

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.458 of 2018**

Future Generally Insurance Company Limited, Through : Its Legal Manager, Shop No.3, II Floor, Maruti Business Park, G.E. Road, Raipur, Tahsil & District Raipur (CG)

---- Petitioner**Versus**

1. Smt. Ilisaba Kujur W/o Emil Kujur, aged about 49 years, Occupation Agriculturist,
2. Uttam Kujur S/o Emil Kujur, Occupation Agriculturist,

Both are R/o Vilage Bandarchua, Tahsil Kunkuri, District Jashpur (CG)

3. Shamser Hussain S/o late Shabbir Hussain, aged about 34 years,
4. Shahzad Hussain, S/o Late Shabbir Hussain, aged about 26 years,

Both are by caste Muslim, R/o Village Bandega, P.S. Bandega, District Sundargarh, (Odisha), Presently R/o Bandarchua Chowki Dokda, Tahsil Kunkuri, District Jashpur (CG)

---- Respondents

For Petitioner	:	Mr.Sourabh Sharma and Mr.Tarkeshwar Nande, Advocates
For Respondents No.1&2	:	Mr.Govind Dewangan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****11.01.2019**

1. By the impugned order, the petitioner's application under Order 9 Rule 13 of the CPC has been rejected by the trial Court, against which, this writ petition has been preferred.
2. Learned counsel for the petitioner would submit that the Claims Tribunal is absolutely unjustified in rejecting the application under Order 9 Rule 13 of the CPC as sufficient cause was shown by the

petitioner for not appearing on 29.6.2016 when the case was called out for hearing.

3. On the other hand, learned counsel for respondents No.1 and 2 would support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order and other documents.
5. In a claim case preferred by the claimants, the petitioner/insurance company was noticed, the petitioner was represented through its counsel and thereafter the petitioner's counsel regularly appeared till 29.6.2016. On 29.6.2016, no one appeared on behalf of the petitioner and the petitioner proceeded ex-parte and ultimately on 8.7.2016, ex-parte award was passed. On 31.8.2016 the petitioner filed an application under Order 9 Rule 13 for setting aside ex-parte award stating inter-alia that on 29.6.2016 the petitioner's counsel was busy in other Court, therefore, she could not be appeared, which has not been accepted by the Claims Tribunal and rejected the application under Order 9 Rule 13 of the CPC by the impugned order.
6. Order 17 Rule 2(c) of the CPC provides the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment. The petitioner company cannot raise a ground that since his counsel was busy in other Court, the decree passed ex-parte be set aside.
7. In view of that, I do not find any perversity or illegality in the finding

recorded by the Claims Tribunal in rejecting the application under Order 9 Rule 13 of the CPC. Accordingly, the writ petition deserves to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-