

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C No.762 of 2018**

Raj Kumar Agrawal S/o Late Jagdish Prasad Agrawal, Aged About 44 Years R/o Sao Bagicha, Behind Laxmi Talkies, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant**Versus**

1. Bilaspur Development Authority (Now Merged In Municipal Corporation Bilaspur) Through The Commissioner, Municipal Corporation Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Commissioner Cum Chairman, Bilaspur Development Authority/ Municipal Corporation, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Chief Executive Officer/commissioner, Bilaspur Development Authority/ Municipal Corporation, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

----Non-Applicants

For Applicant:	Shri Ravindra Agrawal, Advocate.
For Non-Applicants:	Shri Abhijeet Mishra, Advocate

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

11.01.2019

1. This Petition has been filed for restoration of W.P. No.931/2001, which was dismissed in default vide order dated 14.11.2007.

2. Shri Ravindra Agrawal, learned Counsel for the Applicant submits that the Applicant was diligent and was interested in prosecuting the case. He submits further that his Counsel had assured him of taking care of his case and as such he is not required to contact on the date of hearing and that he will be kept informed. However, he did not inform when it was dismissed in default on 14.11.2007 and submits further that all of a sudden, on 31.10.2013, the Applicant suffers from a disease known as Acute Inflammatory

Demyelinating Polyradiculopathy (Guillaine Barre Syndrome) and recurrent pneumonia with bronchiectasis in left lower lobe and has remained in ICU for about five months at Apollo Hospital in Coma. He submits further that even after his discharge, the Applicant was not able to perform his daily routine work and was completely bed ridden. According to Shri Agrawal, on 03.09.2018, an advertisement was published in "Dainik Bhaskar", daily newspaper of Bilaspur edition by Bilaspur Merchant Association in which, vote of thanks has been given in lieu of handing over the possession of plots in the Vyapar Vihar Yojna and as the Applicant was also a candidate for allotment of the same scheme, therefore, upon knowing the said publication, he enquired from his Counsel and other sources about the status of his said Writ Petition, then only, he came to know that his Writ Petition is dismissed for non-prosecution on 14.11.2007. Shri Agrawal, therefore, submits that under such circumstances, while applying liberal view, the said Petition as dismissed on 14.11.2007 be restored to its original number in order to provide the substantial justice to the parties.

3. On the other hand, Shri Abhijeet Mishra, learned Counsel for the Respondent, while opposing the said prayer, submits that sufficient cause has not been explained for almost the delay of more than 10 years in filing this M.C.C for restoration of the said Writ Petition. He submits further that although the Applicant was suffering from a critical condition as stated by him, however, sufficient cause has not been shown from the date when the Writ Petition was dismissed till the Applicant has suffered from the said disease. As such, the application as filed for restoration of the said Writ Petition, which apparently suffers from its inordinate delay, deserves to be dismissed. In support, he placed his reliance upon the principles laid down in the matter of Puran Singh and Others vs. State of Punjab and Others reported in **(1996) 2 Supreme Court Cases 205**, Balwant Singh (dead) vs. Jagdish Singh and

Others reported in **(2010) 8 Supreme Court Cases 685** and also in the matter of Smt Jyoti vs. General Manager passed in **M.C.C No.591/2016** by the co-ordiante Bench of this Court.

4. I have heard learned Counsel for the parties and perused the entire papers annexed with this Petition carefully.

5. Perusal of the record would show that the Writ Petition was filed on 30.05.2001 and the Applicant has obtained the interim relief in the matter. The matter was listed on 14.11.2007 and on the said date, it was dismissed for non-prosecution. The Applicant is therefore seeking for restoration of the said Petition in its original number which was initially filed by him by challenging the irregularity committed by the Non-Applicant authorities in relation to the allotment of plots at Vyapar Vihar Zone-1, Bilaspur on the ground of violation of principles of natural justice. The reasons assigned therein would reveal that the Applicant was assured by his Counsel that he is not required to come on each day of hearing and he will be kept informed. It reveals further that all of a sudden, he suffered the said disease and was even unable to perform his daily routine work. Based upon this, a prayer has been made for restoration of the said Writ Petition dismissed in default on 14.11.2007. Although, the Applicant was in a critical condition, but, it was a period subsequent to the year 2013. It however, seems unacceptable that from the point of dismissal of order i.e. 14.11.2007 up to 31.10.2013 when he suffered from the said disease i.e. almost more than 5 years 11 months, the Applicant, when he was bodily capable, could not have contacted his Counsel regarding the status of the said Writ Petition. In any case, the Advocate's assurance and a litigant's presumptions cannot be a proper ground for explaining a substantial delay of approximately for the period of six years. Although, it is the obligation on the part of the Advocate to keep the

litigant/Applicant informed about the status of the legal proceedings of his case, but it is equally important for the Applicant to be vigilant in his case as well, which is however, completely missing herein. It is true that the Applicant has suffered the said disease from October, 2013 but, it reveals from the record that prior to the said period, the Applicant has never approached his Counsel regarding the status of his case after obtaining the interim relief and kept silent for almost more than the period of 5 years and 11 months, when it was dismissed for his non-prosecution on 14.11.2007. It is the duty of the Applicant to know about the status of his case and it cannot be accepted that merely on the assurance of his Counsel, he has not inquired about his case for such a long period. At this juncture, the principles laid down in the matter of Puran Singh and Others vs. State of Punjab and Others (supra) are to be noted where, the Apex Court in paragraph-12 of its judgment, has observed as under:-

“12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well-known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in

substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.”

6. The aforesaid ratio laid down by the Supreme Court was reiterated by this Court while adjudicating upon the condonation of delay in restoration of Writ Petition in the case of Smt Jyoti vs. General Manager passed in **M.C.C No.591/2016** (supra). In the said matter, this Court, at paragraphs-14, 15 & 16, while referring to Puran Singh's Case (supra), has observed as under:-

“14. In a case where the MCC is filed for restoration of writ petition, which was dismissed for want of prosecution or for non-compliance of Court order, the provisions contained under Order IX Rule 2 or Rule 4 of the CPC read with Article 122 of the Act, 1963 would not apply, therefore, such MCC is not to be treated as barred by limitation even if it is filed after 30 days from the date of order, however, in view of the observations made by the Supreme Court in para 10 of the judgment rendered in **Puran Singh** (supra), the High Court may take note of the period prescribed under Article 122 of the Act, 1963 for considering as to what shall be reasonable time for moving such restoration application or review petition or application for modification/clarification.

15. When such application is filed after long lapse of time, which, *prima facie*, appears to be unreasonable, it would be the duty of the applicant to explain the delay in filing the restoration application or review petition or application for modification/clarification itself, however, no separate application may be necessary unless the Court desires such application to be filed.

16. This order shall also not be taken to lay down the principle that Court can never dismiss such application on the ground of delay and laches because if the principles of delay and laches shall

apply to the parent proceedings under Article 226 & 227 of the Constitution of India it would also apply to the incidental proceedings like restoration application, review petition or the application for modification/clarification and the writ Court can always invoke its inherent powers to dismiss such applications being suffered from delay and laches in the given set of facts and circumstances of the case.”

7. In view of the aforesaid decision of the Supreme Court as well of this Court, it is amply clear that substantial delays need to be explained properly even in incidental proceedings of a writ under Article 226 of the Constitution of India. However, sufficient cause, as observed herein above, has not been shown by the Applicant in his application for restoration of the said Writ Petition.

8. What is “sufficient cause” as provided under Section 5 of the Limitation Act, 1963 has been explained by the Supreme Court in the matter of Balwant Singh (dead) vs. Jagdish Singh and Others (supra) where at paragraphs 34, 35, 36 and 38, it has been held as under:-

“34. Liberal construction of the expression “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect “sufficient cause” as understood in law. (advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edn., 1997).

35. The expression “sufficient cause” implies the presence of legal and adequate reasons. The word “sufficient” means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an

excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. (advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005)

38. Above are the principles which should control the exercise of judicial discretion vested in the court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the court. In addition to this, the court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger Benches as well as equi-Benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the abovementioned ingredients; then alone the court would be inclined to condone the delay in the filing of such applications.”

9. Since the Applicant has failed completely to explain the delay prior to being diagnosed with serious ailment i.e. for the period commencing with effect from 14.11.2007 upto 31.10.2013, therefore, in view of the principles laid down in the above mentioned judgment, I am not inclined to restore the

said Writ Petition to its original number, as claimed by the Applicant.

10. The Petition is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya