

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No.93 of 2015

Smt. Laxmi Jain W/o Subhash Jain, Aged About 46 Years Near Purana Bus Stand, Main Road, Korba (Chhattisgarh).....(Non Applicant)

---- Petitioner

Versus

1. Ramkali W/o Late Siyaram Kaiwart, Aged About 28 Years R/o Village Darra, Thana Kasdol, District Balodabazar (Chhattisgarh)
2. Ku. Divya D/o Late Siyaram Kaiwart, Aged About 10 Years Minor, Through Natural Guardian Mother Ramkali (R-1), R/o Village Darra, Thana Kasdol, District Baloda Bazar (Chhattisgarh)
3. Ku. Triputi, D/o Late Siyaram Kaiwart, Aged About 6 Years Minor, Through Natural Guardian Mother Ramkali (R-1), R/o Village Darra, Thana Kasdol, District Baloda Bazar (Chhattisgarh)
4. Nathuram S/o Janakram Kaiwart, Aged About 85 Years R/o Village Darra, Thana Kasdol, District Baloda Bazar (Chhattisgarh)
5. Sadhin Bai W/o Nathuram Kaiwart, Aged About 80 Years R/o Village Darra, Thana Kasdol, District Baloda Bazar (Chhattisgarh)
6. Arvind Kumar Sharma S/o Babulal Sharma, Aged About 31 Years R/o Sultanpur, Thana Pratapganj, District Sultanpur (Uttarpradesh)

---- Respondent

For Appellant : Shri Parag Kotecha, Advocate
For Respondent No.1 to 3 & 5: Shri S. K. Guha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/11/2015

With the consent of learned counsel for the parties, the matter is heard finally.

2. This appeal arising out of order dated 25-06-2015 passed by 1st Additional District Judge, Baloda Bazar, by which, in the matter of application for setting aside ex parte award, the appellant's application under Section 5 of the Limitation Act has been rejected and application under Order 9 Rule 13 CPC has also been rejected as barred by limitation.

3. Learned counsel for the appellant argued that the appellant moved an application under Order 9 Rule 13 CPC for setting aside ex parte award on the ground that he was never served with the notice in claim proceedings and it was only when later, he came to know, he filed an application for setting aside ex parte award. As the case of the appellant is that he was never served with the notice, the reason assigned for condonation of delay was sufficient. The Court below ought to have condoned the delay and allowed the appellant one opportunity to contest the application under Order 9 Rule 13 CPC on its own merits.

4. On the other hand, learned counsel for respondents opposed the prayer and submits that the Court below has recorded clearly that the appellant was duly served with the notice of the claim petition and despite that he did not appear, hence, the MACT proceeded ex parte and passed the impugned award.

5. In the present case, an application for setting aside ex parte award has been moved along with an application for condonation of delay on the ground that the appellant was never served with the notice in the claim petition, and therefore, he had no occasion to contest the claim petition. It is submitted that the appellant is the owner and the claim petition was filed without impleading insurance company as a party even if the vehicle was duly insured. Had the owner been granted opportunity, the owner could have insisted on impleadment of Insurance Company as one of the parties. In a matter like this, when prayer for condonation of delay is made in moving application under Order 9 Rule 13 CPC for setting aside ex parte award on the ground that the notice of the claim petition was never served, the Court below ought to have adopted liberal approach while considering application for condonation of delay in filing application. In a matter like this, the party should be afforded at least one opportunity to contest his application for setting aside ex parte award on its own merits to satisfy the Court that he was never served in the main claim petition.

6. In view of above, the impugned order cannot be sustained and the same is hereby set aside. The application for condonation of delay in filing application under

Order 9 Rule 13 CPC is allowed. The matter is remanded to the Claims Tribunal to consider the application under Order 9 Rule 13 CPC on its own merits in accordance with law. Considering that this petition arises out of proceedings of an award passed by the Claims Tribunal, the Tribunal shall do well to dispose off the application of the appellant at the earliest preferably within a period of four months from the date of first appearance of the parties along with a copy of this order.

7. Accordingly, the petition is allowed.

Manindra Sd/- Mohan Shrivastava
Judge