

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No.219 of 2021**

G.V.Rathore (Dead) Through Lrs.

1. Devendra Ghanshyam Rathore S/o Late Ghanshyam Rathore Aged About 60 Years R/o Jhulelal Chowk, Khelkarpara, Raipur Chhattisgarh,
2. Mukesh G. Rathore S/o Late Ghanshyam Rathore Aged About 57 Years R/o Jhulelal Chowk, Khelkarpara, Raipur Chhattisgarh
3. Dinesh Ghanshyam Rathore S/o Late Ghanshyam Rathore Aged About 58 Years R/o Jhulelal Chowk, Khelkarpara, Raipur Chhattisgarh

---- Applicants/Legal heirs of the
original Applicant)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Water Resources, Mahanadi Mantralaya, Naya Raipur, Atal Nagar, Post Officer And Police Station Naya Raipur, Atal Nagar, District Raipur Chhattisgarh (Earlier Address D K S Bhawan, Mantralaya, Raipur), District : Raipur, Chhattisgarh
2. The Executive Engineer, Chhirpani Project Division, Water Resources Department, Dist. Kawardha Kabirdham, Dist. Kawardha (Kabirdham) Chhattisgarh

---- Non-Applicants/ Respondents/Defendants

For Applicants	:	Shri Vivek Shrivastava, Advocate.
For Non-Applicants/State	:	Ms. Reena Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay S. Agrawal**Order on Board****05.10.2021**

1. Heard on I.A.No.01 of 2021, which is an application for condonation of delay of 407 days in filing the instant M.C.C. for restoration of Revision Petition No.36 of 2014, which was dismissed for non-prosecution vide order dated 09.01.2019.

2. It is stated in the application that due to inadvertence, the original applicant, namely, G.V.Rathore (since deceased now represented by his legal representatives Devendra Ghanshyam Rathore and others), who died on 26.12.2020, could not file the petition within time and as such some delay occurred in filing the same. It is stated further in the application that the conduct of the applicant is bona fide and there is no ill-intention behind it and owing to outbreak of Covid-19 pandemic, appropriate steps could not be taken within the stipulated period. With these explanations, it is prayed that delay occurred in filing the instant petition may be condoned.

3. On the other hand, learned counsel appearing for the Non-Applicants/State has opposed the application by submitting, inter alia, that there was no proper explanation offered on behalf of the applicants for the huge delay in filing the instant petition and the application in this regard has been made in a cursory manner even without explaining the same in a satisfactory manner, and therefore, liable to be rejected.

4. Perusal of the impugned award dated 17.01.2014 passed by the Arbitrator in Reference Case No. 06 of 2013 preferred under Section 7 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short, the Act of 1983) would show that the applicant's claim was disallowed in *to to*. Being aggrieved with the refusal of the claim, the Revision Petition was filed by said G.V.Rathore under Section 19 of the Act of 1983, which came to be dismissed for non-prosecution on 09.01.2019 as no one had appeared earlier also when it was called continuously on 07.01.2019 and 08.01.2019.

5. Be that as it may, it appears from a bare perusal of the application that no sufficient reasons have, in fact, been assigned for condonation of delay in filing the instant M.C.C. and, instead a plea has been taken to the effect that

due to outbreak of Covid-19 pandemic, necessary steps could not be taken within the stipulated period. It, however, appears that the period of limitation for filing the instant petition for restoration of the said Revision Petition, which was dismissed in default on 09.01.2019, has expired even much prior to the outbreak of Covid-19 pandemic. Thus, it appears that a false plea has been taken with an ulterior motive in order to get the delay of 407 days condoned in filing the instant petition. The applicants are, therefore, not entitled to get the delay condoned on such a concocted plea and the application for restoration is, therefore, liable to be rejected.

6. At this juncture, the principles laid down by the Supreme Court in the matter of ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai***, reported in (2012) 5 SCC 157 are to be seen, wherein it has been held at paragraphs 23 and 24 as under:-

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under [Section 5](#) of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.”

“24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

7. Applying the aforesaid principles to the case in hand, I do not find that the explanations offered by the Applicants for condonation of delay in filing this instant petition are genuine and as such, the same deserve to be rejected.

8. The application for condonation of delay in filing the instant petition is accordingly rejected. Consequently, the M.C.C. is dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge