

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 331 of 2016

1. Dashrath Sahu, Aged About 55 Years, S/o. Late Jethu Ram Sahu, R/o Village Sakri, Tahsil Takhatpur, District Bilaspur, Chhattisgarh.
2. Keshav Prasad Tiwari, Aged About 56 Years, S/o Late Hanuman Prasad Tiwari, Caste Bramhan, Occupation Govt. Employ, R/o : Telipara, Lohar Gali, Tahsil & District Bilaspur (Chhattisgarh)
3. Satish Kumar Jaiswal, Aged About 35 Years, S/o. Laxman Prasad Jaiswal, R/o. Telipara, Sarju Bageecha, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioners

Versus

1. Smt. Soniya, Aged About 60 Years, D/o Jethu Sahu, W/o Late Sitaram Sahu, R/o Chingraj Para, Ganesh Chowk, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)
2. Smt. Munni Bai, Aged About 50 Years, D/o. Jethu Sahu, W/o Late Mohan, R/o. Tikarapara, Near Shiv Talkies Chowk, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)
3. Smt. Pushpa, Aged About 45 Years, D/o Jethu Sahu, W/o Late Raju, R/o Katiyapara, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)
4. State Of Chhattisgarh, Through Collector, District Bilaspur (Chhattisgarh)

---- Respondents

For petitioners - Shri Hemant Gupta, Advocate.
 For respondents No.1, 2, 3 – Shri C.D. Sharma, Advocate.
 For Respondent No.4/State – Ms. Astha Sharma, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/07/2016

1. Heard.
2. This instant petition is against the order dated 30/04/2016 wherein an application filed under Order 16 Rule 1, 6, 7 & 14 r/w 151 of CPC was rejected on the ground that in the earlier round of litigation there was a direction given by the High Court in Writ Petition (227) No.239 of 2016 that application may be filed before 8/04/2016.

3. Learned counsel for the petitioners would submit that the said application though was directed to be filed before 8/04/2016 but could not be filed. He submits that due to mis-communication of the date, to the counsel, when application was tendered it was late, as such delay was caused as it was filed along with the affidavit. Learned counsel therefore submits that they may be given opportunity to get the case decided on merits as in the earlier litigation in Writ Petition (227) No.239 of 2016 it was observed by the court that petitioners should file an application under Order 16 Rule 1, 6, 7 & 14 r/w 151 of CPC.

4. Learned counsel for the respondents opposes the same and submits that as per the order dated 5/03/2016 documents which are ought to be proved are not on record, therefore even if witnesses are called then it will be of no use. Learned counsel further submits that earlier the application has not been filed with respect to the list of witnesses and therefore such permission cannot be granted.

5. I have heard learned counsel for the parties.

6. Perused the earlier order dated 6/04/2016 passed by the coordinate bench of this court in Writ Petition (227) No.239 of 2016 wherein the court has observed that the petitioners may file copy of the order before the court below and may file such application before the trial court before 8/04/2016. Therefore, argument raised by learned counsel will not come to his rescue as entire earlier order with respect to the application under Order 16 Rule 1, 6, 7 & 14 r/w 151 of CPC will merge into the order of Writ Petition (227) No.239 of 2016 which was passed on 6/04/2016. The rejection of the application moved subsequently is only on the ground that the same has not been filed before 8/04/2016, therefore the delay has been caused. Taking into such contents of the application, further taking into fact that earlier such application was allowed and

second application was filed after 8/04/2016, as there has been delay was caused, taking into totality of the subject, this court is of the opinion that on the technical ground application should not be dismissed simply because of the reason that application was filed with delay. Therefore, consequent thereto petition is allowed. Order dated 30/04/2016 is set aside. Learned court below is further directed to re-consider the application filed by the petitioners on its merits and it is the considered opinion of this court delay which has been caused can be compensated, as such petitioners are directed to pay Rs.2000/- as a cost to the respondents.

7. With such observation, the writ petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE