



CGHC010093492026



2026:CGHC:44124

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 48 of 2026

1 - Abhishek Singh S/o Shri Dinesh Singh Aged About 30 Years R/o Ring Road, Bauripara, Ambikapur, Tehsil- Ambikapur, District- Sarguja (C.G.) Also R/o Village- Duppi, P.O.- Narsinghpur, District- Balrampur (C.G.)

... Appellant(s)

versus

1 - Shambhu Prasad Jaiswal S/o Late Shankatha Prasad Jaiswal Aged About 45 Years Occupation - Contractor, R/o Namnakala, District- Sarguja, (C.G.)

... Respondent(s)

For Appellant(s)	: Ms. Mahima Chandra, Advocate
For Respondent(s)	: Mr. Chandrikaditya Pandey, Advocate

{{Hon’ble Shri Justice Sachin Singh Rajput}}

Order on Board

12/10/2026

1) This appeal under Order 43 Rule 1(d) of the Code of Civil Procedure,1908 (for short “C.P.C.) has been filed by the appellant/defendant assailing the validity, correctness and judicial propriety of order dated 23.01.2026 passed in Miscellaneous Civil Case No.167/2025 by the Fifth District Judge – Ambikapur, District – Sarguja, C.G. by which the learned

YASMIN
KHAN

Digitally signed by
YASMIN KHAN
DN: cn=YASMIN
KHAN, ou=HIGH
COURT, o=HIGH
COURT OF
CHHATTISGARH,
st=Chhattisgarh,
c=IN
Date: 2026.10.16
17:59:12 +0530

trial Court rejected the application of the appellant under order 9 Rule 13 of the C.P.C.

- 2) The respondent who happens to be the plaintiff has filed a suit for recovery of an amount of Rs.11,90,300/- against the appellant/defendant, before the learned trial Court. The civil suit was registered as Civil Suit No.1B/2019. Initially on 19.12.2019, the suit was dismissed in which the appellant/defendant remains ex-parte. Challenging the same, the respondent/plaintiff filed an first appeal before this court bearing F.A. No.85/2020. This Court vide its order dated 16.02.2022 remitted back the matter before the learned trial Court for fresh adjudication. The notice was again issued to the appellant/defendant and he engaged a counsel to represent him before the learned trial Court. From the record it appears that the counsel engaged by him appeared on couple of occasions and later on stopped appearing. Thereafter, an ex-parte judgment and decree was passed by the learned trial Court on 04.11.2024 and the appellant/defendant was directed to pay Rs.11,90,300/- with 6% interest to the respondent/plaintiff. Thereafter, an application under Order 9 Rule 13 of the C.P.C was filed by the appellant/defendant before the learned trial Court. The application was barred by limitation of 267 days. The learned trial Court vide impugned order found that the appellant could not explain the delay by sufficient cause and dismissed the application and ultimately dismissed the application under Order 9 Rule 13 of the C.P.C. also.
- 3) Ms. Chandra, learned Counsel for the appellant submits that the impugned order rejecting the application for condonation of delay is bad in law and contrary to the facts and circumstances of the case. She submits that the appellant/defendant engaged a counsel who on appearing for couple of occasions before the learned trial Court stopped appearing and the appellant/defendant was not aware of the proceedings of the case. When the execution proceedings were initiated by the

respondent/plaintiff and notice of the same was received by the appellant/defendant, the application for setting aside the ex-parte judgment and decree was filed along with an application for condonation of delay. She submits that the appellant/defendant was able to show sufficient cause as he was not aware about passing of the decree thus, the delay occasioned was bonafide and it constitute sufficient cause for condoning the same. Ms. Chandra, Advocate has placed reliance in the matter of ***N. Balakrishnan V. M. Krishnamurthy***¹ and ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others***². On merits she submits that it is not a case that the appellant/defendant was not prosecuting the case before the learned trial Court diligently and for that purpose he had engaged a counsel and he was under an impression that the counsel engaged by him would be appearing on his behalf. If any mistake is committed by counsel, the appellant/defendant should not suffer. For this preposition, she placed reliance in the judgment of ***Rafiq & Another Vs. Munshilal and Another***³, Thus, she submits that the impugned order may be set aside and the impugned judgment and decree dated 04.11.2024 passed in Civil Suit No.1B/2019 by the learned trial Court may be set aside and the matter may be remitted back for fresh adjudication.

- 4) Per contra Mr. Chandrikaditya, learned counsel for the respondent/plaintiff vehemently opposes the above submissions. He submits that in the initial stage also the appellant/defendant remained ex-parte and thus an ex-parte judgment and decree was passed though dismissing the suit however the appeal was allowed by this Court in which also the appellant/defendant remained ex-parte. He further submits that making allegations on the advocate would not suffice that the appellant/defendant was able show sufficient cause for his absence before the

1 (1998) 7 SCC 123

2 (2013) 12 SCC 450

3 (1981) 2 SCC 788

learned trial Court. He should have been diligent in prosecuting his case before the learned trial Court. No sufficient reason has been assigned for condonation of delay before the learned trial Court in filing the application under Order 9 Rule 13 of the C.P.C. and the learned trial Court has rightly dismissed the application for condonation of delay as well as the application for setting aside the ex-parte judgment and decree. The appeal sans merit and is liable to be dismissed.

- 5) Heard learned counsel for the parties and perused the records.
- 6) There is no dispute to the fact that a civil suit for the recovery of the above stated amount was filed by the respondent/plaintiff. Initially the suit was dismissed ex-parte which was set aside by this Court on 16.12.2020 in F.A. No.85/2020 and the matter was remitted back. From the order sheet of the civil suit, it appears that the appellant/defendant had engaged a counsel to represent him. It appears that after appearing on few dates, he stopped appearing on behalf of the appellant/defendant which resulted into passing of ex-parte judgment and decree. Thereafter, the application for setting aside the ex-parte judgment and decree was filed along with an application for condonation of delay. The case of the appellant/defendant is that as he was not aware of the passing of the judgment and decree, he could not file the application for setting aside ex-parte judgment and decree in due course of time, for which, he filed an application for condonation of delay. Of course there is a delay of 267 days in filing the application, however, this Court has to see that whether the appellant/defendant was able to show sufficient cause for delay before the learned trial Court.
- 7) In the case of **N. Balakrishnan V. M. Krishnamurthy** (supra), it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide. Relevant paragraphs of the judgment are extracted below:-

“11. Rules of limitation are not meant to destroy the

right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words sufficient cause under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and **State of West Bengal Vs. S.A.No.331 of 2013 The Administrator, Howrah Municipality** [AIR 1972 SC 749].”

8) The Hon’ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others** (supra) has laid down the principles for deciding application for condonation of delay. Para 21 of the judgment states as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for

the Courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behavior and attitude of a party

relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant S.A. No.331 of 2013 not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

- 9) In the light of the above, that this Court is of the opinion that the appellant/defendant was able to show sufficient cause for condonation of delay in filing the application for setting aside the ex-parte judgment and decree. Though this Court could have remanded the matter to the learned trial Court for decision making on application for setting aside the ex-parte judgment and decree, however, as the lis appears to be of year 2019, this Court proceeds to decide as to whether the appellant/defendant

was able to show justifiable reasons for his non - appearance before the learned trial Court in the Civil Suit. The case of the appellant/defendant is that he had engaged a counsel who had appeared on couple of occasions and thereafter stopped appearing. The Supreme Court in the matter of **Rafiq & Another Vs. Munshilal and Another** (supra), held that the litigant should not suffer on account of the mistake of the counsel wherein it has been held as under : -

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer

because of the default of his advocate. If we reject this appeal, as Mr.A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi."

- 10) The appellant/defendant though required to be diligent in prosecuting his case, in the interest of justice, an ex – parte judgment running into lakhs of rupees has been passed and in appropriate cases, the Court may allow the application. In this case, this Court is of the opinion that this application should should be allowed subject to payment of certain amount. Thus this Court is passing the following order. The impugned order dated 23.01.2026 passed in Miscellaneous Civil Case No.167/2025 by the Fifth District Judge – Ambikapur, District – Sarguja, C.G.is hereby set aside and an application under Order 9 Rule 13 of the C.P.C. filed by the appellant/defendant for setting aside ex-parte judgment and decree dated

04.11.2024 in Civil Suit No.1B/2019 is **allowed** and the civil suit No.1B/2019 is restored to its original number in the files of 5th District Judge, Ambikapur, District – Surguja, C.G. This Court is conscious of the fact that the respondent/plaintiff is litigating against the appellant/defendant for recovery of the amount of loan for a long period of time. Thus, to protect his interest also, this Court directs the appellant/defendant to deposit Rs.5 lakhs with the learned trial Court within a period of 90 days from today. The learned trial Court shall invest that amount in the fixed deposit to incur interest. The learned trial Court thereafter decide the case on its own merits without any further delay preferably within a period of 6 months from the date of appearance of the parties.

11) The parties would be at liberty to lead evidence and file documents in support of their pleadings, if required. The amount so deposited by the appellant/defendant shall be subject to outcome of the civil suit. It is made clear that if the said deposit is not made within the stipulated period of time, this order shall not remain in force. The parties are directed to appear before the Court on **19.01.2027**.

12) With the aforesaid directions, this appeal is **allowed** as indicated above.

Sd/-
(Sachin Singh Rajput)
JUDGE