

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No.723 of 2018

1. Santosh S/o Late Dushyan Shukla Aged About 51 Years
2. Sanjay S/o Late Dushyant Shukla Aged About 47 Years
3. Ajay S/o Late Dushyant Shukla Aged About 43 Years
No.1 to 3 all R/o village Kalmitar, Tahsil Kota, District Bilaspur (CG).
4. Sangeeta @ Guddi D/o Late Dushyant Shukla Aged About 40 Years
R/o Village Koni, Police Station District Bilaspur Chhattisgarh.

---- Applicant(s)

Versus

1. State of Madhya Pradesh (Now Chhattisgarh) Through The Collector Bilaspur Chhattisgarh.
2. Bodh Ram S/o Shri Mangal Jaiswal Aged About 40 Years R/o Village Kalmitar, Tahsil Kota District Bilaspur Chhattisgarh.
3. Harish Chandra S/o Late Baijnath Shukla Aged About 64 Years R/o Village Kalmitar, Tahsil Kota District Bilaspur Chhattisgarh.
4. Bhup Chandra S/o Late Baijnath Shukla Aged About 55 Years R/o Village Kalmitar, Tahsil Kota District Bilaspur Chhattisgarh.

(The appellant no. 4 smt. Birji bai w/o late Shri Baijnath Shukla has died in November - 2002 and her LR's are already on record as non-applicants no. 3 and 4 therefore, she has not been made as a party in this petition)

(The respondent no. 2 Sona bai, W/o Kartik Ram has also died 4-5 years back and she was issueless, therefore she has also not been made as a party in this petition).

---Respondents

For Applicants	:	Shri Abhijeet Mishra, Advocate.
For State	:	Shri Rahul Mishra, Dy. Govt. Advocate.
For Respondent No.2	:	Shri Santosh Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/05/2019

1. The present MCC has been filed seeking restoration of Second Appeal No.1299 of 1999 which got dismissed in default on 02.01.2014.
2. The present MCC for restoration has been filed on 05.09.2018 as such the MCC has been filed with a delay of 1677 days. The Second

Appeal was preferred against the judgment passed by the First Appellate Court on 09.08.1999. The First Appellate Court also had dismissed the First Appeal preferred by the appellants.

3. The MCC has supported with an application for condonation of delay. The reason assigned for condoning delay is that, the appellant No.1 in the Second Appeal who was pursuing the case, died on 05.11.2013 and the matter was thereafter listed on 02.01.2014 on which date the appellant No.1 was not represented by their counsel and the appeal got dismissed for want of prosecution. Except for the ground that the appellant No.1 has died on 05.11.2013, there is no other specific ground raised for seeking condonation of delay.
4. Some of the other facts which needs consideration at this juncture is that, admittedly as per the application made by the applicants there was some other parallel proceedings going on between the same parties before the trial court all these period and which was being pursued and contested by the parties. Another fact which cannot be lost sight of is that the Second Appeal No.1299 of 1999 was on behalf of the four appellants. It is only the appellant No.1-Dushyant Shukla who has since expired, which means, three other appellants were still alive and who could have pursued the Appeal. They have not done so. Even now after about more than five years, the other appellants have till date not taken any steps for getting the appeal restored. Neither have they joined the present applicants seeking for restoration of the Second Appeal.

5. Given the aforesaid facts, this court is of the opinion that the applicants herein inspite of contesting the corresponding proceedings before the trial court between the same parties deliberately did not take any steps for getting the Second Appeal restored or being impleaded in the Second Appeal as necessary party promptly, thus this court is of the view that no strong case has been made out by the applicants to condone the delay caused in filing the present MCC.
6. The application for condonation of delay stands rejected and as a consequence, the present MCC for restoration of Second Appeal No.1299 of 1999 also stands rejected.

Sd/-
(P. Sam Koshy)
Judge

inder