

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.82 of 2016

Vinay Kumar Parwani, aged about 38 years, S/o Shri Indra Kumar Parwani, R/o Sindhi Colony Jarhabhata, Bilaspur, Tahsil and District Bilaspur (CG).

---- Petitioner

Versus

1. Smt. Purain Bai, aged about 68 years, W/o late Shri Ramsahay Sahu, R/o Village Jhalfa, Post Hirri, Tahsil Bilha, District Bilaspur (CG).
2. State of Chhattisgarh, through District Collector, District Bilaspur (CG).

---- Respondents

For Appellant	:	Shri Sudeep Verma, Advocate.
For Respondents	:	Shri S.C. Khakhariya, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

16/06/2016

(1) Heard.

(2) Plaintiff/petitioner's suit for specific performance of contract was decreed as ex-parte by the trial Court on 07.05.2009 in Civil Suit No.1A/2009 granting decree in his favour (the respondent/defendant No.1 was duly served).

(3) Feeling aggrieved & dissatisfied with the judgment & decree dated 07.05.2009, the respondent/defendant No.1 filed an application under Order 9 Rule 13 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') on 04.07.2013 before the First Appellate Court stating *inter alia* that she was not duly served with the notice of summon of suit and she came to know about passing of

decree in the month of June, 2013 and, therefore, the ex-parte decree be set aside.

(4) The first appellate Court, by its impugned order dated 30.03.2016 has set-aside the ex-parte decree holding that the respondent/defendant No.1 was not duly served with the notice of summon of suit.

(5) Against which, this revision has been preferred by the petitioner/plaintiff stating *inter alia* that the respondent/defendant No.1 was duly served with the notice of summon of suit.

(6) Learned counsel appearing for the petitioner/plaintiff submits that the respondent/defendant No.1 was duly served the notice and finding of the first appellate Court is perverse and, therefore, it be set-aside.

(7) I have heard learned counsel appearing for the petitioner/plaintiff on question of admission.

(8) After careful examination, the first appellate Court, in its impugned order dated 30.03.2016, came into conclusion that the respondent/defendant No.1 was not duly served with the notice of summon of suit and as such, the suit was being illegally decreed ex-parte in favour of the petitioner/plaintiff.

(9) I have gone through the finding of the first appellate Court and perused the documents. Once discretion has been exercised by the first appellate Court in favour of the respondent/defendant No.1 holding that the respondent/defendant No.1 was not duly served the

notice, there is sufficient cause for set-aside the ex-parte decree.

(10) Law in this regard is settled by the Supreme Court in the matter of **N. Balakrishnan Vs. M. Krishnamurthy**¹, in which their Lordships of the Supreme Court have clearly held that if the competent Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction. Relevant paragraph of the report states as under:-

“9. It is axiomatic that condonation of delay is a matter for discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court”.

¹(1998) 7 SCC 123

(11) After hearing learned counsel appearing for the petitioner/plaintiff, I do not find any jurisdictional error in the impugned order.

(12) Thus, the revision deserves to be and is accordingly dismissed at admission stage. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

