

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 80 of 2013

1. State Of Chhattisgarh, Through Secretary, Department Of Public Works, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud, Raipur C.G.
2. The Collector, Distt. Bilaspur C.G.
3. The Executive Engineer, Public Works Department (B/R) Pendraroad, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Smt.Vinita Goutam, W/o Late Shyam Bihari Goutam Aged About 25 Years, Caste-Bramhan,
2. Hind Goutam S/o Late Shyam Bihari Goutam Aged About 2 Years (Minor) Natural guardian Mother Smt. Vinita Goutam, Both are R/o Bargawa, P.S. Marwahi, Distt. Bilaspur C.G.
3. Baba Durganath Construction Company, A-4, Contractor, R/o Bariyo, Distt. Korea C.G.
4. Dilip Kumar Kediya S/o Laxmi Kediya R/o Pendra Road, Distt. Bilaspur C.G.

---- Respondents

For State/appellants- Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

14/11/2018

Heard.

1. Instant appeal is against the order dated 17/07/2013 whereby an application under Order 9 Rule 13 CPC preferred by the appellant to set aside the judgement and decree dated 30/09/2009 passed in Civil Suit No.1-B/2007 has been dismissed.
2. Facts of the case are that a suit was filed by Vinita Goutam wife of the deceased and son Hind Goutam minor that the respondent Baba Durganath Construction Company and Dilip Kumar Kedia were granted a contract to construct a culvert/bridge over the road at the behest of respondents No.3 and 4 the Executive Engineer PWD and while carrying out the said construction, road were excavated wherein it was filled with

water and in the night deceased fell into it as there was no marking was placed on the road eventually he died. In the said civil suit respondent/State remained ex-parte and joint and several decree was passed against the construction company and the contractor and the PWD whereby the trial court directed payment of compensation of Rs.4 lakhs besides interest thereof. Subsequently when execution was filed an application under Order 9 Rule 13 CPC was filed on behalf of the Executive Engineer on the ground that State was not served with the notice and without proper service ex-parte proceeding were drawn and eventually decree was passed. Learned court below dismissed the said application. Hence this appeal.

3. Learned State counsel would submit that without notice ex-parte decree was passed. The State counsel submits that sufficient ground existed and the State should have been given opportunity to contest the case on merits.

4. Perused the record of the court below and the respective order sheet. Perusal of the record would show that an application under Order 9 Rule 13 CPC was filed by the Executive Engineer to set aside the judgement and decree dated 30/09/2009. Rest of the defendants they did not file any application. Alongwith the application to condone the delay an application under Section 5 of the Indian Limitation Act was filed. In the application under section 5 of the Indian Limitation Act it was contended that on 30/03/2010 on a execution proceeding when the SDO appeared then they discovered that ex-parte proceeding were drawn, thereafter decree was obtained. Thereafter, an application was filed to get the certified copy of the judgment and decree on 23/04/2010 which was received on 5/05/2010. Perusal of the record would show that an application was filed to set aside the judgement and decree on

14/05/2010. No sufficient reasons however has been shown as to why such delay has occurred. In the application under Order 9 Rule 13 CPC it was stated that notice of the original civil suit was not served to appear on 5/07/2007. Order sheet of the court below on 8/05/2007 reflects that notice were served through ordinary and registered post and acknowledgment was received and despite that respondents No.1 and 4 they did not appear and ex-parte proceeding were drawn and respondent No.1 was Baba Durganath Construction Company and respondent No.4 was State of Chhattisgarh through Collector and subsequent order sheet dated 5/07/2007 shows that notice issued to the respondent No.3 who filed the application under Order 9 Rule 13 CPC was served, however no body appeared as such court proceeded ex-parte. One more remaining defendant one of the contractor defendant No.2 namely Dilip Kumar Kedia was served on 24/09/2007. Prima facie it reflects that all the defendants were served simply by saying that service were not affected it cannot be accepted that no notice was served. Apparently despite the service of the notice no appearance was made. Consequently, ex-parte proceeding were drawn. It is also note worthy that out of four defendants the State have not preferred any application to set aside the ex-parte decree instead the application to set aside the decree was made by only one defendant i.e. executive engineer, though the judgement and decree was joint and several. In the result, finding of the court below dismissing the application under section 5 of the Limitation Act as also application under Order 9 Rule 13 CPC do not call for any interference. Appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

