

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 717 of 2015

1. Shaheed Khan S/o Late Mahmood Khan Aged About 67 Years
2. Sikandar Khan S/o Late Mahmood Khan Aged About 47 Years
3. Babar Khan S/o Late Mahmood Khan Aged About 40 Years
4. Gulzar Khan S/o Late Mahmood Khan Aged About 30 Years
5. Bhoori Bai W/o Late Mahmood Khan Aged About 75 Years

All the applicants are R/o Semra, Post- Semra, Tahsil & P. S. Pendra Road, Civil & Revenue District- Bilaspur, Chhattisgarh {All The Applicants Are Legal Heirs Of Late Mahmood Khan, (Who Was The Appellant Before This Honble Court And Was Defendant No.1 Before The Learned Trial Court. Mahmood Khan Died During The Course Of Litigation)}

---- Applicants

Versus

1. Akbar Khan S/o Namdar Khan Aged About 60 Years
2. Sameem Khan @ Miththoo Khan S/o Sahroom Khan Aged About 32 Years

Respondents No. 1 & 2 are R/o Village Semra Tahsil- Pendra Road, Civil & Revenue District- Bilaspur, Chhattisgarh

3. (Deleted) Peernabi
4. Smt. Bhuri Bai W/o Mahmood Khan Aged About 55 Years
5. Shabbir Khan S/o Namdar Khan
6. Sameer Khan S/o Dildar Khan Aged About 60 Years

Non-applicants No. 4 to 6 are R/o Village Semra, Tahsil- Pendra Road, Civil & Revenue District-Bilaspur (CG)

7. The State Of M. P. (Now Chhattisgarh) Through The Collector Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh (Respondents)

---- Respondents

For Applicants	:	Shri Surfaraj Khan, Advocate
For Respondent No.1 & 2	:	Shri Ankit Singhal, Advocate
None for other respondents		

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/03/2016

1. Heard on I.A.No.1, application for condonation of delay in filing this application (MCC).
2. Learned counsel for the applicants, drawing attention of this Court to the reasons stated in the application, submits that the delay in filing the application for restoration is bonafide. The first appeal was filed by the father of the applicant. When the case was listed, the counsel did not represent the matter and the case was dismissed. This fact was not known to applicants. The father of the applicants had already died in the year 2009. There was no information from the counsel.
3. Learned counsel for the respondents opposed the prayer for condonation by submitting that there is long delay of 738 days and the explanation offered by the applicants does not constitute sufficient cause because it was negligence on the part of the applicants and the counsel both. It is also submitted that before the executing Court, the applicants appeared and they had come to know about the dismissal of the appeal, but, even then, the application for restoration was filed as late as on 20th August, 2015.
4. While considering prayer for condonation of delay, the Court is required to adopt liberal standards. The matter relates to right over the immovable property. This is a case where an appeal was filed by the father of the applicants. The appeal was listed but dismissed for want of prosecution. The appeal was filed in the High Court of Madhya Pradesh and later on

the case was transferred to the High Court of Chhattisgarh. True it is that in the execution proceedings, the applicants did appear, however, it is not a case where the application for restoration has been filed years after completion of execution proceedings. The order sheet placed on record show that the applicants were represented through their counsel in the execution proceedings only in the month of June, 2014 and thereafter, the execution continued. The order sheet further records that the order of the High Court was being awaited ever since 18.6.2014 up to 19th January, 2015. Therefore, taking into consideration the cumulative effect of the aforesaid facts and circumstances, delay in filing the application has to be condoned. The application is accordingly allowed. Delay in filing restoration application (MCC) is condoned.

5. The reasons stated herein-above also constitute reason why the order of dismissing First Appeal No.470 of 1997 for want of prosecution should also be recalled. Application (MCC) is therefore allowed. Order dated 11.7.2013 dismissing First Appeal No.470 of 1997 for want of prosecution is hereby recalled. First Appeal is restored to its original number.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge