

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 36 of 2016**

Om Narayan Singh @ Munna Singh S/o Lt. Surajpal Singh Aged About 52 Years R/o 534 / 20, Chowrasiya Colony, Matpurana Santoshi Nagar, Tikrapara Raipur, Chhattisgarh

---- Applicant

Versus

Abhay Kale S/o B. K. Kale Aged About 41 Years R/o 324, Priyadarshini Nagar, P.S. Tikrapara, Distt. Raipur Chhattisgarh

---- Respondent

For Applicant:
For Respondent:

Mr. Pragalbha Sharma, Advocate
Mr. Vishnu Kosta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12.05.2016**

1. The present Revision has been preferred challenging order dated 11.12.2015 passed by the Learned Eighth Additional Sessions Judge, Raipur in Criminal Revision No. 21/2013 whereby the Court below has allowed the Application under 5 of the Limitation Act in support of Revision Petition under Section 397/401 filed before the revision Court by the Respondent in connection with the Complaint Case under Section 138 of the Negotiable Instrument Act which has been dismissed for want of prosecution on 14.06.2012.

2. Learned Counsel for the Applicant submits that the order of the revision Court dated 11.12.2015 i.e. the impugned order, is bad in law for the reason that the Court below has not taken into consideration the

essential requirement of the ingredients which are required under Section 5 of the Limitation Act while condoning the delay. According to the Counsel for the Applicant the respondent ought to have given day to day casue for delay while filing an application under Section 5 of the Limitation Act and in absence of the proper justification for the day to day delay the application under Section 5 ought to have been rejected. He further submits that the grounds which is given by the Respondent in his application are not plausible or justifiable and therefore the order is bad in law.

3. Learned Counsel for the Respondent however opposing the Petition submits that the complaint case was filed in the year 2008 and it got dismissed in the year 2012 i.e. after more 4 year, that too on account of default in the appearance of the Petitioner before the Court on 14.06.2012. He further submits that there was a communication gap with the Counsel who was engaged by the Respondent in as much as the Counsel did not intimate him about the dismissal of the complaint in default, and when at a later stage he came to know that the complaint case has been dismissed, he immediately thereafter filed a revision Petition on 14.01.2013 along with the application for condonation of delay. He submits that the cheque which was dishonoured was of a huge amount i.e. to the tune of Rs. 25 lakhs and in case the Complaint case stands rejected or is not revised, his interest would be adversely affected therefore, considering these facts the Court has allowed the Application under Section 5 of the Limitation Act and therefore, the

impugned order does not call for interference.

4. Considering the total facts and circumstance of the case, particularly taking into consideration the fact that the compliant case is of the year 2008 and it was dismissed on default after 4 years and also that the delay in filing the Revision Petition does seem to be long for the reason that delay as pointed out is only of 4 months, and the reason shown also seems to be plausible and justified as it was because of the reason that the Counsel for the Petitioner in the complaint did not communicate to him about the dismissal of the complaint. Taking this fact into consideration and also the fact that the compliant case was dismissed on default of non appearance and not on merit, it would adversely affect the Respondent and will be also detrimental in the interest of justice. In the opinion of this Court there is no illegality or infirmity on the part of Court below in allowing the Application under Section 5 of the Limitation Act.

5. Accordingly, the instant Revision devoid of merits, the same is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE