

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 443 /2015**

Prabhakar, S/o. Santosh Lodhi, Aged About 62 Years, R/o. Village Barbaspur, At Present Residing at Shankar Nagar Khamardih, Raipur Chhattisgarh, Tahsil, P.O. Police Station & District- Raipur, Chhattisgarh.

---- Appellant

Versus

1. Sheetal Lalwani, S/o. Deepchand Lalwani, Aged About 35 Years, R/o. Sadar Bazar Rajnandgaon, Tahsil, P.O. Police Station & District Rajnandgaon, Chhattisgarh.
2. State Of Chhattisgarh, Through : Collector, Rajnandgaon, Tahsil, P.O. Police Station & District- Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant	:	Mr. R.N.Jha, Advocate.
For Respondent No.1	:	Mr. Aditya Bhardwaj, Advocate
For Respondent No.2	:	Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01/04/2016

1. The appeal is preferred against the order dated 22.01.2015 passed in Misc. Civil Appeal No.06/2014 by the District Judge, Rajnandgaon, whereby the order dated 31.03.2014 passed by the First Civil Judge Class-I, Rajnandgaon, in Misc. Civil Suit No.01/2011 in between *Prabhakar Lodhi v. Sheetal Lalwani & Anr.* was affirmed. The instant appeal as appears is delayed by 86 days.
2. The facts of this case are that the Respondent No.1, Sheetal Lalwani, filed a civil suit for specific performance and possession, which was registered as Civil Suit No.01-A/2005. The appellant/defendant herein appeared in such case on 02.05.2005, thereafter

his counsel was looking after the case. On 24.03.2006 no one appeared on behalf of the appellant/ defendant, therefore, the case was proceeded ex parte and ex parte decree was passed on 12.05.2006. Subsequently, on 26.09.2011, an application was filed under Order 9 Rule 13 of CPC to set aside the judgment & decree on the ground that the case was handed over to his counsel Shri V.K.Sharma, however, he did not inform the dates and eventually the ex parte decree was passed. The said application to set aside the judgment & decree under Order 9 Rule 13 of CPC was dismissed by the trial Court, against which the first appeal was preferred which too was dismissed, therefore, the second appeal.

3. Learned counsel for the appellant would submit that the Court below have failed to consider the reasonable ground which was projected by the defendant, as defendant was completely dependent on his counsel who failed to appear before the Court whereby the ex parte decree was passed. It is further submitted that for the first time in the year 2011 when the execution proceedings were started, the defendant came to know such order of the ex parte decree and immediately filed an application to set aside such ex parte decree. It is contended that the parties cannot be penalized for the laches of the counsel and therefore the appeal be admitted on the substantial question of law.
4. Perused the file of misc. case wherein an application under Order 9 Rule 13 of CPC was filed, which was dismissed. Perusal of the application under Order 9 Rule 13 of CPC purports that the averments have been made that the entire file was handed over to counsel Shri V.K.Sharma who accepted the brief and since he used to practice at High Court at Bilaspur, therefore, he was not available and only he was available on Saturday & Sunday; consequently, he

could not contact the counsel. It is further alleged that on the blank papers, the counsel obtained the signature of the defendant and assured the appellant/ defendant that he will take care of the case and his presence is not required. It is further alleged that after the notice of execution was received on 09.09.2011, the party contacted his counsel, however, he expressed his inability to say anything. Thereafter, the application to set aside the exparte decree was moved on 26.09.2011.

5. Evaluating the pleading would show that the entire allegations have been attributed to the counsel for the exparte decree. The application is silent as to the fact as when the case was handed over to counsel Shri V.K.Sharma in the year 2005 and thereafter till 2011 what the defendant/ appellant was doing as to whether at any time he tried to enquire the matter. It would be completely unjustified to accept the allegations so leveled wherein the default of the party has been passed over to the counsel. The petition is also completely silent as to whether any actions were taken by the party against the counsel for the misconduct so committed. Therefore, taking the averments on the face value, it appears that the appellant/ defendant thought it best to pass over the entire allegations over the counsel. The present second appeal herein also is barred by limitation as it is delayed by 86 days and no application has been preferred to condone such delay. Therefore, in view of the facts which are existing on record, no substantial question of law arises for consideration in this second appeal.
6. Accordingly, the appeal is dismissed at the motion stage itself.