

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.544 of 2019**

*(Arising out of order dated 01.10.2019 passed in MCC No.895 of 2019 by
the learned Single Judge)*

M/s. Punjstar Insulation Fibre Company (A unit of NGP Industries Ltd.), 6
and 7, Heavy Industrial Area, Bhilai, District Durg, Chhattisgarh through
Vice President.

---- Appellant**Versus**

State of Chhattisgarh through the Office of the Chief Electrical Inspector,
Superintending Engineer (Electrical Safety), 36/437, First Floor, Byron
Bazaar, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Shri Uttam Pandey, Advocate
For State/Respondent	: Shri Vikram Sharma, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgement on Board**Parth Prateem Sahu, Judge****26.11.2019**

1. Dismissal of the application for restoration of Writ Petition No.1131 of 2006 has led the appellant to approach this Court by way of filing an appeal.
2. The facts of the case are that, the appellant filed Writ Petition No.1131 of 2006 challenging the demand notice issued by Tahsildar, Durg dated 22.11.2005 on instruction/direction of the sole respondent. The said writ petition came to be dismissed for want of prosecution on 18.10.2016 as no one appeared to represent the appellant/petitioner even after successive

rounds.

3. Miscellaneous Civil Case No.895 of 2019 was filed for restoration of Writ Petition No.1131 of 2006 on 16.05.2019 along with an application for condonation of delay supported by an affidavit of counsel. When the said MCC came up for hearing before the learned Single Judge, the learned Single Judge dismissed the restoration application on the ground that the said application was filed after expiry of the period of limitation which is impugned herein.
4. Learned counsel for the appellant submits that the appellant was diligent and vigilant in prosecuting the writ petition since the date of its filing. He further submits that listing of the case on 18.10.2016 could not come to his knowledge, therefore, he failed to appear on the said date and had it been in his knowledge, he would have attended the case to protect the interest of the appellant, for which, he has been engaged. He also submits that only on the enquiry of the case on 10.05.2019, he came to know that the writ petition was already dismissed in default on 18.10.2016 and he was even not aware about dismissal of the case for non-prosecution on 18.10.2016. He also submits that Writ Petition No.1131 of 2006 was filed under Article 226 of the Constitution of India, for which, the period of limitation in *stricto sensu* will not apply. He also submits that learned Single Bench of this Hon'ble Court in the matter of **Smt. Jyoti v. General Manager, Canara Bank**¹, after considering the judgement passed by Hon'ble Supreme Court held that the provisions of Code of Civil Procedure, 1908 ('CPC', *for short*) and Limitation Act, 1963 ('Limitation Act, *for short*) are not applicable, therefore, impugned order whereby

¹ 2017 (2) CGLJ 102

restoration application was dismissed is liable to be interdicted.

5. Per contra, learned counsel appearing for the State supports the impugned order and submits that the application for restoration was filed after more than 2 years and 6 months and learned Single Judge has rightly dismissed the application for restoration.
6. We have heard learned counsel appearing for the parties at length.
7. The Hon'ble Supreme Court has in 'N' number of cases have held that the Court should make endeavour to do substantial justice by disposing off matters on merits and not get mired in technicalities, but at the same time, parties seeking restoration has to show the cause for delay, if any.
8. In the instant case, the learned Single Judge dismissed the restoration application only on account of delay of more than 2 years and 6 months, but has not considered whether the limitation in *stricto sensu* will be applicable in writ petition filed under Article 226 of the Constitution of India.
9. The Hon'ble Supreme Court in the matter of **Puran Singh and Others v. State of Punjab and Others**², has dealt with the issue as to whether provisions contained under Order XXII of the CPC are applicable to the proceedings under Article 226 and 227 of the Constitution of India and held thus :

“7. When the High Court exercises extraordinary jurisdiction under Article 226 of the constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in

² (1996) 2 SCC 205

view of the conflicting opinions expressed by the different courts, Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression "proceedings" does not include "any proceedings under Article 226 of the Constitution" and statutorily recognised the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable "in all proceedings in any court of civil jurisdiction" it shall not include a proceeding under Article 226 of the constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of *Babubhai v. Nandlal*, (1974) 2 SCC 706, had said that (SCC Headnote p. 707) the words "as far as it can be made applicable occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for" after introduction of the explanation the writ proceedings have to be excluded from the expression "proceedings" occurring in Section 141 of the Code. If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code 'as far as it can be made applicable' to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra-ordinary powers by the High Court under Articles 226 and 227 of the Constitution.

9. In the case of *Ram Kala v. Asstt. Director. Consolidation of Holdings*, AIR 1977 P&H 87, a Full Bench of three Judges held that Article 137 of the Schedule to the Limitation Act does not apply to an application for adding or substituting a party to a petition under Article 226 of the Constitution. It was also held that Section 141 of the Code cannot be pressed into service for applying the provisions including Order 22 of the Code in a petition under Article 226 of the Constitution. Later a Full Bench of

five Judges of the same court in the case of *Teja Singh v. Union Territory of Chandigarh*, AIR 1982 P&H 169, held that in view of Rule 32 of the Writ Rules framed by the High Court under Article 225 of the Constitution which provided that in all matters in which no provision had been made by those Rules, the provisions of Civil Procedure Code shall apply mutatis mutandis in so far as they were not inconsistent with those Rules the explanation which had been added to Section 141 of the Code by the aforesaid Amending Act, did not in any way nullify the effect of Rule 32 of the Writ Rules. Rule 32 of the Writ Rules is as follows:

"32. In all matters for which no provision is made in these rules, the provisions of the Code of Civil Procedure, 1908, shall apply mutatis mutandis insofar as they are not inconsistent with these rules."

10. On a plain reading, Section 141 of the Code provides that the procedure provided in the said Code in regard to suits shall be followed "as far as it can be made applicable, in all proceedings". In other words, it is open to make the procedure provided in the said Code in regard to suits applicable to any other proceeding in any court of civil jurisdiction. The explanation which was added is more or less in the nature of proviso, saying that the expression "proceedings" shall not include any proceeding under Article 226 of the Constitution. The necessary corollary thereof shall be that it shall be open to make applicable the procedure provided in the Code to any proceeding in any court of civil jurisdiction except to proceedings under Article 226 of the Constitution. Once the proceeding under Article 226 of the Constitution has been excluded from the expression "proceedings" occurring in Section 141 of the Code by the explanation, how on basis of Section 141 of the Code any procedure provided in the Code can be made applicable to a proceeding under Article 226 of the Constitution? In this background, how merely on basis of Writ Rule 32 the provisions of the Code shall be applicable to writ proceedings? Apart from that, Section 141 of the Code even in respect of other proceedings contemplates that the procedure provided in the Code in regard to suits shall be followed "as far as it can be made applicable". Rule 32 of Writ Rules does not specifically make provisions of Code applicable to petitions under Articles 226 and 227 of the Constitution. It simply says that in matters for which no provision has been made by those rules, the provisions of the Code shall apply mutatis

mutandis in so far as they are not inconsistent with those rules. In the case of *Rokyayabi v. Ismail Khan*, AIR 1984 Kant. 234, in view of Rule 39 of the Writ Proceedings Rules as framed by the Karnataka High Court making the provisions of Code of Civil Procedure applicable to writ proceedings and writ appeals, it was held that the provisions of the Code were applicable to writ proceedings and writ appeals.

11. We have not been able to appreciate the anxiety on the part of the different courts in judgements referred to above to apply the provisions of the Code to Writ Proceedings on the basis of Section 141 of the Code. When the constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious."

10. Further, Hon'ble Supreme Court in the matter of **Smt. Sudama Devi v. Commissioner and Others**³, has dealt with applicability of provisions of the Limitation Act under Article 226 of the Constitution of India and held thus :

³ (1983) 2 SCC 1

“We are of the view that so far as Writ Petition under Article 226 of the Constitution is concerned, there can be no hard and fast rule of 90 days by way of period of limitation but the general rule of laches alone can be applied and this must necessarily depend on the facts and circumstances of each case. The High Court has said in its order that “the writ petition was beyond time by 136 days. Neither the explanation of 136 days nor the explanation for filing it today, was given.” This view does not appear to be correct because the High Court has proceeded on the assumption that there is a period of limitation of 90 days and unless sufficient cause is shown as contemplated under Section 5 of the Limitation Act, a writ petition filed after the expiration of 90 days is liable to be rejected. This assumption is wholly unjustified. There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt, that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances, whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner. We would, therefore, set aside the order of the High Court and remand the Writ Petition to the High Court so that the High Court may dispose it of on merits in accordance with law. We accordingly allow the appeal, set aside the judgement and order of the High Court and direct that the writ petition may be disposed of by the High Court on merits in accordance with law. There will be no order as to costs.”

11. That when for filing of the limitation, there is no application of the Limitation Act and the proceeding of writ petition do not govern the provisions of CPC. If that be so, then there cannot be a period fixed for filing of an application for restoration of writ petition, but of course, the Courts can consider the laches in filing of the application.

- 12.** The record of MCC would show that along with the application for restoration, an application for condonation of delay supported by an advocate has been filed. The reasons assigned in the application is that listing of the case on 18.10.2016 was not in his knowledge and when on 10.05.2019, enquiry is being made with response to status of Writ Petition No.1131 of 2006, he came to know that the writ petition was dismissed for non-prosecution on 18.10.2016 and he immediately moved an application for certified copy on the same day, which was delivered to him on 16.05.2019, thereafter on the same day i.e. 16.05.2019, application for restoration was filed.
- 13.** Looking to the action taken by the learned counsel for the appellant after getting knowledge of dismissal of writ petition for want of prosecution as also considering the details of date of filing of application for certified copy as mentioned in the certified copy of order dated 18.10.2016, plausible reason for delay has been explained in the application for condonation of delay. It may be possible that non-traceability of the case in the cause-list may be due to slip of eyes, but the fact remains that the */is* filed before the Court by the party is to be decided on its merit so as to do substantial justice. Though the mistake in noting of the case or marking of case from cause-list cannot be an excuse, but for such mistake, which is a human error, the litigants cannot be penalised for not considering their case on merits.
- 14.** For the aforementioned reasons and looking to the fact that litigant approaching to the Court is entitled for getting */is* to be decided on merits, in the facts and circumstances of the case, we are of the view that the

appeal is to be allowed.

- 15.** In the result, the writ appeal is allowed. Impugned order is set-aside. The application for restoration is allowed and the Writ Petition No.1131 of 2006 is restored to its original number subject to deposit of an amount of Rs.1000/- payable to the High Court Legal Aid Committee within a period of 15 days.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh