

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.128 of 2016**

Smt.Kewari Bai Wd/o Late Shri Vishnu Singh Thakur, aged about 55 (now 68) years R/o Village Surdung, Tah.Dhamdha, Distt.Durg (CG)

---Applicant

Versus

Smt.Sharda Bai Wd/o Late Shri Tejram Yadav, aged about 30 (Now 43) years R/o C/o Jagmohan Yadav, Near Gayatri School, Keshar Nagar, Rajnandgaon, Distt.Rajnandgaon (CG)

---Respondent

And**Civil Revision No.129 of 2016**

Smt.Kewari Bai Wd/o Late Shri Vishnu Singh Thakur, aged about 55 (now 68) years R/o Village Surdung, Tah.Dhamdha, Distt.Durg (CG)

---Applicant

Versus

1. Rupesh Kumr S/o Late Shri Tejram Yadav, aged about 27 years (in the year 2003 aged about 14 years)
2. Virendra Kumar @ Golu S/o Late Shri Tejram Yadav, aged about 24 years (in the year 2003 aged about 11 years)

Both R/o C/o Jagmohan Yadav, Near Gayatri School, Keshar Nagar, Rajnandgaon, Distt.Rajnandgaon (CG)

---Respondents

For Applicant : Mr. Vipin Tiwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/10/2016

1. Suit filed by the applicant/plaintiff was decreed ex-parte on 8.10.93. It is the case of defendants-Rupesh Kumar and Virendra Kumar @ Golu that they were minors on the date when ex-parte decree was passed and decree was also executed

against the minors. The defendants filed an application under Order 9 Rule 13 of the CPC for setting aside ex-parte decree dated 8.10.1993.

2. By the order impugned, the trial Court allowed the application filed by the respondents/defendants under Order 9 Rule 13 of the CPC finding sufficient cause and held that defendants-Rupesh Kumar and Virendra Kumar @ Golu were minors at the time when they proceeded ex-parte, proceeding under Order 32 Rule 3 has not been followed, minors property were sold in execution of the decree and further recorded a finding that suit has not been decided on merits and after finding sufficient cause, set aside the ex-parte decree. Against which, these revisions have been filed under Section 115 of the CPC
3. Mr.Vipin Tiwari, learned counsel appearing for the applicant would submit that earlier the defendants have also filed an application for setting aside ex-parte judgment and decree, which was rejected by the trial Court by order dated 24.3.1995 and that will operate res-judicata in the present proceeding.
4. I have heard learned counsel appearing for the applicant and perused the documents annexed with the revision.
5. The trial Court while setting aside the ex-parte judgment and decree has clearly recorded a finding that at the time when the decree was passed defendants-Rupesh Kumar and Virendra Kumar @ Golu were minors, ex-parte decree was passed without complying with the provisions of Order 32 Rule 3 of the

CPC, property of minors was sold in execution of the decree and suit deserves to be decided on merits. Sufficient reasons have been assigned by the trial Court while granting the application under Order 9 Rule 13 of the CPC.

6. After going through the order dated 24.3.1995, it appears that earlier the application under Order 9 Rule 13 of the CPC was not rejected on merits.
7. The Supreme Court in the matter of N.Balakrishnan Vs. M.Krishnamurthy¹ has held that the revisional Court should be slow in interfering with the discretion exercised by the trial Court condoning the delay and observed as under:-

“14.....explanation for the delay set up by the appellant was found satisfactory to the trial Court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction.....”

8. In view of the above-stated analysis, I do not find any jurisdictional error in the order impugned. Consequently, the revisions being without substance are liable to be and are hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

1 (1998) 7 SCC 123