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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.728 of 2016**

Smt. Loli Bai W/o Late Chandrabhan Aged About 54 Years R/o Village Aamgaon, Tehsil Baikunthpur Distirct Korla Chhattisgarh

---- Petitioner**Versus**

1. Mohan S/o Amar Sai Gond Aged About 65 Years R/o Village Aamgaon, Tehsil Baikunthpur, Distirct Korla Chhattisgarh
2. Shankar S/o Sunder Sai Gond, Aged About 45 Years R/o Village Aamgaon Tahsil Baikunthpur Distirct Korla Chhattisgarh
3. Dharam Pal S/o Madhu Goud, Aged About 60 Years R/o Village Aamgaon, Tehsil Baikunthpur, Dist. Korla (Chhattisgarh)
4. State Of Chhattisgarh, Through The Collector, Korla Baikunthpur, Distt. Korla (Chhattisgarh)

---- Respondents**And****Writ Petition (227) No.185 Of 2017**

1. Mohan S/o Amarsai Gond, Aged About 65 Years Agriculturist, R/o Village Amgaon, Tahsil Baikunthpur, District Korea, (Chhattisgarh).....
(Defendant No.2)
2. Shankar, S/o Sundarsai Gond, Aged About 45 Years Agriculturist, R/o Village Amgaon, Tahsil Baikunthpur, District Korea, (Chhattisgarh).....
(Defendant No.3)

---- Petitioner**Vs**

1. Smt. Loli Bai Wd/o Chandrabhan, Caste Gond, Aged About 53 Years R/o Village Amgaon, Tahsil Baikunthpur, District Korea, (Chhattisgarh).....
(Plaintiff)
2. Dharpal, S/o Madhu Gond, Aged About 60 Years R/o Village Amgaon, Tahsil Baikunthpur, District Korea, (Chhattisgarh).....(Defendant No.4)
3. State Of Chhattisgarh, Through: Collector, Korea, District Korea, (Chhattisgarh).....(Defendent No.5)

-----Respondents

Shri Paras Mani Shriwas and Shri Mazid Ali, Advocates for respective parties.
Shri RK. Jaiswal, Panel Lawyer for the State.

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

09.03.2017

1. These Petitions are being disposed of by a common order as they arise out of a same order dated 20.12.2013 passed by the Civil Judge, Class-I, Baikunthpur, Korea.

2. Briefly stated, the undisputed facts of the case are that the Plaintiffs have instituted a suit for declaration of title, permanent injunction and for partition. The said suit was contested by the Defendants but ultimately, it was decree ex-parte by the trial Court, vide judgment and decree dated 30.1.2010.

3. Being aggrieved with the aforesaid ex parte judgment and decree, the Defendants have filed an application for its setting aside as per the provisions prescribed under Order 9 Rule 13 of the Code of Civil Procedure, 1908 along with an application for condonation of delay in filing the same on 14.12.2010.

4. The trial Court, after considering the said application, for condonation of delay in filing the application under Order 9 Rule 13 CPC, has rejected the same by observing that the reasons as assigned therein are not sufficient to condone the delay and accordingly, the trial Court has rejected the said application for condonation of delay in filing the application for setting aside ex parte. While rejecting the application for condonation of delay, as such the trial Court has proceeded further while fixing the case for consideration of the said application filed under Order 9 Rule 13 CPC. The procedure as adopted by the trial Court is unknown to the law because after rejecting the application for condonation of delay, it was not required to proceed further.

5. Be that as it may, the order impugned rejecting the application for condonation of delay deserves to be set aside as the same was passed without examining the reasons assigned by the Defendants in their application for condonation of delay. Rules of limitation are not meant to destroy the

rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court is not because on expiry of such time a bad cause would transform into a good cause.

6. While entertaining the application for condonation of delay in filing the application for setting aside the ex parte judgment and decree dated 30.01.2010 the trial Court should have adopted the liberal approach in order to advance the substantial justice to the parties.

7. In view of the facts and circumstances of the case, the order impugned passed by the trial Court is hereby set aside and the matters are remitted to the trial Court by condoning the delay in filing the application for setting aside ex parte judgment and decree for consideration of application filed under Order 9 Rule 13 CPC.

8. Consequently, both these Petitions are hereby disposed of with a direction to the parties to appear before the concerned trial Court on 4.5.2017.

No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE