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HIGH COURT OF CHHATTISGARH, BILASPUR**C.R No.62 of 2019****Reserved on 18.10.2019****Pronounced on 23.10.2019**

Guruvinder Pal Singh Juneja S/o Late Preetam Singh Juneja Aged About 57 Years R/o Sale Tax Colony, Raipur House No. 10, Amaltash Classic, Tahsil And District Raipur Chhattisgarh. ---(Plaintiff), District : Raipur, Chhattisgarh

---- Applicant**Versus**

1. Smt. Anita Jain W/o Ashok Kumar Jain Aged About 46 Years R/o House No. 11, State Bank Colony, Fafadih, Raipur Tahsil And District Raipur Chhattisgarh. ---(Defendants), District : Raipur, Chhattisgarh
2. Smt. Pinky Jain W/o Indarchand Jain Aged About 41 Years R/o 12/602, Ashoka Ratna, V.I.P. State, Khamhardih, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Smt. Nirmala Jain W/o Shri Jambu Kumar Jain Aged About 39 Years R/o 14/501, Ashoka Ratna, V.I.P. State, Khamhardih, Tahsil And District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Ashok Kumar Jain S/o Danmal Jain Aged About 50 Years R/o House No.11, State Bank Colony, Fafadih, Raipur, Tahsil And District Raipur Chhattisgarh, At Present Shown In The Order At 16, Near Old Jachcha Khana, Ward No. 9, Tahsil Todray Singh, Tok, Tadaraysinghpura, Tok Rajasthan., District : Tonk, Rajasthan
5. State Of Chhattisgarh Through Collector, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----Non-Applicants

For Applicant:	Shri Sunil Tripathi, Advocate.
For Non-Applicants No.1 to 4:	Shri Atul Kesarwani on behalf of Shri Vivek Ranjan Tiwari, Advocates.
For Non-Applicant No.5/State:	Shri Rahim Ubwani, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
C A V Oder/Judgment

1. This Revision Petition has been preferred by the Plaintiff under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 27.04.2019 passed by the 7th Additional District Judge, Raipur (CG) in M.J.C No.47/2019 by which learned

Trial Court has allowed the application for condonation of delay filed under Section 5 of the Indian Limitation Act, 1963 (for short 'the Act of 1963') in filing the application for setting aside the *ex parte* judgment and decree under Order 9 Rule 13 of the CPC. The parties to this Revision shall be referred hereinafter as per their description in the Court below.

2. Briefly stated, the facts of the case are that the Plaintiff has instituted a suit claiming declaration to the effect that the registered deed of sale dated 30.03.2013 executed by him in favour of the Defendants be declared as null and void and also claiming injunction restraining them from interfering in his peaceful possession. The suit was registered as Civil Suit No.199-A/2015 and was decreed *ex parte* on 02.07.2016.

3. Being dissatisfied, an application enumerated under Order 9 Rule 13 of the CPC for setting aside the said *ex parte* judgment and decree was made by the Defendants on 04.09.2018 along with an application for its condonation of delay as provided under Section 5 of the Act of 1963 supported by an affidavit of one Manoj Jain. It is alleged in the application that the summons of the suit was never served upon them and came to know about the delivery of the said *ex parte* judgment and decree through said Manoj Jain when the photocopy of the same was provided to him by the Plaintiff before the revenue authorities on 08.08.2018. It is stated further that immediately upon knowing the said fact, they applied for obtaining the certified copy of the same on 09.08.2018 and in pursuance thereof, it was delivered on 25.08.2018 and then only they came to know about the delivery of the said *ex parte* decree.

4. After considering the said application for condonation of delay in filing the application for setting aside the said *ex parte* judgment and decree, it was allowed by the Trial Court by the order impugned, which has been questioned

by the Plaintiff by way of filing this Revision Petition.

5. Shri Sunil Tripathi, learned Counsel for the Applicant submits that the order impugned as passed by the Trial Court condoning the delay in filing the application for setting aside the said *ex parte* judgment and decree even without issuing notice and that by considering the affidavit of one Mr. Manoj Jain, who was even not the party in the matter, is apparently contrary to law. The order impugned is therefore, liable to be set aside. In support, he placed his reliance upon the decision rendered in the matter of Ram Lal Kapur & Sons (P) Ltd. vs. Ram Nath & Others reported in **A.I.R 1963 SC 1060**.

6. On the other hand, learned Counsel appearing for Non-Applicants No.1 to 4 supported the order impugned.

7. I have heard learned Counsel for the parties and perused the entire papers annexed with this Petition carefully.

8. A suit for declaration to the effect that the alleged registered deed of sale be declared as null and void along with the relief of injunction was made by the Plaintiff, which was registered as Civil Suit No.199-A/2015. Summons of it was directed to be issued on 21.08.2015, which was returned unserved with an endorsement that the Defendants have left the said place and have gone somewhere else. Fresh summons of the suit was therefore directed to be issued while fixing the case on 14.12.2015 and on the said date, i.e. on 14.12.2015, an application under Order 5 Rule 20 of the CPC for effecting substituted service upon the Defendants through daily newspaper was made and after considering the said application, it was allowed on 28.01.2016 while fixing the case on 10.03.2016. The summons of the suit for substituted service upon the Defendants for their appearance on the said date was made in daily newspaper "*Nayi Duniya*". It appears further from the averments made

in the said application that the Presiding Officer was on leave on 10.03.2016 and accordingly, the matter was directed to be placed on 15.03.2016 for which, no summons was issued. On 15.03.2016, the Defendants were treated *ex parte* and the *ex parte* judgment and decree was delivered on 02.07.2016.

9. From bare perusal of the above, it appears that the summons of the suit was not served upon the Defendants and alleged to have been served through paper publication under Order 5 Rule 20 of the CPC. It appears further that the Defendants came to know regarding the delivery of the said *ex parte* judgment and decree on 08.08.2018 through one of their relatives Mr. Manoj Jain, when he appeared before the revenue authorities on their behalf for obtaining the revenue papers mutated in their favour, where a photocopy of the said *ex parte* judgment and decree was produced by the Plaintiff. Immediately on the next date, i.e. on 09.08.2018, an application was made for obtaining the certified copy of the same and in pursuance thereof, it was delivered on 25.08.2018.

10. The Defendants have thus come to know about the passing of the said *ex parte* judgment and decree on 25.08.2018 and within a period of 30 days from its knowledge, an application for setting aside the *ex parte* judgment and decree was made on 04.09.2018.

11. Based upon the aforesaid facts, a question which, therefore, arises for determination is as to what would be the starting point of limitation for filing an application under Order 9 Rule 13 of CPC for setting aside the said *ex parte* judgment and decree.

12. In order to consider the aforesaid question, it is necessary to examine the provisions prescribed under Article 123 of the Act of 1963 which reads as under:-

123	To set aside a decree passed ex parte or to re-hear an appeal decreed or heard <i>ex parte</i>	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree
	Explanation.- For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.		

13. In terms of aforesaid provision, an application for setting aside the *ex parte* judgment and decree can be filed within 30 days from the date of the decree, but where the summons or notice was not served, it can be filed within 30 days from the date of knowledge of the decree. The explanation inserted in the 1st Column of the aforesaid Article laying down clearly that for the purpose of this Article, substituted service under Order 5 Rule 20 CPC shall not be deemed to be the due service.

14. Reverting back to the case in hand, while keeping the aforesaid Explanation in mind and after examination of the order sheets of the Trial Court, it appears that while allowing the Plaintiff's application under Order 5 Rule 20 CPC on 28.01.2016, the Trial Court had directed the Plaintiff to get the notice published in the local newspaper "*Nayi Duniya*" while fixing the case for 10.03.2016 and thereafter, on the said day i.e. on 10.03.2016, the Presiding Officer was on leave and the matter was directed to be placed on 15.03.2016, for which, no summons was issued. Be that as it may, the Defendants were proceeded *ex parte* on the said date, i.e. on 15.03.2016, when they did not turn up despite the said publication. In such circumstances, particularly, when the Defendants were served through substituted service under the said

provision, it cannot be held based upon the said Explanation that the Defendants were duly served in the said suit so as to calculate the period of 30 days from the date of the said *ex parte* decree.

15. The aforesaid observations of mine are fortified by the principles laid down by the Supreme Court in the matter of C.K. Lokesh vs. P.E. Panduranga Naidu, reported in **(1996) 11 Supreme Court Cases 353**, wherein, in a similar situation, it has been observed at paragraph-5 as under:-

“5. It is contended by Shri Sampath, learned Counsel for the respondent, that the respondent had taken all the steps available under Order 5 CPC including of effecting service through substitute service under Rule 20-A, Order 5 CPC. Therefore, the Court was right in setting the appellant *ex parte* and passing the *ex parte* decree. The learned District Judge after going through the entire material on record came to the above conclusion that the appellant had not been served with a notice and, therefore, he was entitled to file the application under Article 123 of the Schedule of Limitation Act, which is 30 days from the date of knowledge. Accordingly, the application came to be filed, though belated by 2015 days. Under these circumstances, the learned District Judge was right in holding that the appellant had filed the application to set aside the *ex parte* appeal within 30 days from the date of knowledge.”

16. It is, thus, clear based upon the aforesaid observation vis-a-vis the Explanation provided to Article 123 that the period of limitation would commence from the date of knowledge of the decree when Defendants are served under Order 5 Rule 20 of the CPC. The Applications, for setting aside the said *ex parte* judgment and decree, were made by the Defendants on 04.09.2018 immediately upon knowing the said fact on 25.08.2018 when certified copy of it was delivered to them. The applications have, thus, rightly

been made within a period of 30 days for setting aside the said *ex parte* decree from the date of knowledge of the decree as provided under Article 123 of the Act of 1963. In such an eventuality, the application filed within the period of 30 days from the date of knowledge of the decree cannot be held to be barred by limitation.

17. As regards the contention of Shri Tripathi, learned Counsel for Non-Applicants No.1 to 4 based upon the decision rendered in the matter of C.K. Lokesh vs. P.E. Panduranga Naidu (*supra*) that before condoning the delay in filing the application for setting aside the *ex parte* judgment and decree, the trial Court should have first issued the notice and after affording opportunity of hearing, the order impugned ought to have been passed, is however noted to be rejected as the Defendants were not duly served with the summons of the suit, as found herein above, and the alleged applications of theirs were found to be made within the period of limitation prescribed in third column of Article 123 of the Act of 1963.

18. Consequently, I do not find any infirmity in the order impugned, though on different observations, so as to call for any interference.

19. The Revision Petition is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge