

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 902 of 2019

1. Smt. Alo Chodari W/o Late Makhan Lala Chodari Aged About 68 Years
2. Anjan Chodari S/o Late Makhan Chodari Aged About 38 Years
3. Smt. Sampa Tirpathi W/o A.P. Tirpathi Aged About 45 Years
4. Smt. Dipa Ray W/o Shri Mihir Ray Aged About 43 Years

(All are r/o Village - Plot No. 462, Matri Villa, Ward No. 07, Amrayapara, Korba Block, Tehsil And Distt Korba Chhattisgarh)

---- Petitioners

Versus

1. Bharat Aluminium Company Ltd. Through Managing Director, Balco Nagar, Block And Distt Korba Chhattisgarh
2. Chhattisgarh Government Through Collector, Distt.- Korba Chhattisgarh

---- Respondents

For Petitioners : Mr. Sanjay Patel, Advocate.

For Respondent No.2/State : Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-11-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 04.03.2015 by which the application of the petitioner under Order 22 Rule 9 of C.P.C. along with application under Section 5 of Limitation Act was dismissed. The petitioners are also aggrieved by the order dated 06.09.2019 passed by the trial Court in Miscellaneous Civil Appeal No.13/2016 by which the order of the trial Court passed in Miscellaneous Civil Case No.07/2015 dated 16.02.2016 was upheld.
2. Learned counsel for the petitioner submits that the sole plaintiff in the Civil Suit has expired on 20.08.2010 in Korba. The petitioners are wife and Children of the deceased- Makhan Lal Chaoudhary, who used to

reside in Kolkata. As the petitioner No.1 was undergoing treatments for quite long time, therefore, she was unable to present application within the limitation and this delay has occurred also on account of her ignorance. When the application under Order 22 Rule 3 of C.P.C. along with application under Section 5 of Limitation Act was filed before the trial Court, then applications were arbitrarily rejected vide order dated 04.03.2015, because the application that was filed not mentioning the provisions under Order 22 Rule 9 of C.P.C. Subsequent to that, application was filed under Order 22 Rule 9 of C.P.C. for setting aside abatement of the Civil Suit which was dismissed by the learned trial Court on 16.02.2016. This order was challenged before the Appellate Court in Miscellaneous Civil Appeal No. 13/2016, which has been again rejected arbitrarily without appreciating the facts, circumstances and the law applicable. Therefore, it is prayed that petitioners be granted relief.

3. Learned counsel for the State/respondent No.2 makes formal objection.
4. After perusal of the order dated 04.03.2015, 16.02.2016 and 06.09.2019, it is found that the application for substitution of legal representatives of plaintiffs has been firstly rejected by the trial Court only on a technical ground. The prayer was made by the petitioners in their application under Section 5 of Limitation Act mentioning the reason of delay which was also supported with affidavit. The requirement of prayer to be made under Order 22 Rule 9 of C.P.C. is only to this extent that after appearing before the Court, the party has to explain that in what manner he was prevented by any sufficient cause from continuing the suit. The Sub Rule 3 of the Order 22 Rule 9 of C.P.C. very clearly provides that Section 5 of Indian Limitation Act, 1877 shall be applicable in this case. Therefore, the trial Court, while firstly deciding the application, should have considered the application under Section 5 of

Limitation Act as an application for setting aside abatement under Order 22 of Rule 9 of C.P.C. without taking the technical approach. Therefore, the misquoting of any legal provision in the application by itself cannot be made a ground for the parties to suffer. Therefore, I am of this opinion that the orders passed by denying to set aside the abatement by the Court below are erroneous and against the principle of law. Therefore, all the impugned orders concerned are set aside along with the abatement in Civil Suit No.29A/2014 is also set aside and the application under Order 22 Rule 3 of C.P.C. is allowed and the petition is disposed off at motion stage. Petitioners are directed to give appearance before the trial Court on 22nd of January, 2020.

5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika