

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 918 of 2016**

1. M/s Sunil Kumar Singh Head Office Babupara Jail Road, Ambikapur District Surguja Chhattisgarh Through Sunil Kumar Singh Partner S/o Late Shri V.P. Singh, Aged About 50 Years, R/o Babupara, Jail Road, Ambikapur, District Sarguja Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh Rural Road Development Agency Through The Chief Executive Officer, Chhattisgarh Rural Road Development Agency, Civil Lines, Raipur Chhattisgarh
2. The Executive Engineer Cum Member Secretary, Project Implementation Unit No. 1 Pradhan Mantri, Gram Sadak Yojna, P.O. Ambikapur, District Surguja Chhattisgarh

---- Respondent

For Petitioner	Shri Apoorva Tripathi, Advocate
For Respondents	Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****10/03/2017**

1. The Chhattisgarh Madhyastham Adhikaran, Raipur (for short 'the Tribunal'), has rejected the petitioner's application for restoration of reference petition No.13/2012, which was dismissed for want of prosecution on 4-3-2015.

2. The Tribunal has taken the view that the restoration application was barred by 38 days yet it was not accompanied with application under Section 5 of the Limitation Act for condonation of delay nor any explanation for such delay was pleaded in the application for restoration also.
3. Referring to the order sheets recorded by the Tribunal on 28-10-2015 and 17-11-2015, it is urged that the petitioner's arguing counsel Shri Rahul Jha, Advocate, was on adjustment and one Shri Ajay Pratap Singh, Advocate, was engaged only to inform the Tribunal about the adjustment applied by Shri Rahul Jha, Advocate, however, the Tribunal proceeded to take up the matter for orders and has dismissed the application for restoration.
4. It is also put forth that the Tribunal has adopted a pedantic and hyper-technical approach to reject the application for restoration, which is not in the interest of justice. It is also argued that the prayer on which the restoration was sought was good enough for condonation of delay, even if no separate application under Section 5 of the Limitation Act.
5. Per contra, learned counsel appearing for the State would oppose the writ petition on the ground that unless an

application is moved stating the reasons seeking condonation of delay, it is not possible to answer the prayer for condonation of delay, therefore, the Tribunal has rightly dismissed the restoration application.

6. A plain reading of the order sheet would manifest that the arguing counsel Shri Rahul Jha, Advocate was not present when the matter was taken up on 28-10-2015 and 17-11-2015. Although the order sheet does not reflect that Shri Ajay Pratap Singh, Advocate, who appeared as proxy counsel made any request for adjournment yet since the words 'on adjustment' are mentioned in both the order sheets, the submission made by the learned counsel for the petitioner appears to be correct that the Tribunal was informed that Shri Rahul Jha, Advocate is on adjustment, therefore, the information itself is suggestive of a prayer on behalf of Shri Rahul Jha, Advocate, for adjournment of the matter.
7. Be that as it may, since the delay was not enormous the Tribunal should not have dismissed the restoration application merely for the reason that a separate application under Section 5 of the Limitation Act has not been filed with the restoration application.

8. For this view of the matter, I may profitably refer to the order passed by the High Court of Delhi in **Universal Builders and Contractors v. Sheila Singh Uppal and Others** (C.R. Petition No.321 of 2004), wherein the High Court of Delhi held thus at para 13 :

13. In *Nand Singh v. Estate Officer & Ors.*; AIR 1993 Delhi 38, it was observed that even an oral application for condonation is sufficient cause for condoning the delay, no formal application in writing is necessary. We consider in the interest of justice the averments in the restoration application should be entertained and the relief under Section 5 of the Act should be granted. Similar observations were made in AIR 1989 Gujarat 44.

9. In **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others** {AIR 1987 SC 1353}, it has been observed by the Supreme Court 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.

10. In view of the above, I am of the considered view that the Tribunal should have allowed the application for restoration of reference case No.13/2012 rather than dismissing the same on hyper-technical grounds.
11. *Ex-consequenti*, the writ petition is allowed. The impugned orders passed by the Tribunal are set aside and the reference case No.13/2012 is restored to its original number for hearing the same on merits.
12. There shall be no order as to cost(s).

Sd/-

Judge

Prashant Kumar Mishra

Gowri