

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 75 of 2014

1. Vishnu Ram Sori S/o Bahal Sori, aged about 48 years, R/o Village-Bhatapara, Chuikhadan, Post Office, Police Station & Tahsil Chuikhadan, Civil & Revenue District Rajnandgaon C.G.

---- Appellant/Applicant

Versus

1. Kamal Khan S/o Gaffur Khan, aged about 30 years, R/o Village - Deopura, Post Office & Police Station Salhewara, Tahsil - Chuikhadan, District Rajnandgaon C.G.
2. The Branch Manager, the National Insurance Co. Ltd., through Branch Manager, Branch Office, Kamthi Line, Police Station - City Kotwali, Rajnandgaon, District Rajnandgaon C.G.

---- Respondents/Non-applicants

For Appellant – Shri A.L.Singroul, Advocate.
For Respondent No.2 – Shri Raj Awasthi, Advocate.
For Respondent No.1 – none, though served.

Order on Board

24/07/2015

1. Heard on I.A.No.3/15 for urgent hearing. The same is disposed of.
2. Also heard on I.A.No.1/14 for condonation of delay.
3. The instant miscellaneous appeal is preferred after 2 days of its limitation.
4. For the reasons mentioned in I.A.No.1/14, the same is allowed and the delay in filing the instant miscellaneous appeal barred by limitation by 2 days is hereby condoned.
5. Also heard on motion.
6. The instant miscellaneous appeal is admitted for consideration.
7. Heard finally.
8. This order shall dispose of the miscellaneous appeal filed on behalf of

the appellant under Order 43 Rule 1 of the CPC against the order passed in MJC No.7/2011 (Vishnu Ram v. Kamal Khan and another) dated 26-10-2013 whereby and whereunder the application filed on behalf of the applicant/appellant under Order 9 Rule 9 of the CPC has been dismissed on the ground that the same is filed after 23 days of its limitation and also no any application along with affidavit was filed for condonation of delay along with such application.

9. By filing the instant miscellaneous appeal the appellant has taken the ground that the order passed by the Additional MACT, Khairagarh, C.G. is bad in law and prayed that the same be set aside and application of the appellant/applicant be allowed in the interest of justice.

10. Heard the parties present.

11. Learned counsel for the appellant submits that he be given an opportunity for filing an application along with affidavit regarding delay of 23 days for filing the application under Order 9 Rule 9 of the CPC and after the said opportunity the application above mentioned be heard and disposed of as per provisions of law.

12. Per contra, learned counsel for the respondent No.2 opposed the petition and submitted that the delay of prosecuting Claim Case No.841/09 is on the part of the appellant/applicant/claimant; after providing many opportunities to the extent of 11 counts, the claimant not adduced his witnesses and ultimately the abovementioned claim case was dismissed for want of prosecution by the Additional MACT Court on 25-06-2011. Thereafter again when the application under Order 9 Rule 9 of the CPC is preferred, no any application for condonation of delay of 23 days is filed along with affidavit before the Court concerned. It goes to show since the appellant/applicant is responsible for all these delay, hence, if at any point of time award is passed or any relief is granted, then for the time delayed by the appellant no interest be ordered to be

granted to the appellant as he was causing delay for his claim petition.

13. On due consideration, upon entire perusal of the material available, it goes to show that during trial of Claim Case No.841/09 (Vishnu Ram v. Kamal Khan and another), the trial Court gave 11 opportunities for adducing witnesses of the appellant/applicant. The appellant/applicant failed to examine himself and his witnesses, and ultimately the applicant remained absent; there was no representation on his behalf on 25-06-2011 thereby the trial Court dismissed the claim for want of prosecution. Even again when the applicant filed the application under Order 9 Rule 9 of the CPC, the same was filed without any application for condonation and any affidavit in support of condonation of delay. On the basis of non-filing of any application along with affidavit regarding condonation and as the instant MJC filed after the stipulated time given under the statute, the Court below has dismissed the petition.

14. The present dispute is regarding motor accident and claim arising out of the said accident. Learned counsel for the appellant submitted that he be given opportunity to rectify and demonstrate his absence and delay for filing the MJC and let there be appreciation for the same. In the considered view of this Court, an opportunity would be proper.

15. Consequently, the impugned order dated 26-10-2013 passed in MJC No.7/11 is hereby set aside. The appellant/applicant is directed to file an application regarding condonation of delay for filing the petition under Order 9 Rule 9 of the CPC along with his affidavit on or before **28th of August, 2015**. The parties are directed to remain present either in person or through their counsel before the trial Court on **28-08-2015** for further hearing in the MJC. The trial Court is directed that if such application for condonation of delay along with affidavit is filed, after affording opportunity to the non-applicants to file counter along with document, affidavit, if any, if they wish to file and after affording opportunity, the application filed under Order 9 Rule 9 of the CPC be denovo heard and to pass an order after hearing the said MJC afresh.

16. As prayed on behalf of respondent No.1, it is further observed that if any award is passed by the trial Court for the above referred claim case in future, the interest part for the period delayed by the applicant be considered and it shall be lawful for the claim tribunal to award interest not for the period for which there was delay on account of the applicant/appellant.

17. With the above observation, the instant miscellaneous appeal is allowed and disposed of.

18. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE