

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 357 of 2010

1. Smt. Kamla, Wife of late Sukhkhulal, aged about 56 years,
2. Mohan Lal S/o Late Sukhkhulal, Aged about 38 years,
3. Tarun Kumar S/o Late Sukhkhulal, Aged about 30 years,
All R/o Ward No.6, Manendragarh, District Korea (C.G.)

---- Appellants/Plaintiffs

Versus

- Jainarayan Agrawal S/o Late Seth Naththuram Ji, Aged about 40 years, Businessman, R/o Bazar Para, Manendragarh, District Korea (C.G.)

---- Respondent/Defendant

For Appellants : Shri Shailendra Shukla, Advocate
For Respondent : Shri Vivek Tripathi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

10/08/2016

1. The substantial question of law formulated, involved and to be answered in the Second Appeal is as under:

“Whether the lower appellate Court was justified in affirming the judgement and decree passed by the trial Court by dismissing the application for condonation of delay in filing the appeal?”

2. In order to answer the substantial question of law the following facts are required to be noticed.

2.1. The suit filed by the respondent/defendant for ejectment and arrears of rent was decreed by the trial Court on 11-11-2005 and decree was drawn on 11-11-2005. First appeal was preferred on 06-09-2010 along with an application under Section 5 of the Limitation of

Act for condoning the delay in preferring the appeal. The said application for condonation of delay was rejected holding that it is barred by more than 2 ½ years and consequently, dismissed the first appeal against which the Second Appeal has been preferred and substantial question of law has been formulated and incorporated in the opening paragraph of the judgement.

3. Mr. Shailendra Shukla, learned counsel for the appellant/plaintiff would submit that the cause shown for delay in filing the application was sufficient as the counsel who appeared on behalf of the appellant/plaintiff before the trial Court did not inform them about the delivery of judgement and therefore, they could not prefer an appeal right in time. As soon as they came to know about the impugned judgement, they obtained certified copy on 26-08-2008 and preferred an appeal on 06-09-2008, therefore, the impugned order deserves to be set aside.

4. Mr. Vivek Tripathi, learned counsel appearing for the respondent would submit that for each day's delay, the plaintiffs were required to explain which they failed to do so. Therefore, the First Appeal was rightly dismissed by the First Appellate Court.

5. I have heard learned counsel for the parties and perused the record of the case.

6. It is not in dispute that the suit for eviction and arrears of rent was decreed on 11-11-2005 in which the appellants were duly

represented through their counsel and the application for condonation of delay filed by the appellants was duly supported by an affidavit and it is also borne out from the record that neither reply of the said application was filed nor any counter affidavit opposing the application for condonation of delay was filed as such, the application of the appellants remained un-controverted, as no affidavit was filed disputing the correctness of the averments made in the application for condonation of delay.

7. It is well settled law that 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.

8. 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

¹(1998) 7 SCC 123

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 *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].**”

9. 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 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.

²JT 2013 (2) SC 450

³2013 (4) B.L.J. 433

- 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, behaviour 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.”

10. Keeping in view the principle laid down in the above stated case and further keeping in view that the appellants' counsel engaged by them in the trial Court did not inform them about passing of the impugned decree by the trial Court, they could not prefer an appeal right in time which constitutes sufficient cause within the meaning of Section 5 of the Limitatio Act. Consequently, the impugned order dated 09-04-2010 passed by Additional District Judge, Manendragarh is hereby set aside. The delay in filing the appeal is condoned. The appeal is hereby restored to its original number for hearing of First Appeal and the First Appellate Court is directed to disposed of the appeal preferably within two months from the date of receipt of copy of this judgement. The appeal is allowed to the above extent subject to payment of cost of Rs.1000/- to the respondent.

Sd/-
(Sanjay K. Agrawal)
JUDGE