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HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 426 of 2014

1. Ratlu Singh S/o Kewal Prasad Aghariya Aged About 80 Years, Cultivator, R/o village Dehkoni, Tah. Janjgir, Distt. Bilaspur (Now Distt. Janjgir-Champa C.G.), (Since Deceased) Through- Lrs. -

(I) Goverdhan Singh Bhardwaj, Age- 63 Yrs, S/o Late Ratalu Singh, Cultivator R/o Dehkoni, P.S. And Tah. Janjgir, Distt. Janjgir-Champa C.G.

(ii) Premi Lal Bhardwaj S/o Late Ratalu Singh Aged About 58 Years R/o Janjgir, Chandaniyapara, Janjgir, P.S. And Tah. Janjgir, Distt. Janjgir-Champa C.G.

(iii) Mohan Lal Bhardwaj S/o Late Ratalu Singh, Cultivator, Aged About 56 Years R/o Dehkoni, P.S. And Tah. Janjgir, Distt. Janjgir-Champa C.G.

(iv) Sohan Lal S/o Late Ratalu Singh Aged About 54 Years, Cultivator R/o Dehkoni, P.S. And Tah. Janjgir, Distt. Janjgir-Champa C.G.

---- Applicants

Versus

1. Ramadhar Singh S/o Prem Singh Aghariya Aged About 41 Years R/o Dehkoni, P.S. And Tah. Janjgir, Distt. Janjgir-Champa C.G., At Present Posted As S.I. Police Station Takhatpur, R/o Muktidham Chowk, Sarkanda, Tah. And Distt. Bilaspur C.G.

---- Respondent

For Applicants : Shri Vipin Singh Thakur, Advocate

For Respondent : Shri Parag Kotecha, Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

ORDER

01/09/2015

1. Heard on I.A.No.1/2014 for condonation of delay in filing the application under Order 22 Rule 9 CPC for setting aside the abatement of Second Appeal No. 984/1997.

2. On behalf of the applicants it is submitted that vide order dated 2.11.2012 application for substitution of the LRs of the sole appellant and delay in filing such application were allowed subject to payment of cost of Rs.1,000/- to the respondent within a week. The Court ordered that after payment of cost amendment be carried out within a week. I.A.No. 3 was dismissed.

3. On 2.1.2013, as no one represented the appellant and also for non-compliance of the order dated 2.11.2012, the appeal was dismissed. Thereafter, the LRs of the sole appellant/applicant, preferred MCC No. 251 of 2014 for restoration of Second Appeal No. 984/1997, dismissed for want of prosecution vide order dated 2.1.2013. The said application was filed after 400 days of its limitation. On 15.4.2014, it was ordered that the applicants were required to file application for setting aside the abatement before the regular Bench and the MCC was dismissed. After the order passed in MCC No. 251/2014 dated 15.4.2014 instant MCC to allow the application under Order 22 Rule 9 CPC for setting aside the abatement of Second Appeal has been preferred.

4. Learned Counsel for the applicants submits that though there is delay of 432 days from the date of order for dismissal of appeal i.e. 2.1.2013 but no observation is made in MCC No.241/2014 filed bonafidely for delay by the Court and immediately after 30 days, the instant MCC has been preferred. Therefore, the delay is bonafide and the same may be condoned and MCC be heard.

5. I.A.No.1/2014 is opposed on behalf of the respondent and submitted that earlier in the year 2005 also the appeal was dismissed for want of prosecution and thereafter, LRs of the appellant not complied the order for payment of cost and also not represented on 2.1.2013. The appeal was dismissed for non-compliance of the order. Thereafter, MCC has been filed after 400 days of its limitation. Delay is not satisfactorily explained. Consequently, application for condonation of delay may be dismissed.

6. On due consideration as there was no observation regarding delay and explanation for the same, MCC No.251/2014 was dismissed with an observation that applicants are required to file application for setting aside the abatement before the regular Bench and immediately within 30 days the instant MCC has been filed. Looking to the entire facts and circumstances this Court is of the considered view that delay is explained for filing the instant

MCC, hence I.A.No.1/2014 is allowed. Delay in filing the MCC is condoned.

7. The instant MCC is admitted for consideration.

8. Heard finally.

9. The applicants prayed that abatement of Second Appeal No. 984 of 1997 be set aside and the appeal be restored to its original number.

10. Prayer made in this behalf is opposed by the Respondent.

11. Reply to the application was also filed. Learned Counsel for the respondent submitted that for the facts and circumstances mentioned in the reply, application for setting aside the abatement may be dismissed as not maintainable.

12. On perusal of the order dated 2.11.2012, I.A.Nos.1 and 2 this Court accepted the prayer made in this behalf regarding substitution of LRs of the sole appellant- Ratlu Singh and also allowed the condonation for delay in filing the application under Order 22 Rule 4 CPC. The Court accepted the prayer made in this behalf. The point remains that applicants have not complied regarding payment of cost to the respondent within a week. Also there was no representation on behalf of the applicants/proposed LRs of appellant on 2.1.2013. It became the basis for dismissal of appeal for non-compliance. In the considered view of this Court, on the basis of this fact alone, application may not be rejected.

13. On due consideration the instant MCC filed under Order 22 Rule 9 CPC for setting aside the abatement of Second Appeal No. 984/1997 on account of death of the sole appellant is hereby allowed subject to payment of cost of Rs.2,000/- to the Library Fund of Chhattisgarh High Court Bar Association and after showing of the receipt before the Registry, Second Appeal No.984/1997 be restored to its original number. The applicants are further directed to comply with the order for payment of cost of Rs.1,000/- to the respondent within 15 days of restoration of Second Appeal No.984 of 1997.

14. The applicants are further directed to amend the cause-title of the Second Appeal as per order dated 2.11.2012 within 15 days of its restoration. The abatement of Second Appeal No. 984/1997 stands set aside after compliance of the above mentioned order.

15. The MCC is allowed.

16. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

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