

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 82 of 2015**

1. Mohan Lal S/o Vishnu Prasad Chandrakar
2. Lalita Bai W/o Kaushal Prasad Chandrakar
3. Ram Pyari W/o Vishnu Prasad Chandrakar All above are residents of Ward No.4, Kurud, Tahsil Kurud, District Dhamtari, Chhattisgarh (Non-Applicants/defendants)

---- Applicants**Versus**

1. Bhagwat Alias Bhagwati Chandrakar S/o Ram Pyare Chandrakar Through Power Of Attorney-Holder Lav Chandrakar Son Of Bhagwat Chandrakar, Resident Of Kurud, District Dhamtari, Chhattisgarh (Applicant/plaintiff)
2. Ku. Dharini D/o Kaushal Prasad Chandrakar
3. Ku. Bhumika D/o Kaushal Prasad Chandrakar
4. Ku. Himani D/o Kaushal Prasad Chandrakar All 2 to 4 are R/o Ward No.4, Kurud, Tahsil Kurud, District Dhamtari, Chhattisgarh (Non-Applicants/defendants)

---- Respondents

For Applicants	:	Shri Somnath Verma, Advocate.
For Respondent No.1	:	Shri Keshav Dewangan and Shri Mayank Chandrakar, Advocates.
For Respondents No.2, 3 and 4:	:	Exempted from issuance of notice and they are not contesting parties.

Order On Board**30/10/2015**

1. Heard on admission.
2. Admit.
3. With the consent of both the parties the matter is heard finally.
4. It is submitted on behalf of the Applicants that even in the absence of any application under Section 5 of the Limitation Act filed on behalf of the Plaintiff/ Respondent No.1 in MJC. No. 13 of 2014, the Civil Judge, Class I, Kurud, District Dhamtari, Chhattisgarh vide order dated 17.07.2015 allowed

the application filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the CPC') and as such the order is not proper and legal as there is no appreciation regarding *bona fide* causes for delay. Hence, the order may be set aside.

5. On behalf of Respondent No.1/ Plaintiff, it is submitted that though no application under Section 5 of the Limitation Act has been filed by Respondent No.1 before the Court below alongwith the application under Order IX Rule 9 read with Section 151 of the CPC, but the Court below considering the ailment of the Plaintiff/ Respondent No.1 and in totality of the facts including the reasons for non-appearance mentioned in the application supported by the affidavit, allowed the said application and restored the suit for hearing deeming that the Court below duly condoned the delay, if any, in filing the original application under Order IX Rule 9 read with Section 151 of the CPC. Hence, the order of the Court below is proper, based on principles of law, and the revision petition may be dismissed.

6. For the purposes of appreciation regarding the prayer made on behalf of the Applicants and the arguments advanced in this behalf, the impugned order dated 17.7.2015, the application and other annexed documents are perused.

7. On due consideration and on close scrutiny of the entire material, it reveals that Civil Suit No. 1-A of 2012 has been filed for declaration and permanent injunction by Respondent No.1/ Plaintiff against all the Applicants and Respondents No.2, 3 and 4. On 23.6.2014. *i.e.* the date of hearing as there was no representation of the Plaintiff/ Respondent No.1 either in person or through his counsel, the Court below dismissed the civil suit for want of prosecution. Thereafter, on 22.12.2014 Respondent No.1 filed an

application under Order IX Rule 9 read with Section 151 of the CPC before the Court below for restoration of the above-mentioned civil suit for hearing as per law and the same was registered as MJC No. 13 of 2014 (Bhagwat @ Bhagwat Chandrakar versus Mohanlal and Others). The Court below after hearing both the parties on 17.7.2015 allowed the application and the above-mentioned civil suit was restored to its original number for further hearing by imposing cost of Rs.1,000/-.

8. In the said MJC admittedly there is no application under Section 5 of the Limitation Act regarding condonation of delay, if any, in filing the original application for restoration of the civil suit. Though in the impugned order dated 17.7.2015, the Court below appreciated the reason for non-appearance of the Plaintiff/ Respondent No.1 on 23.6.2014 as the Plaintiff/ Respondent No.1 filed the documents regarding treatment and also an affidavit in support of the original application and in rebuttal no affidavit or other documents was submitted by the Defendants/Applicant and present Respondents No.2, 3 and 4, but the application for restoration of the civil suit was expressly barred by time he was required to file an application under Section 5 of the Limitation Act to condone the delay and thereafter the Court has to appreciate regarding the ailment as sufficient cause for non-appearance when the suit was called for hearing.

9. On due consideration, the order passed by the Court below requires interference.

10. Consequently, the order passed by the Court below on 17.7.2015 is hereby set aside and the MJC No. 13 of 2014 is restored to its original number. Both the parties are directed to remain present before the Court below on **30.11.2015**.

11. Respondent No.1/ Plaintiff is directed to file an appropriate application under Section 5 of the Limitation Act in support his application under Order IX Rule 9 read with Section 151 of the CPC.

12. The Court below is further directed that after affording opportunity to the Defendants to file reply and other material in rebuttal, hear both the parties afresh and pass a fresh order on the application for condonation of delay as well as application under Order IX Rule 9 read with Section 151 of the CPC, in accordance with law.

13. Consequently, the instant civil revision is hereby disposed of.

14. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge