

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 247 of 2017

1. Dipak Dharmani S/o Khusiram Dharmani, Aged About 45 Years R/o Hanuman Nagar, Kalibadi, Raipur, Tahsil & District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Gurdip Singh S/o Gurucharan Singh, Aged About 55 Years R/o Govind Nagar Pandari, Raipur, Tahsil And District Raipur, (Chhattisgarh)
2. Baliram Dharmani, S/o Kushiram Dharmani, Aged About 50 Years R/o Hanuman Nagar, Kalibadi, Raipur, Tahsil & District Raipur, (Chhattisgarh)

---- Respondent

For Petitioner

Shri M.K. Bhaduri, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

08/03/2017

1. The Board of Revenue has refused to interfere with the order passed by the Commissioner, Raipur Division, on 16-5-2016 whereby the Commissioner allowed the respondents' application under Section 5 of the Limitation Act to condone the delay in filing the appeal.
2. Since the Commissioner as well as the Board of Revenue have passed reasoned orders elaborately dealing with the

explanation offered by the respondents seeking condonation of delay, this Court in exercise of powers under Article 226 of the Constitution of India may not interfere with the said concurrent findings, as if this Court is sitting in appellate jurisdiction.

3. Even otherwise, in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** {AIR 1987 SC 1353}, it has been observed that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There should not be a presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
4. In view of the above, the writ petition *sans* merit is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra