



2026:CGHC:9510



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 242 of 2019

- Ashok Kumar Agrawal, S/o Late Govind Ram, Aged About 58 Years, R/o H.No.9, Sai Heritage Colony, Near Dhimarpur Chowk, Raigarh, District Raigarh, Chhattisgarh.

... **Petitioner****versus**

- Smt. Badka Dai Bairagi, W/o Late Ghasidas Bairagi, R/o Bhola Gali, Indira Nagar Raigarh, District Raigarh, Chhattisgarh.
- Commissioner, Workmens Compensation Act, Labor Court Raigarh, Chhattisgarh.

... **Respondents***(Cause title taken from Case Information System)*

For Petitioner	:	Mr. Ankit Singhal, Advocate.
For Respondent No.1	:	Mr. Roop Ram Naik, Advocate.

Hon'ble Shri Justice Sachin Singh Rajput**Order on Board****24/02/2026**

- Heard.
- This writ petition has been filed by the petitioner assailing the order dated 30.09.2019 passed by the learned Commissioner For Employees Compensation, Labour Court Raigarh (C.G.) (for short 'Commissioner') in Case No.16/E.C. Act/2016 (Miscellaneous), whereby an application under Order 9 Rule 13 of the Civil Procedure Code, 1908 (for short 'CPC') filed by the petitioner for setting aside an *ex parte* award dated 23.11.2012 in Case No.27/W.C. Act/2006 was rejected.



3. Learned counsel for the petitioner submits that the respondent No.1 filed an application under Section 10 of the Workmen Compensation Act, 1923 (for short 'the Act of 1923') seeking compensation on account of death of the deceased Thaneshwar Das Bairagi in an accident that occurred on 20.04.2005. As per the pleadings of the claim application, the deceased was employed as a driver with the petitioner. He further submits that deceased along with family members of the petitioner went to Kharsiya in the Car bearing Registration No. DL-2C-2151. He met with an accident and died. As per the further pleadings, the deceased was aged about 24 years and was being paid for Rs.4,000/- per month, as a driver. Thus, seeking compensation of Rs.4,36,940/-, the said application was filed. Learned counsel for the petitioner further submits that the notice of the said application was received by the petitioner and written statement was also filed. Thereafter, the application of the respondent was dismissed vide order dated 06.12.2006. This led to file an appeal under the Act of 1923 before this Court, which was registered as MAC No.95/2007. This Court vide its order dated 22.07.2011 allowed the appeal in part and remanded the matter back to the Commissioner for fresh adjudication of the same. Thereafter, as the petitioner was not represented before this Court in the said MAC, the learned Commissioner issued notice to the petitioner. He further submits that in the said accident along with deceased/Thaneshwar Das Bairagi, the son of the petitioner also passed away and under duress, they shifted their resident from Raigarh to Jharsugda. As the notices were sent on the Raigarh address of the petitioner, the same could not be served and thereafter the notice was served upon the petitioner through paper publication at Raigarh. He submits that as the petitioner was residing at Jharsugda, he was not aware with regard to the publication of the notice of the case at Raigarh and was proceeded *ex parte* before the learned Commissioner. Thereafter, an *ex parte* award dated 23.11.2012 was passed by the learned Commissioner and



Rs.4,07,700/- was awarded as compensation. As the amount of award could not be deposited, the execution proceedings were carried out by the respondent No.1 and he came to know that the execution was filed against him for recovery of the same. Immediately thereafter, the petitioner moved an application under Order 9 Rule 13 of CPC before the Commissioner, *inter alia* pleaded that the petitioner has shifted to Jharsugda and proper service of the notice was not made upon him. Thus, he was not aware with regard to the pendency of the case before the learned Commissioner and the *ex parte* impugned award dated 23.11.2012 may be set aside. By the impugned order, the learned Commissioner has dismissed the application and treating it to be barred by limitation and also on merit. He submits that in the first round, the claim case of respondent No.1 was dismissed and the petitioner shifted to Jharsudga. In all fairness, the learned Commissioner ought to have allowed the application and decided the case on merits. He further submits that petitioner had already deposited Rs.2,25,000/- in compliance of the order dated 02.12.2019 passed by this Court, no prejudice would be caused to the respondents, if the claim application filed by the respondent No.1 is decided on merits.

4. Learned counsel for the respondent No.1 opposes the submission made by the counsel for the petitioner and submits that petitioner was not able to prove that he had shifted to Jharsugda by cogent and prudent evidence. He submits that his shop is still running at Raigarh and earlier notice issued to the petitioner was refused by him and publication was made on the last known address of the petitioner at Raigarh, thus, proper service of the notice of the claim application was effected upon the petitioner. However, he is not in a position to dispute that in compliance of the order passed by this Court, an amount of Rs.2,25,000/- has already been deposited by the petitioner and the same has been received by the respondent No.1.



5. I have heard learned counsel for the parties and perused the material available on record carefully.
6. There is no dispute to the fact that initially the claim application filed by the respondent No.1 came to be dismissed by the learned Commissioner. An appeal was preferred, in which, the petitioner was served, but not represented. This Court vide its order dated 22.07.2011 passed in MAC No.95/2007, remanded the matter back for fresh consideration and upon which notices were issue to the petitioner. Though, the award was passed in the year 2012 and the application for setting aside the same was filed in the year 2016 after lapse of about 3 years.
7. Perusal of the record would indicate that the petitioner was not represented in the claim application, after the remand was made by this Court. Perusal of the application filed by the petitioner would indicates that said accident his son has also passed away and his wife sustained severe injuries. It also indicates that on account of death of his son, his mental condition deteriorated and no other major male member was in the family. He used to run a shop named & styles as Ratan Automobiles and could not carried out the business later on, suffered monetary losses and his business was shut down. Thereafter, on account of which, his wife along with other two children started living in Jharsugda from the year 2006. The petitioner underwent a heart surgery at Hyderabad and from 2006 till 2015, he was living in Jharsugda. For his personal work, he came to the RTO Office Raigarh (C.G.) and came to know from his acquaintance that some case is pending before the Labour Court. On an enquiry being made, he came to know that award has been passed against the petitioner.
8. From the record, it appears that the notice of the execution by registered mode has been sent to the petitioner at his address at Raigarh and the same was returned unserved, stating that address is wrong. In the proceedings



before the learned Commissioner, petitioner examined himself and categorically stated that he is residing at Jharsugda from 2006 to 2015. He further stated that he did not receive any notice from the learned Commissioner with regard to the pendency of the case and publication of the notice in "*Raigarh Sandesh*" is a local newspaper, which is not distributed in Jharsugda. It has been categorically stated that the notice published on 15.08.2012 was not known to the petitioner. He has further stated that he was told by some acquaintance with regard to the case pending before the Commissioner and thereafter, the said application was filed. He was subjected to the cross-examination by the respondent and nothing important was brought on record to disbelieve the evidence of the petitioner. In support of his application, another witness namely Mani Ram was also examined, who has also deposed that on account of severe injuries, heart ailment, petitioner along with his family started living in Jharsudga from 2006 to 2015. It has been further stated by this witness that the petitioner and his family never lived in Raigarh from 2006 to 2015 and his house was locked. In cross-examination he denied that his tyre shop is still opened and denied the suggestion that petitioner did not live in Jharsugda from 2006 to 2015. Yet evidence of another witness namely Santosh Kumar Agrawal was recorded, who was also deposed in the same line. No witness was examined on behalf of the respondent No.1.

9. The learned Commissioner observed that no documents with regard to the petitioner that he is living in Jharsudga from 2006 to 2015 has been filed and also observed that in the affidavit filed under Order 8 Rule 14 of CPC, he has mentioned his address of Raigarh. The learned Commissioner also observed that in the original case, his advocate has appeared on his behalf. The learned Commissioner did not find the reasons assigned by the petitioner for filing the application under Order 9 Rule 13 of CPC with considerable period of delay. Thus, dismissed the application.



10. While deciding the application, the learned Commissioner has entered into the merits of the case and in the operating portion has also observed that the application was filed with a considerable period of delay. The petitioner made a specific pleading that from 2006 to 2015, he was not residing in Raigarh and was residing at Jharsugda. To buttress this fact, he also examined the two witness. However, the fact remains that after the remand was made by this Court, notice to the petitioner was not served in accordance with law. The publication was made in a daily local newspaper and according to the petitioner, the same is not distributed in Jharsugda, where he was residing.
11. The law is well settled that the period of delay is non *sine qua non* for deciding the application for condonation of delay under Section 5 of the Limitation Act, 1963. In many occasions, shorter period of delay may not be condoned and in some occasions, longer period of delay may be condoned. The Court simply has to see is to whether the person was able to show sufficient cause for not preferring the application within a period of limitation.
12. The Hon'ble Supreme Court in the matter of **N. Balakrishnan Versus M. Krishnamurthy**, reported in (1998) 7 SCC 123 observed as under:-

*"A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain Vs. Kuntal Kumari** [AIR 1969 SC 575] and **State of West Bengal Vs. The Administrator, Howrah Municipality** [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was*



occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date.”

13. The parameters to decide the application has elaborately been discussed in the case of **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and Others**, reported in (2013) 12 SCC 649 in para 21, which reads thus:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.



iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant S.A. No.331 of 2013 not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully



scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

14. Ofcourse, the period of delay in filing the application appears to be of considerable length, but itself could not be a ground to deny the relief as claimed by the petitioner.
15. Taking into consideration the law laid down by the Hon'ble Supreme Court in the above stated cases, this Court is of the opinion that petitioner was able to show sufficient cause for not filing the application in due course of time, thus, application for condonation of delay is allowed and delay in filing the application for setting aside the *ex parte* award is condoned.
16. This leads me to the question as to whether, the application under Order 9 Rule 13 of CPC filed by the petitioner could be allowed. As discussed earlier, the specific ground has been raised by the petitioner that he started living in Jharsudga for a long period. This aspect is also supported by his 2 witnesses. Though, there may be some discrepancies in their evidence, but also taking into consideration that the publication of the notice was made at the Raigarh, whereas the petitioner was residing in Jharsudga and the grounds upon which the learned Commissioner has rejected the application, does not appear to be based upon the proper appreciation of the facts and circumstances of the case and the petitioner was denied the relief by the learned Commissioner exercising the power with material irregularity.
17. In view of the above, this Court is of the opinion that impugned order cannot sustained the scrutiny of the Court and warrant interference in this writ petition. Thus, the impugned order dated 30.09.2019 & *ex parte* award dated



23.11.2012 are hereby set aside and the Claim Case No.16/E.C. Act/2016 (Miscellaneous) & Case No.27/W.C. Act/2006 are restored to its original number.

18. Another aspect of the matter, which requires consideration by this Court that an award of Rs.4,07,700/- was passed by the learned Commissioner and out of which, Rs.2,25,000/- has already been deposited and the same was received by the respondent No.1. The case is two decades old, thus it would be appropriate that a direction be issued to the learned Commissioner to take decision on the application of the respondent No.1 filed under Section 10 of the Act of 1923 expeditiously.
19. It is expected that the learned Commissioner would make all endeavour to conclude the proceedings within a period of 6 months from the next date of appearance of the parties. The parties shall appears before the learned Commissioner on 1st April, 2026.
20. It is observed that the amount which has been deposited by the petitioner in compliance of the interim order passed by this Court, shall not be recoverable from the respondent No.1 and it would be subject to outcome of the award passed by the learned Commissioner.
21. Accordingly, the instant writ petition is allowed as indicated hereinabove.
22. Record be sent back to the Commissioner along with the copy of this order.
23. Interlocutory application(s), pending if any, also stands disposed of.

Sd/-
(Sachin Singh Rajput)
Judge