

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.1091 of 2015**

State of Chhattisgarh, Through the Collector, District Raigarh (CG)
-----Petitioner

Versus

Bahadur Singh S/o. Jagmohan Singh, R/o. Village Chote Atarmuda,
Tahsil and District Raigarh, Chhattisgarh

----- Respondent

For Petitioner	:	Mr.Arun Sao, Dy.A.G.
For Respondent	:	Mr.Ashish Shrivastava and Mr.Vivek Tripathi, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/9/2018

1. Taking exception to the order dated 17.7.2015 passed by learned 5th Additional District Judge in Misc. Civil Appeal No.47/2012 affirming the order dated 8.10.2012 passed by the Civil Judge Class-I, Raigarh, by which the said Court has rejected the application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter called as "CPC"), this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant.
2. The respondent/plaintiff preferred civil suit before the 1st Civil Judge Class-I, Raigarh titled as Bahadur Singh v. State of MP through Collector, Raigarh claiming declaration of title and for permanent injunction. In the suit filed, the petitioner/defendant was duly represented through his counsel Mr.I.P. Sharma, the then Government Advocate, till 19.12.2000 and thereafter, that case was transferred to the Third Civil Judge Class-II,

Raigarh on 26.2.2001, on that day, the State of MP proceeded ex-parte. Thereafter, that case was transferred to the Second Civil Judge Class-II, Raigarh on 13.2.2002 and ultimately, ex-parte decree in favour of the respondent/plaintiff was passed on 26.4.2002 granting decree for declaration in favour of the plaintiff and for permanent injunction restraining the State to interfere with his possession. By that time, the State of Madhya Pradesh was reorganized and the State of Chhattisgarh carved out w.e.f. 1.11.2000.

3. The State of Chhattisgarh through Collector, Raigarh filed an application under Order 9 Rule 13 of the CPC on 2.7.2003 stating inter-alia that case was transferred from Civil Judge Class-I to the Third Civil Judge Class-II, Raigarh and thereafter to the Second Civil Judge Class-II, Raigarh, but these two transfers of case were never noticed to the State of Chhattisgarh and ex-parte order was passed on 26.2.2001 and ex-parte decree was passed on 26.4.2002 as counsel appointed earlier could not appear for want of knowledge about pendency of the case in the transferred Court and therefore, counsel could not appear when the case was called out for hearing. It was further stated that when the case was filed to Tahsildar, Raigarh for mutation, then he informed the Collector, Raigarh on 2.7.2003 and on the same day, application has been filed. The application was duly supported by affidavit of the Tahsildar and Vakalatnama was executed by the Collector while filing the application. That application was

opposed by the respondent/plaintiff by filing reply to that application. On behalf of the petitioner/defendant, the application under Order 18 Rule 4 of the CPC was sworn by S.P.Vaidya, Tahsildar (Nazul) to be the officer-in-charge. Thereafter, the respondent/plaintiff filed objection stating inter-alia that application filed by the petitioner/defendant under Order 9 Rule 13 of the CPC is not maintainable as the Tahsildar had full knowledge of decree and application filed by the Tahsildar under Order 9 Rule 13 of the CPC was not maintainable. No application for condonation of delay has been filed. Therefore, application under Order 9 Rule 13 of the CPC is not maintainable and liable to be rejected.

4. The trial Court considered that preliminary objections and sustained those objections holding that in the transferred Court i.e. Third Civil Judge Class-II, Government Counsel was called out through peon, but despite call, he did not appear and therefore, the Court proceeded ex-parte and passing of ex-parte decree is valid. It was further held that since mutation case was filed before the Tahsildar on 1.2.2003, the Tahsildar, Raigarh had come to know about the decree on the said date, therefore, filing the application on 2.7.2003 is beyond limitation and no application for condonation of delay has been filed. Similarly, it has been held that the Tahsildar is not party defendant in the suit, yet it has been filed by the Tahsildar, which is not maintainable.

5. Questioning the order of the trial Court, the State preferred

Misc. Appeal before the First Appellate Court under Order 43 Rule 1(u) of the CPC, in which the petitioner remained unsuccessful, which has been questioned in this writ petition.

6. Mr.Arun Sao, learned Deputy Advocate General for the petitioner/defendant, would submit that the trial Court ought to have considered the application on its own merit considering the cause shown that from transferred Court no notice was issued to the petitioner/defendant to represent the case after reorganization of the State of Chhattisgarh as prior to 1.11.2000 the State of Madhya Pradesh was duly represented and after reorganization of the State of Chhattisgarh, neither the State of Chhattisgarh was substituted nor fresh notice was issued to the State of Chhattisgarh. The trial Court ought to have considered the fact that as soon as the Tahsildar, Raigarh informed Collector, Raigarh on 2.7.2003, on the same day, application under Order 9 Rule 13 of the CPC was filed and that would constitute sufficient cause. He would further submit that if the trial Court was of the opinion that application for condonation of delay has not been filed, it ought to have granted an opportunity to file application in the ends of justice, as such, the order passed by the trial Court rejecting the application under Order 9 Rule 13 of the CPC and further affirming that order by the First Appellate Court are liable to be set aside.

7. Mr.Ashish Shrivastava, learned counsel for the respondent, would support the impugned order and submit that in the

transferred Court of Civil Judge Class-II, the State Counsel was called to appear in that case, but deliberately he did not appear in that proceedings and therefore, ex-parte decree was passed by the said Court. He would further submit that the Tahsildar was not party defendant in the suit, therefore, application filed under Order 9 Rule 13 of the CPC by his signature was not maintainable. He would also submit that application under Order 9 Rule 13 of the CPC was apparently barred by limitation, therefore, application for condonation of delay ought to have been filed by the petitioner/defendant before the trial Court in addition to filing of application under Order 9 Rule 13 of the CPC, as such, the trial Court is absolutely unjustified in sustaining preliminary objections filed by the respondent/plaintiff and it was rightly upheld by the First Appellate Court.

- 8.** I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
- 9.** The first preliminary objection, which has been made basis for rejecting the application under Order 9 Rule 13 of the CPC, is that Order 9 Rule 13 CPC application was filed by the Tahsildar.
- 10.** A careful perusal of application under Order 9 Rule 13 of the CPC would demonstrate that application was filed by the State of Chhattisgarh through Collector and Tahsildar has only signed on behalf of the State of Chhattisgarh, which is

apparent from affidavit filed under Order 18 Rule 4 of the CPC in which Tahsildar has clearly declared that that he is Tahsildar (Nazul) and officer-in-charge of the case. Therefore, the trial Court is absolutely unjustified in holding that application has been filed by the Tahsildar. It was filed by the State of Chhattisgarh and signed by the Tahsildar in the capacity of officer-in-charge.

11. The next finding on which application under Order 9 Rule 13 of the CPC was rejected that from the transferred Court the Presiding Officer of the Court had called the State Counsel, which he did not respond and therefore, the defendant has knowledge about the date of hearing in the transferred Court. It is the case of the defendant that the State Government was never noticed about transfer of the case in the Third Civil Judge Class-II, Raigarh and thereafter, in the Second Civil Judge Class-II, Raigarh. If there was dispute between the parties, the trial Court ought to have made an enquiry on the said aspect, which has not been done.

12. The trial Court further held that since Tahsildar came to know about the date of decree on 1.2.2003, application filed on 2.3.2003 was barred by limitation and application for condonation of delay was not preferred. If the trial Court was of the opinion that application for condonation of delay has not been filed, it could have granted an opportunity to file application in the ends of justice to decide the question fully, but the trial Court did not take resort to that procedure and

rejected the application.

13. In my considered opinion, the trial Court has committed illegality in not making an enquiry on sufficiency of cause shown under Order 9 Rule 13 of the CPC and further not granting an opportunity to file additional affidavit/application for condonation of delay in support of the application under Order 9 Rule 13 of the CPC. The Appellate Court has perpetuated the illegality.

14. For the foregoing reasons, the order dated 8.10.2012 passed by the trial Court and the order dated 17.7.2015 passed by the First Appellate Court both are set aside and application under Order 9 Rule 13 of the CPC is restored to file of the trial Court for hearing and disposal in accordance with law. The petitioner/defendant is at liberty to file application/affidavit and the respondent/plaintiff is also at liberty to file additional reply/affidavit and same will be decided by the trial Court after making an enquiry within three months from the date of receipt of certified copy of this order. The parties will be granted an opportunity to lead evidence.

15. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge