

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 908 of 2014**

Dron Kumar Sinha, aged about 28 years, S/o Samaru Sinha, R/o Kanlagpur, Dist. Durg at present R/o and post Village Surgi, Tahsil and Dist. Rajnandgaon.

----Petitioner/Appellant

Versus

Ramji, aged about 58 years, S/o Palturam Sinha, R/o Village Surgi, Tahsil and Distt. Rajnandgaon (C.G.)

---- Respondent

For Petitioner	:	Mr. Parag Kotecha, Advocate.
For Respondent	:	Mr. Pallav Mishra, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

03/12/2018

(1) An *ex parte* decree for declaration of title and possession was passed against the petitioner on 04.02.2013 by the trial Court. He filed an application under Order 9 Rule 13 of the Code of Civil Procedure (henceforth "CPC") on 27.11.2013. That application was rejected by the trial Court by order dated 22.04.2014 on the ground that application for setting aside *ex parte* decree has been filed after 30 days of passing the *ex parte* decree but no application for condonation of delay in filing the same has been filed and which has been upheld by the Misc. Appellate Court vide impugned order dated 21st November, 2014, against which instant writ petition has been filed questioning that order.

(2) Mr. Parag Kotecha, learned counsel appearing for the petitioner / appellant would submit that both the courts below have dismissed the petitioner's application under Order

9 Rule 13 of the CPC for setting aside *ex parte* order dated 04.02.2013 on the ground of non filing of the application for condonation of delay in filing the said application as the said application was filed beyond the period of 30 days whereas the time could have been granted by the trial Court to file application for condonation of delay in filing the same and then matter could have been decided finally, therefore, impugned order is liable to be set aside.

(3) Per contra, counsel for the respondent would submit that apart from the technical defect, no sufficient cause was shown for non appearing in the suit when the suit was called for hearing, as such, writ petition deserves to be dismissed.

(4) I have heard learned counsel appearing for the parties & considered their rival submissions made hereinabove and perused the order impugned with utmost circumspection.

(5) Admittedly, the *ex parte* decree was passed against the petitioner on 04.02.2013 and the application for setting aside *ex parte* decree was filed by the petitioner on 27.11.2013, which was beyond the period of 30 days as prescribed in Article 123 of the Limitation Act for making an application for setting aside *ex parte* decree , therefore, the petitioner ought to have filed application for condonation of delay also with an application for setting aside *ex parte* decree but application for condonation of delay in filing the application for setting aside *ex parte* order was not filed and application for setting aside *ex parte* decree was rejected due to non filing of said application. In my considered opinion, time could have been granted by the trial Court to the petitioner/defendant to file application for condonation of delay and then the matter could have been decided finally and the said application could not have been rejected on hyper technical ground and in that view of the matter, both the courts below could not have recorded a finding on merits

on the application under Order 9 Rule 13 CPC holding that no sufficient cause has been shown for non appearing on 3.9.2012 for proceeding ex parte and on 4.2.2013, when the suit was decreed ex parte. Accordingly, impugned order passed by the trial Court dated 22.04.2014 and appellate order dated 21st November, 2014 passed by the Misc. Appellate Court are liable to be and are hereby set aside. The matter is remitted to the trial Court to consider the application for setting aside exparte decree afresh in accordance with law.

(6) Parties are directed to appear before the trial Court on 7th January, 2019 and within 10 days from the date of appearance, the petitioner/defendant will file application for condonation of delay in filing the application for setting aside ex parte decree. In that event, the trial Court is directed to decide both the aforesaid applications i.e. application for setting aside *exparte* decree & application for condonation of delay in filing the same after hearing the affected parties and after making due enquiry in accordance with law expeditiously as the application for setting aside *ex parte* order was filed on 27-11-2013.

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

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

