

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No. 118 of 2015

1. Laxmin Bai W/o Late Ganga Prasad, aged about 65 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.01/ Respondent No.01)
2. Ram Ratan S/o Late Ganga Prasad, aged about 45 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.02/ Respondent No.02)
3. Kanhaiyya @ Bholwa S/o Late Ganga Prasad, aged about 40 years, R/o Village- Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.03/ Respondent No.03)
4. Ram Prasad S/o Late Ganga Prasad, aged about 37 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.04/ Respondent No.04)
5. Manharan S/o Late Ganga Prasad, aged about 35 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.05/ Respondent No.05)
6. Dilharan S/o Late Ganga Prasad, aged about 30 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.06/ Respondent No.06)
7. Girdhari S/o Late Ganga Prasad, aged about 26 years, R/o Village-Khaparidih, Tehsil- Akaltara, District Janjgir-Champa, Chhattisgarh(Plaintiff No.07/ Respondent No.07)

---- Applicants

Versus

1. Marse Power & Steel Limited , Through- Nitin Agrawal (Director) S/o Gauri Shankar Agrawal, aged about- 35 years, R/o 78, Shahid Smarak Complex, G.E. Road, Raipur, District- Raipur, Chhattisgarh (Defendant No.02/ Appellant)
2. Laxminarayan S/o Vijayram @ Vijeram Satnami, aged about 60 years R/o Village- Kartala, Distt.- Korba, Chhattisgarh(Defendant No.01/ Respondent No.08)
3. State of Chhattisgarh, Through: District Collector Distt. Janjgir-Champa, Chhattisgarh(Defendant No.03/ Respondent No.09)

---- Respondents/Non-applicants

For Applicants – Shri Anish Tiwari, Advocate.

For Respondent No.3 – Shri Aditya Sharma, Panel Lawyer, on advance notice.

For Respondents 1 and 2 – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

04/12/2015

1. Heard for admission.
2. The instant civil revision has been preferred challenging the legality and propriety of the order dated 20-08-2015 passed by the Court below i.e. the First Additional District Judge, Janjgir-Champa in Misc. Civil Suit

No.08/15 (Mars Power and Steel Limited as appellant and Laxmin Bai and 08 others as respondents) as the appeal was preferred after 3 to 4 months (it is not mentioned exactly either in the impugned order or in the instant petition as to what is the exact period of delay). In the appeal which is preferred against the judgment and decree dated 29-11-2013, the first appellate Court condoned the delay of about 3 to 4 months in filing the said first appeal and admitted the matter for final hearing.

3. By filing the instant civil revision the grounds have been taken that the reason mentioned to condone the delay is not explained day to day and also not corroborated by the service report, hence, it is prayed that the instant civil revision may be allowed and the order passed by the Court below be set aside.

4. Learned counsel appearing for the applicants duly supported the grounds taken in the civil revision and further prayed that the delay has been condoned even if the delay is not explained sufficiently. The parties were not alert for their appearance and to contest the civil suit before the trial Court. As there is no any satisfactory explanation regarding the delay in filing the appeal, the doctrine for condonation of delay as expected under Section 5 of the Limitation Act is not made out. Learned counsel for the applicants placed reliance in the matter of **Basawaraj & Anr. v. The Spl. Land Acquisition Officer**¹ wherein Hon'ble the Apex Court held :- Condonation of Delay – On condition that applicant would lose interest for period of delay – Most inappropriate and not legally sound.

5. For the purpose of admission of the instant civil revision and the documents annexed along with it are perused. Order dated 20-08-2015 is also perused.

6. From close scrutiny, it emerges that initially Civil Suit No.142A/2011 proceeded ex-parte, defendant No.2 (respondent No.1 herein) had not taken

¹ 2013 AIR SCW 6510

part in the hearing reasons best known to him. As per the impugned order dated 20-08-2015, it is held that as defendant No.2 remained ex-parte, the suit was allowed vide judgment and decree dated 29-11-2013 in favour of the applicants/plaintiffs.

7. The defendant No.2 (appellant in the first appeal) not challenged or prayed before the trial Court to set aside the ex-parte judgment and decree under the provision of Order 9 Rule 13 of the CPC, on the other hand, he had filed a regular appeal along with condonation of delay application. The learned first appellate Court observed that the date of judgment and decree was not known to the appellant/defendant No.2 is natural as he remained ex-parte before the trial Court and the summons have been served or not it loses its importance as the appellant/defendant No.2 had not proceeded under Order 9 Rule 13 of the CPC, instead thereof, he had preferred a regular appeal.

8. The Court below being satisfied with the reasons mentioned for the cause of delay, condoned the delay and the matter has been admitted for final hearing.

9. From the perusal of the above facts, in the considered view of this Court, the applicants failed to demonstrate the date of knowledge of the judgment and decree passed against respondent No.1 (appellant in the first appeal). I do not see any illegality or impropriety in the order passed by the Court below and therefore, the matter is not worth for admission. Consequently, the instant civil revision is dismissed at the motion stage itself.

10. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE