

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.43 of 2017**

Vijay Kumar son of late Vishambhar Sonkar, aged about 37 years, (wrongly mentioned as 27 years), resident of near Biscuit Factory, Apapura, Durg, Tahsil and District Durg (CG).

---- Petitioner

Versus

Deepak Kumar son of late Vishambhar Lal Sonkar, aged about 37 years, resident of near Mukund Bhawan, Baijnathpara, Durg, Tahsil & District Durg (CG).

--- Respondent

For Petitioner	:	Mr. Avinash Chand Sahu, Advocate
For Respondent	:	Mr. Anmol Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

27/04/2017

(1) The petitioner/defendant has challenged the impugned order dated 14.09.2016 by which, the respondent/plaintiff's application under Order 22 Rule 4 of CPC with Section 5 of the Limitation Act has been allowed by the trial Court.

(2) Learned counsel appearing for the petitioner would submit that the trial Court has allowed the application under Order 22 Rule 4 of CPC filed by the respondent/plaintiff which is illegal and contrary to law, therefore, the impugned order deserves to be set-aside.

(3) Learned counsel appearing for the respondent would submit that the respondent/plaintiff has already filed an application under Order

22 Rule 4 of CPC and also application under Section 5 of the Limitation Act, therefore, the trial Court is absolutely justified in allowing the application.

(4) I have heard learned counsel for the parties and perused the impugned order.

(5) Defendant No.2 died on 12.08.2015 and thereafter, within a period of limitation, the respondent/plaintiff filed an application for bringing the legal representatives of the defendant No.2 on 30.11.2015, but the said application was withdrawn on 02.03.2016 on account of technical mistake in that application. Thereafter, again on 02.03.2016, an application for bringing legal representatives of the defendant No.2 was filed by the plaintiff with an application for condonation of delay in filing the application. Both the applications were allowed by the trial Court and the respondent/plaintiff was directed to substitute the legal representatives of the defendant No.2 on record.

(6) Since the first application was filed on 30.11.2015 for bringing the legal representatives of the defendant No.2 within time and finding some technical error in the said application later on, same was allowed to be withdrawn by the plaintiff on 02.03.2016 and the second application was filed for bringing the legal representatives of the defendant No.2 on record on 02.03.2016 with application under Section 5 of the Limitation Act for condonation of delay which has been allowed by the trial Court. Sufficient and valid reasons have been assigned by the trial Court while granting those applications. It is well settled principle of law that declaration of title and the suit must be

decided on merit and as such, I do not find any merit in the writ petition.

(7) Consequently, the writ petition deserves to be and is accordingly dismissed. No order as to costs.

SD/-

(Sanjay K. Agrawal)
Judge

L/-