

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 217 of 2008

- Shankar Lohi (Died Through LRs)

1. (A) Jyoti Lohi, Aged about 47 Years, W/o Late Shankar Lohi,

1. (B) Lokesh Lohi, Aged about 22 Years, S/o Late Shankar Lohi,

1. (C) Manish Lohi, Aged about 18 Years,

All R/o Street No. 19, Qt. No. 18-A, Sector 2, Bhilai, District Durg
(Chhattisgarh)(Plaintiffs)

---- Appellants

Versus

1. Municipal Corporation Bhilai, Through Commissioner, Municipal Corporation Office, Bhilai, Tahsil And District Durg (C.G.)
2. Sampda Adhikari, Municipal Corporation, Bhilai, Corporation Office, Bhilai, District Durg (Chhattisgarh).....(Defendants)

---- Respondents

For Appellants	:	Shri Anand Shukla, Advocate
For Respondents	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/07/2016

1. Heard on I.A. No.01 which is an application for condonation of delay in filing the appeal.
2. For the reasons mentioned in the application, the same is allowed and the delay in filing the appeal is hereby condoned.
3. Heard on admission.
4. The plaintiffs' suit filed against Municipal Corporation, Bhilai for declaration of title and permanent injunction was dismissed by the trial Court holding that suit is barred for non-compliance of serving of notice under Section 401 of the Municipal Corporation Act, 1956 (for short 'the Act,1956') against which the first appeal was filed by the plaintiffs/appellants. The First

Appellate Court by its impugned judgement dismissed the appeal and against that, second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'CPC') has been filed.

5. Shri Anand Shukla, learned counsel appearing for the appellants/ plaintiffs would submit that concurrent findings holding that the suit is barred for non-compliance under Section 401 of the Act, 1956 is perverse and gives rise to substantial question of law for admission of this appeal. This Court in the matter of **M/s Mangilal Pagariya, Builders & Contractors Vs. Nagar Palika Nigam, Raipur**, reported in **2013 (3) C.G.L.J. 65** has held that Civil Suit cannot be filed against Municipal Corporation without serving notice under Section 401 of the Act, 1956.

6. The concurrent findings recorded by two Courts below holding suit to be barred for non-service of notice under Section 401 of the Act, 1956 is a finding of fact based on evidence available on record. I do not find any substantial question of law for admission of this appeal. Accordingly, the appeal deserves to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)

JUDGE