

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCC No. 294 of 2015

Thakurram & Ors. **Versus** Babulal & Ors.

03/07/2015	Shri Anand Kesharwani, Advocate for the applicants. Shri Sanjeev Agrawal, Panel Lawyer for the State/respondent No.3. Heard on IA No.01/2015, application under Section 5 of Limitation Act as the instant MCC is filed after 186 days of its limitation and also heard on admission. Second Appeal No. 229 of 2003 was dismissed as per peremptory order dated 11.07.2014. Learned counsel appearing for the applicant submits that as the applicants were not having information regarding death of respondent No.2, they were not in a position to file suitable application for substitution of LRs of respondent No.2, and therefore, delay be condoned and SA No. 229 of 2003 be restored to its original number. Perused the order dated 11.07.2014. At the time of passing of order dated 11.07.2014, counsel for appellants was present, thereby, it was well within the knowledge of applicants/appellants through their counsel that what was the order of court. Vide that order, three weeks time was granted to the applicants to to file suitable application for substituting LRs of respondent No.2. Before completion of three weeks, no any application preferred on behalf of applicants/appellants for extension of time or inability or for any circumstances and thereafter instant MCC has been filed for restoration of SA No.229 of 2003 that too after inordinate delay 186 days of its limitation. While considering the above facts, delay is not satisfactorily explained, and as such, MCC is not liable for admission.	

	Section 5 of Limitation Act, 1963, confers power to condone delay if the applicants are successful in showing that they were prevented from preferring the appeal for sufficient cause. It is the sufficient cause which gives jurisdiction to a court to condone the delay. Normally, after the expiry of the period right to sue extinguishes and the other side acquires right, which normally should not be disturbed. Only in case of proving a sufficient cause, the applicant is entitled to continue the litigation further. At the same time, the court should adopt a liberal approach while dealing with an application under Section 5 of the Limitation Act. For the reasons mentioned herein above, IA No.01/2015 for condonation of delay is dismissed. Consequently, MCC is also dismissed as not maintainable. No order as to costs. Sd/- (Chandra Bhushan Bajpai) Judge	

Inder