

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 894 of 2019

- Janki D/o Jhagarsay Aged About 40 Years Caste - Gond R/o - Madidand, Tahsil - Pratappur, Revenue And Civil District - Surajpur Chhattisgarh.

---- Applicant /defendant No.1

Versus

1. Dumhen D/o Late Singar Say Aged About 52 Years Caste - Gond Resident Of Village - Sukhar, Tahsil - Pratappur , Revenue And Civil District - Surajpur Chhattisgarh.....(Plaintiff),
2. Jhagar Say S/o Adhanu Aged About 65 Years Resident Of Village - Madidand, Tahsil - Pratappur, Revenue And Civil District - Surajpur Chhattisgarh...(Defendant No. 2).
3. (A) Sukhdeo S/o Bigan Aged About 49 Years Resident Of Village - Madidand, Tahsil - Pratappur, Revenue And Civil District - Surajpur Chhattisgarh....(Defendant No. 3A).
3.(B) Bandhan S/o Bigan Aged About 49 Years Resident Of Village - Madidand, Tahsil - Pratappur, Revenue And Civil District - Surajpur Chhattisgarh.....(Defendant No. 3-B).
4. State Of Chhattisgarh Through Collector, Surguja At Present - Surajpur, District - Surajpur Chhattisgarh.

---- Respondent/Non-applicant

For Applicant : Mrs. Apporva Tripathi, 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 960 days in filing the instant MCC which is supported by an affidavit of Janki s/o. Jhagarsay.
2. Present MCC has been filed for restoration of Second Appeal No./ 43 of 2016 which was dismissed on 19-12-2016.
3. It is the property of dispute. Admittedly, Aghnu Gond was originally owner of the property in question and thereafter it was inherited by his three sons namely Singarasay, Bhagan and Jhagarsy. The trial Court allotted 1/3rd share in the property in question to the sole successor of Singarsay namely Doomhen.
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 19-12-2016 whereas application for restoration is filed on 5-9-2019 i.e., after two years, eight months and seventeen 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 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 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 seventeen 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. 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