



2026:CGHC:16049

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 22 of 2022

Ramkrishn Sahu S/o Bodhan Sahu, Aged About 54 Years R/o Village Kirwai, Tahsil Simga, District Baloda Bazar (Chhattisgarh) Through Power Of Attorney Hemlal Sahu S/o Late Ram Krishna Sahu, R/o Village Kirwai, Tahsil Simga, District Baloda Bazar Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

--- Applicant(s)

versus

1. Kamal Prasad Kasar S/o Kanhaiya Lal Kasar, Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2. Jairam Dubey, S/o Shri Keshav Prasad Dubey, Aged About 32 Years R/o Kankalipara, Raipur Tahsil And District Raipur, Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyaari, Raipur Tahsil And District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

--- Respondent(s)

MA No. 20 of 2022

Dilip Sahu S/o Ram Krishna Sahu Aged About 29 Years R/o Village Kirwai, Tahsil Simga, District Baloda Bazar, Through Power Of Attorney Hemlal Sahu S/o Late Ram Krishna Sahu, R/o Village Kirwai, Tahsil Simga, District Baloda Bazar (C.G.)

---Appellant(s)

Versus

1. Kamal Prasad Kasar S/o Kanhaiya Lal Kasar, Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District Raipur (C.G.)

2. Jairam Dubey S/o Shri Keshav Prasad Dubey Aged About 32 Years R/o Kankali Para Raipur Tehsil And Distt. - Raipur Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyaari Raipur Tehsil District Raipur (C.G.)

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar-Bhatapara (C.G.)

--- Respondent(s)

MA No. 21 of 2022

1. Hemlal Sahu S/o Ramkrishan Sahu, Aged About 25 Years R/o Village Kirwai, Tahsil Simga, District Baloda Bazar, (C.G.)

---Appellant(s)

Versus

1. Kamal Prasad Kasar S/o Kanhaiya Lal Kasar, Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District Raipur (C.G.)

2. Jairam Dubey S/o Shri Keshav Prasad Dubey Aged About 32 Years Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyaari Raipur Tehsil District Raipur (C.G.)

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar-Bhatapara (C.G.)

--- Respondent(s)

MA No. 17 of 2022

1. Tirith Sahu S/o Bodhan Sahu Aged About 61 Years R/o Village Kirwai, Tahsil- Simga, District- Baloda Bazar, Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---Appellant(s)

Versus

1. Kamal Prashad Kasar, S/o Kanhaiya Lal Kasar Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

2. Jairam Dubey S/o Shri Keshav Prasad Dubey Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyaari, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

3. State Of Chhattisgarh Through The Collector, District- Baloda Bazar- Bhatapara, Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

--- Respondent(s)

MA No. 16 of 2022

1. Lalaram S/o Tirith Ram Sahu, Aged About 34 Years R/o Village Kirwai, Tahsil Simga, District Baloda Bazar, Through Power Of Attorney Tirith Ram Sahu S/o Late Bodhan Sahu, Aged About 61 Years, R/o Village Kirwai, Tahsil Simga, District Baloda Bazar (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

---Appellant(s)

Versus

1. Kamal Prasad Kasar S/o Kanhaiya Lal Kasar, Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2. Jairam Dubey, S/o Shri Keshav Prasad Dubey, Aged About 32 Years Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyari, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

--- Respondent(s)

MA No. 19 of 2022

1. Lalji Sahu S/o Tirath Ram Sahu, Aged About 33 Years R/o Village Kirwai, Tahsil Simga, District Baloda Bazar, Through Power Of Attorney Tirith Ram Sahu S/o Late Bodhan Sahu, Aged About 61 Years, r/o Village Kirwai, Tahsil Simga, District Baloda Bazar (C.G.)

---Appellant(s)

Versus

1. Kamal Prasad Kasar S/o Kanhaiya Lal Kasar, Aged About 59 Years R/o Near Akhade, Sati Bazar, Raipur, District Raipur (C.G.)

2. Jairam Dubey, S/o Shri Keshav Prasad Dubey Aged About 32 Years
R/o Kankali Para Raipur Tehsil And District Raipur Other Address-
Rajdhani Photocopy, Janta Colony, Behind Balaji Mandir, Gudiyari,
Raipur, District Raipur (C.G.)

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar-
Bhatapara (C.G.)

--- Respondent(s)

MA No. 18 of 2022

1. Jivrakhan Sahu S/o Ram Krishna Sahu, Aged About 27 Years R/o
Village Kirwai, Tahsil Simga, District Baloda Bazar, Through Power Of
Attorney Hemlal Sahu, R/o Village Kirwai, Tahsil Simga, District Baloda
Bazar Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---Appellant(s)

Versus

1. Kamal Prashad Kasar, S/o Kanhaiya Lal Kasar, Aged About 59 Years
R/o Near Akhade, Sati Bazar, Raipur, District Raipur Chhattisgarh,
District : Raipur, Chhattisgarh

2. Jairam Dubey, S/o Shri Keshav Prasad Dubey, Aged About 32 Years
Other Address- Rajdhani Photocopy, Janta Colony, Behind Balaji
Mandir, Gudiyari, Raipur, District Raipur Chhattisgarh, District : Raipur,
Chhattisgarh

3. State Of Chhattisgarh Through The Collector, District Baloda Bazar
Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara,
Chhattisgarh

--- Respondent(s)

For Appellant	:	Mr. T. K. Jha along with Mr. Parth Kumar Jha, Advocate
For Respondent No. 1	:	Mr. Bharat Lal Dembra, Advocate
For Respondent No. 2	:	None, though served.
For Respondent/ State	:	Mr. Anand Gupta, Dy. G.A. and Mr. Malay Jain, PL

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

08/04/2026

Heard.

1. Since all the appeals assail the common order and involve interconnected issues, they were heard and being disposed off by this common judgment.
2. The present appeals have been preferred under Order 43 Rule 1 (d) of the CPC by the appellant/ defendant No.1 challenging separate orders dated 05.01.2022 passed by the learned Trial Court in different MJCs whereby the applications filed by the respective appellants herein under Order 9 Rule 13 of the CPC have been rejected on the ground of delay.
3. The plaintiff Kamal Prasad Kasar preferred civil suit stating inter alia that he is the owner and in possession of certain agricultural lands situated in Village Kirwai and Village Darchura, Tahsil Simga, District Baloda Bazar, Chhattisgarh. According to the plaintiff, the said lands are his lawful property and he has full ownership and possessory rights over them. It is further pleaded that the plaintiff had never executed any power of attorney in favour of defendant No.2 (Jairam Dubey) nor had he appeared before the Sub-Registrar Office, Raipur for execution or registration of any such document for selling the aforesaid lands or any part thereof. The plaintiff asserts that the alleged registered power of attorney purportedly executed in favour of defendant No.2 does not bear his signature or thumb impression. The plaintiff has alleged that defendant No.2, in furtherance of a criminal conspiracy and with dishonest intention to usurp the plaintiff's valuable property and to gain unlawful benefit, prepared

a forged and fabricated power of attorney by fraudulently affixing the plaintiff's forged signatures and thumb impressions without his knowledge or consent. Further, he categorically pleaded that he has never executed a power of attorney in favour of Jairam Dubey on 26.10.2010 and despite the said fact he has sold the land belonging to him to several persons by executing different sale deeds and hence the sale deeds as well as the power of attorney be declared as null and void.

4. Defendant No.1 filed his written statement contending that upon coming to know about the plaintiff's intention to sell the land, he approached the plaintiff, who introduced defendant No.2 Jayaram Dubey as his authorized power of attorney holder. The plaintiff allegedly showed the power of attorney and represented that defendant No.2 was authorized to deal with the sale of the land, receive the sale consideration and complete the registration on his behalf. It was further pleaded that relying upon such representation, defendant No.1 purchased the land after paying the entire sale consideration amount to defendant No.2 and thereafter the sale deed was duly executed and registered through him. On the basis of the said registered transaction, defendant No.1 claims to have become the lawful owner and to be in possession and cultivation of the suit land. Defendant No.1 denied the allegations of forgery and fraud and asserted that the power of attorney as well as the sale deed executed on its basis are valid and binding upon the plaintiff. It was also contended that

the plaintiff himself had shown the loan book and other relevant documents at the time of the transaction, therefore the allegation that the documents were forged without his knowledge is baseless. It was further contended that the plaintiff has already received the entire sale consideration through his power of attorney holder and therefore he is not entitled to any injunction against defendant No.1. The suit is also stated to be barred by limitation and insufficiently stamped and has been filed only due to disputes between the plaintiff and defendant No.2. However, after filing the written statement, defendant No.1 did not participate in the proceedings at the stage of evidence and was proceeded ex parte thereafter.

5. Defendant No.2, Jayaram Dubey, also filed his written statement denying the allegations made in the plaint. He specifically denied the plaintiff's contention that no power of attorney dated 26.02.2010 was executed in his favour. It was contended that the said power of attorney bears the thumb impression of the plaintiff and was duly executed and registered before the Sub-Registrar, Raipur, and therefore the document is valid and binding upon the plaintiff. Defendant No.2 further denied the allegation that the power of attorney or other documents were forged or fabricated. He also denied the allegation that any impersonation had been made in place of the plaintiff for execution of the document. According to him, the plaintiff himself had appeared before the Sub-Registrar and executed the power of attorney in his favour. It was also

contended that the loan book had already been issued prior to the execution of the power of attorney and had been provided by the plaintiff himself. It was further pleaded that on the basis of the valid power of attorney, the sale deed was executed in favour of defendant No.1 and the same is binding upon the plaintiff. The name of defendant No.1 has also been duly recorded in the revenue records and therefore the plaintiff is not entitled to any relief in respect of the suit land. The allegation that the plaintiff was cultivating the land or that he suffered any loss due to the alleged sale was also denied. Defendant No.2 further stated that the plaintiff had earlier lodged a complaint before the Special Investigation Cell but did not pursue the same. He also contended that on the instructions of the plaintiff he had executed another registered sale deed in favour of a third person in respect of other land, which was never challenged by the plaintiff, thereby indicating that the power of attorney was genuine. Accordingly, it was contended that the suit has been filed on false and baseless grounds and is liable to be dismissed, and the defendant claimed compensation of Rs.10,000/- for being unnecessarily dragged into litigation. However, after filing the written statement, defendant No.2 did not participate in the proceedings at the stage of evidence and was proceeded ex parte thereafter.

6. After considering the entire aspect of the matter, the learned Trial Court allowed the suit preferred by the plaintiff ex-parte relying upon the testimony and report of the fingerprint and handwriting

expert Dr. Kumari Sunanda Denge (PW-2), who compared the questioned signatures and thumb impressions appearing on the alleged power of attorney with the admitted and specimen signatures and thumb impressions of the plaintiff. After examination, the expert opined that the questioned signatures and thumb impressions on the power of attorney did not match with those of the plaintiff and were made by a different person. The Court observed that the expert was a qualified and experienced forensic specialist and her report remained unchallenged in cross-examination. Placing reliance on the expert opinion under Section 45 of the Indian Evidence Act, the Court held that the plaintiff had not executed the alleged power of attorney in favour of defendant No.2. Consequently, the Court held that defendant No.2 had no authority to execute the sale deed on behalf of the plaintiff and therefore the sale deed executed in favour of other persons on the basis of such power of attorney was void and did not confer any valid title. Accordingly, the plaintiff was held entitled to declaration of title, possession and permanent injunction and thus the suit was decreed in favour of the plaintiff.

7. Against the said ex parte judgment and decree, defendant No.1 filed an application under Order 9 Rule 13 of the CPC stating that after filing the written statement his counsel had assured him that he would inform him whenever his presence was required, however no such information regarding the dates of hearing was given to him. He came to know about the ex parte decree only in November 2016

upon receiving a notice from the Tahsildar. Thereafter, he obtained certified copies of the judgment and decree. It was further stated that he had entrusted the matter to his counsel for taking appropriate steps, however no application or appeal was filed, and when he personally contacted another advocate he came to know that no appeal had been filed and the file was returned to him, after which the present application was filed, attributing the delay to lack of communication and negligence on the part of the previous counsel. Subsequently, he has filed an application under Section 5 of the Limitation Act stating that lack of proper legal guidance and bona fide mistake, he could not file the application under Section 5 along with the Order 9 Rule 13 of the CPC.

8. However, the learned Trial Court dismissed the said applications by the order impugned only on the ground of delay without entering into the merits of the Order 9 Rule 13 of the CPC. Thus these appeals.
9. Learned counsel for the appellant submitted that the appellant is aggrieved by the order of the trial court whereby the application filed under Order 9 Rule 13 of the CPC for setting aside the ex parte judgment and decree was rejected. It is contended that the appellant came to know about the ex parte judgment and decree only when a notice was received in mutation proceedings before the Tahsildar. Thereafter, he applied for and obtained the certified copy of the judgment and consulted his counsel for taking appropriate legal steps. However, due to lack of proper communication and negligence on the part of his previous counsel, instead of filing an

application for setting aside the ex parte decree before the trial court, the matter was forwarded to another advocate for filing an appeal before the High Court, which was also not filed and the documents were returned to the appellant. It is further submitted that thereafter the appellant promptly filed an application under Order 9 Rule 13 CPC as also the application under Section 5 of the Limitation Act with delay, which occurred due to *bona fide* reasons and circumstances beyond his control. Learned counsel argued that the delay was neither intentional nor deliberate and the case ought to be decided on merits rather than on technical grounds. It is therefore prayed that the impugned order rejecting the application be set aside and the appellant be granted an opportunity to contest the suit on merits. He further placed reliance in the case of **Dwarika Prasad Vs. Prithvi Raj Singh (2024 INSC 1030)**.

10. On the other hand, learned counsel for the respondent/plaintiff supported the impugned order and submitted that the trial Court, after considering the reasons assigned by the defendant in the application, has rightly rejected the application under Section 5 of the Limitation Act and consequently rejected the application under Order 9 Rule 13 CPC. It is contended that the defendant failed to show sufficient cause for the delay by assigning sufficient and cogent reasons, and therefore the trial Court was justified in rejecting the application. Hence, the impugned order does not call for any interference.

11. I have heard learned counsel for the parties and perused the impugned orders.
12. Having heard learned counsel for the parties and upon perusal of the record, this Court finds that the ex-parte judgment and decree was passed in absence of the defendants. The appellant has contended that due to the mistake and negligence of his earlier counsel he could not remain present on the date fixed for hearing and was also not informed about the proceedings, due to which he was deprived of an opportunity to contest the suit.
13. It is well settled that while considering an application under Order 9 Rule 13 of the Code of Civil Procedure as well as an application under Section 5 of the Limitation Act, the Court should adopt a liberal approach so that a party is not deprived of an opportunity to contest the matter on merits. In the present case, the explanation offered by the appellant indicates that the absence was not deliberate but occurred due to the lapse on the part of his counsel.
14. The Hon'ble Supreme Court in **Rafiq & Anr. v. Munshilal & Anr. reported in (1981) AIR (SC) 1400** has held that a litigant should not be made to suffer for the fault, negligence or inaction of his counsel. Once a party has engaged an advocate and entrusted him with the conduct of the case, he is entitled to presume that the advocate will properly represent him before the Court, and the litigant cannot be expected to constantly monitor the proceedings or act as a watchdog over the advocate. Therefore, the innocent party should not be penalized for the default of his counsel.

15. Further in the Supreme Court in the case of **Dwarika Prasad (supra)** has also held at para 11 & 12 as under:-

11. The Appellant has relied upon the following judgments in support of his submissions. In **Bhagmal and Ors Vs. Kunwar Lal and Others (2010 (12) SCC 159)** this Court held as follows;

"12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time

when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application.

Procedure is after all handmaid of justice."

12. From the above cases, it is clear that there was no need to file a separate application for condonation of delay in the present case as well. The High Court has erred in taking a hyper technical view and concluding that there was violation of mandatory provision of law. Endorsing such a view would effectively mean ignoring the purpose of judicial procedure. The procedure cannot stand in the way of achieving just and fair outcome. In the present case, the Appellant acted bona fide and diligently. His conduct does not violate any rule of law.

16. In view of the submissions made by the parties and the settled legal position, this Court is of the opinion that the impugned order dated 05.01.2022 passed in the respective MJCs deserve to be set aside.

Accordingly, **all the appeals are allowed** and the impugned orders are set aside. Delay in filing the MJCs is hereby condoned.

17. All the matters are remanded back to the trial Court with a direction to decide the applications filed under Order 9 Rule 13 of the CPC afresh on merits in accordance with law.
18. The parties are directed to appear before the trial Court on 21st April, 2026. The trial Court shall make an endeavour to decide the applications under Order 9 Rule 13 CPC within a period of 30 days from the date of appearance of the parties.
19. It is made clear that this Court has not expressed any opinion on the merits of the case.
20. Registry is directed to send back the entire record to the concerned trial Court forthwith.

**Sd/-
(Bibhu Datta Guru)
JUDGE**

Jyoti