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HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 157 of 2021

Neeraj Kumar Sahu, Proprietor Of Aditya Agro, S/o Nathu Prasad Sahu, Aged About 39 Years R/o Pendra, Tahsil And Police Station Pendra, District - Gaureila - Pendra - Marwahi, Chhattisgarh., District : Gaurela-Pendra-Marwahi, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through District Collector, Collectorate Building, Collectorate Road, Near Nehru Chowk, District - Bilaspur Chhattisgarh.
2. Zila Vipnan Adhikari/ District Distribution Officer, District Bilaspur, Chhattisgarh. (Non-appellant No.1)
3. Branch Manager, State Bank of India, Pendra Branch, District Gaurela Pendra Marwahi, Chhattisgarh. (Non-appellant No.2)

---- Respondents

For Petitioner	:	Shri Faiz Kazi, Advocate
For Respondent/ State	:	Shri Sameer Uraon, G.A.

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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

08.09.2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 9.12.2019, passed by respondent No.1 – The Collector, Bilaspur, dismissing the application for restoration of the appeal filed by the petitioner.

2. The petitioner is Proprietor of Rice-mill styled as Aditya Agro situated in village Amadand, Tehsil Pendra and District Pendra-Gaureila-Marwahi. The petitioner has done the work of the custom milling under the contract. Respondent No.2 - District Marketing Officer has passed an order dated 5.5.2016 directing for supply of the arrears of rice until 15.5.2016 with a stipulation that in case the rice is not supplied by the given date the bank guarantee/ FDR shall be appropriated for the same.

This date was further extended till 31.5.2016 by order dated 16.5.2016. The petitioner being aggrieved by this order preferred an appeal before respondent No.1. This appeal was dismissed on account of non-appearance of the petitioner/ appellant on 5.5.2018. The petitioner then filed an application for restoration of the appeal which has also been dismissed on 28.1.2019 on the ground of non-appearance of the petitioner/ appellant. The petitioner then filed a second application for restoration of the appeal which has been dismissed by the impugned order dated 9.12.2019.

3. it is submitted by counsel for the petitioner that the impugned order is arbitrary and erroneous. On all the dates fixed prior to the date of impugned order, the petitioner had been giving appearance but the case was not heard. The very first date on which, the petitioner was not present the order of dismissal has been passed, therefore, the application for restoration was fit to be allowed and the impugned order is not sustainable. Hence, the relief be granted to the petitioner.

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4. Learned counsel for respondents No.1 & 2 opposes the submissions and submits that the present petition is not maintainable as the clause 11 of the Chhattisgarh Rice Custom Milling Order, 2016 provides that the order passed by the Collector is appealable before District Judge, therefore, the petition be dismissed.

5. In reply, it is submitted by counsel for the petitioner that the appeal before the Collector/ respondent has not been decided on merits. Hence, the present petition is maintainable.

6. Considered on the submissions. After perusal of the order-sheets of the case, it is found that respondent No.1 has taken a very technical approach in dismissing the application for restoration due to non-appearance of the petitioner whereas, on all the earlier dates the case

was listed and the petitioner was either present or represented. Therefore, the intention of the petitioner to prosecute the appeal appears to be genuine. Hence, the petition is disposed of at motion stage. The impugned order dated 9.12.2019 is set aside and the application for restoration of the appeal before the respondent is restored. The petitioner is directed to give appearance before respondent No.1 on **04.10.2021**.

7. Accordingly, the petition stands disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi

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