

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 01/2014**

{Arising out of order dated 12.11.2013 passed in M.J.C. No.13/2013 by the Sixth Additional District Judge, Durg}

- Dr. Anil Khare, aged about 64 years, Son of Late Bhagwan Prasad Khare at present residence of Kamala Market, Gujarati Bazaar, District – Sagar (M.P.)

---- Appellant

Versus

- Anjul Katore, Son of Dr. S.R. Katore, aged about 30 years, Residence of 1200-3750, Tamaya Street, Apartment No.105, Phreemont California, United States of America through Dr. S.R. Katore, father of Attorney holder on behalf of plaintiff resident of 1829 near Vivekanand Nagar, New Adarsh Nagar, Durg, District – Durg (C.G.)

---- Respondent

For Appellant	:	Shri Vishnu Koshta and Shri Shobhit Koshta, Advocates
For Respondent	:	Shri Jitendra Gupta, Advocate

Hon'ble Shri Justice Thottathil B. Radhakrishnan, Chief Justice

Order on Board

29.06.2018

1. This is an appeal by the Defendant against the suit for recovery of Rs. 11,11,120/-. The suit was decreed ex-parte after failure of service of personal notice and upon subsequent service being effected through paper publication. The ex-parte decree was passed on 28.02.2008. It appears that there was a criminal complaint under the provisions of the Negotiable Instruments Act. The plea of the Appellant/Defendant was that he did not know about the ex-parte decree until 25.10.2010, when his counsel, for the first time, came to know of the existence of the ex-parte decree. On this premise, the Appellant moved to have the ex-parte decree set-aside. That application under Order 9 Rule 13 of the CPC was dismissed. Hence, this appeal.
2. Hearing the learned counsel for the Appellant and the learned counsel for the Respondent, it is seen that the Appellant/Defendant did not tender any evidence

in support of any plea which could be treated as sufficient cause for the purpose of Order 9 Rule 13 of the CPC. He did not tender oral evidence. He did not speak in Court that he was unaware of the decree and he had obtained information about the decree only in the manner pleaded by him, as noted above. He also did not testify that he had not seen the paper publication. The contention attempt to be raised by the learned counsel for the Appellant is that mandatory provisions of service of notice have not been followed. This does not hold good on the facts and materials of the case in the hand. This is a case where the defendant did not tender any evidence in support of application under Order 9 Rule 13 of the CPC. Unless he justifiably established the case that he knew about the decree only by 25.10.2010, the application for setting aside the ex-parte would be highly belated and barred by limitation since the ex-parte decree was issued on 28.02.2008. Therefore, there is no reason to hold that the trial Court had erred on facts or in law in dismissing the application to set aside the ex-parte decree.

3. In the light of the aforesaid finding, I do not find any ground to interfere with the impugned order dismissing the application under Order 9 Rule 13 of the CPC. This appeal, therefore, fails.
4. In the result, the appeal is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice