

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No.415 of 2015**

Vidyanand Soni S/o Late Tularam R/o House No. 29/451, Hatipara Ward, Near Lili Chowk, Raipur Tah. & Distt.- Raipur, Chhattisgarh

---- Applicant

Versus

1. Smt. Prembati W/o Murlidhar Soni R/o Near Lili Chowk Hatipara Ward, Raipur M.P. Now Chhattisgarh
2. Ramesh Giri Alias Raghunath Prasad S/o Late Tularam Soni At Present, Through Shri Ramesh Chandra Sharma, Bhawana Nade, At Basoor, Buxur, Post Rajpara, Distt.- Merath, Uttar Pradesh

---- Respondents

Shri Viprasen Agrawal, counsel for the applicant.
Shri Anmol Sharma, counsel for respondent No.1.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order****16/10/2015**

Heard.

2. As per the Office note, notice issued to respondent No.2 returned unserved.
3. Learned counsel for the applicant submits that even in the array of cause title of the second appeal, respondent No.2 is mentioned as Sanyasi and his address was shown through Shri Ramesh Chandra Sharma. Respondent No.2 was not represented when SA No.1140/98 was taken up for hearing on 13.3.2013. Looking to the above facts, the instant MCC may be heard without noticing respondent No.2.
4. Learned counsel appearing for respondent No.1 has no objection on the above submission.
5. As prayed, the instant MCC is heard without noticing respondent No.2.

6. Application filed on behalf of the applicant for issuance of notice to the respondent No.2 through paper publication under Order 5 Rule 20(1A) of the CPC stands disposed of as not pressed.

7. Also heard on IA No.01/15 , application for condonation of delay in filing the instant MCC as the instant MCC has been filed after 749 of its limitation.

8. Learned counsel for the applicant submits that the matter was fixed for hearing on 13.3.2013, but on account of oversight, bonafidely the same could not be traced and there was no representation on behalf of the applicant. When this fact was informed to the counsel appointed by the High Court Legal Aid Committee, he after getting the certified copy and after taking advise preferred the instant MCC. It is submitted that as it was bonafide mistake on account of oversight by learned counsel, the delay may be condoned and the matter may be heard.

9. On behalf of respondent No.1 no any objection was made to the above submission and prayer.

10. On due consideration, for the reasons mentioned in the IA No.01/15 and also as submitted, in view of this Court, delay is satisfactorily explained. Consequently, IA No.01/15 is hereby allowed. Delay in filing the instant MCC is hereby condoned.

11. The instant MCC is admitted for consideration.

12. Heard finally regarding the prayer of the applicant to restore the SA No.1140/98 to its original number.

13. On behalf of respondent No.1, no any objection was submitted for restoration.

14. On due consideration, instant MCC is allowed and SA No.1140/98, dismissed for want of prosecution on 13.3.2013, is restored to its original number. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE