

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.481 of 1999**

Surendra Bahadur Singh (died) through LR's

(a) Smt.Malti Devi W/o Lt. Surendra Bahadur Singh, aged about 70 years,

(b) Smt.Anoop Devi W/o Deenanath Singh, aged about 49 years, Both R/o Indira Chowk, Ramnagar, Supela, Bhilai, Tahsil & District Durg (CG)

(c) Smt.Kusum Singh W/o Indrapal Singh, aged about 52 years, R/o 38, Payagaptti, Tahsil and District Sultanpur (C.G.)

---- Appellants

Versus

1. Narendra Bahadur Singh (died) Through his LR's

a. Vijay Singh S/o Narendra Bahadur Singh, aged about 42 years,

b. Dhananjay Singh S/o Narendra Bahadur Singh Singh, aged about 38 years,

c. Rakesh Singh S/o Narendra Bahadur Singh, aged about 35 years,

All R/o Nehru Road, Near Nehru Bhawan, Supela Market, Bhilai, Tahsil and District Durg (CG)

2. Smt. Sunita Ahuja W/o K.S. Ahuja

3. K.S.Ahuja, S/o S.B.Ahuja

4. S.P. Ahuja S/o B. Ahuja

No.2 to 4 residents of 28 Neharu Nagar (Purana) Bhilai Nagar, Tahsil and District Durg (MP) (Now CG)

5. Reshamlal Chawala S/o Sakawatram Chawala residents of Raurkela (Orissa) at present resident of 28 Neharu Nagar Bhilai Tahsil and District Durg (MP) (Now CG)

6. Smt.Smrita Chawala W/o Sushil Kumar Chawala, resident of Raipur, Tahsil and District Raipur at present resident of 28 Neharu Nagar, Bhilai Tahsil and District Durg (MP) (Now CG)

7. The State of Madhya Pradesh through Competent Authority Urban Land Ceiling Durg, Tahsil and District Durg (MP) (Now CG)

---- Respondents

For Appellants : Mr.H.B.Agrawal, Senior Advocate with
Mrs.Meera Jaiswal, Advocate
For Respondent No.1a to 1c: Mr.Vipin Tiwari, Advocate
For Respondents No.2 to 6 : None present though served.
For Respondent No.7 : Ms Ashtha Shukla, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

16/09/2016

1. Substantial question of law involved, formulated and required to be answered in this plaintiffs second appeal is as under:-

“Whether the approach of the first appellate Court in rejecting the application under Section 5 of the Limitation Act, 1963 has been perverse and highly unreasonable ?”

2. Suit filed by the original plaintiff-Surendra Bahadur Singh for declaration of title and for setting aside the sale deed dated 21.12.90 came to be dismissed by the trial Court on 5.12.94.

3. Being aggrieved against the judgment, appeal was preferred before the First Appellate Court on 21.2.95 with a delay of 29 days stating inter-alia that on the date of passing of the judgment, before the trial Court original plaintiff was not present and upon receiving information he applied for certified copy on 30.12.94 and certified copy was received on 17.1.95 and thereafter, he preferred the appeal duly supported by an affidavit of the plaintiff which was barred by 29 days, which was duly replied by the respondents. The First Appellate Court by its impugned order rejected the application finding no sufficient cause and also dismissed the appeal.

4. Against which, this second appeal under Section 100 of the CPC has been filed and substantial question of law formulated has been mentioned in opening paragraph of this judgment.

5. I have heard learned counsel appearing for the parties and perused the records of both the Courts below with utmost circumspection.

5. It is true that the plaintiff's application for condonation of delay was duly supported by an affidavit. He clearly stated that he was not present at the time of delivery of judgment on 5.12.94 and when he received information, then he filed an application for certified copy of the judgment on 30.12.94, which was received by him on 17.1.95 and thereafter he preferred the appeal with a delay of 29 days, which was duly replied by the respondents.

6. It is well settled law the Courts should adopt an justice-oriented approach in considering the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of *bona fides* of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.

7. In the matter of **N. Balakrishnan V. M. Krishnamurthy**¹, it has been held by the Supreme Court that the sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide. Relevant portion of the report held as under:-

¹ (1998) 7 SCC 123

“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. The Administrator, Howrah Municipality** [AIR 1972 SC 749].”

8. Recently, the Supreme Court in the matter of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**² has laid down the principles for deciding application for condonation of delay, which has been followed by this Court in case of **Pradeep Majumdar V. Duvas Bai and others**³. Para 21 of **Esha Bhattacharjee (Supra)** states

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

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 pro sufficer 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 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. Keeping in view the principles laid down in the above-stated cases, the facts of the instant case are examined, I find that the plaintiff has succeeded in showing the cause for delay in filing the appeal of 29 days.

10. Thus, the First Appellate Court has committed illegality in rejecting the application under Section 5 of the Limitation Act. Therefore, the order impugned dated 23.12.1995 passed by the First Additional District Judge, Durg in unregistered Case (Surendra Bahadur Singh vs. Narendra Bahadur Singh and others) is hereby set aside. The delay in filing the appeal is condoned. Case is restored to the original file of the First Additional District Judge, Durg for hearing and disposal of appeal on merits in accordance with law. Since the appeal was filed on 21.2.1995, the First Appellate Court is directed to decide the appeal within three months from the date of receipt of copy of this order.

11. The second appeal is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K Agrawal)
Judge

B/-