

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Civil Case No. 115 of 2017**

- Abhijeet Bose S/o Shri Ravindra Nath Bose, Aged About 61 Years (Presently) C/o Culcutta Photo Studio & Drycleaners, Bastar Road, Dhamtari, District Dhamtari, Chhattisgarh

---- Applicant**Versus**

1. Ajay Jain S/o Shri Mohan Lal Jain, Aged About 49 Years (Presently) R/o Bastar Road Dhamtari, Tahsil & District Dhamtari, Chhattisgarh
2. Deepak Kumar Jain S/o Shri Mohan Lal Jain, Aged About 39 Years (Presently) R/o Bastar Road Dhamtari, Tahsil & District Dhamtari, Chhattisgarh
3. Smt. Archana Jain W/o Shri Ajay Jain, Aged About 42 Years (Presently) R/o Bastar Road Dhamtari, Tahsil & District Dhamtari, Chhattisgarh
4. Smt. Kamna Jain W/o Shri Deepak Jain, Aged About 27 Years (Presently) R/o Bastar Road Dhamtari, Tahsil & District Dhamtari, Chhattisgarh

---- Respondents

For Applicant
For Respondents

Mr. Chandresh Shrivastava, Advocate
Mr. T.K. Jha, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****28.04.2017**

1. The present M.C.C. has been filed seeking restoration of the First Appeal No. 34/2010 which got dismissed for want of prosecution on 02.12.2016.
2. The M.C.C. has been preferred with a delay of 28 days. I.A. No.1/2017 has been filed for condonation of delay on which notices were also issued to the Respondents who are represented by Shri T.K. Jha, Counsel.
3. Learned Counsel for the Applicant raises a ground that he had promptly instructed the Counsel but for some inadvertence on part of the Counsel, the matter could not be pursued at the appellate level in spite of service of

S.P.C. and which resulted in the appeal being dismissed in default.

4. Mr. T.K. Jha opposes delay application and submits that no justified reason has been assigned for condonation of delay and also there being no justified grounds for restoration reflected in the application.
5. Having considered the facts and circumstances of the case, taking into consideration the fact that the subject matter being First Appeal preferred by the Applicant, if the same is not restored substantial injustice would be caused to the right of appeal in favour of the Applicant. I.A. No. 1 is accordingly allowed and the delay of 28 days in filing the present M.C.C. is condoned.
6. True it is on perusal of the record it appears that there has been some lapse on part of the Applicant who should have been vigilant enough to pursue the appeal which was filed before this Court regularly which has been dismissed for want of prosecution. That for the lapse on part of the Applicant he definitely has to be saddled with some cost for restoring the First Appeal.
7. Considering the total facts and circumstances of the case ends of justice would meet if the M.C.C. is allowed subject to the Applicant paying a cost of Rs. 5000/- payable to the Respondents.
8. Subject to the Applicant paying the cost of Rs. 5000/- to the Respondents or to the Counsel for the Respondents, the First Appeal No. 34/2010 shall stand restored to its original number.
9. The M.C.C. thus stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
JUDGE