

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 679 of 2019

- Mehatter S/o Mohan Aged About 57 Years R/o And Post Karahibhadar, Police Station And Tahsil Balod, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

1. Sitaram S/o Mohan Aged About 45 Years R/o Of Village Newarikhurd, Tahsil Balod, District Durg Chhattisgarh.
2. Dwarka Prasad S/o Mohan Aged About 43 Years R/o Village Dundera, Tahsil Balod, District Durg Chhattisgarh.
3. State of M. P. Now State of Chhattisgarh Through Collector Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Applicant : Mr. Pankaj Agrawal, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

01-10-2019

1. Heard on I.A.No.1 of 2019, which is an application for condonation of delay of 942 days in filing the instant MCC which is supported by an affidavit of Mehattar
2. Present MCC has been filed for restoration of Second Appeal No. 7 of 2000 which was dismissed on 7-11-2016 for want of prosecution.
3. The appeal was preferred for property dispute. Admittedly, property was originally owned by Gangaram and thereafter it

was inherited by Hathiya Bai. After passing of Hathiya Bai, her son namely Mehattar, her husband namely Mohan and her daughter namely Bahrinbai inherited the property and each was allotted 1/3rd by the order of the trial court.

4. 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 7-11-2016 whereas application for restoration is filed on 10-7-2019 i.e., after two years, eight months and three days.
5. I have heard, learned counsel for the applicant.
6. 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 two years, eight months and three days. 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 his

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 two years, eight months and three days 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 applicant this Court has no reason to restore the said appeal.
8. Accordingly, the instant MCC is liable to be and 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