

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 641 of 2019**

Kishore Kumar Agrawal, S/o- Ramchandra Agrawal, Age-50 years,
Occupation – Business, R/o- Station Chowk, Civil-Revenue Distt.-
Raigarh (C.G.)

--- Petitioner/Defendant No. 1**Versus**

1. Mahesh Garg, S/o- Subhash Garg, Age-32 years,
2. Avinash Garg, S/o- Subhash Garg, Age -31 years.
3. Kamal Garg, S/o – Gopiram Garg, Age-42 years.
4. Vimal Garg, S/o Gopiram Garg, Age-44 years.

Respondents No. 1 to 4 all occupation – Business, R/o – Kharsiya,
Tahsil & P.S. - Kharsiya, Distt. - Raigarh (C.G.)

..... Plaintiffs

5. Veer Singh Yadav, S/o Not Known, Occupation – Tractor
Owner/driver, R/o – village – Muraripali, Tahsil & Distt. - Raigarh
(C.G.)
6. Executive Director, M/S Jindal Steel and Power Ltd. Patrapali, Tahsil
& Distt.- Raigarh (C.G.)
7. State of Chhattisgarh, Through- Collector, Raigarh, Tahsil & Distt.
Raigarh(C.G.)

.....Defendants

---- Respondents

For Petitioner : Mr. Amit Sharma, Advocate.
For Respondent No. 7/State : Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****21/08/2019**

(1) By the impugned order dated 15.07.2019, application under Order 9 Rule 9 of the

Code of Civil Procedure (henceforth “CPC”) has been allowed and the suit has been directed to be restored to its original number for hearing and disposal in accordance with law.

(2) Learned counsel appearing for the petitioner/defendant No. 1 would submit that the civil suit filed by the plaintiffs was dismissed 5.2.2018 for want of prosecution, thereafter the plaintiff filed an application for restoration of the civil suit on 12.03.2018, which was filed after 30 days of the period of limitation as prescribed in Article 122 of the Limitation Act, 1963 and, therefore, the application could not have been entertained that too without application for condonation of delay in filing the civil suit invoking Section 151 of the Code of Civil Procedure. He placed reliance upon the judgment of the Supreme Court in the matter of **Vinod Seth v. Devinder Bajaj and another**¹ in support of his submissions.

(3) I have heard learned counsel the petitioner at length, considered his submissions and went through the record with utmost circumspection.

(4) The plaintiff's suit was dismissed on 05.02.2018 for want of prosecution. According to the plaintiff, he came to know about the dismissal of the civil suit on 01.03.2018; he applied for certified copy of the aforesaid order on 08.03.2018 and obtained the same on 08.03.2018 and, thereafter, he filed an application for restoration of the civil suit on 12.03.2018.

(5) Learned District Judge, by its impugned order, has allowed the restoration application by condoning the delay of 5 days in filing the suit. True, it is that application for condonation of delay has not been filed by the plaintiffs, it ought to have been filed by the plaintiffs but on the basis of the cause shown, learned District Judge proceeded

1 (2010) 8 SCC 1

to consider the application for restoration of suit and granted the application finding that sufficient cause has been shown in not appearing in the case when the case is called out for hearing on 5.2.2018.

(6) It is also true that inherent power cannot be invoked into when there is express provision for condonation of delay is available in the statute.

(7) Taking into consideration the fact that plaintiff filed a civil suit on 04.08.2010 and there is only 5 days delay in filing the application , which the learned District Judge has considered to be condonable and exercised the discretionary power available with him for condoning the delay and restoring the suit holding that sufficient cause was shown for no appearing, when the suit was called up for hearing, I do not consider it to be a fit case to interfere with the discretionary power exercised by the trial Court by condoning the delay in filing the application for restoration and restoring the suit in its original number in accordance with law in jurisdiction under Article 227 of the Consitution of India.

(8) In view of above, the writ petition, being devoid of merit, is liable to be and is hereby dismissed. However, the trial Court is directed to consider and decide the suit expeditiously preferably within a period of three months from the date of receipt of certified copy of this order as it was instituted on 4.8.2010.

(9) A copy of this order be sent to the trial Court for compliance and needful.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

