

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 375 of 2018

Bhura S/o Kadanna Gauli Aged About 48 Years Suraj Hotel,
Ratnabandha Chowk, Dhamtari, District Raipur Now District
Dhamtari, Chhattisgarh

---- Applicant

Versus

M/s Muzaffer Hussain M. Nazaf Ali Registered Partnership Firm,
Dealer Of Bharat Petroleum Corporation Ltd., Dhamtari, District
Raipur Now District Dhamtari, Chhattisgarh

---- Respondent

For applicant - Smt. Hamida Siddiqui, Advocate.
For Respondent- Shri Ali Asgar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

03/10/2018

Heard.

1. Instant petition is for restoration of S.A. No.431/1995 which was dismissed for want of prosecution on 21/11/2011.
2. Learned counsel for the applicant would submit that originally against the ejectment decree a second appeal was filed before the erstwhile High Court of M.P. wherein the stay was granted in favour of the appellant and subsequently after re-organization case was transferred to the High Court of C.G, Bilaspur. It is contended that in the meanwhile some dispute occurred in between over ownership of the respondent decree holder M/s Muzaffer Hussain and Anjuman Islamiya Committee claiming to be owner of suit property. The ownership of the land lead to proceeding before the Wakf Tribunal, Raipur. Wakf Tribunal, Raipur dismissed the petition of the Anjuman Islamiya Committee against which civil revision is pending before the High Court wherein ownership of the suit property is to be decided as subject property was notified to be wakf property, therefore no private party can interfere and claim their right as

that of the decree holder. It is further contended that in the meanwhile the nephew of the applicant Bhura Gauli original judgement debtor had entered into agreement of tenancy with Anjuman Islamiya Committee and was paying the rent, therefore that itself would show that litigants have accepted the ownership now not that ownership decree holder M/s Muzaffer Hussain and as such execution was voluntarily withheld till 2018. Learned counsel places her reliance in case of **Vedabai @ Vijayanatabai Baburao Patil Vs. Shantaram Baburao Patil & ors.** reported in **2001 SAR (Civil) 617** and would submit that in respect of condonation of delay for restoration of petition the court has to see the facts and circumstances and the reasons behind and the reasons in this case support the case of the applicant.

3. Per contra, learned counsel for the respondent/decreed holder vehemently opposes the same. He referred to the application for restoration and would submit that contradictory statement have been made by the applicant itself and would submit that averment to the restoration application itself destroy the bonafide of the applicant as he himself claims to be out of the possession of the suit property. He further referred to the document filed in execution proceeding and would submit that in any case applicant herein Bhura Gauli claim that he is not in possession and it was handed over to one Lucky Gauli in the year 2002, therefore the claim of the applicant before this court itself is destroyed.

4. Perused the application for restoration alongwith the application for condonation of delay and also documents connected to this petition. Order sheet of original second appeal is also perused. On 1/08/1996 question of law was framed and court further directed the appellant i.e. applicant herein to deposit all rent and the mesne profits due and further directed to deposit monthly rent by 15th of each succeeding month. Subsequently, the

case came up for hearing after re-organization and before this court, on 31/10/2001, 29/07/2002 & 13/09/2002 representation was made on behalf of the applicant through counsel who was earlier appearing before the High Court of M.P. Subsequently, case came up for hearing on 8/11/2011 and no one appeared on behalf of the applicant and eventually when again no one represented the appellant on 21/11/2011 second appeal was dismissed. Therefore, it appears that even after transfer of the case before this court on three occasions the appearance was made.

5. The contents of the restoration application and the application for condonation of delay in filing the restoration application purports that applicant herein was treated to be sub tenant by the Anjuman Islamiya Committee. Thereafter oral compromise was affected and he started paying rent to Anjuman Islamiya Committee, therefore he did not prosecute the S.A. No.431/1995 neither in the High Court of M.P. nor before this court. Clear admission therefore is on the face of record is that applicant himself chose not to prosecute this appeal before this court. Alongwith the petition one kirayanama rent note is also produced wherein it is tried to be projected that Anjuman Islamiya Committee entered into tenancy agreement with Muzaffer Hussain the decree holder. The copy of the letter which was placed before the executing court by the applicant judgement debtor Bhura Gauli the applicant herei is also perused wherein it is stated that he is not continuing with the tenancy which is addressed to the Anjuman Islamiya Committee and purports that he is surrendering his tenancy to Anjuman Islamiya Committee. Said letter is dated 26/06/2002. Thereafter, one agreement is placed on record to show that Hazi Mohammad on behalf of Anjuman Islamiya Committee has entered into agreement of rent with Lucky Gauli in respect of letting the premises on rent. The said Lucky Gauli is not before this court.

6. It is only Bhura Gauli who has filed this application for restoration. Admission is made that he has surrendered the tenancy to Anjuman Islamiya Committee when the decree holder is respondent M/s Muzaffer Hussain M. Nazaf Ali then any agreement entered with third party by any person will hardly change the terms of the decree. The reasons assigned by the applicant herein the judgement debtor that he chose not to prosecute the appeal is on record. Therefore, the argument that no intimation of date was given to the applicant will not have much significance apart from fact the commission of own wrong cannot be passed on to head of counsels. On the earlier occasion this court asked the applicant to furnish rent details, particular of the deposits if any. However no such documents are filed to show the bonafide. Perusal of the record of the second appeal shows that 1st civil appeal was decided in 1995 whereas original civil suit was of 1986. Under the circumstances, taking into facts of this case, it appears that ratio of law laid down in **Vedabai @ Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil & ors.** (supra) holds the sway in favour of dismissal of this petition. Considering the same, it appears that there is clear abuse of process of law on the face of the record. Accordingly, the petition has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE