

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 167 of 2016**

Pitamber Sahu S/o R.K. Sahu aged about 40 years, R/o near Jaistambh Arvind Nagar, Bandhvapara Sarkanda Bilaspur, Tah. & Dist. Bilaspur, Chhattisgarh.

---- **Petitioner/ Non-applicant**

Versus

Dwarika Prasad Sahu S/o late Shri Manglu Sahu aged about 36 years, R/o Birkona Tah. & Dist. Bilaspur, Chhattisgarh.

---- **Respondent/ Applicant**

For the Petitioner	:	Shri Amit Kumar, Advocate.
For the Respondent	:	Not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

10/03/2016

1. At the outset, Learned counsel for the Petitioner submits that the instant W.P. (227) may be disposed of without even noticing the Respondent. The Court below vide order dated 5.1.2016 held that the application under Section 5 of the Limitation Act, 1963 (for short 'Act of 1963') has not been filed explaining the delay caused in filing the application for setting aside *ex parte* proceedings. Hence, the Court below dismissed the application filed under Order IX Rule 7 of the Code of Civil Procedure, 1973 (for short 'the Code') for non-filing of an application under Section 5 of the Act of 1963 showing explanation for the delay. The Petitioner is the Non-applicant in the proceedings of contempt under Order XXXIX Rule 2A read with Section 151 of the Code against whom proceedings regarding

disobedience and breach of injunction are initiated. Though he did not appear earlier in the proceedings bona fide and if he now wishes to participate in the proceedings, he should be afforded reasonable opportunity and the matter should be heard on its merits.

2. After perusal of the impugned order dated 5.1.2016, this Court is of the considered opinion that the Petitioner/ Non-applicant deserves to be given an opportunity to file an application under Order IX Rule 7 of the Code alongwith an application under Section 5 of the Act of 1963 and the same requires to be disposed of on their merits after affording opportunity to the Respondent/ Applicant afresh.

3. Consequently, the impugned order dated 5.1.2016 is hereby quashed. The Petitioner informed this Court that the next date of hearing in the matter before the Court below is 21.3.2016. If it is so, the Petitioner is directed to file a fresh interim application under Order IX Rule 7 of the Code supported by an application under Section 5 of the Act of 1963 before the Court below on or before 21.3.2016. After hearing both the interim applications, the Court below shall dispose of the same afresh on their merits in accordance with law, without being influenced by the earlier order dated 5.1.2016.

4. As stated by the Petitioner, the next date of hearing in the matter before the Court below is 21.3.2016. It is further observed that if the next date of hearing is not fixed for 21.3.2016, then the aforementioned opportunity afforded to the Petitioner/ Non-applicant shall not remain operative and the Court below may proceed further without such opportunity as directed in this order.

5. The Petitioner may file a copy of this order before the Court below for compliance.

6. The Registrar (Judicial) is also directed to transmit immediately a copy of this order to the concerned trial Court through usual and fax modes for compliance.
7. No order as to costs.
8. Certified copy of the order today as per rules.

Sd/-
Chandra Bhushan Bajpai
Judge