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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.04 of 2019**

1. Smt. Bhagtin Bai Wd/o Ram Narayan Aged About 70 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
2. Tribhuvan S/o Late Ram Narayan Aged About 47 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
3. Khagesh S/o Late Ram Narayan Aged About 45 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
4. Rewti Bai D/o Late Ram Narayan Aged About 42 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
5. Kunti Bai D/o Late Ram Narayan Aged About 34 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
6. Vishnu Kumar S/o Late Ram Narayan Aged About 37 Years By Caste- Agariya, R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
7. Kushal Singh S/o Late Dukhram Gond Aged About 40 Years R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
8. Dilip Singh S/o Late Dukhram Gond Aged About 38 Years R/o- Jawalpur, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.

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1. Ram Ratan S/o Late Ghasiram By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
2. Bhagat Ram S/o Late Ghasiram Aged About 57 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
3. Budhar Bai W/o Late Ishwar Prasad Aged About 52 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
4. Kamlesh Kumar S/o Late Ishwar Prasad Aged About 34 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
5. Vijay Laxmi D/o Late Ishwar Prasad Aged About 28 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
6. Lallu S/o Late Ishwar Prasad Aged About 20 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.

7. Kali Charan S/o Ghasiram Aged About 42 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
8. Kanti Kumar S/o Late Ishwar Prasad Aged About 26 Years By Caste Bind, Residents Of Village Jawalpur Para, Nagpura, Tahsil Baloda, District- Janjgir-Champa, Chhattisgarh.
9. State Of Chhattisgarh Through- District Collector, Janjgir-Champa, Chhattisgarh.

---- Respondents

 For the appellants : Shri Somnath Verma, Advocate
 For respondent No.9 : Shri Ishwar Jaiswal, Panel Lawyer
 For other respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

02.9.2019

1. This miscellaneous appeal is preferred under Section 104 read with Order 43 Rule 1(T) of the Code of Civil Procedure, 1908 against order dated 14.11.2018 passed in Misc. Civil Case No.16/2018 by the District Judge, Janjgir-Champa wherein the said Court dismissed the application filed under Section 5 of the Limitation Act, 1963 and consequently, appeal No.7A/2004 was dismissed.

2. A civil appeal was filed before the Court of District Judge, Janjgir Champa against judgment and decree dated 29.12.2003 passed by First Civil Judge Class-II, Janjgir in Civil Suit No.162A/02. The appeal was fixed for hearing on 26.4.2006. On that day, the appellant did not appear and no application for restoration of the said appeal was filed by the appellant for more than 12 years. A writ petition under Section 227 of the Constitution of India was filed before this Court which was

registered as WP(227) No,295/2018. This Court directed to file application before the First Appellate Court for consideration. An application under Section 5 of the Limitation Act was filed before the first appellate Court for condonation of delay and another application under Order 41 Rule 19 read with Section 151 of CrPC was also filed. Application under Section 5 of the Limitation Act was dismissed by the said Court on the ground that no sufficient reason is assigned for delay of more than 12 years.

3. Now the question for consideration before this Court is whether sufficient reason was assigned for delay of more than 12 years. Undisputedly, the appellant was the party before the trial Court and the appeal was filed by him. The case was fixed for calling the record on 26.4.2006 but no one appeared before the trial Court that is why the case was dismissed for want of prosecution.

4. It was the duty of the appellant to get the information regarding progress of the appeal but that is not done in the case. No application was filed before the said Court for restoration of the appeal till the year 2018. A petition was filed before this Court as mentioned above and this Court directed to submit the application before the First Appellate court. The appellant was under obligation to make conscious efforts regarding the progress of the case, but it appears that he was not serious in prosecuting the case in question. It may be said that the appellant did not acted diligently and he was negligent on his part for not conducting the case. It is settled law that a party who at fault cannot be benefited

for his own fault. In view of the above, this Court has no reason to record a view contrary to the finding recorded by the trial Court.

5. Accordingly, the appeal is liable to be and is hereby dismissed at the motion stage itself.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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