

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C. No. 643 of 2017**

1. Amish Kumar Lal S/o Ishwari Lal, Aged About 32 Years R/o Village Bochuvakapa, Post Jargahagon, Tahsil Mungeli, Civil Bilaspur, Revenue District Mungeli, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Suchitra Bobby Lal W/o Amish Kumar Lal, Aged About 34 Years R/o Behind Of Anant Karuna Vidya Mandir, Jarhabhata, Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Non-Applicant

For Applicant:
For Non-Applicant:

Shri N. L. Soni, Advocate
Shri Ritesh Verma, Advocate

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****23.10.2017**

1. Heard on I. A. No. 1, an application for condonation of delay of 869 days in filing this petition.
2. It is submitted in the application for condonation of delay that when the matter was listed for hearing on 04.03.2015, neither the counsel nor appellant was present and therefore, the appeal was dismissed. It is submitted that since the counsel appearing for the appellant/applicant has oversighted the cause list and because of which he could not appear on the said date for hearing. It is submitted further that in the second week of August, 2017 he came to know about the dismissal of appeal for want of prosecution when he intended to move an application for urgent hearing of the said appeal. Immediately after knowing the said fact, he applied for obtaining the certified

copy of the order dated 04.03.2015 and filed this MCC for restoration for the said First Appeal in its original number. It is submitted further that the delay has been occurred bonafidely and there was no malafide intention behind it, therefore, the same may kindly be condoned.

3. On the other hand Shri Verma opposed the said application by submitting that the delay in the said application has not been explained properly and therefore, the delay of 869 days does not require to be condoned.

4. I have considered the submissions of the parties and find that sufficient reasons have duly been assigned in the application for condonation of delay in filing this MCC. Accordingly, the same is allowed and delay of 869 days is condoned.

5. Also heard on admission.

6. This MCC has been preferred for restoration of F. A. No. 165/2014, which was dismissed in default on 04.03.2015. Shri N. L. Soni, Counsel for the applicant submits that he had no knowledge regarding the listing of the said appeal on the said date and because of his non appearance, the said appeal was dismissed in default. It is submitted further by him that in the second week of August, 2017, when he was trying to move an application for urgent hearing of the said appeal, he came to know that the appeal was listed on 04.03.2015 and on the said date it was dismissed for non-prosecution. It is submitted further that immediately after knowing the said fact, he applied for obtaining the certified copy of the said order and after obtaining the same has filed this MCC for restoration of the said appeal.

7. Shri Verma has opposed the said petition and submits that the counsel for the applicant deliberately did not appear on the said date and therefore the

appeal which was dismissed on 04.03.2015 should not be restored to its original number.

8. I have heard the submission of learned Counsel for the parties and upon considering the reasons assigned in the application, I found that the same have duly been explained. Accordingly, this petition for restoration of the said appeal dismissed in default on 04.03.2015 is hereby allowed and First Appeal is hereby directed to be restored to its original number as F. A. No. 165/2014. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita