

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 188 of 2015**

Kendi, D/o. Late Jairoop, W/o. Vishwanath, aged near about 65 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.).Defendant No.2

---- Appellant**Versus**

1. Jhitku @ Sitku, S/o. Late Bhajan, aged about 60 years, r/o Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
2. Sukhmin, W/o. Late Udai, aged about 60 years.
3. Durjan, S/o. Late Udai, aged about 42 years.

Respondents No. 2 & 3 are R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)

4. Mohan, S/o. Late Bhajan, aged about 55 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
5. Harish Chandra @ Khora, S/o. Jagarnath, aged about 35 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.) at present R/o. Bharatpur, Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
6. Santosh @ Bhatthi, S/o. Jagarnath, aged about 30 years
7. Chandramani @ Rubi, D/o. Jagarnath, aged about 23 years
8. Leelwati @ Tholo, D/o. Jagarnath, aged about 20 years

Respondents No. 7 to 9 are R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)

9. Kena Parhin, Wd/o. Late Jagarnath, aged about 50 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
10. Dalip, S/o. Late Bhajan, aged about 50 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)

Bachan, S/o. Atibal (since died issueless)

11. Till, S/o. Atibal, aged about 28 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
12. Befaiya Bai, W/o. not known to the appellant, D/o Late Atibal, aged about 45 years, R/o. Village Gorta, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
13. Son Baiya, D/o. Late Atibal, aged about 42 years, R/o. Village Puhputra, Police station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
14. Ramdhen, S/o. Late Chhotu, aged about 67 years, R/o. Village Korja, Tahsil Lakhanpur, Police Station & Tahsil Lakhanpur, Civil and Revenue District Surguja (C.G.)
15. Kusum, D/o. Dilbasiya, aged about 27 years, R/o. Village Bhattikala, Tahsil Ambikapur, Civil and Revenue District Surguja (C.G.)
16. State of Chhattisgarh through Collector, Ambikapur, District Surguja (C.G.)

---- Respondents

For Appellant	: Mr. Manoj Paranjpe, Advocate.
For Respondents No. 2 to 10	: Mr. Shakti Raj Sinha, Advocate
For Respondent No. 14	: Mr. Mahendra Kumar Sahu, Advocate
For Respondent No.16	: Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/08/2016

(1) The substantial question of law formulated and to be answered by this Court in the defendant's No.2 second appeal is as under:-

“Whether the first appellate Court is justified in dismissing the first appeal on the ground of delay by recording a perverse finding ?”

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

(2) Plaintiffs' suit for declaration of title, partition and permanent injunction was decreed by the trial Court by its judgment & decree dated 31.03.2006, against which, defendant No.2 preferred first appeal on 27.01.2012 with a delay of five years, 8 months and 26 days before the first appellate Court supported by affidavit.

(3) Respondents/plaintiffs has filed their reply opposing an application for condonation of delay in filing the appeal.

(4) First appellate Court, by its judgment & decree dated 18.02.2015, dismissed that application holding it to be barred by limitation and consequently dismissed the first appeal, against which the instant second appeal under Section 100 of the CPC has been filed by the defendant, in which, substantial question of law has been framed and mentioned in opening paragraph of this judgment.

(5) Mr. Manoj Paranjpe, counsel for the appellant would submit that defendant No.2 was duly represented through her counsel before the trial Court and passing of the decree was not informed by her counsel to defendant No. 2 and when plaintiffs came to take possession of the suit land from defendants No. 1 to 6, then only the defendant No. 2 came to know about the passing of the decree and obtained certified copy of the same and then preferred first appeal, as such, it constitutes sufficient cause within the definition of Section 5 of the Limitation Act. He would further submit that no enquiry was made on the said application and even no summary enquiry was made by first appellate Court on that application and straightway dismissed the application after reply by the plaintiffs holding it to be barred by limitation.

(6) On the other hand, Shri S.R. Sinha, learned counsel for the plaintiffs/respondents would submit that the first appellate Court is absolutely justified in dismissing the first appeal as barred by limitation as there was no sufficient cause for delay in filing the application and, as such, second appeal is liable to be dismissed.

(7) I have heard learned counsel appearing for the parties and perused the judgment & decree impugned and record of the both the courts below with utmost circumspection.

(8) It is true that the appellant/defendant No. 2 preferred an appeal on 27.01.2012 after obtaining certified copy of the judgment and decree on 19.01.2012, but the fact remains that appellant is an illiterate lady, residing at remote village of Surguja and was prosecuting the suit diligently by representing through her counsel.

(9) 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.

(10) It is also case of the defendant that though decree for declaration, partition and possession was passed in plaintiffs' favour but as the possession has not been taken pursuant to the decree of the trial Court by the plaintiffs by execution and defendant is still in possession of the suit land, which demonstrates that the appellant/defendant No. 2 was not

aware of the passing of the decree.

(11) 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 mala fide. 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 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.

¹ (1998) 7 SCC 123

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].**”

(12) Recently, the Supreme Court in the case of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others²** 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 others³**. 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.

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

- 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.”

(13) Thus, applying the ratio of law laid down by the Supreme Court in the abovestated cases and keeping in view the status of the appellant/defendant, who is illiterate lady, residing at remote village of Surguja and was prosecuting the suit diligently and even she had appeared personally before the trial Court and there is no evidence available on record to show that the counsel, who had appeared for the appellant/defendant, had informed about passing of the decree to her, it cannot be held that delay in filing the appeal is malafide or deliberate and cause shown is sufficient cause. The Suit for partition & possession has to be decided on merits. Therefore, 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. The impugned order/judgment dated 18.02.2015 is hereby set aside. The delay in filing the appeal is condoned. The First Appeal (Kedi Vs. Phoolbasia (since deceased) & others) is restored to the original file of Fourth Additional

District Judge, Ambikapur for hearing and disposal of appeal on merits in accordance with law subject to payment of cost of Rs.10,000/- payable to the plaintiffs.

(14) The parties are directed to appear before the Fourth Additional District Judge, Ambikapur on 29th August, 2016. The First Appellate Court is directed to decide the appeal on merits expeditiously preferably within a period of three months as the first appeal was filed on 27.01.2012.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-