

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Civil Case No.530 of 2016**

- Panchram S/o Late Somar Sai, Aged About 58 Years R/o Village Khondhia, Now Tahsil Udaypur, District Surguja, Chhattisgarh, Civil And Revenue District Surguja, Chhattisgarh.....(Plaintiff)

---- Applicant**Versus**

1. Ishwar S/o Somar Sai, Aged About 35 Years Caste Kanwar, R/o Village Khondla, Now Tahsil Udayapur, District Surguja, Chhattisgarh
2. Hirammar, S/o Somar Sai, Aged About 30 Years Caste Kanwar, R/o Village Khondla, Now Tahsil Udayapur, District Surguja, Chhattisgarh
3. Smt. Bachni, D/o Somar Sai, Aged About 45 Years R/o Village Rekhi, Post Udaypur, District Surguja, Chhattisgarh
4. The State Of Madhya Pradesh Now Chhattisgarh Through Collector Surguja At Ambikapur, Chhattisgarh.....(Defendants)

---- Respondents

For applicant	: Shri AK Prasad, Advocate
For respondent No.4	: Shri SK Mishra, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****01.3.2017**

Heard on IA No.01/16, for condonation of delay in filing the application as the same has been filed after 1168 days of its limitation.

2. By filing the instant MCC, it is prayed that SA No.213/98 dismissed for want of prosecution on 22.3.2013 may be restored.

3. Learned counsel for the applicant would submit that during the pendency of the appeal, appellant No.1 Gedi Bai has expired in the year 2003 and her legal representative was already in

record as appellant No.2 Panchram. After transfer of this case from erstwhile High Court of Madhya Pradesh, it was listed for hearing on 08.01.2013, 14.01.2013 and ultimately 22.3.13 as no one appeared of behalf of the appellant, the appeal was dismissed for want of prosecution. When the applicant met his counsel, his counsel advised him to enquire the matter at Bilaspur. Thereafter as the applicant enquired the matter, he came to know regarding dismissal of the said second appeal. Thereafter immediately the applicant has preferred the instant application, hence, the delay may be condoned and the said second appeal may be restored for hearing.

4. Learned counsel for the appellant has placed reliance on **(2014) 4 SCC 163, Manoharan vs. Sivrajan and Others**, whereby the Hon'ble Apex Court condoned the delay in filing the appeal in the High Court as well. He also placed reliance on **1984 AIR(SC) 41, Lachi Tewari vs. Director of Land Records**. In the said case law Hon'ble the Apex Court held that if the party belongs to rural area and have no knowledge of the court's procedure, after engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest and at the time of hearing of appeal, personal appearance of the party is not required and in the matter the party had taken the steps as required.

5. Perused order dated 22.3.2013.

6. It is apparent that in IA No.01/16 there is no disclosure of facts regarding date and month of death of appellant No.1 of SA No.213/98 and also there is no disclosure of fact despite alleged death of appellant No.1 in the year 2003 why the applicant had not taken any steps for the deletion of appellant No.1 from the cause title of said second appeal. Also there is no disclosure of date, month and year in para 6 when the applicant met his counsel to know the progress of the case. The instant MCC is barred by 1168 days of limitation. The applicant is required to satisfy the delay caused in filing the instant MCC. In the present matter as the applicant has utterly failed to satisfy the Court regarding the cause of delay, IA No.01/16 is dismissed. The case law submitted has no help to the applicant looking to the facts and circumstances of the present matter. MCC is also dismissed as barred by limitation.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE