

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.706 of 2016**

1. Jagatram S/o. Mansay, Aged About 35 Years Caste Harijan, Occupation Agriculturist, R/o. Village Nayanpur, P. S. & Tehsil Surajpur, District Surguja (Now District Surajpur) (Chhattisgarh).
2. Budhni, W/o. Chandrika, Aged About 40 Years Caste Harijan, R/o. Village Samaoli, P. S. Bhaiyathan, Tehsil Surajpur, Civil & Revenue District Surajpur (Chhattisgarh)
3. Hiradhan, S/o. Ramsundar, Aged About 28 Years Caste Harijan, R/o. Village Nayanpur, P. S. & Tehsil Surajpur, Civil & Revenue District Surajpur (Chhattisgarh)
4. Motilal, S/o. Mansay, Aged About 29 Years Caste Harijan, R/o. Village Nayanpur, P. S. & Tehsil Surajpur, Civil & Revenue District Surajpur (Chhattisgarh)

---- Petitioners**Versus**

1. Subaso W/o. Kawalsay, Aged About 47 Years Caste Ghasiya, Occupation House Wife, R/o. Village Nayanpur, P. S. & Tehsil Surajpur, Civil & Revenue District Surajpur (Chhattisgarh)
2. Parmeshwari @ Nanha, W/o. Rajaram, Aged About 32 Years R/o. Village Gelhapani, Bazaarpara, P. S. Chirmiri, Tehsil Koriya, Civil & Revenue District Koriya (Chhattisgarh)

-----Respondents

For Petitioners:

Shri Surfaraj Khan, Advocate.

For Respondent No.1:

Shri Ashok Kumar Shukla, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****27.1.2017**

1. Heard on admission.
2. This is a Petition filed under Article 227 of the Constitution of India by the Plaintiffs by questioning the propriety of the order dated 14.7.2016 passed by the 2nd Additional District Judge, District Surajpur in Civil Appeal No.02-A/2013, whereby the lower appellate Court has not only condoned the delay in filing the regular Appeal preferred under Section 96 of CPC, but has stayed

the operation of the impugned ex parte judgment and decree also which was delivered on 29.4.1985.

3. Brief facts of the case are that the Plaintiffs/Petitioners had instituted a suit for declaration of title and also for possession. The said suit was registered as Civil Suit No.114-A/1984 and was decreed ex parte on 29.4.1985. For setting aside the same, an application under Order 9 Rule 13 CPC was made by the Defendants/Respondents along with an application for condonation of delay.

4. The aforesaid application filed under Order 9 Rule 13 CPC was rejected by the Trial Court by its order dated 5.5.2010 affirmed further by the Appellate Court vide order dated 20.7.2012 in a miscellaneous appeal preferred by the Defendants.

5. Being aggrieved by the aforesaid order, the defendants/Respondents had preferred the Petition, being W.P.(227) No.573/2012, before this Court.

6. After considering the rival submissions of the parties, this Court, vide order dated 6.12.2012, had affirmed the said finding and ultimately granted liberty to file a regular Appeal against the said ex parte judgment and decree which was delivered in the year 1985.

7. Immediately after passing of the aforesaid order, the Defendants/Respondents have preferred the regular First Appeal as per the provisions prescribed under Section 96 CPC along with an application for its condonation of delay and also praying for staying the operation of the impugned decree passed in the year 1985.

8. The aforesaid applications were objected by the plaintiffs/Petitioners by filing reply.

9. After considering the rival submissions of the parties, the Appellate

Court had condoned the delay and admitted the Appeal for its hearing and that by admitting the same, the Appellate Court has also stayed the operation of the impugned decree while exercising its powers under Order 41 Rule 5 CPC.

10. Being aggrieved by the aforesaid order, the Plaintiffs/Petitioners had filed this Petition.

11. Shri Surfaraj Khan, the learned Counsel for the Petitioners submitted that the order as passed by the Appellate Court is apparently contrary to law. He argued that even without considering any of the cause shown by the Defendants/Respondents in their application for condonation of delay, the same has been allowed just by referring the order passed by this Court on 06.12.2012 and stayed further the operation of the impugned decree, which according to him, is liable to be set aside.

12. On the other hand, Shri Ashok Kumar Shukla, the learned Counsel appearing for Respondent No.1 has supported the order impugned and submitted that though the speaking order was not passed, but the same has been passed only after considering the submissions of both the parties and therefore, the same deserves to be upheld.

13. I have heard learned Counsel for the parties and perused the entire record carefully.

14. From bare perusal of the order impugned, it is clear that the Appellate Court has condoned the delay in filing the regular Appeal filed under Section 96 CPC even without considering any of the grounds raised by the Defendants/Respondents and the same has been allowed merely on the ground that since this Court vide its order dated 6.12.2012 had directed the Defendants/Respondents to prefer the regular Appeal. At this stage, it is necessary for this Court to examine the relevant portion of the said order as

passed by this Court on 6.12.2012. Paragraph-12 of the said order is relevant and is reproduced as under:-

“12. As a consequence of foregoing discussion, the writ petition is found to be totally devoid of any merit. It fails and is accordingly dismissed. However, I grant liberty to the petitioner/defendant to file a regular appeal against the original judgment and decree dated 29/4/85 passed in Civil Suit No.114A/84.

15. On perusal of the aforesaid observation, it is clear that this Court had just granted liberty to the Defendants/Respondents to file a regular Appeal so that, his interest could be safeguarded. Be that as it may, it is the bounden duty of the Court below to consider each and every ground before condoning the delay in preferring the said regular Appeal. Since the order impugned has been passed without considering any of the grounds raised by the Defendants/Respondents in filing the regular Appeal for its condonation of delay, therefore the same is liable to be set aside.

16. In view of above, the matter is remitted back to the concerned Second Additional District Judge, Surajpur for considering the grounds which have been taken by the Defendants/Respondents in their application for condonation of delay in filing the said regular Appeal in accordance with law. The concerned Appellate Court is directed to decide the said application as early as possible.

17. Consequently, the instant Petition is disposed of with the aforesaid directions. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE