

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C. No. 331 of 2017**

Motilal Shrivastava son of Shivdatta Shrivastava resident of C/o M.P. Shrivastava near Police Chowki Katra Post Rewa District Rewa (MP) (Now Dead), Through Legal Representatives

(i) Smt. Kusumlata Shrivastava Wd/o Shri Motilal Shrivastava, Aged About 71 Years

(ii) Sanjeev Kumar Shrivastava Aged about 38 Years S/o Late Shri Motilal Shrivastava

Both are resident of 14/328, Samiti Colony, Tahsil Hujur, District Rewa (M.P.)

---- Applicant

Versus

1. The Raipur Transport Co. Pvt. Ltd. R.T.C. Building, Near Raj Talkies, G.E.Road, Raipur (M.P.) Now Chhattisgarh (Owner Of Bus No. M P S 5804)
2. The Oriental Insurance Co. Ltd., 35, Malviya Nagar, Durg, Chhattisgarh (Insurance Co. Of Bus No. MPS 5804) Insured Period 05.03.1985 To 04.03.1986 Category Comprehensive Risk Covered
3. Union Of India, Through The General Manager, South Eastern Railway, Garden Reach, Kolkata (West Bengal) (Owner Of Waltair- Durg Passenger Train)

---- Non-applicants

For Applicant : Shri Alok Nigam, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

01/05/2017

1. What is styled as MCC and instituted as original proceedings, is essentially reliefs referable is different Rules of Order 22 of the CPC, all put into one application.
2. Motilal Shrivastava filed a claim under the Motor Vehicles Act referable to an accident in which his son allegedly died. He carried M.A. No.1529 of 1997 to this Court. It appears that Motilal Shrivastava died during the pendency of that appeal. No impleadment was carried out in M.A. No.1529 of 1997. Through order

dated 20.4.2007, without noticing Motilal Shrivastava's death, M.A. No.1529 of 1997 was dismissed for non-prosecution. Long thereafter, MCC No.519 of 2013 was filed seeking restoration. The Division Bench saw that the said MCC was not maintainable since the right royal way in terms of the provisions of law, he is to invoke Order 22 Rule 9 of the CPC.

3. Instead of invoking the power to condone delay in applying to set aside the abatement and seeking the relief to set aside the abatement and also for consequential impleadment through interlocutory applications in M.A. No.1529 of 1997, the legal representatives of Motilal Shrivastava, since deceased, have filed this MCC as if it is a composite proceedings. We have to ensure that due process is followed. It is obviously means that due procedure prescribed by the laws are to be adhered to.

4. Under such circumstances, this MCC is dismissed without prejudice to the Applicants' rights, if any, to apply through interlocutory applications in M.A. No.1529 of 1997 for condonation of delay in applying to set aside the abatement; to set aside the abatement; and, for impleadment of the legal representatives of Late Motilal Shrivastava. We clarify that we have not mentioned anything on the merits of any such of applications.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE