

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 674 of 2019

- Smt. Ganeshia Bai W/o Chintaram Chaturvedi Aged About 71 Years R/o Village Gondwara, P O Sarora, Police Station Khamtari, District Raipur Chhattisgarh.

---- Applicant

Versus

- Jagannath Verma S/o Ghasiram Verma R/o Village Maungesar, Police Station Mandirhasaod, Tahsil And District Raipur Chhattisgarh. 492101.....Driver Of Mini Bus No.C G 04/ Z A 0608.
- Ghamulal Verma S/o Gayram Verma R/o Village Khamharia P O Tekari, Tahsil And District Raipur Chhattisgarh. 492001.....Owner Of Mini Bus No.C G 04/ Z A 0608.
- The New India Insurance Company Ltd. Through Divisional Manager, Kachhahari Chowk, Jail Road, Raipur Chhattisgarh. 492001.

---- Respondents

For Applicant : Mr. Siddharth Rathod, Advocate.

For State : Mr. Ravish Verma, Govt. Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

23-09-2019

1. Heard on I.A.No.1 of 2019, which is an application for condonation of delay of 4397 days in filing the instant MCC which is supported by an affidavit of Ganeshin Bai.

2. Present MCC has been filed for restoration of Miscellaneous Appeal No. 1056 of 2005 which was dismissed on 6-6-2007 for non-compliance of per-emptory order dated 19-4-2007.
3. As per the applicant, due to bona fide mistake on the part of the counsel, the applicant did not comply with per-emptory order dated 19-4-2007 which led to dismissal of the appeal on 6-6-2007, therefore, mistake is liable to be condoned. Miscellaneous Appeal was dismissed on 6-6-2007 for non-compliance of per-emptory order dated 19-4-2007 whereas application for restoration of the said appeal is filed on 24-6-2019., i.e., twelve years and eighteen days.
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 said appeal. The application for restoration of Miscellaneous Appeal is filed after twelve years and eighteen days. It is the case where the party had knowledge about non-compliance of per-emptory order of this court. 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 her 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 for restoration of said appeal is filed after twelve years and eighteen days 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 is hereby dismissed at motion stage itself. Consequently, I.A. No. 1/2019, application for condonation of delay in filing the present MCC also stands dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE