

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 40 of 2019

- Dukhu Ram @ Bhau S/o Late Keja Ram Kashyap Aged About 42 Years R/o Village- Khamhariya , Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh.

---- Appellant/defendant No.1

Versus

1. Saraswati Bai D/o Late Keja Ram Kashyap Aged About 51 Years R/o Village Khamhariya, Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh, At Present R/o Ward No.1 Takhatpur, Tahsil- Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh.,
2. Smt. Bhagwati Bai Kashyap W/o Shri Balbhadra Kashyap Aged About 55 Years (D/o Late Keja Ram Kashyap), R/o Village Beergaon, Tahsil Mungeli, Civil And Revenue District Mungeli Chhattisgarh.,
3. Smt. Laxmin Bai Kashyap W/o Shri Bhai Ram Kashyap Aged About 53 Years (D/o Late Keja Ram Kashyap), R/o Village Kapariyakala , Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh.
4. State Of Chhattisgarh Through The District Collector Bilaspur, Civil And Revenue District Bilaspur Chhattisgarh.,

---- Respondents

For Appellant	:	Mr. Parasmani Shriwas, Advocate.
For Statate	:	Mr. Ravish Verma, G.A.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

30-09-2019

1. This Miscellaneous Appeal is preferred under Order 43 Rule 1(t) of the Code of Civil Procedure 1908 against the order dated 15-2-2019 passed by 9th Additional District Judge,

Bilaspur, District Bilaspur CG in M.J.C. No. unregistered/2019 by which an application filed by the appellant/defendant No.1 under Order 9 rule 8 of CPC for restoration of Civil Appeal No. 191-A/2014 has been rejected .

2. As per appellant civil suit No. 44-A/2013 has been filed for partition in which decree is passed and four share-holders have been allotted $\frac{1}{4}$ share each. Against the decree, appeal was preferred which is registered as Civil Appeal No. 191-A/2014 and same was dismissed on 9-1-2017 for non-prosecution by the appellant. Restoration application was filed on 8-2-2019 which is dismissed by the trial court. .
3. Learned counsel for the appellant submits that the case should have been heard on merit because appellant was facing paralysis disease but the trial court dismissed the application without considering the facts and circumstances of the case, therefore, same is liable to be set aside.
4. I have heard learned counsel for the parties and perused the record of the court below.
5. From the record, it appears that the said civil appeal was dismissed on 9-1-2017 for non-prosecution and restoration application was filed on 8-2-2019 i.e., after two years and one

month. There is nothing on record regarding treatment of the appellant.

6. The question for consideration of this Court is whether the appellant has shown sufficient cause for filing of the instant appeal. The test which is applied is whether the appellant honestly and sincerely intended to prosecute the appeal. Present appeal is filed after two years and one month. Filing of the appeal after lapse of time shows that the appellant has not acted diligently and remained inactive for a long. It can be said that the appellant has acted in negligent manner and there was want of bona fide on his part. It is not the case where appellant sincerely intended to contest the case and did his best to do so, therefore, it is the appellant who could be blamed for non-prosecution the case. The appeal is filed after two years and one month which is clearly after expiry of the period of limitation, in other words the application is hopelessly time barred.
7. This Court in the facts and circumstances of the case cannot ignore the period of limitation because no court shall have jurisdiction to entertain any application if the same has been filed after expiry of the period of the limitation. The application is evidently time barred and looking to the gross

negligence of the appellant this Court has no reason to entertain the said appeal.

8. Accordingly, the instant appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju