

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 583 of 2015

1. Akil Ahmad Ansari S/o Shekh Karimuddin Ansari Aged About 33 Years
R/o Mominpura, Ambikapur, Police Station & Tahsil Ambikapur, Civil &
Revenue Distt. Surguja Chhattisgarh

**---- Applicant
Respondent**

Versus

1. Smt. Amrita Singh Chandel @ Aafiya Sana Ansari W/o Akil Ahamad
Ansari D/o Surya Bali Singh Aged About 26 Years R/o Mominpura,
Ambikapur, Police Station & Tahsil Ambikapur, Civil & Revenue Distt.
Surguja Chhattisgarh At Present R/o Village Bdoha, Post Tita Vya Lalgunj,
Police Station & Tahsil Mirjapur U.P.

2. Surya Bali Singh Chandel S/o Bankraj Singh Chandel Aged About 54
Years, Occupation Government Employee, R/o Ambikapur, Police Station &
Tahsil Ambikapur, Civil & Revenue Distt. Surguja Chhattisgarh

**---- Respondents
Appellant**

For applicant : Shri Anup Majumdar, Advocate.
For Respondents : None

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board By Justice Pritinker Diwaker

23/09/2015

This petition has been filed under Order 41 Rule 21 of CPC for
recalling the judgment and decree dated 13.3.2015 passed by this
Court in FA (M) No.129/14. As there is delay of 61 days in preferring
the instant petition, the applicant has also filed an application i.e. IA
No.01 for condonation of delay.

02. Counsel for the applicant submits that on the date when the case
was heard no representation was made on behalf of the
applicant/respondent No.1 and therefore, the judgment was delivered

without hearing the applicant. The applicant came to know about the said judgment only when he appeared before the Court below for execution of the decree of restitution of conjugal rights. He further submits that the applicant has a good case on merits, however, while passing the final judgment the important aspects of the case have not been considered in its proper perspective.

03. Order sheets of FA (M) No.129/2014 reflect that on 20.2.2015 when the appeal was admitted and stay was granted, counsel for the applicant/respondent No.1 Shri K.M. Ansvari was present. Since his name was not appearing in the cause list, Registry was directed to publish his name in the cause list and the appeal was fixed for final hearing on 12.3.2015. The appeal was listed in the weekly list commencing from 9.3.2015 and since then it was being called for final hearing, however, no one appeared on behalf of the applicant/respondent No.1 and at last, the Court proceeded to decide the appeal in absence of respondent No.1 on the basis of material available on record.

04. From perusal of the judgment dated 13.3.2015 it is evident that it has been passed after taking into consideration all the relevant aspects of the case in accordance with law. The applicant/respondent No.1 was provided more than sufficient opportunity for his representation, but as there were repeated defaults in appearance on his part, the Court having been left with no other option decided the appeal based on the material on record, giving full consideration to the pleadings of both the parties. This apart, the present petition is also filed with delay and in the facts and circumstances of the case, the reasons assigned therefor

are not satisfactory. We find no reason to recall the judgment and decree dated 13.3.2015. The present petition is liable to be dismissed on merits as also on the ground of delay and is dismissed as such.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(I.S.Uboweja)
Judge

Khan