

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 88 of 2011**

Smt. Rewati Bai, aged 40 years, widow of Ratiram Sahu,
Occupation Agriculturist, R/o. Village Bagdongari, P.S. and
Tahsil Charama, District North Bastar, Kanker (C.G.)

... ..Plaintiff

---- Appellant**Versus**

1. Dayaram, son of Sundarlal Teli, aged about 45 years,
2. Pardesh (died) through LRs.

2-A Ramratan Tandiya, S/o Late Pardeshi, aged about 40 years

2-B Nirmal Kumar, S/o Late Pardeshi, aged about 35 years,

Both are R/o Village & Post -Bagdongari, Tahsil Charama,
Distt. North Bastar Kanker (C.G.)

3. Bhriguram Sahu (died) through LRs.

3-A Smt. Shanta Bai, Wd/o Late Bhriguram Sahu, aged about
65 years,

3-B Gurusharan Sahu, S/o Late Bhriguram Sahu, aged about
45 years,

3-C Panesh Ram Sahu, S/o Late Bhriguram Sahu, aged about
45 years,

3-D Kanesh Ram Sahu, S/o Late Bhriguram Sahu, aged about
38 years,

All are R/o Village & Post- Parsoda, Tahsil Charama, Distt.
Kanker (C.G.)

4. State of Chhattisgarh, Through: The Collector, Kanker (C.G.)
.....Defendants

---- Respondents

For Appellant : Mr. R.S. Patel, Advocate.

For Respondents 1 & LRs. of respondent No.2:

Mr.D.N. Prajapati, Advocate

For Respondent No.4 : Ms. K. Tripti Rao, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/08/2016

(1) Heard on I.A. No. 1, application for condonation of delay in filing the appeal.

(2) Instant Second Appeal filed under Section 100 of the CPC is directed against the judgment and decree dated 03.03.2006 passed by the First Additional District Judge, Kanker in Civil Appeal No. 21-A/2004 affirming the judgment and decree dated 27.03.2004 passed by Civil Judge, Class-I, Kanker in Civil Suit No.9-A/1999.

(3) Present appeal has been filed after an inordinate delay of 1722 days. According to the appellant, she is labourer and had gone to the State of Punjab for earning her livelihood and, therefore, she could not prefer appeal right in time. After three years, when she came back to the State of Chhattisgarh, she arranged funds for legal expenses and then engaged a counsel and thereafter, filed the instant appeal and, therefore, delay occurred in filing the appeal, which is unintentional and bonafide, be condoned in the interest of justice.

(4) Reply to the application for condonation of delay in filing the appeal has been filed stating *inter-alia* that there is inordinate delay of 1722 days in filing the appeal; and the appellant has not given any particulars about the date, month or year, when she went to the State of Punjab and on which date, month or year, she came back to the State of Chhattisgarh. According to her, she returned back to the State of Chhattisgarh after three years, but the instant appeal has

been filed with the delay of more than 4 ½ years. She has also stated that the appellant and the respondents are residing in the same village i.e. Bagdongari and according to the respondents, the appellant has never gone to the State of Punjab for earning her livelihood and, therefore, the application for condonation of delay in filing the appeal is liable to be rejected.

(5) It is well settled that approach of the Court should be liberal while considering the application for condonation of delay, if the appellant is successful in showing that he/she was prevented by sufficient cause from preferring the appeal.

(6) In order to decide the application for condonation of delay in preferring the appeal, it would be appropriate to notice reasons assigning for delay in filing the application. Paragraph 2 of the said application reads as under:-

“2. That, the appellant is labour and she went to out of State for bread and butter to State of Punjab. She came back after three years, than came to know the first appeal was dismissed. Thereafter, approach the local counsel who advised to file second appeal before the High Court. Thereafter, approach the local counsel who advised to file second appeal before the High Court. Thereafter, she arranged the funds for legal expenses and court fee of the appeal and approached the High Court for filing the second appeal, the reason is bonafide.”

(7) A careful perusal of the aforesaid reason would show that the appellant has not cared to give sufficient cause for explaining the inordinate delay of 1722 days in filing the instant appeal. The appellant has simply stated that she is a labourer and she had gone to the State of Punjab for earning her livelihood and, therefore, she

could not prefer appeal right in time; and the appellant and the respondents are resident of same village and as such, inordinate delay of 1722 days has not been explained satisfactorily; and it cannot be held that sufficient cause has been shown for condoning the inordinate delay of more than four years in filing the appeal. Since appellant/plaintiff has failed to assign sufficient cause for delay in filing the appeal, therefore, delay occurred in filing the appeal cannot be condoned. Accordingly, IA No.1, application for condonation of delay in filing the appeal is dismissed.

(8) Consequently, the second appeal is also dismissed as barred by limitation. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-