

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C. No. 240 of 2018**

Jai Prakash Singh Rajput S/o Balram Singh Rajput Aged About 33 Years
R/o Barai Para, Tahsil And District Durg, Chhattisgarh.

---- Applicant

Versus

1. Nagar Palika Nigam Durg Through Commissioner, Nagar Palika Nigam Durg, Chhattisgarh.
2. State Of Chhattisgarh Through Collector District Collector Durg, Chhattisgarh.
3. Secretary Nagariya Prashanshan And Vikas Vibhag, New Mantralaya Raipur, Chhattisgarh.

---- Non-applicants

For Applicant:	Shri Vinod Kumar Sharma, Advocate.
For Non-Applicant No. 1:	Shri Rajnish Singh Baghel, Advocate
For Non-Applicants No.2 & 3:	Shri Adhiraj Surana, Dy. G. A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Order On Board

02.08.2018

1. Heard on I.A. No.01/2017, an application for condonation of delay of 1559 days' in filing this MCC for restoration of Second Appeal No. 186/2013, which has been dismissed for non-compliance of the order dated 09.07.2013.
2. It is stated in the aforesaid application for condonation of delay that the counsel for the applicant had instructed his clerk for payment of process fee, as per the direction contained in the order dated 09.07.2013 and was under the impression that the clerk has paid the same. However, he came to know upon enquiry that it has been dismissed for non-compliance of the said order dated 09.07.2013. Immediately thereafter, he applied for obtaining the certified copy of the said order on 04.09.2017 and in pursuance thereof, the certified

copy was delivered on 27.09.2017. It is submitted further that after obtaining the certified copy of the same, the instant MCC has been filed on 10.12.2017. The said application has duly been supported by the counsel for the applicant.

3. The aforesaid application for condonation of delay has been contested by respondent No. 1 by submitting *inter-alia* that sufficient reasons have not been explained properly and the reasons so assigned are unreasonable, and therefore, the application as made after the period of more than four and half years deserves to be rejected.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. The Second Appeal against the judgment and decree dated 17.09.2012 was filed on 10.04.2013. The matter was thereafter adjourned from time to time. On 09.07.2013, counsel for the appellant was absent and the application, marked as I.A. No.02, for condonation of delay in payment of process fee, was rejected. After rejecting the same, it was directed further for issuance of notice on I.A. No. 01 (an application for condonation of delay in filing the appeal) to the respondents which was directed to be returnable within a period of four weeks. Though the counsel for the appellant was not present but has instructed his clerk to pay process fee and was under the impression that the same has already been paid. However upon enquiry being made, he came to know that it was dismissed for non-compliance of the said order dated 09.07.2013.

6. Perusal of the record would show further that immediately after obtaining the certified copy of the said order dated 09.07.2013, the instant MCC for restoration of the said appeal was filed on 10.12.2017.

7. Having considered the facts and circumstances of the case, I am

inclined to allow the same. The application (I.A. No. 01/2017) for condonation of delay is accordingly allowed and delay in filing this MCC is accordingly condoned.

8. Also heard on admission.

9. On due consideration and for the reasons assigned in the application, I am inclined to allow this MCC. The Second Appeal which was dismissed for non-compliance of the order dated 09.07.2013 is hereby restored to its original number as S. A. No.186/2013 subject to payment of cost of Rs. 2500/- payable to Chhattisgarh Legal Services Authority within a period of two weeks from today.

Sd/-
(Sanjay Agrawal)
JUDGE