

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.188 of 2016**

- Md. Akhtar Khokhar S/o Alanurkh Khokhar, Aged About 45 Years R/o Indira Ward, Jagdalpur, Police Station Jagdalpur, District Jagdalpur, Chhattisgarh(Plaintiff)

---- Applicant

Versus

1. Smt. Akhtari Begum Wd/o Late Naeemulla Khan, Aged About 55 Years R/o Pratapganj Para, Jagdalpur, Police Station & Post Jagdalpur, District Bastar, Chhattisgarh
2. Azmat Ulla Khan S/o Late Naeemulla Khan, Aged About 30 Years R/o Pratapganj Para, Jagdalpur, Police Station & Post Jagdalpur, District Bastar, Chhattisgarh
3. Ziyaulla Khan @ Guddu S/o Naeemulla Khan, Aged About 28 Years R/o Pratapganj Para, Jagdalpur, Police Station & Post Jagdalpur, District Bastar, Chhattisgarh(Defendants)

---- Respondents

For applicant	: Shri Manoj Paranjpe and Shri Vikram Dixit, Advocates
For respondents	: Not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03.02.2017**

Heard on admission and also on the maintainability of the instant civil revision.

2. As per the brief facts, the trial Court had passed the ex-parte judgment and decree dated 29.8.2006 in Civil Suit NO.1A/2005. After the said judgment and decree, present respondents/applicants/defendants had filed an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') along with Section 5 of the Limitation Act. The same was registered as Misc. Civil Suit

No.01/12. The Court below disposed of the same matter vide order dated 19.10.2016 and while allowing the said application ex-parte judgment and decree dated 29.8.2006 was set aside, the original civil suit was restored for hearing, directed both the parties to remain present for hearing in the said civil suit for the reasons in brief that during hearing of the said civil suit No.1A/05, notice through registered mode was issued for present respondents for their representation/appearance on 22.02.2006. The present respondents/applicants/defendants refused to accept the said registered envelop containing the notice as aforementioned, but on 22.02.2006 presiding officer of the said court was on leave, ordersheet was written by Reader of the said Court for further orders on 03.3.2006. On 03.3.2006 the Presiding Officer has taken the matter for hearing and on the basis of refusal of the respondents to accept the notice through registered mode for hearing on 22.02.2006, proceeded ex-parte against respondents 1 & 2 and also the notices were served through substituted service to respondent No.3 i.e. through paper publication, but on 22.02.2006 there was no hearing in the matter and also as the Reader merely posted the case for further orders on 03.3.2006. With this, on the basis of the case law cited the Court below set aside the ex-parte order. After the said order, the present applicant/non-applicant/plaintiff has preferred the instant revision under the provision of Section 115 of the CPC with a prayer to set aside the Order dated 19.10.2016.

3. Learned counsel for the applicant would submit that as the respondents were aware of the pendency of one civil suit before the Court below against them and in the said notice date was given for hearing as 22.02.2006, with this they were well aware of the pendency of the said civil suit, with this, application under Section 5 of the Limitation Act is not maintainable as there was no any bonafide reason to condone the delay and also it was the duty of the respondent to remain present on 22.02.2006 or to make arrangement for their representation in the matter, with this, the instant civil revision is worth for admission, may be admitted and matter may be disposed of by bi-parte hearing.

4. Perused order dated 19.10.2016 and other documents adduced along with instant civil revision.

5. The Court below on the basis of the word “for hearing” held that as the Presiding Officer was on leave, the matter was taken by Reader, he simply posted the matter for further hearing on 03.3.2006, with this the ex-parte order dated 03.3.2006 by the Court below was not desirable under the law, hence, the order requires interference, with this, the Court below has set aside the order and restored the same civil suit for hearing bi-parte, by dismissing the ex-parte judgment and decree dated 29.8.2016.

6. The Reader is not a Presiding Officer. The Reader posted the case for 03.3.2006 for appropriate orders. On 22.02.2006 there was no hearing with this, the ex-parte proceedings against the respondents for their non appearance coupled with facts that

they refused to accept the registered notice cannot be acted upon. So far as delay in filing the said application under Section 5 of the Limitation Act is concerned, as per para 3 of the Order dated 19.10.16, it appears that after the proceedings under Order 31 Rule 97 of the CPC, the respondents/applicants/ defendants came to know regarding judgment and decree passed against them and also when the order of the trial Court to proceed ex-parte against the respondent on 03.3.2006 for their non-appearance on 22.02.2006, when the Court was not functioning, the ex-parte proceedings itself is illegal and void. Also after the Court below set aside the said ex-parte judgment and decree and gave opportunity to both the parties to decide the dispute bi-parte, upon consideration of the entire facts and principles of law, in the considered view of this Court, instant civil revision is having no substance for admission.

7. Consequently, instant civil revision is dismissed at the motion stage itself.

Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE