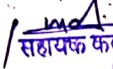



तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज	नम्बर व अहकाम ज हुक्म की तारीख में जारी हुए The applicant mistake th:
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18/2/19

पत्रावली आज पेश हुई।
आज हम दिगर कार्या में व्यस्त
अतः इतला होकर पत्रावली आईन्दा वास्ते
अग्रिम कार्यवाही दि. 5/12/19 को पेश हो।
/ 
सहायक कलेक्टर (SDO)
शिव

5/12/19

पत्रावली आज दिनांक 5/12/19 को न्यायालय
के सम्मुख प्रस्तुत हुई। प्रार्थी वकील उपरो
बध्म सुनो गरी पत्रावली वास्ते आदेश
दिनांक 9/12/19 को पेश हो।

सहायक कलेक्टर
(SDO) शिव

9/12/19

The present application has been filed under Order IX Rule 13 of CPC. The order in question was passed on 12.10.95 and the application to set aside the ex-parte decree was filed on 12.08.2011. There is a delay of 15 years and 10 months in filing the application.


The applicants have stated in their application that they came to know about the ex-parte decree only after issue of possession came into existence on 15.07.11.

It is clear from the order dated 12.10.95 and also from the application filed by the applicants, that they were aware that a suit was pending in a court of competent jurisdiction in which they were affected parties. The order dated 12.10.95 says that "प्रतिवादी 1 से 6 जरिए वकील न्यायालय में उपस्थित आये परन्तु वाद में एकतरफा कार्यवाही के आदेश पारित किये गए। प्रतिवादी 1 से 6 ने कोई जवाब बगैरह पेश नहीं किया।"

Section 5 of the Limitation Act reads as follows

Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section

Extension of prescribed period can be done only in 'certain' cases as is clear from the title of the Section 5 itself. Now, those certain cases are cases where applicant is able to satisfy the court that there was sufficient cause for not preferring the appeal within such period.


सहायक कलेक्टर
(SDO) शिव

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The applicants have mentioned in their application that it is because of a mistake of the pleader that an ex parte decree was passed. The court at this point is deciding only on the application under S.5 of the Limitation act. Only the reason for preferring the present application after the prescribed period is under scrutiny.

The fact that they were aware that a suit was pending and had even appeared in the court represented by a pleader and the delay of 15 years and 10 months in filing the appeal are not reconcilable. Even if an ex parte decree was passed because of a mistake of the pleader, it is hard to reconcile the conduct of the applicants that they didn't bother to enquire about the status of a pending court case in which they were affected parties. The applicants have failed to provide a sufficient cause as per Section 5 of the limitation act. The delay is not being condoned and the application u/s 5 of the Limitation Act is hereby rejected.


सहायक कलक्टर
(SDO) शिव

