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HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 805 of 2016

1. Dheeraj Bhosle S/o. Raghupat Rao Bhosle, aged about 46 years, R/o Village Simga, Police Station and Tehsil Simga, Civil and Revenue District Raipur, Chhattisgarh

---- Applicant

Versus

1. Smt. Ranu Bhosle D/o. Prahlad Rao Jadhav, aged about 43 years, W/o. Dheeraj Bhosle, Presently R/o. Geeta Nagar, Bhanupuri, Police Station Khamtarai, District Raipur, Chhattisgarh

---- Non-applicant

For Applicant :- Shri Durgesh Goyal, Advocate.
For Non-applicant - None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

08/11/2016

1. The instant MCC has been preferred 268 days of its limitation as the applicant failed to remove the default as directed by this Court on 23-12-2015. While hearing MCC No.1025/2015 the applicant prayed for an opportunity to remove the default in First Appeal No.55/2004 on the basis of peremptory order dated 14-05-2015 for removing the default in said first appeal. At the request of learned counsel for the applicant said MCC No.1025/2015 was allowed with a pre-condition that the default shall be removed within 7 days from 23-12-2015 and after removal of said default within stipulated period, the first appeal is directed to be restored and to be listed for further hearing. As the applicant failed to remove the default as submitted during hearing of said MCC No.1025/2015 on 23-12-2015, said first appeal was not restored. Against said order in the MCC, the applicant had preferred MCC No.645/2016 and as prayed on 16-09-2016, said MCC was disposed of as withdrawn with liberty to file a duly constituted MCC for

restoration of MCC No.1025/2015. After said liberty the applicant has filed the present MCC which is barred by limitation by 268 days.

2. Learned counsel for the applicant submits that the applicant was under wrong impression that the default was removed when they filed the application under Order 5 Rule 20 of the CPC and thereafter when they enquired about fate of said matter they came to know that said first appeal was not restored as the default was not removed, hence, prayed that the delay may be condoned and the present MCC may be heard, allowed and MCC No.1025/2015 may be restored.

3. Perused the material annexed along with said MCC. On perusal of order dated 23-12-2015, it appears that said MCC was allowed on a submission made on behalf of the applicant. The present MCC has been filed for restoration of MCC No.1025/2015.

4. On due consideration, it shows that said MCC was not dismissed for want of prosecution, on the other hand, disposed of, allowed as per submission of applicant, also the present MCC is barred by limitation by 268 days. The applicant has failed to demonstrate satisfactory cause for the delay. Even otherwise, in the present MCC, the applicant cannot get the relief as said MCC was disposed of on the basis of submission made on behalf of the applicant.

5. On due consideration, I.A.No.1/2016 for condonation of delay is dismissed. Also the MCC is dismissed being not maintainable on its merit and barred by limitation by 268 days.

6. MCC dismissed.

Sd/-
(Chandra Bhushan Bajpai)
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