

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.1830 of 2008

Puspendra Singh, S/o Late Maharaja Anand Pratap Singh
Judev, aged about 41 years, Occupation Agriculturist, R/o
Village Barondha, Tahsil Manjhgaon, District Satna (M.P.)

(Respondent No.10)

(Plaintiff)

---- Petitioner

Versus

1. Smt. Sushila Devi, Wd/o Late Ajit Pratap Bahadur Singh,
aged about 52 years, R/o Village Rumga, Tahsil Pendra
Road, District Bilaspur (C.G.)

(Appellant/Defendant)

2. Smt. Uttam Kunwer, Wd/o Lal Amol Singh, aged 65 years.

(Respondent No.1)

3. Smt. Madhuri Singh, Wd/o. Abhay Pratap Singh, aged about
40 years,

(Respondent No.2)

Both R/o Pendra Rajmahal, Tahsil Pendra Road, District
Bilaspur (C.G)

4. Upendra Bahadur Singh, S/o Ajit Pratap Bahadur Singh,
aged about 30 years, R/o Village Tendumudha, Tahsil
Marwahi, District Bilaspur (C.G)

(Respondent No.3)

5. Raghvendra Pratap Singh, aged about 30 years,

(Respondent No.4)

6. Kaushal Pratap Singh, aged about 29 years,

(Respondent No.5)

7. Shailendra Pratap Singh, aged about 33 years,

(Respondent No.6)

8. Pushpendra Pratap Singh, aged about 27 years.

(Respondent No.7)

9. Smt. Mithilesh Singh, aged about 37 years.

(Respondent No.8)

10. Kiran Singh, aged about 33 years,

(Respondent No.9)

No.5 to 9's father Anand Pratap Singh. R/o Barondha,
Tahsil Raghurajnagar, District Satna (M.P)

---- Respondents

For Petitioner: Mr. Arvind Kumar Dubey, Advocate.

For Respondents No.1, 2 and 4: -

Mr. Somnath Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/10/2016

1. The suit filed by the petitioner plaintiff was decreed ex parte on 2-3-1988 granting decree in his favour against which the defendant respondent No.1 filed application for setting aside the ex parte decree on 2-4-1997 which was rejected by the trial Court on 29-1-2005 holding that sufficient cause has not been shown and against which the defendant preferred a miscellaneous appeal before the first appellate Court and the first appellate Court allowed the same by order dated 22-6-2007 and the suit has been restored to its original number for hearing in accordance with law against which this writ petition has been preferred by the plaintiff petitioner.
2. Learned counsel for the petitioner submits that delay of nine years has not been explained properly and the appellate Court is unjustified in condoning the delay and restoring the suit on merits.
3. Whereas, learned counsel for respondents No.1, 2 and 4

would submit that the suit has been dismissed in default on 17-9-2007.

4. Be that as it may, the first appellate Court has shown sufficient cause for condoning the delay in filing application under Order 9 Rule 13 of the CPC.
5. The Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**¹ has clearly held that if explanation for the delay set up by the appellant was found satisfactory to the trial Court in the exercise of its discretion, the High Court should not interfere with the finding so recorded by the trial Court exercising revisional jurisdiction.
6. I have heard learned counsel for the parties and gone through the reasons assigned by the first appellate Court.
7. The first appellate Court has assigned sufficient reasons and held that sufficient cause has been made out by the appellant. Such delay was neither mala fide nor deliberate.
8. In view of the above, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

¹ (1998) 7 SCC 123