

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 925 of 2019**

Nandkishore Sharma, S/o. Shri Chiranjiv Lal Sharma, Aged About 68 Years, R/o. Ward No.14, Baldev Bag, Rajnandgaon District Rajnandgaon, Chhattisgarh.

---- **Petitioner**

Versus

Ravi Nagwani, S/o. Shri Rajesh Nagwani, Proprietor Kamlesh Kumar Sahu, R/o. Chikli Ward No.1, Rajnandgaon Chhattisgarh.

----**Respondents**

For Petitioner : Mr. Shivang Dubey, Advocate

For Respondent : Mr. Siddharth Dubey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28.01.2020**

Heard

1. The present petition is for restoration of the CRMP No.725 of 2015 which was dismissed on 27.10.2015 for want of prosecution.
2. Learned counsel for the petitioner would submit that eventually the loss would be to the petitioner/applicant as the matter could not come to the notice of the counsel or the petitioner, as such, the restoration of CRMP may be made. He further submits that the matter may be heard on merit, as the petitioner would be left with no other remedy in future.
3. Per contra, learned counsel for the respondent vehemently opposes the argument and would submit that even the CRMP which was earlier filed was grossly delayed. He further submits that the instant petition for restoration is delayed by 3 years and 5 months and no sufficient reason has been shown to condone the delay, therefore, the petition may be dismissed.

4. Perusal of the original record would show that initially on 24.07.2014, the Judicial Magistrate First Class, Rajnandgaon, has dismissed the complaint case filed under Section 138 of the Negotiable Instrument Act. Against such acquittal order, the petitioner initially approached to the Court of Sessions Judge and the Sessions Judge on 09.04.2015 dismissed the appeal on the ground that as against the order of acquittal, the Sessions Court cannot hear the appeal and it is only the High Court which can hear the appeal. Consequently, the instant CRMP was filed.
5. The CRMP was filed on 16.07.2015 which was delayed by 279 days. Subsequently, the application for condonation of delay was filed and the notices were issued on 20.08.2015. Eventually, on 27.10.2015 when the case came up for hearing, no one appeared on behalf of the applicant in the CRMP before this Court, despite repeated calls, as such, it was dismissed. Thereafter, the instant petition for restoration has been filed on 10.04.2019, which is almost delay of 3 years and 5 months approximately.
6. Perused of the application for condonation of delay, only it is stated that the applicant was under the bonafide believe that the CRMP is pending adjudication and when approached to counsel could only know the fact in the month of March, 2019 about dismissal. The averments are supported by an affidavit of the applicant. Vehement opposition has been made by the respondent's counsel. It is submitted that the petitioner has an alternative remedy to file civil suit for recovery, if any, subject to proof and it is further submitted that no sufficient reasons have been assigned for condonation of delay. The application for restoration has been filed after 3 years and 5 months. In view of this, the reasons assigned in the application prima facie reflects that the petitioner/applicant himself

was negligent to prosecute his case. It is not a delay of short term, more than 3 years and 5 months have occurred even for filing restoration application. Normally the application for condonation are considered liberally but when there is gross delay, it cannot be matter of right to get it restored. In view of this, the reason for condonation of delay cannot be held to be sufficient. Simply narrating the fact by applicant that he came to know of dismissal when contacted his counsel would only demonstrate that applicant himself was negligent to enquire and failed to follow up his case and tried to pass on buck on the counsel. The said explanation by applicant appears to be lack in bonafide in view of past delay, which occurred at his instance. Under the circumstances, I do not find any sufficient cause to restore the petition by condoning the delay. In a result, this MCC is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE

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