

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Art.227) No.470 of 2015**

1. Mukesh Saparia S/o Late Chiraunjilal Saparia Aged About 40 Years Saparia Auto Mobiles,
2. Shiv Kumar Agrawal @ Mama S/o Late Shri Ramniwas Agrawal Aged About 52 Years Occ- Business, Krishna Photocopiers,
3. Krishna Agrawal S/o Shri Kundan Lal Agrawal Aged About 46 Years Occupation- Business, Krishna Book Depot. ,
4. Chandrika Prasad Gauraha S/o Late Shri Sunder Lal Aged About 53 Years Occupation- Business, Gouraha General Stores,
5. Murari Lal Agrawal S/o Shri Manna Lal Agrawal Aged About 35 Years Occupation- Business Komal Traders,

All R/o Kota Pandariya, Main Road, Old Bus Stand, Lormi, P.S. -
Lormi, Civil & Revenue Distt. Mungeli (Chhattisgarh)

---- **Petitioners**

Versus

1. Smt. Rashmi Kesharwani W/o Mahesh Kumar Kesharwani Aged About 35 Years
2. Smt. Manju Kesharwani W/o Mukesh Kumar Kesharwani Aged About 34 Years
3. Smt. Ekta Kesharwani W/o Manoj Kumar Kesharwani Aged About 31 Years
4. Mahesh Kesharwani S/o Late Shobhram Kesharwani Aged About 40 Years
5. Mukesh Kesharwani S/o Late Shobharam Kesharwani Aged About 30 Years
6. Manoj Kesharwani S/o Late Shobharam Kesharwani Aged About 35 Years

All R/o Ward No. 08 Rani Gaon, Lormi, (Infront Of Life Insurance Office) Post And Tahsil- Lormi, Distt. Bilaspur (Now Mungeli) (Chhattisgarh)

7. State Of Chhattisgarh, Through Collector, Mungeli, Distt. Mungeli (Chhattisgarh)

---- **Respondents**

Shri Vivek Tripathi, counsel for the petitioners.
Shri Sumit Jhawar, Panel Lawyer for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

08.12.2015.

Heard.

2. It is submitted on behalf of the petitioner that the petitioner has filed miscellaneous civil appeal before the Court below after three days of its limitation along with an affidavit, on the ground that counsel for the appellant was not available due to health reason of his family member, but the Court below found it not worth for hearing on admission and dismissed the application under Section 5 of the Limitation Act and also in furtherance dismissed the miscellaneous appeal. Looking to the entire facts, the matter may be heard and disposed of without even hearing to the respondents.

3. On due consideration, I am not inclined to issue notice to respondents 1 to 6. The matter is heard finally at motion stage itself without noticing the respondents .

4. The petitioners have invoked the jurisdiction of Article 227 of the Constitution of India and challenged the legality and propriety of order 20.02.2015 passed in unregistered Civil MJC of 2014 (Mukesh Saparia & Ors. Vs. Smt. Rashmi Kesharwani & Ors.) whereby and whereunder the learned court below, i.e. the appellate court in an appeal preferred under the relevant provisions of Order 43 Rule 1 of the Code of Civil Procedure against the order dated 18.12.2013 passed by Civil Judge Class-II Lormi in MJC No.02/13, whereby an application under Order 9 Rule 9 read with order 161 of the CPC filed by the applicant/plaintiff has been dismissed. The appellate Court has rejected the application filed under Section 5 of the Limitation Act in support of miscellaneous appeal as there was a delay of three days. Against the impugned order, the plaintiff/appellant/petitioner filed instant petition to set aside the order passed by the appellate court.

5. Heard parties present and perused the record.

6. Counsel for the petitioner submits that as the counsel for the petitioner, on account of ill health of the family member, was not available, hence, the said miscellaneous appeal was filed after three days of its limitation. The petitioner also filed affidavit to explain the delay of three days, even then the Court below wrongly appreciated and application for condonation of delay was dismissed also the said miscellaneous appeal was dismissed. The counsel for the petitioner submits that the delay was well explained and there was an affidavit in support of facts of three days delay in filing the appeal, hence the above order requires interference and prayed that this court would pass suitable direction and relief as prayed in the matter.

7. For the purpose of appreciation in the matter, documents adduced along with the petition are perused.

8. On due consideration, it appears that filing of the miscellaneous appeal is barred by limitation of three days on account of health reason of a family member of the counsel of the petitioner and their counsel on those days was far away for treatment purpose, hence the appeal was filed after limitation of three days only.

9. After perusal of the order passed by the learned appellate Court, in view of this Court, reasons for the delay, delay of three days only, that too on account of non availability of the counsel for the reasons that the counsel was at Nagpur for treatment of his family member, all these facts are supported by the affidavit in this behalf by the appellant, the trial Court acted in a very hyper technical manner. For this short delay and that too on humanitarian ground affidavit of the concerned counsel was not required. Even otherwise, adjudication of the matter on its merits would be proper hence, order passed by the Court below

dated 20.02.2015 requires interference. Consequently, impugned order dated 20.02.2015 is hereby set aside. Filing of miscellaneous appeal for a delay of three days only is hereby condoned as such delay is satisfactorily explained. The Court below is directed to register the miscellaneous appeal and after hearing both the parties dispose of the same in accordance with law.

10. Another point this Court deemed it fit to appreciate that learned Additional district Judge had taken up the matter as Civil MJC unregistered 2014 whereas the miscellaneous appeal has been filed by the petitioner under the relevant provisions of Order 43 Rule of the Code. With this the nomenclature of the matter (Civil MJC unregistered 2014) is not correct, it should be and it must be mentioned as miscellaneous civil appeal unregistered and that may be registered after the admission. The court below is directed to remain cautious in future to give proper nomenclature to the matter before him.

11. The Registry is directed to send a copy of this order to the concerned presiding officer through Registrar General for future guidance.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**