

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 105 of 2018**

Pardeshi Gond, aged about 70 years, S/o Suklal Gond, resident of village and post Bitkula, via, Baloda, Tahsil-Masturi, District – Bilaspur (C.G.) (non-applicant No.1/plaintiff)

----Applicant

Versus

1. Phul Singh Binjhar, S/o Ramesh Singh, aged about 59 years, resident of village – Uslapur, Post- Dhaniya, via. Baloda, District Bilaspur (C.G.)

(Appellant/defendant No.1)

2. State of Chhattisgarh, through District Magistrate, District Bilaspur (C.G.) (Non-applicant No. 2)

---- Respondents

For Applicant : Shri Sunil Tripathi, Advocate.
For Respondent No. 2/State : Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/09/2018

1. The trial Court passed an ex parte judgment & decree in favour of applicant/plaintiff on 09.5.2008. Questioning the ex parte judgment & decree, respondent No.1/defendant filed an application under Order 9 Rule 13 of the Code of Civil Procedure (for short "CPC") along with application under Section 5 of the Limitation Act for setting aside ex parte order. That application was rejected by the trial Court by 21.11.2016,

2. The respondent No. 1/defendant preferred miscellaneous appeal thereagainst. The Misc. Appellate Court, by its impugned order, allowed the appeal and the delay in filing the same has been condoned and application under Order 9 Rule 13 of the CPC has been allowed subject to payment of cost of Rs.5,000/- to the applicant/plaintiff. Questioning that order, this civil revision under Section 115 of the Code of Civil Procedure has been preferred.

3. Learned counsel for the applicant would submit that the first appellate court has committed grave legal error in condoning the delay in filing the application and thereby allowing application under Order 9 Rule 13 of the CPC for setting aside the ex parte order, which is liable to be set aside. He placed reliance upon the judgment of the Supreme Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another**¹ in support of his submissions.

4. I have heard learned counsel appearing for the applicant and perused the order impugned with utmost circumspection.

5. True it is that ex parte judgment & decree was passed on 09.05.2008 in favour of the applicant/plaintiff; and application for setting aside the ex parte judgment and decree along with application under Section 5 of the Limitation Act was filed by respondent No. 1/defendant on 1.10.2014.

6. The first appellate Court has considered the matter threadbare and given elaborate reasons to hold that sufficient cause has been shown for delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure and also took note of the decision of the Supreme Court in the matter of **M.K. Prasad v. P. Arumugam**², in which Hon'ble Supreme Court has held that while considering an application under Order 9 Rule 13 of the CPC, beside sufficient cause, other factors such as extent and nature of suit property, stake of the parties are needed to be taken into account.

7. In the matter of **N. Balakrishnan Vs. M. Krishnamurthy**³, their Lordships of the Supreme Court held as under:

“9.....Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior

1 (2010) 5 SCC 459

2 (2001) 6 SCC 176

3 (1998) 7 SCC 123

court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.....”

8. Having heard learned counsel appearing for the petitioner and having regard to the facts and circumstances of the case and in view of the principle of law laid down by the supreme Court in the above-stated matter **N. Balakrishnan (Supra)**, in the considered opinion of this Court that the appellate Court has passed the reasoned order by holding that sufficient cause has been shown for delay in filing the application under Order 9 Rule 13 of the Code of Civil Procedure and thereby allowing the application under Order 9 Rule 13 of the CPC for setting aside the *ex parte* order further finding sufficient cause for not appearing when the suit was called up for hearing, in which I do not find any illegality or perversity warranting interference by this Court in its revisional jurisdiction.

9. Thus, civil revision, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

