

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 166 of 2015**

1. Topilal, son of Sukhi Ram Chandra, aged about 50 years, Occupation Agriculture.
2. Negilal, Son of Sukhi Ram Chandra, aged about 45 years, Occupation Agriculture,

Both are R/o. Village Doma, Tahsil Malkharoda, District Janjgir-Champa (C.G.)

---- Appellants**Versus**

1. Chherkaram, son of Ranguram, aged about 60 years, Occupation Agriculture, R/o. Village Doma, Tahsil Malkharoda, District Janjgir-Champa (C.G.)
2. Shyamlal Chandra, son of Puniram, aged about 60 years, Occupation Agriculture, R/o. Village Sharhar, Tahsil Baradwar, District Janjgir-Champa (C.G.)
3. Kamala Bai Chandra, D/o. Puniram, wife of Firat Ram, aged about 55 years, R/o. Bade Rabeli, Tahsil Malkharoda, District Janjgir-Champa (C.G.)
4. Manager, son of Raghu, aged about 45 years, Occupation Agriculture, R/o. Village Doma, Tahsil Malkharoda, District Janjgir-Champa (C.G.)
5. State of Chhatisgarh, Through: The Collector, District Janjgir-Champa (C.G.)

---- Respondents

For Appellants : Mr. Akhtar Hussain, Advocate.

For respondent No.1 : Mr. Parag Kotecha, Advocate.

For respondent No. 5 : Mr. Sameer Behar, Panel Lawyer.

For Applicant-Banshilal: Mr. Ashish Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

14/07/2016

(1) The substantial question of law formulated and to be answered by this Court in the defendants' No. 3 & 4 second appeal is as under:-

“Whether the first appellate Court had exercised its jurisdiction fairly and judiciously while dismissing the application seeking condonation of delay ?”

[For sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court]

(2) The plaintiff/respondent No.1-Chherkaram filed a civil suit for declaration of his title, confirmation of possession and declaring the sale deed dated 30.01.1974 as null & void.

(3) Present appellants/defendants were impleaded as defendants No. 4 & 5 in that suit. Defendants No. 4 & 5 appeared before the trial Court and filed their written statement. Thereafter, they proceeded ex parte and *ex parte* decree was passed by the trial Court on 12.12.2012 against them holding that plaintiff-Chherkaram is title & possession holder of the suit land and the defendants are restrained from interfering with his peaceful possession.

(4) Defendants No. 4 & 5 preferred first appeal along with application for condonation of delay in filing the appeal before the First Appellate Court on 11.06.2013 stating *inter alia* that the amendment applications were allowed beyond the back of these defendants and no notices were served to them as the case was

transferred from Civil Court Shakti to Civil Court Malkharoda and they came to know about the ex parte judgment & decree when the plaintiff interfered with their possession on 13.04.2013 and, thereafter, they enquired into the matter and then they came to know that ex parte judgement & decree has been passed against them on 12.12.2013 and after obtaining certified copy of the same and engaging the counsel, they preferred appeal with a delay of 141 days and, therefore, this delay in preferring the appeal may be condoned.

(5) Respondent No.1/Plaintiff opposed the application for condonation of delay by filing reply.

(6) The first appellate Court, by its impugned order dated 24.12.2014 dismissed the application for condonation of delay in preferring the appeal holding that no sufficient cause has been shown for the delay in the filing the appeal and consequently dismissed the first appeal.

(7) Impugning the legal acceptability and sustainability of the order 24.12.2014 passed by the First Appellate Court, the second appeal under Section 100 of the CPD has been preferred by the defendants No. 4 & 5/appellants herein, which has been admitted for final hearing on the substantial question of law as stated in opening paragraph of this judgment.

(8) Mr. Akhtar Hussain, learned counsel appearing on behalf of

the appellants/defendants No. 3 & 4 would submit that the First Appellate Court has committed grave illegality in holding that no sufficient cause has been shown in preferring the appeal under Section 96 of the CPC, whereas, Mr. Parag Kotecha, learned counsel for respondent No.1/plaintiff would submit that the First Appellate Court has rightly rejected the application under Section 5 of the Limitation Act the thereby dismissal of first appeal is well merited.

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

(10) A careful perusal of the record of the case would show that the suit was initially instituted at Civil Court, Shakti and thereafter it was transferred to Civil Court Malkharoda and with effect from 22.9.2010 Civil Court, Malkharoda started hearing of said civil suit. It is the case of defendants' No. 3 & 4 that no notice was served to them for transfer of the case from Civil Court, Shakti to Civil Court, Malkharoda and therefore, their counsel could not appear and proceeded ex parte with effect from 5.3.2011 and ultimately ex parte decree was passed against them on 12.12.2012.

(11) It is true that there was delay of 141 days in filing the appeal but fact remains that transfer of suit from Civil Court, Shakti to Civil Court, Malkharoda was never informed to the present defendants No. 3 & 4/appellants after transfer and when the plaintiff made an

attempt to interfere with the suit property after decree of the trial Court, they enquired into the matter and the first appeal came to be filed on 11.6.2013 along with application for condonation of delay in filing the appeal.

(12) 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.

(13) In case 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:-

“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

1 (1998) 7 SCC 123

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].**”

(14) Recently, the Supreme Court in the case 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

² JT 2013 (2) SC 450

this Court in case of **Pradeep Majumdar V. Duvas Bai and others**³. Para 21 of the **Esha Bhattacharjee(Supra)** 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 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.”

(15) Keeping in view the principles laid down in the above-stated cases, the facts of the instant case is examined, I find from the record that the appellants/defendants No. 3 & 4 appearing in the trial diligently and seriously contested the suit from 14.07.1995 till the date when the case was transferred from Civil Court, Shakti to Civil Court Malkharoda and as according to them, no notice was served to them about the transfer of the case, they could not appear before the Civil Court, Malkhaorda and proceeded ex parte with effect from 5.3.2011. It is neither deliberate and nor out come of malafide action and the cause shown for delay in filling the application is an “sufficient cause” within the meaning of Section 5 of the Limitation Act.

(16) This Court is of the considered opinion that the First Appellate Court has committed illegality in rejecting the application under Section 5 of the Limitation Act and consequently dismissing the first appeal. The impugned order/judgment dated 24.12.2014 is hereby set aside. The delay in filing the appeal is condoned. The First Appeal (Topilal & another Vs. Chherka & others) is restored to the original file of Additional District Judge, Shakti for hearing and disposal of appeal on merits in accordance with law subject to payment of cost of Rs.5,000/- payable to the counsel for respondent No.1/plaintiff.

(17) The parties are directed to appear before the District Judge, Shakti on 22nd August, 2016. The First Appellate Court is directed to decide the appeal on merits expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-