

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No. 226 of 2018

1. Sheikh Mohammad Alim, S/o. Late Sheikh Anjum, Aged About 41 Years.
 2. Sheikh Mohammad Kalim, S/o. Late Sheikh Anjum, Aged About 39 Years.
 3. Sheikh Mohammad Fahim, S/o. Late Sheikh Anjum, Aged About 37 Years.
- All are R/o. Churiline Golbazar Raipur, District Raipur, Chhattisgarh
4. Nazim Khantun, D/o. Late Sheikh Anjum, Aged About 32 Years, R/o. Rohini Vihar, Phase -02, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellants

Versus

M/s. Shakti Picture Circuit Limited, Registered Office Saroj Talkies Building
Amravati, Tahsil & District Amravati, Maharashtra

---- Respondent

For Applicant : Mr. Abdul Wahab Khan, Advocate
For Respondent : Mr. Ashish Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28.09.2018

Heard

1. This is an application for restoration of Second Appeal No.1411/1999, which was dismissed for want of prosecution on 01.02.2016. The restoration application appears to have been presented on 24.03.2018, which is delayed by 711 days. The notices were issued and now the parties are represented.
2. Learned counsel for the applicants submits that the applicants were not aware of the dismissal of the case in the year 2016 and immediately when they came to know about the dismissal of the case in the month of March 2018, on 07.03.2018 the instant application has been moved, therefore, the applicants may be given an opportunity of hearing the case on merits. He further submits that there is no legal adjudication of the law raised, therefore, the case may be restored to decide the same on merits.

3. Per contra, learned counsel for the respondent vehemently opposes the same and would submit that this is the third dismissal, earlier two dismissal were caused in the year 2014 itself and it was restored without objection, however, again the same continued, therefore, deliberate default has been made with oblique motive and it is not bonafide and no reasons have been assigned to condone the delay, so the application deserves to be dismissed.
4. Perused the record of the Second Appeal. The record would show that the Second Appeal was initially dismissed on 14.02.2014 for want of prosecution. Subsequently, it was restored on 03.03.2014 to its original number. Thereafter, again the Second Appeal was dismissed on 08.07.2014 for second time and the Court while dismissing the Second Appeal on 08.07.2014 observed that on 14.04.2014 and 12.05.2014 no one represented on behalf of the appellant and further recorded that it appears that the appellant is not interested in prosecuting the matter. Consequently, the Second Appeal was dismissed. Again the restoration application was filed and the Court by its order dated 15.10.2015 again restored the Second Appeal for second time. Now subsequently third dismissal was caused on 01.02.2016. After the third dismissal on 01.02.2016, the present MCC has been filed, which is delayed by 711 days. Along with the MCC, an application under Section 5 of the Limitation Act is also filed. Perusal of application would show the reasons have been assigned that the applicants came to know about the dismissal of Second Appeal on 07.03.2018 and thereafter on 09.03.2018 the copy was received and the application for restoration was filed. What was the reason for non-appearance on 01.02.2016 and subsequent thereto till 2018 and

what was the reason for non-filing the MCC within specified time has not been explained at all. It has only been shown that on 07.03.2018 the applicants came to know about the fact that the Second Appeal was again dismissed.

5. This Court earlier while dismissing the Second Appeal on 08.07.2014 had observed that in earlier occasion also, no one represented on behalf of the applicants, which reflects the manner in which the applicants prosecuted the suit. Normally in restoration application, the Court takes the lenient view but the past record and the order sheets of the Court cannot be ignored, which shows that on earlier two occasions dismissal were caused prior to last dismissal on 01.02.2016. Furthermore, the reasons stated in the application under Section 5 of the Limitation Act do not assigned any reason as to what was the reasons to condone the delay of 711 days. Only the knowledge of dismissal is projected. Therefore, taking into the checkered history, as it was the third dismissal, this Court is not inclined to extend the benefit of restoration as a matter of right as no sufficient reasons were assigned to condone the delay or to restore the second appeal. The MCC appears to be with lack of bonafide. Accordingly, the same is dismissed.

Sd/-
(Goutam Bhaduri)
Judge