

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 310 of 2016**

Smt. Ameera Bai, aged about 65 years, widow Late Shri Rambharosh Rajwar, Caste Rajwar, Occupation House-caretaker, R/o- Village – Telgawan, P.S.- Bhatgowan, Tahsil-Bhaiyathan, district Surajpur (C.G.)

---- Appellant**Versus**

1. Mangal Sai, aged about 50 years, S/o Late Shri Nanhoo Ram, Occupation – Cultivate and service.
2. Dewsharan, S/o Ghasi Ram, aged about 48 years, Occupation- Cultivation,
3. Smt. Shanti Bai, Widow of ShukhaLal, aged about-45 years,
4. Ashwani Kumar, S/o SukhaLal, aged about 20 years,
5. Niteen, S/o SukhaLal, age about 19 years,
6. Miner Purity, D/o SukhaLal, age about 17 years, Natural Guardian of mother Shanti Bai,
7. Smt. Manbasiya, aged about 85 years, Widow of Late Shri Ghasi Ram Rajwar, Caste-Rajwar, Occupation House-caretaker, Above Respondents 1 to 7 are R/o-Village – Telgawan, P.S.-Bhatgowan, Tahsil-Bhaiyathan, District – Surajpur (C.G.)
8. Forest Davison Officer, Davison Office-Surajpur Range, Surajpur (C.G.)
9. State of Chhattisgarh through the Collector-Surajpur (C.G.)
10. Gambhir Sai, aged about 49 years, S/o Late Shri Rambharosh Rajwar,
11. Ameer Sai, aged about 45 years, S/o Late Shri Rambharosh Rajwar, Caste-Rajwar, Occupation- Cultivate,
12. Chandrika, aged about 35 years, S/o Late Shri Rambharosh Rajwar, Caste-Rajwar, Occupation- Labour, Respondents No.10 to 12, R/o- Village-Telgawan, P.S.-Bhatgowan, Tahsil-Bhaiyathan, District – Surajpur (C.G.)

---- Respondents

For Appellant : Mr. S.A. Ansari, Advocate.
For respondent No.1 : Mr. Sushil Dubey, Advocate.
For respondent/State : Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/08/2016

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

“Whether the first appellate Court is justified in dismissing the first appeal on the ground of limitation 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) The plaintiff's suit for declaration of title, partition and recovery of possession was partly decreed by the trial Court by its judgment & decree dated 21.08.2012 passed in Civil Suit No.126-A/2012.

(3) Appellant/defendant preferred first appeal under Section 96 of the CPC before the first appellate Court on 3.7.2013 along with an application for condonation of delay in filing the same, duly supported by affidavit as there is delay of 275 days in filing appeal stating *inter alia* that as defendant No. 2-Gambhir Sai was seriously ill, he could not prefer appeal within the period of limitation.

(4) The First Appellate Court, by its impugned order dated 10.05.2016, rejected the application under Section 5 of the Limitation Act and consequently, the first appeal is also dismissed as barred by limitation.

(5) Impugning the legal acceptability and sustainability of the order

10.05.2016 passed by the First Appellate Court, the second appeal under Section 100 of the CPD has been preferred by the defendant No.1 (appellant herein), which has been admitted for final hearing on the substantial question of law as stated in opening paragraph of this judgment.

(6) Mr. S.A. Ansari, learned counsel appearing on behalf of the appellant/defendant No.1 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. Sushil Dubey, 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.

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

(8) The first appeal was preferred before the first appellate Court on 3.7.2013 along with application for condonation of delay in filing the appeal stating *inter alia* that defendant No. 2 -Gambhir Sai became ill from 11.8.2011 to 14.09.2012 and it also appears from the record that he remained hospitalized from 12.08.2011 to 22.08.2011. The said fact is duly supported by affidavit.

(9) The said application was opposed by learned counsel for the plaintiff.

(10) The first appellate Court, by its impugned order, rejected the said applicaiton finding no sufficient cause has been shown for delay in filing

the appeal.

(11) 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.

(12) 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 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

1 (1998) 7 SCC 123

interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigatin). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilaory tactics but seek their remedy promptly. The idea is that every legal remedy must be kep 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].”**

(13) 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-

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

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.”

(14) Keeping in view the principles laid down in the above-stated cases, the facts of the instant case is examined, I find that reasons assigned by the appellant/defendant No.1 are sufficient reasons for condoning the delay of 275 days in preferring the appeal. It is neither deliberate and nor out come of *malafide* action and the cause shown for delay in filling the application is an a “sufficient cause” within the meaning of Section 5 of the Limitation Act and, therefore, the first appellate Court is absolutely unjustified in rejecting the application for

condonation of delay in preferring the appeal as the suit for partition and possession has to be decided on merits.

(15) 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 10.05.2016 is hereby set aside. The delay in filing the appeal is condoned. The First Appeal (Ameera Bai & others Vs. Mangalsai & others) is restored to the original file of Second Additional District Judge, Surajpur, District Surajpur for hearing and disposal of appeal on merits in accordance with law subject to payment of cost of ₹ 2,500/- payable to learned counsel for respondent No.1 within a period of one month.

(16) The parties are directed to appear before the Second Additional District Judge, Surajpur, District Surajpur on 05.09.2016. The First Appellate Court is directed to decide the appeal on merits expeditiously as the judgment & decree of the trial Court was passed way back on 21.08.2012.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-