

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 182 of 2018

1. A. Mokil (Dead) Through LRs

1.1 - Aryan Ram S/o Mokil Aged About 8 Years Minor Through His Natural Guardian Mother Applicant No.2, Kalawati, R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

1.2 - Kalawati Wd/o Mokil Aged About 40 Years R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

2. B. Ukil (Dead) Through LRs

2.1 - Duleshwari Wd/o Late Ukil Aged About 38 Years R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

2.2 - Chanda D/o Late Ukil Aged About 18 Years R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja(Ambikapur),Chhattisgarh

2.3 - Soni D/o Late Ukil Aged About 14 Years Minor Through Their Natural Guardian Mother Applicant No.3 Duleshwari, R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur),Chhattisgarh

2.4 - Samundra Ram S/o Late Ukil Aged About 7 Years Minor Through Their Natural Guardian Mother Applicant No.3 Duleshwari, R/o Village Bhafauli, Police Station Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

3. Doctor Ram S/o Late Somar Say Aged About 20 Years Caste Kanwar, R/o Village Bhafauli, Police Station Ambikapur, Tahsil- Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Applicants

Versus

- Dulari W/o Ramcharan Aged About 50 Years Mother Of Late Mohan, R/o Village Bhafauli, Police Station Dhaurpur, Tahsil Ambikapur, District Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Respondent

For Applicant	:	Shri A.K.Prasad, Advocate
For Respondent	:	Shri Sunil Tripathi, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

09/08/2018

Heard on I.A.No.1, application for condonation of delay in filing application for

restoration.

Learned counsel for the applicant submits that the MCC for restoration of appeal was listed on 20/08/2014 and this Court had directed payment of P.F. by Registered A/D and ordinary process both. The applicant, due to inadvertent mistake, paid P.F. through ordinary process, but P.F. through Registered A/D mode was not paid. By operation of the peremptory order, MCC stood dismissed. In November, 2017, when the other party started alienating the disputed property, enquiry was made by the applicants and it was revealed that the application for restoration was dismissed due to non-compliance of peremptory order dated 20/08/2014 and thereafter, the application has been filed for condonation of delay.

Though reply to this application has not been filed, learned counsel for the respondent orally submits that sufficient cause has not been shown in the application to condone the delay.

Taking into consideration the cause shown in the application that out of two processes directed to be paid, one of the processes has already been paid and the MCC stood automatically dismissed without further reference to the Bench because of the peremptory order, in the interest of justice, we are inclined to condone the delay in filing restoration application. The application for condonation of delay is allowed.

Also heard on prayer for restoration of MCC No.584/2014.

It is found that restoration application itself was dismissed because the peremptory order of the Court was complied with only in part in the manner that the order was passed for payment of P.F. by two modes and P.F. was paid only for one mode. Therefore, in these circumstances, we are of the view that if the party's right to contest the matter on merits is denied, it will cause miscarriage of justice. We are, therefore, inclined to allow the application for restoration.

Accordingly, MCC No.584/14 is restored to its original number subject to payment of cost of Rs.1,000/- to the other party.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge