

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Civil Case No. 301 of 2015**

M/s B.B. Verma & Company, Contractor & Engineer, Through B.B. Verma, Proprietor, C-15, MP Housing Board Colony, Balco Township, Korba, Chhattisgarh (Presently residing at: HIG-2, Bajpai Castle, Behind Minocha Colony, Bilaspur, Tahsil: Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Applicant**Versus**

1. South Eastern Coalfields Limited, Through Chairman Cum Managing Director, S.E.C.L., Seepat Road, Bilaspur, P.S. Sarkanda, PO. Seepat Road, Bilaspur, Tahsil Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.
2. General Manager, S.E.C.L. Bhatgaon, Area, Civil & Revenue District Surguja (Ambikapur) Chhattisgarh.

---- Respondents

For Applicant	:	Shri Raj Kamal Singh, Advocate.
For Respondents	:	Dr. N.K.Shukla, Senior Advocate with Shri Shailendra Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, J.

Order on Board**Per Navin Sinha, Chief Justice****11/08/2015**

1. The present application has been filed to restore First Appeal No. 138 of 2007 dismissed for want of prosecution on 13.10.2014. The restoration application is barred by delay of 137 days.
2. Learned Counsel for the Applicant submits that it was primarily lack of proper communication with the earlier Counsel which led to dismissal for non-prosecution. The Applicant is 68 years old suffering from various ailments as detailed in paragraph 2 of the application supported by documentary evidence. The delay may therefore be condoned and the appeal be restored to file for disposal on merits.
3. Learned Senior Counsel Dr. N.K.Shukla appearing for the Respondents has opposed the prayer for condonation of delay as also the restoration

application submitting that the present was not a case where no one appeared on behalf of the Applicant leading to dismissal for non-prosecution. On the contrary, a clear statement was made giving the impression that the Applicant was no more interested in pursuing matters further evident from paragraph 2 of the impugned order.

4. We have considered the submissions on behalf of the parties.

5. A final order on merit adjudication is always preferable to an order passed on technicalities which leaves the dispute festering to resurface in one manner or another. In the facts of the present case, considering the plea of lack of proper communication with the earlier counsel, supported by the plea of ailment, we are satisfied that present is a fit case in the larger interest of justice to restore the First Appeal for disposal in accordance with law.

6. The application for condonation of delay is allowed and First Appeal No. 138 of 2007 is restored to file for disposal on merits.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE