

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 888 of 2019

- Smt. Pushpa Verma W/o Shri Lakshmi Prasad Verma Aged About 68 Years R/o Torwa, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

----Applicant

Versus

1. Municipal Corporation Bilaspur Through The Commissioner, Municipal Corporation, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Farid Ahmed Quereshi S/o Vakil Ahmad Quereshi Aged About 48 Years Assistant Engineer, Municipal Corporation Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Applicants : Mr. J.K. Shastri, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

27-09-2019

1. Heard on I.A.No.1 of 2019, which is an application for condonation of delay of 197 days in filing the instant MCC which is supported by an affidavit of Smt. Pushpa Verma.
2. Present MCC has been filed for restoration of First Appeal No. 180 of 2003 which was dismissed on 18-1-2019 for want of prosecution.
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 18-01-2019 whereas application for restoration is filed on 4-9-2019 i.e., after seven months and seventeen 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 appeal. The application for restoration of the said appeal is filed after seven months and seventeen 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 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 seven months and seventeen 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 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

Raju