

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 833 of 2019

- Surendra Kumar Mishra S/o Late Madan Gopal Mishra, Aged About 75 Years, R/o Gondpara, Bilaspur, Tahsil and District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Vinod Rai Tripathi S/o Late Nanalal Mahashankar Tripathi, Aged About 94 Years, R/o Faisal Bada, Near Aata Chakki, Juna Bilaspur, Tahsil and District Bilaspur Chhattisgarh. Proprietor Vijay Stores, Sadar Bazar Bilaspur, District Bilaspur., District : Bilaspur, Chhattisgarh
2. Chhattisgarh Government Through The Collector, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner – Shri Badruddin Khan, Advocate.

For the State/respondent No.2 – Shri Jitendra Shukla, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

23-01-2020

Heard.

1. This petition has been brought being aggrieved by order dated 17-09-2019 passed by the 6th Additional District Judge, Bilaspur in unregistered case between Surendra Kumar Mishra Vs. Vinod Rai and another.

2. It is submitted that the petitioner is plaintiff who had filed a Civil Suit No.273-A/2015. The defendant who is respondent No.1 filed an application under Order 07 Rule 11 of the CPC which was dismissed by the trial Court. The respondent No.1 then filed Civil Revision No.120/2016 before this Court which was allowed by order dated 29-08-2018 by this Court, in which, the order of trial Court was set aside and it was directed that the application filed by respondent No.1 be decided afresh. The trial Court by order dated 23-10-2018 passed order on that application and rejected the plaint. It is submitted that the petitioner then filed a review petition under Order 47 Rule 1 read with Section 114 of the CPC., the learned trial Court has dismissed this application only on the ground that it has been filed belatedly. Hence, this petition.

3. It is submitted that the petitioner/plaintiff is very much keen to prosecute the civil suit, he had filed an application under Section 5 of the Limitation Act to condone the delay mentioning the grounds which have not been appreciated at all, therefore, the order passed of dismissing the review application is arbitrary and erroneous which is liable to be set aside. Reliance has been placed on the judgment delivered by Hon'ble the Supreme Court in the matter of **Urvashiben & Anr. Vs Krishnakant Manuprasad Trivedi** in Civil Appeal Nos. of 2018 arising out of S.L.P. © Nos. 23062-23063 of 2018.

4. On perusal of the impugned order the learned trial Court has held that the reasons mentioned in the application under Section 5 of the Limitation Act do not appear to be bonafide. The petitioner had mentioned that he is 79 years old man and he is suffering physical ailment and also economic crisis, therefore, the time lapsed in engaging a new counsel and filing a review petition. This statement was supported with affidavit sworn by the petitioner. Therefore, there was no reason to disbelieve the same and hold that the reasons mentioned for delay were not bonafide. Hence, I am of this view that the order passed by the learned Court below is erroneous. Hence, the petition is disposed off at the motion stage and the impugned order dismissing the application under Section 5 of the Limitation Act is set aside and at the same time that application is allowed by this Court. Learned trial Court is directed to consider on the review application filed by the petitioner on its merit.

5. The petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge