

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 55 of 2018

Heera Lal Satnami, S/o. Shri Ram Dayal Satnami, Aged About 56 Years,
R/o. Village Pauwara, Tahsil Gundardehi, District Balod, Chhattisgarh.

---- Appellant

Versus

Naresh Jain, S/o. Late Pukhraj Jain, Aged About 52 Years, R/o. A - 203,
Mahaveer Lake View, Bandha Talab, Ganjpara, Tahsil & District Durg
Chhattisgarh.

---- Respondent

For Appellant : Mr. P. Chetan Kumar, Advocate

For Respondent : Mr. T.K.Jha, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.10.2018

1. This appeal is against the dismissal of an application under Order 9 Rule 13 of C.P.C. read with Section 5 of the Indian Limitation Act.
2. It has been contended on behalf of the appellant that an exparte decree was passed on 15.07.2016 against the appellant. It is submitted that on the date when the alleged service of summons was issued, the appellant was undergoing treatment for his burn injury, as such, he was unable to attend the Court. It is further stated that subsequently the appellant met with the respondent wherein some settlement was arrived at initially; consequently, some delay had occurred but eventually the settlement could not take place as such delay has occurred, which is bonafide.
3. Learned counsel for the appellant referred to the medical documents filed along-with the application under Order 9 Rule 13 of C.P.C. read-with Section 5 of the Indian Limitation Act and would submit that bonafide reasons existed in favour of the

appellant and one chance may be afforded under the facts of this case to contest the case on merit.

4. Per contra, learned counsel for the respondent vehemently opposes the same and would submit that despite knowing all the facts that he has been proceeded exparte, an application to set aside the judgment and decree was preferred on 19.06.2017, as such, neither the application is bonafide nor sufficient reasons have been assigned to set aside the judgment and decree, therefore, the appeal has no merit and is liable to be dismissed.
5. Heard learned counsel for the parties and perused the record of the Court below.
6. Perusal of the record would show that on 25.02.2016, the appellant /plaintiff proceeded exparte in a recovery suit filed by the respondent. The exparte proceeding was drawn on the basis of the report of the post office wherein envelop came back with an endorsement that, he refused to accept the notice. The record would reveal though the ordinary notice was also issued to the appellant, however, the service report of such notice is not on the file. It is only on the basis of the post-master report, the exparte proceeding has been drawn. Subsequently, the application under Order 9 Rule 13 of C.P.C. read with Section 5 of the Indian Limitation Act was preferred by the appellant on 19.06.2017. The reason assigned in the application to condone the delay states that he came to know of the judgment and decree first time on 23.04.2017, thereafter, he contacted his counsel and applied for the certified copy on 24.03.2017 and had received the copy on 27.05.2017. Thereafter, the application to set aside the judgment and decree was passed. The certified copy of the judgment and

decree dated 15.07.2016 which was filed alongwith the application under Order 9 Rule 13 of C.P.C. also fortifies the same fact. Along with the application, the appellant had also preferred certain document, which shows that he suffered burn injury and was under treatment and the treatment papers shows that it continues from 15.01.2016 till 06.04.2016. Apparently, it appears that the appellant had suffered burn injury and he was under treatment prima facie finds support from the document. Considering the nature of this case and the ground which has been projected, in the considered opinion of this Court, no exorbitant delay has been shown and while evaluating & balancing the reasons assigned, one opportunity is required to be given to contest the case on merit.

7. Accordingly, the appeal is allowed. The exparte judgment and decree dated 15.07.2016 is set aside subject to payment of a cost of Rs.1000/- to the respondent.

Sd/-
(Goutam Bhaduri)
Judge