

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 545 of 2015

1. Chhaganlal Sharma s/o Devi Sahay Sharma, village Janjgir Champa (CG) (died) through Manish Kumar Sharma S/o Chaganlal Sharma, aged 39 years, R/o village Janjgir Champa CG.

---- Applicant

Versus

1. Executive Engineer, PWD Champa Division, Champa
2. Land Acquisition Officer (Revenue) Janjgir, District Janjgir Champa (CG)
3. State of Chhattisgarh through the Collector, Janjgir-Champa, District- Janjgir-Champa, Chhattisgarh

---- Respondents

For Applicant:	Shri Rupesh Shrivastava, Advocate
For Respondents:	Shri Arun Sao Dy AG.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board By Justice Pritiniker Diwaker

13/10/2015

Heard on IA No. 1 – an application for condonation of delay in filing this MCC.

2. Counsel for the respondents submits that reply has been filed on behalf of the State. He submits that as no satisfactory explanation has been assigned by the applicant for the delay caused in filing the MCC, it cannot be condoned. Even otherwise, according to the State counsel, this MCC is not maintainable in the present form. He also informs that the original applicant has already expired on 3.7.2012 and this MCC has been filed by his son Manish Kumar Sharma under Order IX Rule 13 CPC for setting aside the order dated 15.4.2015 passed

by this Court in FA (M) No. 72/2010.

3. Counsel for the applicant submits that on the date when the case was called, no representation could be made as his counsel was engaged in some other Court. He submits that as the order impugned has been passed by this Court in the absence of the applicants, the same is liable to be set aside.

4. From the order sheets of FA (M) No. 72/2010 it is reflected that on two dates i.e. 5.12.2014 and 11.2.2015 no representation was made on behalf of the applicant though the *Vakalatnama* was filed by the counsel, and ultimately on 15.4.2015 the Court decided the first appeal on merits after hearing the State counsel.

5. Evidently, the order dated 15.4.2015 has been passed after taking into consideration all the relevant aspects of the case in accordance with law. The applicant was provided more than sufficient opportunity but he defaulted repeatedly in ensuring his representation leaving the Court with no other option but to decide the appeal on the basis of material available on record after hearing counsel for the State and giving full consideration to the pleadings of the parties. That apart, the MCC has come to be filed with considerable delay without there being any satisfactory explanation for the same. In these circumstances, there is no reason for this Court to set aside the order dated 15.4.2015. Accordingly, the present MCC is liable to be dismissed on merit as also on account of unexplained delay in filing the same. It is dismissed as such.

Sd/-

(PRITINKER DIWAKER)

Judge

Sd/-

(I.S. UBOWEJA)

Judge