

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 196 of 2016**

Bishambhar Prasad Verma (Died) Through Lrs
1. (A) Ravi Verma Aged about 35 Years S/o Late Shri Bishambhar Prasad Verma, R/o Hatri Bazar, Main Road, Baloda Bazar, P.S. Baloda Bazar, Revenue And Civil District- Baloda Bazar-Bhatapara, Chhattisgarh
1. (B) Dinesh Verma Aged about 33 Years S/o Late Shri Bishambhar Prasad Verma, R/o Hatri Bazar, Main Road, Baloda Bazar, P.S. Baloda Bazar, Revenue And Civil District- Baloda Bazar-Bhatapara, Chhattisgarh
1. (C) Ramesh Verma Aged about 30 Years S/o Late Shri Bishambhar Prasad Verma, R/o Hatri Bazar, Main Road, Baloda Bazar, P.S. Baloda Bazar, Revenue And Civil District- Baloda Bazar-Bhatapara, Chhattisgarh

---- Applicants**Versus**

1. Ku. Sharmila Mandhani D/o Late Goverdhan Das Mandhani, Aged About 17 Years Minor Through Brother Shri Ramdev Mandhani S/o Late Shri Goverdhan Das Mandhani, R/o Shailendra Nagar, Raipur, Revenue And Civil District- Raipur (M.P.) Now Chhattisgarh
2. Ku. Madhu Mandhani D/o Goverdhan Das Mandhani, Aged About 15 Years Minor Through Brother Shri Ramdev Mandhani S/o Late Shri Goverdhan Das Mandhani, R/o Shailendra Nagar, Raipur, Revenue And Civil District- Raipur (M.P.) Now Chhattisgarh
3. Ramanlal S/o Khoru Ram Sahu, Aged About 29 Years R/o Kusmi, P.S. Palari, Revenue And Civil District Raipur (M.P.) Now Chhattisgarh
4. The New India Insurance Company Limited, Through Divisional Manager, Divisional Office Madina Building, Station Road, Revenue And Civil District Raipur (M.P.) Now Chhattisgarh

---- Respondents

For Applicants	:	Shri Palash Tiwari, Advocate
For Respondents 1 & 2	:	Shri K.K. Patel, Advocate
For Respondent 3	:	Shri Deepak Jain, Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****24/10/2016**

1. Heard on I.A.No.1/2016, application for condonation of delay in filing the MCC.

2. The instant MCC has been preferred after 1215 days of its limitation.
3. Also heard on I.A.No.2/2016 for grant of leave for filing application for restoration of M.A.No.1387/1999, dismissed for want of prosecution on 10.1.2013.
4. As per facts of the case, against the award passed by the Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No.11/97 dated 13.4.1999, non-applicant No.1- Bishambhar Prasad Verma had filed M.A.No.1387/1999 under Section 173 of the Motor Vehicles Act, 1988 for quashment of the award. The said M.A. has been received on transfer by this High Court after formation of the State of Chhattisgarh. As the parties were not represented, this Court issued SPC for securing representation of the appellant Bishambhar Prasad Verma. As per SPC report, the said appellant has died. Therefore, this Court had dismissed the appeal for want of prosecution. The present applicants are the LRs of said Bishambhar Prasad Verma who died on 17.2.2012. The applicants were not having knowledge regarding presentation of any appeal by their father or any award passed against their father as aforementioned. They came to know only when execution proceeding arises out of the impugned award dated 13.4.1999 that an execution is pending against their father and after the death of their father, they have noticed as LRs to satisfy the said award. Thereafter, the applicants enquired about the fate of M.A. No. 1387/1999 and filed the instant application for restoration of the said M.A. as the LRs.
5. It is submitted on behalf of the applicants that they had no knowledge hence, though they had filed the instant MCC after 1215 days of its limitation, but immediately after the knowledge regarding the said execution

petition, they enquired and ultimately filed the instant MCC, hence they may be permitted to file the instant MCC for restoration and the delay in filing the MCC may be condoned.

6. Learned counsel for the applicants submits that as the said MA was dismissed for want of prosecution, a legal question is involved as to what extent the LRs of the deceased against whom an award is passed and being executed are responsible and required to satisfy the award as Section 306 of the Indian Succession Act, 1925 is not applicable and also on the other hand, the claimant has to prove this fact that they have inherited the property of the deceased Bishambhar Prasad Verma so that the award may be executed against the present applicants from the estate inherited by the applicants. Learned counsel further submits that unless the M.A. may be heard and disposed of in appreciation of legal question, execution may not be come to an end and on the basis of the Lrs, they may be directed to satisfy the award hence, looking to the peculiar condition of the matter and also there was no knowledge regarding the said M.A., the delay may be condoned.

7. Per contra, learned counsel for the respondents opposed the prayer.

8. Perused the material available on record.

9. On due consideration, it would be appropriate to permit the applicants to file the application for restoration of M.A.No.1387/1999. Consequently, I.A.No.2/2016 is hereby allowed. The applicants are permitted to file restoration application for M.A.No.1387/1999, being the LRs. of deceased Bishambhar Prasad Verma.

10. On consideration of the submission made on behalf of the applicants, the facts involved required a judicial pronouncement by this Court as to what extent the LRs of the judgment debtor be held responsible to satisfy the award as per law. Also the fact that as they were not party in the said M.A. they were not having any knowledge regarding pendency of such M.A. before this Court.

11. In the considered view of this Court, the applicants had satisfactorily explained the delay as they had no knowledge for existence of said M.A. and also for dismissal of the M.A. for want of prosecution.

12. Consequently, the delay of 1215 days of its limitation in filing the MCC is hereby condoned. Also heard the matter finally.

13. On due consideration, the instant MCC is hereby allowed. M.A.No.1387/1990 dismissed for want of prosecution on 10.1.2013 is restored to its original number. The applicants are directed to file appropriate interim application under the provisions of Order 22 C.P.C and other provisions in the said M.A. within 30 days from today. On filing of the said interim application, the M.A. is directed to be restored for further hearing.

14. Registry is directed to list M.A.No.1387/1999 for further hearing on 1.12.2016. Parties to the present MCC are directed to take part in hearing of the said M.A. on 1.12.2016 either in person or through their respective counsel.

15. The MCC stands disposed of.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

