

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 322 of 2017

1. Muralidhar Hariharno S/o Late Shri Ramadhin Hariharno, Aged About 80 (62) Years, Retired Lecturer, S.D. Mpl. Corporation Hr. S. School, Rajnandgaon, Resident of Nakshatralok Stationpara, Ward No.8, Rajnandgaon, District Rajnandgaon, Chhattisgarh

---- Applicant

Versus

1. The State of Chhattisgarh through the Secretary, Local Self Government (Urban Department), Mantralaya Naya Raipur, Chhattisgarh
2. Municipal Corporation, Rajnandgaon (M.P.) (now Chhattisgarh), Through The Commissioner, Municipal Corporation Rajnandgaon, Chhattisgarh
3. The Commissioner, Municipal Corporation Rajnandgaon (M.P.) (now Chhattisgarh)

---- Non-applicants

For Applicant – Shri Kripesh G.Kela, Advocate.

For Non-applicant No.1/State – Shri Anant Bajpai, Panel Lawyer.

For Non-applicants 2 and 3 – Shri Sourabh Sharma, Advocate, on advance copy.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

26-04-2017

1. Perused the matter.
2. WP No.4640/1999 has been dismissed for want of prosecution on 07-04-2017. To restore the said writ petition, the petitioner/applicant filed the instant MCC on 17-04-2017. There is a note over the petition by Registry that the limitation period not calculated as per Hon'ble Court order dated 13-12-2016 passed in MCC No.591/2016.
3. On due consideration, though there is no limitation applied in writ petition as per the Limitation Act, 1963, but the present matter is a MCC which is classified under Rule 140 sub-rule 11 of the High Court of Chhattisgarh Rules, 2007. There is no any category for the MCC arises out from various proceedings, suit, appeal or anything. With this, every party who prays for restoration of any matter dismissed for want of prosecution or on a peremptory

order are required to file MCC. As per Article 122 of the Limitation Act 1963, to restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs is mentioned 30 days, except this Article 122, there is no other article prescribed for restoration of any matter; though there is no any specific mention of word writ petition in the matter, but as per the development of recent law, many proceedings whose nomenclature is not mentioned in the Article 122 of the Limitation Act, 1963 but with the natural justice, appropriate right of hearing, it cannot be said that if a writ petition is dismissed for any of the reason, party may file a restoration application and the said restoration application for all the purposes broadly may not come under the provisions of Article 122 of the Limitation Act, 1963. Even apart, Full Bench of this Court while dealing another matter in case of acquittal appeal as in **Acquittal Appeal No.96 of 2012 (*Mithilesh Yadav vs. State of Chhattisgarh and others*)** and **Acquittal Appeal No.121/2012 (*Smt. Ahilya Bai Satnami Versus State of Chhattisgarh and another*)** vide order dated 01-10-2013 while answering the period of limitation prescribed for filing an appeal under Section 377 or 378 of the Code of Criminal Procedure would also apply to an appeal preferred by the victim under proviso to Section 372 of the Code of Criminal Procedure, answered that though Article 114 and Article 115 of the Schedule to the Limitation Act, 1963, is not applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order of acquittal, the Hon'ble Full Bench directed that for the appeal filed by victim, it is require to demonstrate a reasonable period to be reckoned from the date the victim acquires knowledge of the order of acquittal and what would be the reasonable period, should depend upon the facts and circumstances of every case. Hon'ble the Full Bench further directed that period of limitation prescribed in Article 115(b) of the Limitation Act, 1963,

would be applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 Cr.P.C. against an order convicting for lesser offence or imposing inadequate compensation. With this, object of the Court is to see that any proceeding may not be filed as per choice of the applicant, if this would allow, it would not be appropriate to give an instrument to the applicant to file the MCC for restoration of any WP after an unlimited time, time is also a core issue in procedural law, though the consideration may vary in a case where there is no any specific limitation is prescribed but certainly as per the consideration, broadly speaking, Article 122 is applicable in the matter. Consequently, Registry is directed to give a note over the MCC for restoration of WP as how much time is taken for filing the MCC against the dismissal of W.P. or dismissal on any of the account so that the Court has to consider the reasonability and other aspects in the matter.

4. With this, Registry is directed to calculate the entire period and affix a note within how many days the applicant had preferred the instant MCC.
5. Heard the matter finally.
6. As the instant MCC has been preferred within 30 days from the impugned order dated 07-04-2017, the instant MCC is hereby allowed. The WP No.4640 of 1999 dismissed for want of prosecution on 07-4-2017 is hereby restored to its original number.
7. No order as to cost.
8. The MCC allowed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE