

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 325 of 2018

- Dilkumar Koshre S/o Tulsiram Aged About 25 Years R/o Village Faradfod , Police Station Devri, Tahsil Dondilohara, District Balod Chhattisgarh.

----Applicant

Versus

1. Maheshwar Dewangan s/o. Shri Bedlal Dewangan , R/o Village Gabdi, Police Station Arjunda, Tahsil Gunderdehi, District Balod Chhattisgarh.
2. Bedlal Dewangan s/o Rambharosha Dewangan R/o Village Gabdi, Police Station Arjunda , Tahsil Gunderdehi, District Balod Chhattisgarh.
3. United India Insurance Company Limited , Through Branch Office, In Front Of United Hospital , Near Syndicate Bank, 2nd Floor, Old Bus Stand Road, Rajnandgaon District Rajnandgaon Chhattisgarh.

---- Respondents

For Applicant : Mr. Aman Kesharwani, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

11-09-2019

1. Heard on I.A.No.1 of 2018, which is an application for condonation of delay in filing the instant MCC which is supported by an affidavit of Dilkumar Koshre.
2. Present MCC has been filed for restoration of appeal namely MAC No. 440 of 2016 which was dismissed on 30-6-2016.
3. As per the applicant, due to bona fide mistake on the part of the counsel, he could not appear before this court when the

case was called for hearing, therefore, mistake is liable to be condoned. The said appeal was dismissed for want of prosecution on 30-6-2016 whereas application for restoration is filed after nine months i.e., on 2-4-2018.

4. I have heard, learned counsel for the applicant.
5. The question for consideration of this Court is whether the applicant has shown sufficient cause for restoration of the said appeal. The test which is applied is whether the applicant honestly and sincerely intended to prosecute the appeal. The application for restoration of the said appeal is filed after nine months. It is the case where the party had knowledge about listing of the case. Filing of an application after lapse of time shows that the applicant has not acted diligently and remained inactive for a long. It can be said that the applicant has acted in negligent manner and there was want of bona fide on its part. It is not the case where applicant sincerely intended to contest the case and did its best to do so, therefore, it is the applicant who could be blamed for non-prosecution of the case. The application is filed after nine months which is clearly after expiry of the period of limitation, in other words the application is hopelessly time barred.

6. 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 applicant this Court has no reason to restore the said appeal.
7. Accordingly, the instant MCC is liable to be and hereby dismissed. Consequently, I.A. No. 1/2018, application for condonation of delay in filing the present MCC also stands dismissed.

Sd/-/-

(Ram Prasanna Sharma)

JUDGE

Raju