

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.35 of 2019

- Smt. Chinta Devi Wd/o Shri Rupan Aged About 36 Years R/o Village Bhanaura Tah. And P. S. Balrampur, District Balrampur Ramanujganj, Chhattisgarh

---- Petitioner

Versus

1. Navin Sao S/o Let Girja Sao Aged About 62 Years R/o Village Balrampur, P. S. Balrampur, District Balrampur- Ramanujganj, Chhattisgarh
2. Basant S/o Shri Jhunua Aged About 50 Years
3. Kisun Devi Wd/o Shri Jhunua Aged About 70 Years
4. Shatrudhan S/o Shri Shyamlal Aged About 48 Years
5. Bharat S/o Shri Shyamlal Aged About 46 Years
6. Satwanti D/o Shri Shyamlal Aged About 44 Years
7. Wd. Manmati Wd/o Shri Shyamlal Aged About 68 Years
8. Sagar Singh S/o Shri Girdhari Aged About 40 Years
9. Foolkumari D/o Shri Girdhari Aged About 46 Years
10. Surajmaniya D/o Shri Girdhari Aged About 42 Years
11. Shanta D/o Shri Girdhari Aged About 36 Years
12. Mano Wd/o Shri Girdhari Aged About 75 Years
13. Kailash S/o Shri Indar Aged About 65 Years

(All are r/o Village Bhanaura Tahsil And P. S. Balrampur, District Balrampur- Ramanujganj, Chhattisgarh)

14. Jayprakash Gupta S/o Shri Ramlakhan Gupta Aged About 40 Years R/o Village Ramanujganj, P. S. And Tahsil Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh
15. State Of Chhattisgarh Through The Collector Balrampur, District Balrampur Ramunujganj, Chhattisgarh

---- Respondents

For Petitioner – Mr. A.N. Bhakta, Advocate.

For State/respondent No.15 – Mr. Anil Tripathi, Panel Lawyer.

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

25-08-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 05.11.2018 passed by the Court of Civil Judge, Class-I, Ramanujganj Circle Court, Balrampur in Civil Suit No.5A/2017, by which the application filed by the petitioners/defendants for deciding the issue No.4 and 5 at preliminary stage was rejected.
2. It is submitted by learned counsel for the petitioner that the impugned order is erroneous, arbitrary and illegal. The learned trial Court should have ordered for deciding the issues No.4 and 5 at the preliminary stage, therefore, the impugned order is unsustainable.
3. The private respondents are not represented.
4. Learned State counsel appearing for Respondent No.15 has made formal objection.
5. Respondent No.1/plaintiff has filed a Civil Suit praying for specific relief of performance of contract. It is pleaded in the plaint that the plaintiff has brought the suit with delay due to his ignorance. The petitioner has raised objection of limitation in his written statement. The pleading in plaint also shows the valuation made for filing of the suit, which has also been objected in the written statement, therefore, the issues were framed on the point of limitation and on the point of Court fees, which have been sought to be decided at preliminary stage by the petitioner in the application filed.
6. The respondent No.1 in his reply to the application submitted that he

has separately filed an application praying for condonation of delay in filing the Civil Suit and that in case, the trial Court holds that the Court fees paid is deficient than the respondent No.1 is ready to make good the deficiency in the Court fees. The learned trial Court has dismissed the application by the impugned order, without making any observation on the reply of Respondent No.1 as mentioned hereinabove.

7. Considered on the submissions, it appears that there is an application for condonation of delay in filing the Civil Suit which has not been decided and appears to be still pending which needs to be decided before proceeding further in the Civil Suit.
8. As regards the objection raised by the petitioner regarding deficiency of the Court fees which is a subject for consideration under Order 7 Rule 11 of C.P.C. by the Court below, therefore, the petition is disposed off at the motion stage.
9. The learned trial Court is directed to consider on the application filed by the respondent No.1 praying for condonation of delay in filing the Civil Suit and pass appropriate order for the same and if that application is allowed and delay is condoned, in that case, the learned trial Court is also directed to consider on the point of the deficiency of Court fees suo-moto in exercise of power under Order 7 Rule 11 of C.P.C. and pass appropriate order for the same.
10. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge