

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 222 of 2016**

1. Maloo Ram Singhania S/o Late Prabhu Lal Singhania, Aged at present near about 85 Years R/o Village Than Khamaria, Tehsil Saja, P.S. Than Khamaria, Post Than Khamaria, Tehsil Than Khamaria, Civil And Revenue District Bemetara, District Bemetara, Chhattisgarh(Plaintiff)

---- Petitioner**Versus**

1. Nagar Panchayat, Khamaria, Through Its Chief Municipal Officer (CMO) N.S. Batti, Aged About 45 Years, Nagar Panchayat Khamaria, R/o Khamaria, Tehsil Saja, PS Than Khamaria, Tehsil Than Khamaria, Civil And Revenue District Bemetara, District Bemetara, Chhattisgarh
2. President Nagar Panchayat Khamaria, Anand Singhania, S/o Chiranjeevlal Singhania, Aged About 54 Years, R/o Khamaria, Tehsil Saja, P.S. Than Khamaria, Post Than Khamaria, Tehsil Than Khamaria, Civil And Revenue District Bemetara, District Bemetara, Chhattisgarh
3. Collector, Durg, Now Bemetara, District Bemetara, Chhattisgarh.....(Defendants)

---- Respondent

For Appellant	Shri Manoj Paranjape & Ms. Priyanka Mehta, Advocates
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For Respondents No.1 & 2	Shri Awadh Tripathi, Ms. Indira Tripathi & Ms. Pritha Ghoshal, Advocates
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For Respondent/State	Shri Om P. Sahu, Govt. Advocate
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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/08/2016

1. In the second appeal a substantial question of law involved, formulated and to be answered in the plaintiff's second appeal is as under :

Whether the first appellate Court is justified in dismissing the first appeal as barred by limitation by recording a finding which is perverse to the record ?

2. The plaintiff's suit for recovery of possession and damages was dismissed by the trial Court by judgment and decree dated 24-9-2013. Feeling aggrieved by the said judgment and decree the plaintiff preferred first appeal before the first appellate Court on 18-11-2013 along with an application for condonation of delay. The said appeal was barred by six days. The first appellate Court by its impugned order held that sufficient cause has not been shown by the plaintiff for condoning the delay and consequently, dismissed the appeal on the ground of delay. Thereagainst, the instant second appeal preferred by the plaintiff in which the substantial question has been framed and incorporated in the opening paragraph of this judgment.

3. Shri Manoj Paranjape, learned counsel appearing for the appellant, would submit that the finding recorded by the first appellate Court holding that sufficient cause has not been shown for condoning the delay in filing the first appeal is perverse and contrary to the law laid down by the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**¹.
4. Per contra, Shri Awadh Tripathi, learned counsel appearing for the respondents No.1 & 2, while supporting the impugned order would submit that no sufficient cause has been shown by the plaintiff for condoning the delay in filing the first appeal.
5. Having heard learned counsel for the parties and perused the record, it is manifest that the judgment was pronounced by the trial Court on 24-9-2013 and admittedly, on that date the plaintiff was not present before the trial Court and he came to know about the judgment and decree only on 29-10-2013. Thereafter, the plaintiff obtained certified copy of the judgment and contacted the counsel and in the said process the delay of six days occurred in filing the first appeal.

1 (1998) 7 SCC 123

6. The Supreme Court in **N. Balakrishnan** (supra) observed that the sufficient cause has to be construed liberally especially when the delay is not deliberate and *mala fide*. Paras 11 & 12 of the said decision are 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.

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* and *State of West Bengal Vs. Administrator, Howrah Municipality*.”

7. Thus, applying the ratio laid down by the Supreme Court in **N. Balakrishnan** (supra) to the facts of the case at hand, it would appear that the plaintiff was quite diligent in prosecuting the suit and the delay occurred in filing the appeal on account of the fact that he was not present when the judgment was pronounced by the trial Court, however, immediately after coming to know about the judgment and decree, the plaintiff applied for certified copy of the same and consulted the counsel and, as such, the delay caused in filing the appeal cannot be termed as *mala fide* and deliberate. In fact, sufficient cause was

shown by the plaintiff before the first appellate Court for condoning the delay in filing the appeal.

8. As a sequel, the instant second appeal is allowed. The impugned order dated 15-3-2016 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal 14-A/2013 to its original file of the Court of Additional District Judge, Bemetara, for hearing and disposal of the same, in accordance with law and on its own merits, as expeditiously as possible, preferably within a period of three months from the date of receipt of record and certified copy of this order, as the first appeal was filed by the plaintiff on 18-11-2013. Parties are directed to appear before the first appellate Court on 13th September, 2016.
9. Decree be drawn accordingly.
10. Registry is directed to return back the record to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

Gowri