

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 844 of 2017**

- Rajesh Dewangan S/o Late Raghunath, Aged About 40 Years, R/o Kevramuda Ward, Jagdalpur, District Bastar, Chhattisgarh, Chhattisgarh

---- Petitioner**Versus**

- Madhusudan S/o Sonuram Dewangan, Aged About 40 Years, R/o Village Niyanar, Tahsil Jagdalpur, District Bastar Chhattisgarh., Chhattisgarh

---- Respondent

For Applicant	Shri Goutam Khetrapal, Advocate
For Respondent	Shri H. S. Ahluwalia, Advocate
For Intervener Pramod Kumar Parakh	Shri Malay Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****23/02/2018**

1. This is an application for restoration of Second Appeal No.448/1994, which was dismissed for want of prosecution on 15.07.2010.
2. The plaintiffs Budhiyarin Bai and Raghunath filed the subject suit in the year 1981, which was dismissed in the year 1983. The plaintiffs moved first appeal which remained pending before the District Judge and in the meanwhile, the intervener Pramod

Kumar Parakh entered into a sale agreement with the sole defendant Madhusudan. The first appeal was eventually dismissed on 11.07.1994, against which the plaintiffs preferred Second Appeal No.448/1994.

3. When this second appeal was pending, the plaintiff No.2 Raghunath died in the year 1997, whereas the plaintiff No.1 Budhiyarin Bai died in the year 1999. In the year 2005, the defendant Madhusudan also died. Thus, all the parties to the suit have died during the pendency of the second appeal.
4. On 15.07.2010, the second appeal was called on for hearing, however, in the absence of any representation by the appellants, the appeal was dismissed for want of prosecution.
5. In this restoration application, it is argued that the applicant Rajesh Dewangan, being a young boy, was not aware of the litigation, which he came to know only when Pramod Kumar Parakh moved execution application for recovery of possession. This execution was preferred, as Pramod Kumar Parakh had obtained a decree for specific performance of contract, on the basis of agreement which he had entered with Madhusudan during the pendency of the first appeal.
6. Indisputably, the suit preferred by Pramod Kumar Parakh has been decreed throughout, as the SLP preferred by the legal heirs of Madhusudan bearing SLP (C) No.28012/2013 was dismissed by the Supreme Court on 21.02.2014. One Puroshottam Dewangan, brother of Madhusudan, also moved an application

under Order 21 Rule 97 CPC in the pending execution proceeding initiated by Pramod Kumar Parakh. Upon dismissal of his application, Puroshottam Dewangan preferred FA No.137/2016 before this Court, which came to be dismissed on merits on 13.09.2017. When all other avenues for keeping the litigation pending were exhausted, the son of Raghunath, the present applicant, has moved this application for restoration of second appeal, which itself is barred by 2633 days.

7. Even if the application filed by Pramod Kumar Parakh for intervention in this restoration application is not entertainable, as he was not a party to the suit or the second appeal, I am not convinced with the arguments raised by learned counsel for the applicant in support of his prayer for restoration of the second appeal.
8. I am not convinced because the delay is not only of 2633 days, but the delay begins from the date the plaintiff No.2 Raghunath died in the year 1997. The present applicant, being the legal heir of Raghunath, was required to implead himself in the pending second appeal within 90 days from the date of death of his father, however, he did not move any application and allowed the second appeal to be dismissed in default and the plea that he was not aware about the litigation is only a camouflage to cover up his negligence or lack of interest in the litigation. The documents filed with the intervention application have revealed that the legal heirs of Madhusudan have failed in the suit initiated by Pramod Kumar Parakh and after the end of the said litigation,

the present application has been filed, therefore, it cannot be ruled out that the legal heirs of the respondent Madhusudan have persuaded the applicant to move this application for restoration.

9. Considering the enormous delay, I do not find the present to be a fit case for condonation of delay in filing the restoration application. Accordingly, I.A. No.1, application for condonation of delay in filing the restoration application, is dismissed. Consequently, the restoration application is also dismissed.

Sd/-

Judge

Prashant Kumar Mishra

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