

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 827 of 2013**

1. Ratan S/o Ghasiram Aged About 55 Years
2. Ruki S/o Ghasiram Aged About 50 Years

No.1 and 2 R/o Danaut, Tahsil Gharghoda, Civil And Revenue District Raigarh C.G.

---- Petitioners**Versus**

1. Ram Son of Manbodh Kavar, Aged About 17 Years Caste Kanwar, Occupation Agriculture, Minor, Gaurdian, Through Panik Ram S/o Sukharam Kanwar, R/o Danaut, Tahsil Gharghoda, Civil And Revenue District Raigarh C.G.
2. State of Chhattisgarh Through The Collector, Raigarh, Distt. Raigarh C.G.

---- Respondents

For Petitioners	:	Shri R.S. Patel, Advocate
For Respondent No.1	:	Shri M.K. Sinha, Advocate
For Respondent No.2/State:		Shri SRJ Jaiswal, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11/07/2018**

1. Heard.
2. The present petition is against the order dated 11.10.2013 whereby an application under Section 5 of the Limitation Act was dismissed. Background of this case is that a civil suit was filed by the petitioners/plaintiffs which was dismissed in default on 12.05.2011 for want of prosecution. As submitted thereafter an application was filed under Order 9 Rule 9 CPC read with Section 5 of the Limitation Act was filed, wherein 10 days delay had occurred. The Court below by the impugned order dated

11.10.2013 has dismissed the application for condonation of delay and thereafter fixed the case for hearing on the application filed under Order 9 Rule 9 CPC. It is being submitted before this Court that the application under Order 9 Rule 9 CPC was subsequently dismissed on 14.10.2014. It is also submitted that since earlier the decision on the application filed under Section 5 of the Limitation Act came into force, therefore, a separate writ petition was filed to condone the delay.

3. In any case, the order impugned dated 11.10.2013 to decide the application is misconceived. Once the application under Section 5 of the Limitation Act is dismissed then automatically the original petition cannot survive as it is barred by time after application to condone the delay is dismissed and subsequently the order of dismissal of application filed under Order 9 Rule 9 CPC appears to be without jurisdiction. It is been submitted at the bar that the appeal has been filed under Order 43 Rule 1 CPC for dismissal of application under Order 9 Rule 9 CPC, therefore, under the circumstances and taking into the facts of this case, it is directed that the appellate Court shall decide the appeal preferred by the petitioner under Order 43 Rule 1 CPC and also shall take into account the ground of dismissal of application under Section 5 of the Limitation Act. The appellate Court is further directed to decide the case objectively and this Court has not passed any comment on the merits of the case.
4. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu