

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.38 of 2018**

Chatan Sharma S/o Ramanand Sharma, aged about 27 years,
occupation-Business, R/o Aatabira, P.O.-Aatabira, Distt.Bargarh (Orissa)

---- Petitioner

Versus

1. Purnima Patel Wd/o Thandaram, aged about 34 years, occupation-Laborer
2. Indumati Patel D/o Late Thandaram Patel, aged about 18 years,
3. Tarachand Patel S/o Late Thandaram aged about 15 year

Respondent No.2 and 3 are minor through guardian mother Purnima Patel Wd/o Thandaram Patel

All are the R/o village-Manikpur, Tehsil-Baramkela, at present R/o Kouhakunda, tehsil & Distt.-Raigarh (CG)

4. Parikshtimukhi Sahu @ Ajit S/o Arjun Sahu, aged about 22 years, Occupation-Driver R/o Devgarh, Thana Boud, Distt.-Boud (Orissa)
5. Branch Manager, Oriental Insurance Company Limited, Branch It-wari Bazar, Raigarh (CG)

---- Respondents

For Petitioner	:	Mr.Sanjay Patel, Advocate
For Respondents No.2&3	:	Mr.M.K.Jaiswal, Advocate
For Respondent No.5	:	Mr.Ghanshyam Patel, Advocate on behalf of Mr.Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/12/2018

1. In a claim case filed by Mst. Purnima Patel and others against the Insurance Company and the petitioner/owner of the vehicle, the Claims Tribunal passed ex-parte award on 30.11.2012 and fastened the liability of ₹ 5,80,000/- along with 6% interest upon the petitioner/owner of the vehicle.

2. It is the case of the petitioner/owner that he came to know about ex-parte award when he received notice of execution on 30.4.2015 and then immediately filed an application on 8.5.2015 for setting aside ex-parte award stating inter-alia that he has engaged his counsel Mr. S.K. Patnaik, Advocate, Raigarh, but he did not appear on 20.9.2011 and ex-parte award was passed on 30.11.2012. Immediately after getting notice of execution, application was filed as his counsel did not inform about non-appearance and passing of ex-parte award fastening liability on him. The Insurance Company did not file any reply to the said application. On account of strike, the Advocates were not appearing on 20.9.2011 and therefore, ex-parte decree has been passed. The said application was inquired into by the Claims Tribunal and ultimately, finding no sufficient cause for setting aside ex-parte decree, it was rejected. Questioning that order, this writ petition has been filed.
3. Mr.Sanjay Patel, learned counsel for the petitioner, would submit that the Claims Tribunal has committed grave illegality in rejecting the application filed under Order 9 Rule 13 of the CPC after having held that counsel engaged by the petitioner/defendant did not inform him not to appear before the Claims Tribunal by which the defendant was proceeded ex-parte and ex-parte award was passed against him. He would further submit that the defendant came to the knowledge of the award only on 30.4.2015 when he received notice of execution and within one month from the date of knowledge of the award, on 8.5.2015 he preferred the application under Order 9 Rule

13 of the CPC as provided in Article 123 of the Limitation Act. He placed reliance of the judgment of this Court passed in Salim Memon v. Smt. Kanti Mishra and others (WP227 NO.558 of 2016), decided on 19.10.2016.

4. On the other hand, Mr.M.K.Jaiswal, learned counsel for respondents No.2 & 3 and Mr.Ghanshyam Patel, learned counsel for respondent No.5, would oppose the writ petition and submit that the petitioner was aware of ex-parte proceeding and ex-parte award, yet did not file any application within the period of limitation, therefore, the writ petition is liable to be dismissed.
5. I have heard learned counsel for the parties and perused the impugned order.
6. It is not in dispute that the petitioner/owner appeared before the Claims Tribunal since 28.4.2011 till 20.9.2011. On 20.9.2011 it appears that on account of absence of advocates probably on account of strike of advocates, the claimants appeared personally and on behalf of Insurance Company, his Administrative Officer appeared, but since on behalf of the petitioner/owner, nobody appeared, the Claims Tribunal proceeded ex-parte which resulted in passing of ex-parte award on 30.11.2012. The Claims Tribunal made an enquiry and held that on 20.9.2011 other side appeared, but the petitioner did not take any steps to appear and admitted in cross-examination that he was aware of the date of hearing of the case.
7. Ex-parte award was passed on 30.11.2012 against the petitioner/owner. For setting aside the same, limitation has been

prescribed under Article 123 of the Limitation Act, which reads as below:-

Description of suit	Period of Limitation	Time from which period begins to run
Article 123 – To set aside a decree passed ex parte or to re-hear an appeal decreed or heard ex parte Explanation – for the purposes of this Article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908, shall not be deemed to be due service.	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

8. A careful perusal of the aforesaid provision would show that the limitation for presenting the application has been prescribed i.e. thirty days from the date of decree or where the summons or notice was not duly served when the applicant had knowledge of the decree. It is the case of the petitioner that he has no knowledge of the ex-parte award.
9. The question for consideration would be whether the petitioner can be said to have knowledge of passing of ex-parte award as provided under Article 123 of the Limitation Act.
10. Before coming into force of the Act of 1963, the Limitation Act, 1908 was in force, and present Article 123 of the Limitation Act, 1963 corresponds to Article 164 of the old Limitation Act. The Supreme Court, while dealing with a matter under Article 164 of the Limitation Act, 1908 in Panna Lal v. Murari Lal (dead) by his legal representatives¹ observed as below:-

¹ AIR 1967 SC 1384

“(A) Limitation Act (1908), Art. 164 – “Knowledge of the decree”- meaning of.

The expression " Knowledge of the decree " in Art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under Art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of Art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealing with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Art. 164. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree.”

11. The High Court of Madhya Pradesh, while dealing with the expression “knowledge of decree” in Smt. Chhutbai and another v. Madanlal and another², observed as below:-

“7. Now coming to the question of application being barred by time, we are of the opinion that the appellate Court has completely misdirected itself in holding that the application was barred by time. The expression "knowledge of the decree" used in Art.123 of the Limitation Act, 1963, means the knowledge of a particular decree, which is sought to be set aside. It has been held that when the summons was not duly served on the petitioners, the limitation under Art.123 of the Limitation Act does not start running against the petitioners because they received some vague information that some decree has been passed against them (See AIR 1967 SC 1384), Pannalal v. Amarlal). No doubt in this case, it has been held that it is a question of fact in each case whether the information communicated to the

2 AIR 1989 MP 330

defendant is sufficient to impute to him knowledge of the decree within the meaning of Art.164 of the old Limitation Act. In the present case, the appellate Court, itself has held that in the notice fix. P-4, it has not been mentioned that from which Court the decree was passed nor the date of the decree has been mentioned but as the case No. 1 has been mentioned, the petitioner could have gathered the knowledge by inspecting the Register of Civil Suit maintained by the Courts. Admittedly in Mhow, there is not only one Civil Judge Class II, but there are two or three Civil Judges. Therefore, this type of information cannot be said to be the knowledge of the decree. There is no finding of the Appellate Court that from the notice Ex. A-4, the petitioners got the knowledge of the decree, but, on the other hand, the finding is different that the petitioners could have inspected the record and could have got the knowledge by finding out the particulars of the decree. In our opinion, on such a finding of the appellate Court, the order of the appellate Court holding that the application under O.9, R.13, C.P.C. was barred by time, cannot be sustained and deserves to be quashed.”

12. Reverting to the facts of the present case, it is quite vivid that the petitioner in due diligence engaged his counsel to appear in the claim case, but it appears that probably on the ground of advocates' strike, his counsel did not appear on 20.9.2011 and even did not inform the petitioner that he will not appear on the date of hearing which resulted in passing of ex-parte award. The petitioner immediately after getting information of ex-parte award by receiving notice for execution filed an application for setting aside ex-parte award. Merely having knowledge about the judgment/award would not satisfy the requirement of “knowledge” as stated above in Article 123 of the Limitation Act. It is not on record as to whether the petitioner has not been given information regarding name of the court, name of the parties and particulars of the award passed.

13. Therefore, I am of the considered opinion that sufficient cause has been shown by the petitioner in not appearing before the Claims Tribunal when the case was called for hearing and therefore, the Claims Tribunal is absolutely unjustified in rejecting the application under Order 9 Rule 13 of the CPC, which is hereby set aside. The application under Order 9 Rule 13 of the CPC is allowed subject to payment of cost of ₹ 5000/- to the claimants before the Claims Tribunal.
14. The writ petition is allowed to the extent indicated hereinabove. Original claim case was filed on 3.2.2011. The District Judge, Raigarh is directed to conclude the hearing of claim case within a period of three months from the date of receipt of certified copy of this order after affording an opportunity of hearing to the parties. Record of the Claims Tribunal be sent forthwith. A copy of this order be sent to the concerned Claims Tribunal. No cost (s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-