



2024:CGHC:40801

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 926 of 2024

- Sumitra @ Sunita D/o Ramratan, Aged About 46 Years R/o Village-
Thelkabanda, P.S.-Abhanpur, District-Raipur (C.G.).

... Petitioner/Plaintiff

versus

1. Gajanand Agrawal, S/o Satyanarayan Agrawal, Aged About 40 Years, R/o
Khamardih Kachna Road, Green Glori Shankar Nagar, Raipur (C.G.).
2. State Of Chhattisgarh, Through The Collector Durg, District Durg (C.G.).

... Respondents/Defendants

(Cause title taken from Case Information System)

For Petitioner	: Mr. Rahil Arun Kochar, Advocate.
For State/Respondent No.2	: Mr. Dashrath Prajapati, P.L.

Hon'ble Shri Justice Naresh Kumar Chandravanshi

Order on Board

17.10.2024

1. Heard on admission.
2. This petition has been preferred by the petitioner under Article 227 of the Constitution of India, challenging the impugned order dated 16.07.2024 (Annexure-P/1) passed by the learned 8th District Judge, Durg, District Durg (C.G.) in C.A. No.RCA/130/2024 {Gajanand Agrawal Versus Sumitra @ Sunita & Another}, whereby the learned First Appellate Court has allowed the application filed by the respondent No.1, under Section 5 of the Limitation Act, 1963 (for short 'the Act of 1963') and condoned the delay in filing the appeal.

(Hereinafter, the parties to this petition shall be referred as per their status before the trial Court).

3. Learned counsel for the petitioner would submit that plaintiff has filed the civil suit bearing Civil Suit No.26-A/2023 against the defendants, which was decreed in her favour vide impugned judgment dated 03.10.2023 (Annexure-P/2) passed by the Civil Judge, Class-I, Paatan, District Durg (C.G.) and that judgment and decree has been challenged by the defendant No.1 by filing first appeal on 10.06.2024, bearing Civil Appeal No.RCA/130/2024 along with an application under Section 5 of the Act of 1963, as appeal was barred by limitation. It is further submitted that without issuing notice to the plaintiff, learned First Appellate Court vide impugned order dated 16.07.2024 (Annexure-P/1) has allowed the aforesaid application filed by the defendant No.1, without affording opportunity of hearing to the plaintiff. Thus, order impugned is perverse and illegal, as it has been passed *ex parte* without issuing notice to the plaintiff. Hence, it is prayed that this petition may be allowed and the impugned order dated 16.07.2024 may be set aside and the First Appellate Court may be directed to decide the application under Section 5 of the Act of 1963 after providing the opportunity of hearing to the plaintiff.
4. Petitioner/Plaintiff has filed the certified copy of order sheets and photocopy of the judgment passed by the trial Court, which shows that judgment and decree was passed on 03.10.2023, thereafter first appeal was preferred along with the application under Section 5 of the Act of 1963 by the defendant No.1 before the 8th District Judge, District Durg (C.G.) on 10.06.2024. After filing appeal along with the application, case was fixed for hearing on 16.07.2024 and without the order for issuance of notice to the plaintiff and without his appearance vide impugned order dated 16.07.2024, learned first appellate Court has allowed the application under Section 5 of the Limitation Act, 1963 and condoned the delay in filing the appeal. Thus, it is evident that impugned order has been passed and delay of about 5 months has been condoned without providing opportunity of hearing to the petitioner/plaintiff.

5. When, any case is not filed within the period of limitation prescribed by the law, then it creates legal right upon the opposite party to raise his objection that delay has been occurred without any sufficient reason, as such opportunity of hearing ought to have been provided to the opposite party to make his submission against the application filed under Section 5 of the Limitation Act, 1963, but in instant case, the same has not been complied with by the learned first appellate Court. Hence, the impugned order dated 16.07.2024 (Annexure-P/1) passed by the learned 8th District Judge, Durg, District Durg (C.G.) in C.A. No.RCA/130/2024 {Gajanand Agrawal Versus Sumitra @ Sunita & Another} is found to be perverse and illegal, therefore, the same is set aside and the learned first appellate Court is directed to decide the application filed under Section 5 of the Act of 1963 by the respondent No.1/defendant No.1, after providing the opportunity of hearing to the petitioner/plaintiff.
6. Learned counsel for the petitioner has stated that till date petitioner/plaintiff has not entered her appearance, therefore, she is directed to enter her appearance before the first appellate Court in instant case on the next date of hearing and submits the copy of this order before the concerned Court, forthwith.
7. Accordingly, this petition is allowed.
8. Interlocutory application(s) pending, if any, also stands disposed of.

Sd/-

(Naresh Kumar Chandravanshi)
Judge