

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 10 of 2016**

1. State Of Chhattisgarh , Through Secretary, Department Of Water Resources, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh (The Appellant No. 1, Though, Was Not A Party Before The Court Below, But, For Due Representation Of The State Of Chhattisgarh, Is Arrayed As Appellant)
2. The Executive Engineer, T.D.P.P. (Tribal Development Pilot Project), Water Resources, Department, Jagdalpur, Chhattisgarh(Non Applicants)

---- Appellants**Versus**

Fakir Mohan Singh S/o Kamlochan Singh Thakur, Agriculturist, R/o Village Titirgaon, Tahsil Jagdalpur, Presently Residing At Geedam, P.S. Geedam, District South Bastar Dantewada, Chhattisgarh
(Applicant)

---- Respondent

For appellant	:	Ms. Prachi Agrawal, Adv. under the authority of Mr. B.P. Sharma, Adv.
For Respondent/State	:	Mr. Satish Gupta, GA.

ORDER**22/12/2016**

1. Heard on I.A. No. 1/16 for condonation of delay in filing the instant FAM as the same has been filed after 522 days of its limitation.
2. Learned counsel for the appellant submits that the delay is not deliberate or intentional. Counsel for appellant No. 2 sent a communication with his opinion in favour of preferring an appeal on 8-5-2014, further on 11-6-2014 another communication from the counsel was received by the appellant No. 2. Then for completion of formalities and obtaining necessary permission, the matter was processed. Hence the appeal is preferred after 522 days of its limitation. Also the appeal preferred by the respondent is pending before this Court and delay in filing the present appeal is not going to affect adversely any right of the respondent herein as no such right has accrued in his favour in many time. Hence it is prayed that delay may be condoned. Instant FAM may

be admitted for consideration along with connected FAM filed by the respondent for enhancement.

3. Perused the order passed by the Court below dated 4-4-2014.
4. Learned counsel for the appellant placed reliance on the judgment in the matter of State of Haryana -v- Chandra Mani and ors. reported in (1996) 3 SCC 132 wherein the Hon'ble Apex Court condoned the delay of 109 days in filing the appeal. In the said case, the High Court of Haryana dismissed the appeal thereafter the appellant/State preferred appeal before the Apex Court after leave to appeal. Learned counsel drew the attention of this Court in para 11 of the judgment which is reproduced below :

“11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court-be it by private party or the State-are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the Community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually

affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the case whether any legal principles are involved for decision by the court or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is fit case for condonation of the delay."

Learned counsel for the appellant submits that in the light of the principles laid down by the Apex Court, the delay in filing the appeal of 522 days may be condoned.

5. By filing the I.A. No. 1/16, the appellant solely attempted to impress upon the communication received from the counsel and various formalities for preferring an appeal in the in-house institution. Under the Limitation Act, the limitation to prefer an

appeal is for every concerned. In the present matter, the appeal has been preferred after 522 days of its limitation. From perusal of the order sheet recorded in FAM No. 65/2014 the connected appeal preferred by the present respondent as appellant for enhancement of the amount ordered by the Court below, it appears that in the said FAM the State was represented on 24-7-2014. With this, it appears that the State through his counsel before this Court was aware of existence of FAM No. 65/2014 which was for enhancement of the order passed by the Court below, even then the State has filed instant FAM No. 10/2016 on 23-12-2015 which goes to show that after a lapse of one year and five month after representation of the State in the connected FAM, the State has preferred instant FAM before this Court. Looking to the fact that the State was fully aware of the pendency of another FAM against the order passed by the Court below, the appellant preferred instant FAM after 522 days of its limitation

6. In the case law cited above, there was a delay of 109 days only. This Court is of the considered view that in addition to the date of knowledge of the order dated 4-4-2014 where the present appellant No. 2 was represented through public prosecutor, the respondent No. 2 also marked his representation on 24-7-2014 in the FAM No. 65/2014 preferred by the respondent against the same order which was also admitted on 24-7-2014. This court is of the view that merely for the sake of formalities and also in absence of any satisfactory cause for delay of 522 days, such delay is not satisfactorily explained.
7. Consequently, I.A. No. 1/15 for condonation of delay is not maintainable. Hence I.A. No. 1/15 is dismissed. As a result, instant FAM is also dismissed as barred by limitation.

Sd/-
(Chandra Bhushan Bajpai)
Judge