

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 119 of 2015**

1. Shobharam, S/o Roopram Kurmi (Pargania), aged about 83 years,
2. Dayashankar, S/o. Shobharam Kurmi (Pargania), aged about 55 years,

Both above R/o. Village Mohrenga, Tahsil and Post Dhamdha, Police Station Dhamdha, Civil and Revenue District Durg (C.G.) Decree Holders/plaintiffs

---- Applicants**Versus**

State of Chhattisgarh, through: Collector, Durg, Tahsil and District Durg (C.G.)Judgment Debtor/defendant

--- Respondent.

For Applicants : Mr. Manoj Paranjpe, Advocate

For Respondent : Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/06/2016**

(1) The trial Court decreed the plaintiffs' suit *ex parte* granting decree for title & permanent injunction in respect of 11.92 Hectares [approximately 29.45 acres] of government land in favour of applicants/plaintiffs.

(2) Respondent/State Government moved an application under Order 9 Rule 13 of the Code of Civil Procedure (for short 'CPC')

for setting aside ex parte decree along with application under Section 5 of the Limitation Act for condonation of delay in filing the said application, inter alia, on the ground that summons of the suit was not duly served to the Collector.

(3) The trial Court, by its impugned order dated 26.10.2015, allowed the application, also condoned the delay and further held that it would be expedient to grant an opportunity to contest the matter on merits relying upon the decision of the Supreme Court in the matter of **Collector Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji & Others**¹ against which, instant revision has been filed by the plaintiffs/applicants.

(4) Shri Manoj Paranjpe, counsel for the applicants would submit that trial Court has committed jurisdictional error in deciding main application filed under Order 9 Rule 13 CPC and setting aside exparte decree while considering only the application for condonation of delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure.

(5) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

(6) In support of his contention that the trial Court while considering the application for condonation of delay in filing

¹ (1987) 2 SCC 107

application under Order 9 Rule 13 of the Code of Civil Procedure, application under Order 9 Rule 13 CPC, application itself was allowed by trial Court, no supporting documents/order sheets of the trial Court has been filed before this Court by the applicant, though this revision was filed & pending since 1.12.2015. It was the duty of the applicant to support his contention by filing necessary documents in this regard, but applicants choose not to file any such documents. The trial Court after due consideration condoned the delay in filing application for setting aside *ex parte* decree holding that suit land is a Govt. land admeasuring 11.92 hectare (approximately 29.45 acres), that too charagah land and further considering the facts & circumstances of the case held that this is a case where the suit be heard and decided on merits, remitted the matter to the trial Court by setting aside the *ex parte* decree passed in favour of applicant/plaintiff.

(7) The trial Court has considered the entire matter critically and came to the conclusion that property in dispute i.e. 11.92 hectare of land is recorded as government land situated at village Mohrenga, Dhamdha and further relied upon the decision of the Supreme Court in the matter of **Collector, Land Acquisition, Anantnag and Anr.** (supra) and held as under:-

“Refusing to condone a delay can result in a meritorious matter being thrown out at the very

threshold and cause of justice being defeated.

As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.”

(8) The trial Court has rightly observed that suit for title and permanent injunction has to be considered on merits; and also further held that it would be expedient to grant an opportunity of hearing to the defendant/Government to contest the matter on merits.

(9) The Supreme Court in the matter of **State of Nagaland Vs. Lipok Ao**² held that the Court must take a justice oriented approach while considering an application for condonation of delay. If the Court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the Court, in view of larger public interest, should take a lenient view in such situation, condone the delay, howsoever, huge may be the delay, and have the matter decided on merits.

(10) The pertinent observation made in the above stated matter aptly applies to the facts of present case in full force. The Judgment of Supreme Court in the matter of **State of Nagaland** (supra) has recently been followed by Supreme Court in the matter of **Executive Officer, Antiyur Town Panchayat Vs. G.**

2 (2005) 3 SCC 752

Arumugam (dead) by legal representatives³

(11) After hearing learned counsel of the parties at length, I am of the view that the trial Court' discretion in condoning the delay and thereafter granting application under Order 9 Rule 13 CPC deserves acceptance, I do not find any jurisdictional error in the impugned order granting an application under Order 9 Rule 13 of the CPC. The trial Court is directed to decide the civil suit on merits expeditiously after affording opportunity of hearing to the parties.

(12) In view of above, revision fails and is hereby dismissed.
No order as to costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

³ (2015) 3 SCC 569