

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No.30 of 2009

Vijay Kedia S/o Late Shri Bajrang Lal Kedia, Aged about 44 years,
R/o Civil Lines, Baloda Bazar, Police Station & Tahsil Baloda Bazar,
District Raipur (CG)

-----Appellant

Versus

1. Smt.Chandrika w/o Om Prakash @ Prakash Sahu
2. Mior Ku. Ravina D/o Om Prakash @ Prakash
3. Minor Ku. Kiran D/o Om Prakash Sahu
4. Minor Kanta Kumar S/o Om Prakash Sahu for respondent
No. 2 to 4 through natural guardian Smt. Chandrika Sahu
All are resident of village Khamhariya (Champa) Police
Station Palari District Raipur (CG)
5. Branch Manager, New Insurance Company Limited Branch
Baloda Bazar, District Raipur (CG)
6. Kripa Sindhu Bernal S/o Shri Urga Sen Bernal aged about 25
years R/o Vihip Office, Pandri, Raipur (CG)
7. Sanatan S/o Sunder Lal Sagar R/o Pandri Raipur, District
Raipur (CG)
8. Manager New Insurance Company Limited Divisional Office,
Madina Building Raipur, District Raipur (CG)

----- Respondents

For Appellant	:	Mr. A.S. Rajput and Mrs.Anusuiya Rajput, Advocates
For Res.No.5 & 8	:	Mr.Shivendu Pandya, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/10/2016

1. Appellant's application for setting aside ex-parte award has been
rejected on the ground that application for condonation of delay has
not been filed.

2. Against which, this Misc. Appeal has been filed.
3. Mr.A.S.Rajput, learned counsel appearing for the appellant would submit that opportunity ought to have been afforded to the appellant to file an application for condonatiion of delay.
4. Mr.Shivendu Pandya, learned counsel appearing for respondents No.5 and 8 would however oppose the appeal.
5. I have heard learned counsel appearing for the parties.
6. The appellant admittedly did not file an application for condonation of delay along with an application under Order 9 Rule 13 of the CPC. If the Claims Tribunal was of the opinion that an application under Order 9 Rule 13 of the CPC was not within 30 days from the date of knowledge, it could have been granted opportunity to file an application under Section 5 of the Limitation Act and it could not have been dismissed the application summarily since no opportunity was given to the appellants, whereas it ought to have been given opportunity in the interest of justice.
7. Therefore, this Court is of the opinion that one opportunity ought to have been given to the appellant to file an application for condonation of delay in filing the second application and the Claims Tribunal committed an illegality in not granting time and rejecting an application under Order 9 Rule 13 of the CPC.
8. Accordingly, the appeal is allowed and the order impugned is hereby set aside. Unregistered MJC (Vijay Kedia vs.

Smt.Chandrika and others) is restored in the Court of Second Additional District Judge, Baloda Bazaar for hearing and disposal in accordance with law. The appellant will appear before the Second Additional District Judge, Baloda Bazaar on 15th November, 2016 and will file an application for condonation of delay within 10 days from today before it and the Court below would decide the application under Order 9 Rule 13 of the CPC as early as possible preferably within a period of three months from the date of receipt of copy of this order.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-