

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 252 of 2016**

Mohd. Shahid Khan, S/o Shri Mohd. Rahim Khan, Aged about 38 Years, Resident of Sadar Police Line (Old Lines), Quarter No. 2/631, Main Gate Police Line, Raipur, District Raipur, Chhattisgarh

---- Appellant**Versus**

1. State of Madhya Pradesh (Now Chhattisgarh), Through Secretary, Ministry of Home Affairs, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh
2. Director General of Police, P.H.Q. Raipur, District – Raipur, Chhattisgarh
3. Inspector General of Police, Raipur Zone, District – Raipur, Chhattisgarh
4. Superintendent of Police – Raipur, District – Raipur, Chhattisgarh

---- Respondents

For Applicant : Shri Ravi Bhagat, Advocate

For Respondent : Shri Vinod Deshmukh, Deputy Govt. Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment on Board****19/09/2016**

1. This writ appeal is directed against the judgment dated 29.3.2016, whereby, the Learned Single Judge dismissed the application for restoration (M.C.C. No. 982 of 2015) of the writ petition filed by the Appellant.
2. Briefly stated facts of the case are that the Appellant had filed Writ Petition (S) No. 2126 of 2005 and it was dismissed for want of prosecution

on 22.8.2012. Thereafter, the Appellant filed the application for restoration being M.C.C. No. 38 of 2013, which was allowed and the writ petition was ordered to be restored on 28.1.2013. Unfortunately, on 9.1.2014 again the writ petition was dismissed. Thereafter, the Appellant had filed application for restoration being M.C.C. No. 982 of 2015 on 2.12.2015 i.e. after almost two years. In the application for condonation of delay only grounds given are as follows:

“2. That, the applicant wants to submit that there is a delay in filing the restoration application of W.P. (S) No. 2126 of 2005 as the same has been dismissed for want of prosecution on 09/01/2014. That, the fact that the matter has been dismissed was not come to the knowledge of the counsel, and the counsel for the petitioner was under the impression that the matter is pending before the Hon'ble High Court. That same was came to the knowledge in the month of November 2015, when the petitioner himself checked the status of the case in the Inquiry at Hon'ble High Court, thereafter without further delay the petitioner contacted the counsel applied for the certified copy on 27/11/2015 received the certified copy on 30/11/2005, as affidavit was awaited further delay occurred and therefore this delay has been occurred.

3. That the circumstances really beyond the control of petitioner as when the petitioner inquired his case status before Enquiry, then the information of dismissal of the writ petition on want of prosecution on 09/01/2014 came into the knowledge of the Petitioner as well as the petitioner's counsel very late, as the petitioner was under the impression that the matter is pending therefore, for this reason the petitioner has been prevented from approaching high court for restoration of the W.P. (S) No. 2126 of 2005 within the time prescribed. That there is a bonafide mistake and therefore a liberal view should be taken.”

3. The Learned Single Judge rightly held that the grounds set out in the application are not sufficient to condone the delay.

4. It appears that on 31.8.2015, the Appellant had sent a letter to the High Court asking information about his case and then he was informed that his case was dismissed on 9.1.2014. This document does not support the version of the Appellant given in the MCC petition that his counsel

remained under the impression that the writ petition was pending. Why would a party write directly to the High Court for information about his case if he has engaged a counsel and was in contact with him. The Appellant is not telling whole truth to the Court and is hiding something from the Court.

5. We, therefore, find no merit in writ appeal. It is accordingly dismissed.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge