

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.55 of 2020

1. Smt. Shailbala Tiwari W/o Late Ramesh Kumar Tiwari, Aged About 65 Years
2. Nimesh Tiwari S/o Late Ramesh Kumar Tiwari Aged About 40 Years
3. Smt. Pragati Tiwari D/o Late Ramesh Kumar Tiwari, Aged About 38 Years
4. Smt. Kranti Tiwari, D/o Late Ramesh Kumar Tiwari Aged About 36 Years
Wrongly Mentioned In Ann. P - 1 As Smt. Kirti Tiwari,
(all are r/o Village Narayanpur, Tahsil Nawagarh, District - Bemetara
Chhattisgarh)

---- Petitioners

Versus

1. Mukesh Agrawal S/o Kedaranath Agrawal Aged About 31 Years R/o
Ekta Nagar, Bilha, Tahsil Bilha, District - Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through The Collector, Bemetara, District -
Bemetara Chhattisgarh

---- Respondents

For Petitioner	: Mr. Ravindra Agrawal, Advocate.
For State/respondent No.2	: Mr. Arijit Tiwari, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 11.11.2019 by which the application filed by the petitioner for restoration of M.J.C. No.11/2018 was dismissed.
2. Learned counsel for petitioners had shown a good cause for their non-appearance on the date and the case was fixed when application was filed on application under Section 5 of Limitation Act. Even then, the learned Court below has not given any consideration and passed the impugned order dismissing the application for restoration.

3. Considered on the submission and also perused all the documents present along with the petition and on perusal of the impugned order, it is found that the learned Court below has taken into consideration, the previous lapses that had been present on the part of the applicants. Whereas in the matter of prayer for restoration of any proceeding dismissed for non-prosecution, the only point of consideration has to be where the said applicant was prevented from appearing before the Court because of some sufficient reason. The reason mentioned in the application that the learned counsel appointed by the petitioners did not give appearance and he did not give any information to the applicants is a good reason. The learned Court below has not at all given any proper consideration to this reason and dismissed the application for restoration, which appears to be erroneous order and liable to be set aside. Hence, the petition is disposed off at motion stage. The impugned order is set aside, the M.J.C. No.11/2018 initiated under Order 9 Rule 13 of C.P.C. by the petitioners is restored, petitioners are directed to give appearance on 16th of April, 2020.

4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika