

(2019) 08 CHH CK 0216
Chhattisgarh High Court
Case No: MCC No. 792 Of 2018

Raj Kumar Agrawal

APPELLANT

Vs

Municipal Corporation, Bilaspur
Through Its Commissioner And
Ors

RESPONDENT

Date of Decision: Aug. 30, 2019

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ravindra Agrawal, Abhijeet Mishra

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. The instant petition has been filed for restoration of Writ Petition No. 2671 of 2002 which was dismissed for want of prosecution on 5-10-2010.

2. As per the applicant, he was due diligent and interested in prosecuting the case. Counsel for the applicant had assured him taking care of his case

but he did not inform regarding dismissal of the case. The applicant suffered from disease and admitted in hospital for five months. On 3-9-2018 an

advertisement was published in the Dainik Bhaskar, daily news paper of Bilaspur Edition at page No.15 which is published by Bilaspur Merchant

Association, Bilaspur in which vote of thanks has been given in lieu of handing over the possession of plots in the Vyapar Vihar Yojna. The applicant

was also a candidate for allotment of the same scheme of Vypar Vihar Yojna. Thereafter, he enquired from his counsel and other sources about the

status of his writ petition, then he came to know that his writ petition is dismissed on 5-10-2010 for want of prosecution. The mistake is bona fide and

it should be condoned and the petition be restored to its original number. He placed reliance in the matter of Smt. Jyoti w/o. Shri Narayan Kumar vs.

General Manager, Canara Bank, Staff Selection (Workmen) decided by this court on 13-12-2016 in M.C.C.No. 591 of 2016.

3. On the other hand, learned counsel appearing for the respondents would submit that sufficient cause has not been explained for delay of about eight

years, therefore, it is not a case where the petition can be restored.

4. I have heard learned counsel for the parties and perused the record.

5. Perusal of the record goes to show that writ petition was filed in the year 2002 and it was listed on 5-10-2010 and it was dismissed for want of

prosecution. The reason assigned in the application would reveal that the applicant was assured by his counsel. The writ petition was dismissed in the

year 2010. The applicant was admitted in hospital in the year 2013 for five months, but application is filed after five years of admission in the hospital.

When the applicant was in good health condition, he could not have contacted his counsel regarding status of the said petition. The counsel assurance

cannot be an appropriate ground for explaining substantial delay of approximately eight years. It is the obligation on the part of the counsel to appear

before the court but it is equally important for the applicant to be vigilant in his case as well. It is the duty of the applicant to know about status of his

case.

6. In the matter of Balwant Singh (dead) vs. Jagdish Singh and others, reported in 2010 8 SC 685, Hon'ble the Supreme Court has held as under:

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting

bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is

whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

7. In the present case, applicant has failed to explain the delay prior to ailment i.e., from the year 2010 to 2013 and after improving his health condition

in the year 2013 to 2018 which comes out about more than seven years. Therefore, it is not a case where the applicant has paid due care and attention

to the petition. It is not a case where the case should be restored.

8. Accordingly, the instant petition is liable to be and is hereby dismissed.

9. Parties to bear their own costs.