

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No.144 of 2015**

- Syed Usman Ali S/o Syed Saban Ali, Aged About 45 Years R/o Qt. No. 08 A, M. P. R. Zone 2, Sector - 11, Khursipar, Tahsil & District Durg (Chhattisgarh)

---- Appellant

Versus

- Shahin Bano D/o Sheikh Nasir, Aged About 27 Years R/o Plot No. 32 A, Street No. 1, Zone - 1, New Adarsh Nagar, Durg, Tahsil And District Durg (Chhattisgarh).....Workplace - Teacher, Govt. Primary And Middle School, Savni, Tahsil - Patan, District Durg (Chhattisgarh)

---- Respondent

For the appellant	:	Smt. Fouzia Mirza, Advocate.
For respondent	:	None present, though served.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board**Per Prashant Kumar Mishra, J****06.10.2016**

The appellant is aggrieved by the Order passed by the Family Court dismissing his application under Order IX Rule 9 of the Code of Civil Procedure, 1908, thereby refusing to restore the suit to its original number which was dismissed for want of prosecution on 18.02.2015.

2. The Family Court has rejected the application on two counts. Firstly, that the applicant has failed to furnish good grounds for explaining his non appearance on 18.02.2015 and secondly, the application has been submitted after the period of 30 days from the date of dismissal and further it is not supported

with an application under Section 5 of the Limitation Act seeking condonation of delay in moving the application.

3. It appears that the appellant is an employee of Bhilai Steel Plant. According to him the suit was fixed before the Family Court on 12.12.2014. However, on the said date the presiding officer was on leave, therefore, the suit was posted on 18.02.2015 for further orders and not for any material hearing, therefore, the ex-parte order should not have passed. He has also explained that he was not granted leave by his employer on 18.02.2015, therefore, he could not remain present before the Court on that date.

4. After dismissal of the suit in default, the appellant applied for certified copy of the order on 25.02.2015 which was received by him on 12.3.2015 and thereafter an application was preferred on 30.3.2015. Therefore, according to the appellant, the application was within limitation.

5. On reading of Article 122 of the Limitation Act, 1963 it would appear that the period of limitation commences from the date of dismissal. However, the date of knowledge of such dismissal is a good ground for seeking condonation of delay. Although the appellant has not preferred any application for condonation of delay in moving the application under Order IX Rule 9 of the CPC, yet considering the facts that the delay in moving such application was not enormous and present is a matrimonial dispute, ends of

justice would be served if the suit is restored to its original number for hearing on its own merits.

6. Consequently, the appeal stands allowed and the impugned order dated 17.6.2015 passed by the First Additional Sessions Judge, Family Court Durg is hereby set aside.

7. The matter is remitted back to the trial Court. The trial Court is directed to restore the Civil suit to its original number i.e. Civil Suit No.87-A/12 and decide the same afresh on its merits after affording opportunity of hearing to both the parties.

Sd/-
(Prashant Kumar Mishra)
JUDGE

Sd/-
(Chandra Bhushan Bajpai)
JUDGE