

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 575 of 2017

1. Rohit Kumar S/o Shri Sukhram, Aged About 5 Years R/o Village Kohadiya, P. S. No. 40, R. I. No. Anandgaon, Post Gudheli, Tahsil Berla, District Durg Chhattisgarh.

---- Petitioner

Versus

1. Pradeep Ganguwar S/o Late Rajeshwar Rao Ganguwar, Aged About 54 Years R/o Near Shiv Mandir, In Front Of Talab, Ward No. 2 Rajeev Nagar, Tahsil And District Durg Chhattisgarh. (Plaintiff)
2. Suresh Dongaonkar, S/o Late Pandurang Dongaonkar, Aged About 70 Years R/o Village Kohadiya, P. S. No. 40, R. I. No. Anandgaon, Post Gudheli, Tahsil Berla, District Durg Chhattisgarh Present At Block No. 13-14, Building No. B- 20, Girdhar Aangan, In Front Of Girdhar Nagar, Valne Pune Maharastra.

---- Respondent

For Applicant
with Ms.

Shri H.B Agrawal, Senior Counsel
Preeti Yadav, Counsel

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/08/2017

1. The present application for restoration has been moved after delay of seven years, during which the petitioner was enjoying the interim order, whereby the proceedings before the trial Court was stayed.

2. It is argued that the interim order was passed on 04-05-2010¹² and the petitioner had paid the process fee on 06-05-2010 and the State has already filed its return, therefore, there was no mistake or malafide on the part of the petitioner, therefore, the writ petition deserves to be restored to its original number.
3. On 04-05-2010, this court directed for issuance of notice to all the parties by ordinary mode as well as by registered mode. The petitioner paid the process fee by ordinary mode to the private respondents and by registered post to the State of Chhattisgarh, instead of paying two separate sets of process fee to all the respondents, one for service by ordinary mode and the another for service by registered mode. The petitioner was in possession of certified copy of the interim order, on the basis of which, at his instance, the trial Court stayed the further proceedings for seven long years, therefore, it cannot be said that the petitioner was not aware of the requirement of paying two separate sets of process fee. During the seven years period, the petitioner never made any effort to check up with the Registry as to the fate of his petition. It is only when the opposite party informed the trial Court that the petition has already been dismissed in the High Court because of non compliance of the peremptory order, the petitioner has rushed to this court for moving this restoration application.
4. Having examined the papers, this Court is not convinced that the petitioner was bonafidely believing that the writ petition is pending. It is a case where the petitioner was enjoying the

interim order, therefore, it was him to verify about the compliance of the peremptory order within the time fixed by the Court. The petitioner's conduct does not entitle him to make a prayer for restoration. It lacks bonafide, therefore, it deserves to be and is hereby rejected.

5. The MCC for restoration of WP (227) No.2132/2010 is dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Nirala