

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 928 of 2017

Rajesh Kumar Agrawal, S/o. Late Shri Ramrasal Agrawal, Aged About 63 Years, R/o. 602, Ahmedji Colony, Raipur, Chhattisgarh

---- Petitioner

Versus

1. Sanjay Agrawal, S/o. Late Shri Ramrasal Agrawal, Aged About 61 Years, R/o. Purani Basti, Baniyapara, Raipur, Chhattisgarh.
2. Asit Kumar Agrawal, S/o. Late Shri Ramrasal Agrawal, Aged About 77 Years, R/o. Ahmedji Colony, Raipur, Chhattisgarh.
3. Mangal Vinod Agrawal, S/o. Late Shri Ramrasal Agrawal, Aged About 70 Years, R/o. Baniyapara, Raipur, Chhattisgarh.
4. Smt. Kamal Agrawal, S/o. Late Shri Ramrasal Agrawal, Aged About 66 Years, R/o. Baniyapara, Raipur, Chhattisgarh.
5. Associated Bearings, Agent TSR, Darshiv Limited.
6. Hindustan Lever, Through Its Director, Agent Karvi Computer Share Pvt. Ltd.
7. Hindalco Industries Ltd., Ahura Centre, B - Wing, 1st Floor, 82, Mahakali Caves Road, Andheri, Mumbai
8. Century Enka Ltd., Through Its Director, Agent In Time Spectre Registry Ltd. C - 13, Panna Lal Silk Mills Compound, M B. S. Road, Bhandup West Mumbai 78
9. Indian Organic & Chemical Pvt. Ltd. Through Its Director, Agent - Futura Polyesters Ltd. Presently Satellite Corporate Services Pvt. Ltd. B - 302, Soni Apartment, Opposite Saint Jude High School Office - Andheri Kurla Road, Jarimari Sakinaka Mumbai – 72.
10. Strapproduct Ltd., Through Its Director, J.K. Corp. Ltd. Presently, J.K. Lakshmi Cement Ltd. Gulab Bhawan, Rear Wing, 3rd Floor, Bahadur Shah Zafar Road, New Delhi – 2, Also At Nehru House, 4. Bahadur Shah Zafar Road, Post Box No. 7057 New Delhi 110002
11. Orissa Cement Ltd., Through Its Director, Post Office Rajgangpur, Railway Station Pass, Sundargarh, Odisha.
12. National Insulated Cable Co. Ltd., Through Its Director New Nikouke Alliance Credit Ltd. Niko House, 2 Hair Street Kolkata 700001
13. Smt. Kumud Agrawal, W/o. Late Shri Ramnivaran Agrawal, Aged About 73 Years, Address Gram Ghoradi, Nadi Chowk, Mahasamund, Chhattisgarh

---- Respondents

For Petitioner : Mr. Abhishek Vinod Deshmukh, Advocate

For Respondent No.1: Mr. Sanjay Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12.11.2018

1. This petition is against the order dated 20.03.2015 whereby the application to set aside the exparte order dated 29.09.2011 was dismissed.
2. The present petition is by the defendant No.10 who was proceeded exparte. It is contended on behalf of the petitioner that on 29.09.2011 due to absence of the counsel, the petitioner suffered exparte. Subsequently, the facts came to the notice of appellant when his sister came to his house during the occasion of Bhai Duj on 18.03.2015 and disclosed the fact that the case was still pending and the counsel for the petitioner did not appear and appellant has proceeded exparte. Thereafter, immediately an application was filed on 05.04.2014 explaining the reason thereof and the learned Court below without assigning any reason simply dismissed the application only on the ground that it is delayed as filed beyond the period of limitation.
3. Learned counsel for the petitioner would submit that one opportunity may be granted to the parties and the exparte order dated 29.09.2011 may be set aside so as to contest the case on merits. It is further contended that the evidence has not yet begin and the case is still pending since 2008.
4. Learned counsel for the respondent opposes the argument and would submit that only to cause the delay, the petition has been filed.
5. Perused the documents connected with this petition including the order sheets of the Court below. It appears that on 29.09.2011 no one appears on behalf of the defendant, therefore, the Court below proceeded exparte. Subsequently, an application was filed

on 05.04.2014 whereby the reason was assigned that it disclosed by one of the defendant who was sister in the occasion of Bhai-Duj. Prima facie, it appears that the lis is in between the family members. The order dated 20.03.2015 was also perused. After going through the order and the reasons assigned, in the opinion of this Court, one opportunity may be granted to the petitioner to contest the case on merits as otherwise it would lead to further multiplicity of the petition and lis would continue for ever.

6. Under the circumstances, taking into fact that still the parties are yet to begin the evidence and no prejudice would be caused if one opportunity is granted, the exparte order dated 29.09.2011 is set aside subject to payment of cost of Rs.5000/- to the plaintiff. The trial Court shall further make all endeavour to decide the case as early as possible considering the nature of the case as it considerable delayed.
7. In view of the above, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge