

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 439 of 2017

1. Jokhu S/o Feku Aged About 68 Years, Cast Panika, Village Kudar, P. S. Dhourpur, Tahsil Lundra District Surguja Chhattisgarh., Chhattisgarh
2. Rudranath, S/o Feku, Aged about 63 years, Cast Panika, Village Kudar, P. S. Dhourpur, Tahsil Lundra District Surguja Chhattisgarh.

---- Petitioners

Versus

1. Jila Sahakari Bhoomi Vikas Bank Maryadit Through Branch Manager, Jila Sahakari Bhoomi Vikas Bank, Maryadit Nawapara, Ambikapur District Surguja Chhattisgarh., Chhattisgarh
2. Sub Registrar, Sahakari Samiti Ambikpur, District Surguja Chhattisgarh. , District : Surguja (Ambikapur), Chhattisgarh
3. Vanshi, S/o Shivbalak, Aged About 53 Years, Cast Ahir, R/o Village Kudar, P. S. Dhourpur, Tahsil Lundra, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
4. Rajkumar, S/o Shivbalak, Aged about 50 years, Cast Ahir, R/o Village Kudar, P. S. Dhourpur, Tahsil Lundra, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
5. Anup S/o Shivbalak, Aged about 47 years, Cast Ahir, R/o Village Kudar, P. S. Dhourpur, Tahsil Lundra, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
6. Shyamlal Gupta S/o Ramnath Gupta, Aged About 58 Years, R/o Nagar Gudri Chouk, Ambikapur, P. S. and Tahsil Anmbikapu, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
7. State of Chhattisgarh, Through The Collector, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
8. Gosai S/o Devlal, Aged About 56 Years, Cast Ahir R/o Village Kudar, P. S. Dhourpur, Tahsil Lundra, District Surguja Chhattisgarh. , District : Surguja (Ambikapur), Chhattisgarh
9. Kunwar Sai, S/o Goma, Cast Nagesiya, R/o Village Amdi, Tahsil Lundra, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

----Respondents

For Petitioners – Shri Anand Shukla, Advocate.

For Respondents 3 to 6 and 8, 9 – Shri Dashrath Prajapati, Advocate.

For State/respondent No.7 – Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-11-2019

1. This petition has been brought being aggrieved with the order dated 21-02-2017 passed by the Court of Third Additional District Judge Ambikapur,

Surguja in Misc. Civil Appeal No.22/2016.

2. It is submitted that the petitioners had filed a civil suit against the respondents praying for reliefs of declaration and permanent injunction. The suit was dismissed for non-prosecution on 12-05-2000 as neither the petitioners nor their counsel were present on that date. The petitioners were unaware of the dismissal of the suit for the reason that the petitioners belong to poor class and they had been out of station for earning livelihood. They were also not informed by the counsel about dismissal of the suit. The plaintiffs/petitioners came to know about the dismissal in the year 2015 when they enquired about the status of the case and thereafter an application was filed by them under Order 9 Rule 9 of the CPC before the trial Court. The trial Court dismissed the application by order dated 25-07-2016 in Misc. Civil Case No.22A/2015 on the ground that filing of the application was delayed by 15 years. This order was challenged in Misc. Appeal No.22/2016, but the appellate Court has also dismissed the appeal on the same ground. Hence, this petition.

3. It is submitted that the petitioners are claiming for their valuable right in the civil suit and because they are illiterate, ignorant and had been out of station for years for earning livelihood they should not be made to suffer for these reasons.

Reliance has been placed on the judgment of Hon'ble the Supreme Court delivered in the matter of **Ram Nath Sao Alias Ram Nath Sahu and others Vs. Gobardhan Sao and others**, (2002) 3 SCC 195, in which Hon'ble the Supreme Court has held that expression "sufficient cause" should be given a liberal construction so as to advance substantial justice.

Relying upon the judgment of Hon'ble the Supreme Court delivered in the matter of **Imrat Lal and others Vs. Land Acquisition Collector and others**, (2014) 14 SCC 133 it is submitted that Hon'ble the Supreme Court has held that judicial notice should be taken of the fact that villagers in our country

are by and large illiterate and are not conversant with the intricacies of Law.

Further, relying on the judgment of this Court delivered in **M.A.No.1002/2006** (Smt. Preetam Kaur Vs. Nagar Palika Parishad Pithaura) on 01-10-2013 it is submitted that it had been duty of the lawyer to attend proceedings after being appointed by the petitioners. Therefore, it is prayed that the petition be allowed.

4. Learned counsel appearing for the State/respondents 1 and 2 opposes the submission made and submits that there is inordinate delay of 15 years which is needed to be explained by the petitioners, therefore, it is a case of gross negligence, they there is no error committed by the Courts below.

5. Learned counsel for private respondents submits that the delay of 15 years in filing the application for restoration of the civil suit has not been explained by the petitioners satisfactorily. Therefore, there is nothing to suggest that the petitioners had sufficient cause for their non-appearance on the date when the suit was called for hearing.

Reliance has been placed on the judgment of Hon'ble the Supreme Court delivered in the matter of **B. Madhuri Goud Vs. B. Damodar Reddy**, 2012 (12) SCC 693 submitting that it was held by Hon'ble the Supreme Court that the Court can vindicate rights of the litigants when there is no unreasonable delay. It was also held that sufficient cause as mentioned in Section 5 of the Limitation Act, 1963 has to be meaningful and any vague statement cannot be entertained. Hence, it is prayed that this petition does deserve to be allowed.

6. Heard learned counsel for the parties and perused the documents.

7. There is no denial that the application for restoration of the civil suit was brought after delay of 15 years. The judicial pronouncements speak of liberal construction to be given to the expression 'sufficient cause'. The sufficient

cause that is mentioned in Order 9 Rule 9 of the CPC is related to the cause of non-appearance only which can be considered liberally, but the petitioners in this case had also to explain the delay of 15 years in bringing the application for restoration of the civil suit, for which the only reason given is that the petitioners had been out of station to earn livelihood. Apart from that on perusal of the copy of the application filed under Order 9 Rule 9 of the CPC and Section 5 of Limitation Act filed before the trial Court, it is not found that therein nowhere mentioned that the petitioners had been out of station for earning livelihood. Hence, in this particular case where there is huge delay in bringing the application for restoration of the civil suit, the delay had to be explained satisfactorily as required under Section 5 of the Limitation Act, any liberal construction cannot be given much expansion so as to ignore the number of years when the petitioners never attempted to learn about the fate of the case filed by them either from the Court or from the counsel engaged by them. It is admission of the petitioners themselves that they enquired about the status of the case after passing of 15 years which shows the gross negligence on their part, such negligence cannot be ignored or condoned and condonation of such delay would certainly frustrate the purpose of the provisions of Law which have been made to take care of the parties who are not vigilant with respect to their litigation. Therefore, I am of this opinion that the trial Court as well as the appellate Court have not committed any error and no relief can be granted to the petitioners in this petition. Therefore, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge