

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 405 of 2015**

Sardar Harvansh Singh (Dead) s/o Karam Singh Through Lrs.

1. Smt. Satwant Kaur, Kathoor, w/o Late Harvansh Singh, aged about 40 years, occupation household.
2. Surendra Singh Kathoor S/o Late Harvansh Singh Aged About 24 Years Occupation Nil (Dead)
3. Surendra Pal Singh Kathoor S/o Late Harvansh Singh Aged About 22 Years Occupation Nil (Dead)
4. Arjun Singh Kathoor S/o Late Harvansh Singh Aged About 21 Years Occupation Nil

All resident of village Ramanujganj Road, Boripara (Mahaveer Ward)
Near Hanuman Mandir, Ambikapur, District Surguja (CG)

---- Applicants

Versus

1. Om Prakash Agrawal (Died),
- 1(a) Sushil Kumar S/o Om Prakash Aged About 48 Years
- 1(b) Brijmohan Agrawal S/o Om Prakash Agrawal Aged About 55 Years
- 1(c) Bajrang Agrawal S/o Om Prakash Agrawal Aged About 53 Years

All resident of near Jaystambh, Bindu Saree Centre, Ambikapur, District Surguja (CG)

---- Respondents

For Applicants	: Smt. Anju Ahuja, Advocate
For Respondents	: Shri A.K. Yadav, Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****15/10/2015**

1. Heard on I.A, No. 1/2015 for condonation of delay in filing the instant MCC, barred by limitation of 217 days.

2. The MCC filed for restoration vide No.585 of 2014 was dismissed on 23.12.2014 summarily reserving liberty to the petitioners to file appropriate application may be under Order 22 Rule 9 of the Code of Civil Procedure along with other supporting applications.

3. Thereafter, information sent to the applicants was received at a later stage and on account of illness of appellant No.1, they could not take immediate steps to file required application, hence, there is a delay of 217 days and also on a bonafide act after the order passed in S.A.No.867/98 on 27.6.2014, the applicants had filed MCC No. 585/2014, which was dismissed on 23.12.2014. Thereafter, the present MCC has been preferred. Hence, it is prayed that delay in filing the instant MCC be condoned.

4. On behalf of the respondents, reply to I.A.No.1/2015 has been filed wherein it is submitted that as the sole respondent died on 23.10.2005, the applicants were in knowledge about the death of the sole respondent as they are living in the same vicinity and on the other grounds, it is prayed that appropriate orders be passed and the MCC be dismissed.

5. From perusal of the order sheet in Second Appeal No. 867/98, it shows that since the sole respondent died on 23.10.2005, he was represented through his counsel. The respondents have failed to demonstrate whether any information

as required regarding the death of the sole respondent was given to the Court as per Order 22 Rule 10A C.P.C. as the duty is casted on the pleader in a mandatory form using the word “shall”. Upon consideration of the entire facts, for the reasons of delay in filing the instant MCC and for the fact that in the mid-way after the impugned order dated 27.6.2014 for dismissal of the Second Appeal for want of prosecution, MCC No. 585/2015 was preferred and subsequently, disposed of vide order dated 23.12.2014. In the considered view of this Court, the applicants have explained satisfactorily regarding delay in filing the instant MCC. Consequently, I.A.No.1/2015 for condonation of delay in filing the MCC is hereby allowed. Delay of 217 days is condoned. The instant MCC is admitted for consideration.

6. With the consent of the parties, heard finally.

7. Heard on main petition under Order 22 Rule 9 C.P.C., other interim applications for setting aside abatement of Second Appeal No. 867/1998, application under Section 5 of the Limitation Act, for condonation of delay in bringing LRs in the matter, I.A.No.3/2015 for bringing the LRs of the deceased/respondent on record.

8. It is submitted on behalf of the applicants that learned counsel for the applicants could not appear due to oversight and not noticing of listing of the matter before the High Court, non

appearance of the counsel was not intentional, bonafide and same may be condoned and the Second Appeal may be restored along with setting aside the abatement of the death of sole respondent died on 23.10.2005 with a permission to substitute the name of sole respondent, to substitute the names of LRs as mentioned in the instant MCC along with delay in filing setting aside the abatement and also delay in filing the application for bringing the LRs as the appellants filed an application under order 22 Rule 3 C.P.C. for substitution of the LRs as they were aware of one LR only. Though subsequently, they came to know there are 3 LRs and before any order could be passed on the application for substitution and deletion of the name of sole respondent, the instant Second Appeal dismissed for want of prosecution due to oversight of the learned counsel which prayed that it was not intentional rather bonafide.

9. On the other hand, learned counsel for the respondents objected regarding maintainability as the appellants were in knowledge of the fact regarding all the LRs of the sole respondent, no application has been filed within limitation because the applicants are the tenants of the sole respondent. They were from the same vicinity knowing well regarding the death. They failed to file appropriate application regarding substitution and they were negligent for their representation in the matter, hence, as there is no good ground for setting aside the abatement and

condonation of delay for deletion and substitution of LRs are preferred, hence by filing IA No.4/2015 and reply to other interim applications, it is prayed that the instant MCC may be dismissed as not maintainable.

10. On entire consideration of the facts it is surfaced that no compliance of Order 22 Rule 10 A was made by the counsel for the respondent. Even otherwise, before dismissal of instant Second Appeal for non prosecution for substitution of one LR, an application was filed by the appellants. Merely, because there is relationship of land lord and tenant, it cannot be held that death and other facts regarding LRs are in the knowledge of the applicants also as the non compliance of Order 22 Rule 10A of the C.P.C. In the considered view of this Court, the Second Appeal abated on account of death of the sole respondent, delay in filing the application for setting aside the abatement and also delay in filing the application for substitution are shown reasonable cause for the same.

11. Consequently, upon consideration of the entire material all the interim applications filed in the matter on behalf of the applicants/respondents are hereby disposed of and it is held that abatement, if any, caused after the death of sole respondent is hereby set aside. Delay in filing the application to set aside the abatement and also to pray for substitution of the LRs are hereby condoned. Application for substitution of the LRs of sole

respondent is hereby allowed. Second Appeal No.867/98 dismissed for want of prosecution on 27.6.2014 is hereby restored to its original number and the appellants are directed to amend the cause title of the Second Appeal till **6th November, 2015**. Parties are directed to appear for hearing the instant Second Appeal either in person or through their counsel on **19th November, 2015**.

12. The MCC is allowed and disposed of accordingly.

13. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE