

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 338 of 2013

1. Power Mech Projector Pvt.Ltd. Vehicle Owner, Through Gupteshwar Rana, Senior Supervisor, Camp Office Cseb, Korba, Tahsil & Distt Korba, CG

---- Petitioner

Versus

1. Murlidhar Bairagi S/o Bhujbal Das @ Ujjawal Das Aged About 35 Years R/o Vill Bahama, Thana Tahsil Lailunga, Distt Raigarh, Halmukam Vill Dhourabhantha, Thana Tamnar, Tah Gharghoda, Distt Raigarh, Cg
2. Kishor Stephan S/o Stipal L. Aged about 28 years Occupation, Driver, R/o Tarabila Vidikanira Road, Thana Kunda, Dist Kollam (Kerala) Hal Mukam T.P.Nagar, Patarapali, House Of A.P.Patel, Kotara Road, Raigarh, Tah & Distt Raigarh, CG

--Respondents

For Petitioner – Shri Sanjay Patel, Advocate.
For Respondent No.1 – Shri M.K. Sinha, Advocate.
Respondent No.2 not served as not known.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

Order on Board

19/11/2015

1. Heard on admission.
2. It is prayed that respondent No.2 is a formal party and even remained ex parte before the Court below while hearing MJC No.2/2009 (Power Mech Projector Private Limited Vs. Murlidhar Bairagi & Anr.) whereby and whereunder the Court below had dismissed the application filed by the petitioner/applicant under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter the 'Code') and Section 5 of the Limitation

Act, 1963 on 11.10.2010.

3. On behalf of the petitioner it is further submitted that respondent No.2 also remained ex parte in Claim Case No. 50/2007 though the Claims Tribunal had passed award dated 22.9.2007 against the present petitioner and respondent No.2 jointly and severally but respondent No.2 was the Driver of the vehicle. His whereabouts were not known and as a owner of the vehicle, he is primarily responsible to satisfy the award, hence, the matter may be heard without representation of respondent No.2 as his whereabouts are not known. On due consideration, as prayed, the matter is heard finally even without representation of respondent No.2.

4. The brief facts required for the instant Writ Petition (227) are that respondent No.1 had filed Claim Case No. 50/2007 against the present petitioner and respondent No.2 for compensation as he met with an accident by a vehicle motorcycle No. CG 13B 6533 and suffered injuries. The 4th Additional Motor Accidents Claims Tribunal (FTC) Raigarh (CG) vide award dated 22.9.2007 by hearing the matter ex parte allowed the application preferred by respondent No.1 and directed the non-applicants to pay the compensation as per order mentioned in para 13 (1), (2) (3) & (4) of the award. Against the impugned award the petitioner had filed application under order 9 Rule 13 of the Code along with Section 5 of the Limitation Act to set aside the ex parte award as he was not aware of the notice published in the daily news paper through substituted service for hearing Claim Case No. 50/2007. When he received the notice in execution then only he came to know that the award was passed against

him ex parte deemed served through paper publication. The Court below after hearing the present petitioner and respondent No.1 held that application under Order 9 Rule 13 of the Code coupled with Section 5 of the Limitation Act is not maintainable. Hence, the Court below dismissed the application and rejected the prayer of the petitioner to set aside the ex parte award passed.

5. Against the impugned order, the petitioner has preferred M.A.No.98/2010 with a prayer to set aside the order dated 11.10.2010 passed by the Court below. On 10.4.2013, the appellant prayed for permission to withdraw the said Misc. Appeal with liberty to file appropriate legal proceedings reserving the aforesaid liberty by the coordinate Bench on 10.4.2013. Thereafter, the petitioner has preferred the instant Writ Petition and challenged the legality and propriety of the order passed by the Court below dated 11.10.2010.

6. By filing the instant writ petition, the sole ground has taken that he was residing at Korba and the substituted service through paper publication had published in the daily news paper in Raigarh. Earlier, the petitioners mentioned their communication address through Jindal Steel and Power Limited, Raigarh (CG). As the owner of the vehicle was a Private Limited Company and the Company office was at Korba and the officials of the Company had no knowledge for publication of service of notice through substituted service, hence they had no information regarding issuance of any notice against them. They have not represented before the Court below in hearing and the Court proceeded ex parte deemed served. It is prayed that there was no mistake on behalf

of the petitioner for his non representation in the matter before the Court below. The Claim Case is a social legislation. Before any award the parties have to be given an appropriate opportunity of hearing so that the matter could be disposed of on its merits. It is further submitted that the impugned order passed by the Court below on 11.10.2010 against the petitioner be set aside and they be given opportunity to defend the matter and the Claim Case may be disposed of on its merits.

7. On behalf of respondent No.1 no written response has been filed in the petition. However, the petition is opposed orally.

8. Heard both the parties.

9. Learned counsel for the petitioner duly supported the grounds taken in the instant writ petition and submitted that initially the address given in Claim Case No.50/2007 was not a complete address of the petitioner, the officials of the petitioner were at Korba and they were not aware regarding a paper publication for substituted service regarding their representation in the matter. They have bonafidely failed to appear and they be given an opportunity. The order dated 11.10.2010 be set aside and the matter be heard afresh after affording opportunity to both the parties.

10. Per contra learned counsel for respondent No.1 had opposed the petition and submitted that on the basis of the charge sheet the address of the petitioners were mentioned in the Claim Case. The petitioner remained ex parte before the Court below though even after substituted service under Order 5 Rule 20 of the Code. The petitioners were served through substituted service and even after publication in the daily news

paper the petitioner failed to appear and contest the matter. The Tribunal for no option left, proceeded ex parte and passed the impugned award dated 22.9.2007. As the petitioner failed to demonstrate bonafide reason for delay in filing the application to set aside the ex parte decree, hence the order passed by the Court below on 11.10.2010 does not require any interference and the petition may be dismissed.

11. For appreciation of the arguments advanced in this behalf, I have perused the material annexed along with the petition.

12. From perusal of the entire material it shows that address of the petitioner was mentioned through Jindal Steel Plant Limited Raigarh (CG) whereas no any specific mention is there as to why ordinary mode of service was not effected on the petitioner and also why the petitioners were mentioned in the cause title of the Claim Case No. 50/2007 as through some Steel Company. It shows that the address of the petitioner was not correctly shown in the said claim case. May be it was not a fault of the claimant but if correct address is not given it would not safe to proceed further even after publication of the notice as substituted service because the petitioner was stationed at Korba and not at Raigarh (CG). Thereby, it shows that the substituted service cannot be held good and as per facts there is a reason for non representation of the petitioner in the claim case. The application under Order 9 Rule 13 of the Code along with Section 5 of the Limitation Act has to be appreciated in light of the above facts. On due consideration, it is apparent that the petitioner had shown satisfactory reason for delay in filing the MJC No.2/2009 and also shown sufficient cause for non representation in the matter. Also in the interest of

justice when the petitioner prayed for bi-party hearing, it would be appropriate to grant him an opportunity to be heard and the matter be disposed of on its merits.

13. Consequently, in the view of this Court, the order dated 11.10.2010 requires interference, the same is set aside. The ex parte award dated 22.9.2007 is set aside and Claim Case No. 50/2007 is restored to its original number. The parties are directed to remain present in person or through their counsel before the Court below on 13th January, 2016. The trial Court is directed to proceed further afresh after affording opportunity to the present petitioner to file his written statement, documents if any, to both the parties to adduce their evidence and pass a fresh order in the said Claim Case No. 50/2007 on its merits according to law. Liberty may also be given to Respondent No.1 to implead any other facts in his claim petition, if necessary, for the adjudication of the case.

14. The petition is allowed.

15. No order as to cost.

16. Copy of the order be sent to the Court below for compliance. The parties may also file certified copy of this order before the Court below for further proceedings.

Sd/

(Chandra Bhushan Bajpai)

Judge