

(2019) 02 CHH CK 0231
In the Chhattisgarh High Court
Case No : M.C.C No. 1045 Of 2015

Murarilal Agrawal And Ors

APPELLANT

Vs

Gopal Krishna Beriwal And Ors

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Limitation Act 1963 — Section 5

Code Of Civil Procedure 1908 — Order 22 Rule 3, Order 22 Rule 9

Citation : (2019) 02 CHH CK 0231

Hon'ble Judges : Sanjay Agrawal, J

Bench : Single Bench

Advocate : Manoj Paranjpe, Sameer Uraon

Final Decision : Allowed

Judgement

Sanjay Agrawal, J

1. Heard on IA No.2, an application filed by Applicants No.2 to 10 & 12 to 17 for grant of permission to file M.C.C.

2. On due consideration of the reasons mentioned therein, I am inclined to allow the same. The said Applicants are accordingly permitted to file this

M.C.C.

3. Heard on IA No.3, an application filed by the Applicants for grant of permission to file this Petition against Non-Applicants No.2 to 8.

4. On due consideration of the reasons assigned therein, the same is allowed. Applicants are hereby permitted to file this Petition against Non-

Applicants No.2 to 8.

5. Heard on IA No.1, an application for condonation of delay of 1467 days in filing the instant M.C.C.

6. The said application is orally opposed by Shri Uraon as no reply has been filed till now.

7. On due consideration of the reasons mentioned therein, it appears that the aforesaid delay has occurred bonafidely and there is no malafide intention behind it. As such, the same is allowed and delay in filing the M.C.C is hereby condoned.

8. Also heard on IA No.8, an application for taking photographs on record.

9. Shri Paranjpe does not want to press this application, which is accordingly dismissed as not pressed.

10. In view of above, IA Nos.1,2,3, & 8 stand disposed of.

11. Also heard on admission.

12. This M.CC has been filed for restoration of S.A No.76/1994, which was dismissed by this Court vide order dated 09.11.2011 for want of prosecution.

13. Perusal of the record would show that an application for restoration of the said Appeal was earlier moved on 18.01.2013, which was registered as

M.C.C No.43/2013. Since one of the Applicants namely Smt Vimala Bai has expired, therefore, vide order dated 25.10.2013, this Court, while

considering the said fact, dismissed the same summarily by granting liberty to the Applicants to move appropriate application as required under Order

22 Rule 9 CPC along with an application under Order 22 Rule 3 CPC as well as under Section 5 of the Limitation Act. Acting upon it, another Petition

was filed on 11.12.2013 for setting aside abatement of said Second Appeal alongwith an application as required under Order 22 Rule 9 of C.P.C. The

said petition was registered as M.C.C 1204/2013. However, the same was dismissed while granting liberty to the Applicants to seek revival of

application for restoration of S.A No.76/1994. The instant Petition is accordingly filed for restoration of the said Appeal, which was dismissed in

default on 09.11.2011.

13. Having considered the facts and circumstances of the case and considering further the reasons assigned in the petition for restoration of the said

Appeal, which have not been controverted by the Non-Applicants, I am inclined to allow the same.

14. Accordingly, the instant M.C.C is allowed and S.A No.76/1994 dismissed in default vide order dated 09.11.2011 is restored to its original number.

No order as to costs.