 16.8.2010. The explanation given for condonation of delay therefore stands completely falsified and merits no consideration.
7. In absence of any sufficient ground for condoning the abnormal delay of 368 days, IA No.1, for condonation of delay in filing the review petition is rejected. The review petition consequently automatically fails and is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Prashant Kumar Mishra)
J U D G E

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