

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 30 of 2017

1. Arvind Kumar Thakur S/o Late Shri Badri Lal Thakur, aged about 54 years, R/o Shankar Vihar Colony, Ward No. 17, House No. 8, Link Road, Janjgir, District- Janjgir-Champa, Chhattisgarh (Owner of the Truck No.CG-10 ZB-1013)

---- Appellant

Versus

1. Smt. Savitri Bai W/o Bhagwat Prasad Rajwade, Aged about 60 years, R/o Vill- Banari, P.S. & Tah. Janjgir, District- Janjgir-Champa, Chhattisgarh
2. Ashish Kumar S/o Uttam Kumar Mahar, Aged about 25 years, R/o Tarbahar, Behind F.C.I. Godown, Bilaspur, Chhattisgarh, Present Address:- Near Ananda Imperial Hotel, In front of Calcutta Transport, Station Road, Bilaspur, Tahsil & District- Bilapur, Chhattisgarh
3. Branch Manager, United Insurance Co. Ltd. Korba, District- Korba, Chhattisgarh (Insurer of the Truck No.CG-10 ZB-1013)

---- Respondents

For Appellant – Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

06-03-2017

1. Heard on I.A.No.1/2017 for taking document on record under Order 41 Rule 27 of the CPC, a photocopy of the sale deed showing the name and address of the appellant.
2. On due consideration, even prima facie as the appellant was owner of the vehicle in question, he had not filed any document in relation with any seizure during enquiry or investigation of the said incident to demonstrate what seizure was effected from him and what was the reason for mentioning his residential address otherwise as shown in the application under Order 9 Rule 13 of the CPC, on due consideration, the said sale deed is of no relevance in the matter. Consequently, I.A.No.1/2017 is hereby dismissed as not maintainable.
3. Also heard the matter finally at the motion stage.

4. Brief facts of the case are that, the applicant/respondent No.1 had preferred an application for compensation against the present appellant—the owner, respondent No.2—the driver and respondent No.3—insurance company. The present appellant and respondent No.2—driver remained ex-parte during said trial. After conclusion of the trial, learned Tribunal held that there was breach of policy and with this, exonerated the liability of the insurance company and held the present appellant and respondent No.2 severally and jointly responsible for the compensation of Rs.4,600/- to be payable to claimant/respondent No.1. Against the said award after 3 years and 7 months the present appellant had filed an application under Order 9 Rule 13 of the CPC to set aside the ex-parte award passed against him. The Court below vide order dated 23-12-2016 held that there is no any reason to satisfy the delay of 3 years 7 months in filing the said application and the party was required to be careful to defend himself; the appellant failed, he was not careful and filed the said application after 3 years and 7 months from the date of the award, and with this, dismissed the said application filed under Section 5 of the Limitation Act and consequently also dismissed the application to set aside the ex-parte award. against the said order, the present appellant filed the instant MA under Order 43 Rule 1(d) of the CPC.

5. Learned counsel for the appellant would submit that he was never residing at Hemunagar, Bilaspur, C.G. His address was at Link Road, Janjgir mentioned in the cause title of the instant MA, duly supported this fact by the sale deed, hence, he was not aware of the issuance of notice, as per law, therefore, the MA may be allowed and the order passed by the Court below dated 23-12-2016 may be set aside, also the award dated 05-03-2013 may be set aside and he may be granted liberty to defend himself.

6. Perused the entire material.

7. The appellant is silent on the point whether any document has been

seized regarding ownership of the vehicle, insurance or any other documents, from his possession. The appellant failed to demonstrate that what was the address mentioned in the said document and what was the address informed by him to police during investigation of said incident for whom the respondent No.1 has preferred claim petition.

8. In absence of any disclosure of these facts, if at all, in a sale deed the address of the appellant is mentioned otherwise, it cannot be held that it was the only address informed or submitted by the appellant during the investigation of said accident.

9. After perusal of the entire material, in the considered view of this Court, the trial Court not committed any error of law while dismissing the application under Order 9 Rule 13 of the CPC as the said application was barred by limitation by 3 years and 7 months and also the appellant was not careful to defend himself in the matter.

10. Upon due consideration, as the instant MA has no substance, the same is liable to be dismissed. Consequently, the instant MA is dismissed at the motion stage itself.

11. The MA dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE