

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Civil Case No.725 of 2019Order reserved on: 19-8-2021Order delivered on: 1-9-2021

Mehboob Hussain @ Mehboob Khan, Wrongly mention as Hussain repeatedly (Since Dead) Through Legal Representatives

1A. Mohd. Hussain, Age 74 years, S/o Mohd. Yaseen Khan,

1B. Mathlub Hussain, Age 69 years, S/o Mohd. Yaseen Khan,

1C. Musstaq Hussain (Mushtaq), Age 65 years, S/o Mohd. Yaseen Khan,

All the above 1A to 1C are R/o Bazarpara, Saraipali, P.S. & Tahsil Saraipali, Distt. Mahasamund (C.G.)

(Plaintiffs)  
---- Applicants

Versus

1. Kalim Beg, S/o Late Karim Beg, Age 49 years, R/o Village Saraipali, P.S. & Tahsil Saraipali, District Mahasamund (C.G.)

(Deleted) Phul Bai (Dead)

2. The State of Chhattisgarh, Through the Collector, Mahasamund, Distt. Mahasamund (C.G.)

(Defendants)  
---- Non-applicants

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For Applicants: Mr. J.A. Lohani, Advocate.

For Non-applicant No.1: Mr. S.N. Nande, Advocate.

For Non-applicant No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

(Through Video Conferencing)

1. This Miscellaneous Civil Case for rehearing of S.A.No.476/2007, decided on 12-7-2019, has been preferred on the ground that the applicants' counsel Mr. J.A. Lohani, Advocate, could not appear on 12-7-2019 when the case was called for hearing as his elder sister

was hospitalized at CIMS, Bilaspur, due to serious illness and therefore he could not attend the matter when it was called for hearing.

2. Reply has been filed opposing the application for rehearing of second appeal, on 2-11-2019.
3. Mr. J.A. Lohani, learned counsel appearing for the applicants, would submit that he was appearing in the second appeal by filing Vakalatnama on behalf of the plaintiffs / applicants herein, but when the case was called for hearing on 12-7-2019, since his sister was hospitalized, he could not appear on that day i.e. 12-7-2019 and thereafter, the case was heard and decided ex parte which may be recalled in view of Order 41 Rule 21 of the CPC. He relied upon the decisions of the Supreme Court in the matters of Savithri Amma Seethamma v. Aratha Karthy<sup>1</sup>, Indu Bhushan v. Munna Lal<sup>2</sup>, Pappayammal v. Palaniswamy<sup>3</sup>, Surat Singh (Dead) v. Siri Bhagwan and others<sup>4</sup> and the decisions of this Court in the matters of M/s. Bharat Petroleum Corporation Limited v. Khatanand @ K. Anand Saraf and others<sup>5</sup>, Mohd. Saleem and others v. Ejaj Ahmed<sup>6</sup>, Ghasiram (Dead) Through LRs and others v. Shashi Bhushan and others<sup>7</sup>.
4. Mr. S.N. Nande, learned counsel appearing for non-applicant No.1, would oppose the application for rehearing.
5. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the record

1 1983 CJ(SC) 289

2 2007 CJ(SC) 495

3 2008 CJ(SC) 1184

4 2018 CJ (SC) 125

5 2006(2) M.P.H.T. 89 (CG)

6 2013 CJ(Chh) 74

7 2017 CJ(Chh) 134

with utmost circumspection.

6. The material pleading for recalling the order dated 12-7-2019 passed in S.A.No.476/2007 has been made in paragraph 4 of the MCC (application for rehearing) in which it has only been stated that when the matter has been called for hearing on 12-7-2019, Ku. Sabiha Lohani, elder sister of counsel Mr. J.A. Lohani, Advocate, was hospitalized in CIMS, Bilaspur due to serious illness and for the said reason, the counsel failed to attend the matter when it was called for hearing and also made a mention on 15-7-2019, but order was not recalled.
7. In order to recall an order under Order 41 Rule 21 of the CPC, sufficient cause has to be shown for non-appearance when the matter was called for hearing. S.A.No.476/2007 came up for hearing in the weekly list on 8-7-2007 and it remained in the list. On 12-7-2007, the matter was called for hearing and since counsel for respondent No.1 therein could not appear, order was passed in open court. The only reason that has been assigned is that the counsel's sister was hospitalized on that day due to serious illness, but nothing has been pleaded that he remained in the hospital throughout the day and could not appear when the matter was called for hearing or why he could not make any alternative arrangement for representation of respondent No.1 in the second appeal, particularly when it was an old matter of the year 2007 and was listed for final hearing in the week commencing from 8<sup>th</sup> July, 2019, and came-up for hearing on 12-7-2019.
8. In the considered opinion of this Court, the averment made for showing sufficient cause is very vague and would not constitute sufficient cause and as such, there is no ground for recalling the order dated 12-7-2019 passed in S.A.No.476/2007. The decisions cited by

learned counsel for the applicants in the matters of Savithri Amma Seethamma (supra), Indu Bhushan (supra), Pappayammal (supra), Surat Singh (supra), M/s. Bharat Petroleum Corporation Limited (supra), Mohd. Saleem (supra) and Ghasiram (supra), are clearly distinguishable and are inapplicable to the facts of the present case. As such, the MCC deserves to be and is accordingly dismissed.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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