

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 234 of 2015

1. Matuk Lal Soni (since died) through legal representative Suresh Kumar Soni S/o Shri Matuk Lal Soni, aged about 53 years, R/o Sarafa Line Thakhatpur, Tahsil Takhatpur, District Bilaspur, Chhattisgarh

---- Applicant

Versus

1. Shri Ram Janki Bade Mandir Trust Sarafa Line Takhatpur, Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2. Smt. Janaki Soni Wd/o Mutuk Lal Soni, aged about 70 years, R/o Old Police Station Takhatpur, District Bilaspur, Chhattisgarh
3. Smt. Jyoti Soni D/o Mutuk Lal Soni, wife of Narendra Soni, aged about 40 years, R/o Pathariya, Dhamdha, District Durg, Chhattisgarh
4. Smt. Lata Soni D/o Mutuk Lal Soni, wife of Virendra Soni, aged about 50 years, R/o Sonarpara, Mungeli, District Mungeli, Chhattisgarh
5. Smt. Sarita D/o Mutuk Lal Soni, wife of Birbal Soni, aged about 46 years, R/o Sonarpara, Lormi, District Mungeli, Chhattisgarh
6. Dinesh Soni S/o Mukut Soni, aged about 48 years, R/o Near Police Station Takhatpur, District Bilaspur, Chhattisgarh
7. Naresh Soni S/o Mutuk Lal Soni, aged about 43 years, R/o Near Police Station Takhatpur, District Bilaspur, Chhattisgarh

---- Respondents/Non-applicants

For Applicant – Mr. Anukul Biswas, Advocate.

For Respondent No.1 – Ms. Jyoti Rathore, Advocate under the instruction of Mr. Malay Shrivastava, Advocate.

For Respondent No.2 – notice issued to respondent No.2 returned unserved as he has died.

For Respondents 3, 4, 5, 5 and 7 – None, though they are served.

Order on Board

23/07/2015

1. Heard on I.A.No.1/15 for condonation of delay in filing the application for setting aside the abatement.
2. On behalf of respondent No.1, the same is opposed for the delay in filing the instant MCC as it is 132 days barred by time and it is submitted that there is no satisfactory explanation for the same. Learned counsel further opposed the MCC and submitted that the prayer as mentioned in the petition, later part of the prayer is not permissible under the law.

3. Heard both the parties on the above submission.
4. Second appeal No.125 of 2008 vide order dated 19-08-2014 was dismissed as abated as the sole appellant Matuk Lal Soni had died on 22-06-2012 and the LRs. of the deceased had not filed proper application within limitation.
5. Against the order, the LR. of deceased appellant preferred MCC No.37/2015. On 29-01-2015 the co-ordinate Bench of this Court upon prayer made by the applicant to withdraw that petition reserving liberty to file duly constituted petition, dismissed the said petition as withdrawn reserving the aforesaid liberty.
6. Thereafter, the instant MCC has been filed for setting aside the abatement of the second appeal and restoration of the same to its original number and further prayed that applicant be directed to amend the name of LRs. of deceased appellant Matuk Lal Soni.
7. Though, the present MCC is preferred after 132 days of its limitation as the order of abatement was passed on 19-08-2014, before filing this instant MCC, the MCC No.37/2015 also filed, later on, withdrawn with the liberty as aforementioned, thereafter, the instant MCC has been filed; on due consideration, for the reasons mentioned in I.A.No.1/15, this Court is of the view that the applicant has shown satisfactory cause for condonation of delay.
8. Consequently, I.A.No.1/15 is hereby allowed and the delay in filing the instant MCC is hereby condoned.
9. Also heard on the instant MCC duly supported by affidavit filed under Order 22 Rule 9 of the CPC for setting aside the abatement.
10. On due consideration, the MCC is hereby allowed and the abatement of Second Appeal No.125 of 2008 dismissed as abated on 19-08-2014 is hereby set aside and Second Appeal No.125 of 2008 is hereby restored to its original number.

11. The applicant is directed to file appropriate application regarding substitution and other attending circumstances in the Second Appeal No.125 of 2008.
12. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
Judge