

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 112 of 2016**

1. Jagatram, S/o Shri Mansai, aged about 35 years, by Caste: Harijan, Occu : Agriculturist, R/o Village Nayanpur, Police Station & Tahsil Surajpur, District Surajpur (C.G.)
2. Bhdhni, W/o Chandrika, aged about 40 years, by caste : Harijan, R/o Village : Samouli, Police Station : Bhailyathan, Tahsil Surajpur, District Surajpur (C.G.)
3. Hiradhan, S/o Ramsunder, aged about 28 years, by caste : Harijan,
4. Motilal, S/o Mansai, aged about 29 years, by caste: Harijan,Plaintiffs

The applicant No. 3 & 4 are R/o Village Nayanpur, Police Station & Tahsil Surajpur, District Surajpur (C.G.)...Plaintiffs

---- Applicants**Versus**

1. Subaso, W/o Shri Kawalsai, aged about 35 years, by Caste: Ghasiya, Occupation : House Wife, R/o Village Nayanpur, Police Station & Tahsil Surajpur, District Surajpur (C.G.) Defendant
2. Parmeshwari @ Nanha, W/o Shri Rajaram, aged about 40 years, R/o Village Gelhapani, Bajarpara, Police Station : Chirmiri, District Korea (C.G.)Plaintiff No.3

---- Respondents

For Applicants: Mr. Pushpendra Kumar Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****26/08/2016**

(1) Appellants/plaintiffs' suit for declaration of title was decreed by the trial Court by *ex parte* judgment & decree dated 29.04.1985 in Civil Suit No.114-A/84.

(2) Respondents/defendants filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside *ex parte* judgment & decree of the trial Court, that was dismissed by the trial Court on 5.5.2010, against which Miscellaneous Appeal was preferred by the defendants, which was also dismissed by the first appellate Court by order dated 13.05.2010.

(3) Respondents/defendants preferred Writ Petition (227) No.573/2012 thereagainst, which was dismissed by this Court by order dated 06.12.2012 affirming the order passed by two courts below but liberty was granted to the defendants to file regular appeal against the original judgment and decree dated 29.04.1985 passed in Civil Suit No.114-A/84.

(4) Defendants filed regular appeal before the First Appellate Court on 31.12.2012 along with application for condonation of delay in filing the appeal and application under Order 41 Rule 5 read with Section 151 of the CPC. The First Appellate Court, by its impugned order dated 14.07.2016 allowed the application filed under Section 5 of the Limitation Act and also allowed the application filed under Order 41 Rule 5 read with Section 151 of the CPC staying the effect & operation of the impugned judgment & decree, against which the instant revision has been filed.

(5) Learned counsel for the applicants would submit that the delay has wrongly been condoned by the First Appellate Court as there was no sufficient cause for delay in filing the appeal.

(6) I have heard learned counsel for the applicant with utmost circumspection.

(7) The trial Court passed *ex parte* judgment & decree on 29.04.1985; application under Order 9 Rule 13 of the CPC for setting aside *ex parte* judgment & decree was rejected on 5.5.2010; the same is affirmed by the first appellate Court on 20.07.2012; and this Court also dismissed the writ petition on 6.12.2012 reserving liberty in favour of the defendants to file regular appeal against the original judgment & decree dated 29.04.1985 passed in Civil Suit No.114-A/84 and, as such, the first appellate Court has condoned the delay finding that the defendant has spent much time in prosecuting the legal remedies and, as such, there is sufficient cause for delay in filing the appeal, in which, I do not find any illegality in the order impugned warranting interference by this Court under its revisional jurisdiction as sufficient cause has been shown by the respondent/defendant.

(8) Accordingly, the civil revision being devoid of merit is liable to be and is hereby dismissed. However, the petitioners are at liberty to raise the point of maintainability of the appeal before the first appellate Court and if the petitioners raises such a plea of maintainability, the first appellate Court shall decide the same in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

