

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 364 of 2005**

R. Gangadharan, son of Shri Obulesu, aged about 62 years, C & F Agent, Transport Contractor, Proprietor Varun Sai Shipping & Cargo Agency, Compson Street, Visakhapatnam (Andhra Pradesh), presently residing at Bangalore

---- Appellant

Versus

Nemichand Jain, son of Shri Multanchand Jain, Proprietor Bhansali Road Lines, Tatibandh, Raipur, resident of Choubey Colony, Raipur

---- Respondent

For Appellant	:Shri Sameer Oraon, Advocate
For Respondent	:Shri Adhiraj Surana, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Judgment / Order On Board**

18/11/2016

This is defendant's miscellaneous appeal under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code, 1908') against the order dated 06.01.2005 passed by the 3rd Additional District Judge, Raipur, in Miscellaneous Civil Case No. 102/2002 whereby the trial Court has rejected the application for condonation of delay in filing the application under Order 9 Rule 13 of the Code, 1908 for setting aside the *ex parte* judgment and decree.

2. Brief facts of the case are that the plaintiff – Nemi Chand Jain had instituted a suit for recovery of sum of Rs.6,97,280/-. Upon issuance of summons, the defendant has made his appearance and contested the suit. However, during trial, he was proceeded *ex parte* and consequently the trial Court decreed the suit *ex parte* on 22.02.2000.

3. For setting aside the aforesaid *ex parte* judgment and decree, the defendant had moved an application under Order 9 Rule 13 of the Code, 1908 for setting aside the said judgment and decree on 10.07.2000. Since there is some delay in filing the application for setting aside the *ex parte* judgment and decree, therefore, an application for its condonation was also moved as per the provisions contained under Section 5 of the Indian Limitation Act, 1963. In the said application, it is stated that he was not aware with regard to delivery of *ex parte* judgment and decree and came to know about the same on 04.07.2000 when he received the letter from the Department of Women and Child Welfare and then only he applied for obtaining the certified copy of the said *ex parte* judgment and decree. Immediately after obtaining the certified copy of the said *ex parte* judgment and decree, he has moved the aforesaid application.

4. Learned counsel for the appellant submitted that while entertaining the application for condonation of delay under Section 5 of the Limitation Act, the Court below ought to have adopted the liberal view and particularly when there is no inordinate delay in approaching the Court for setting aside the *ex parte* judgment and decree. He placed his reliance upon ***M.K.Prasad vs. P. Arumugam, (2001) 6 SCC 176.***

5. The plaintiff / respondent had contested the aforesaid application and stated that even prior to 04.07.2000, the defendant was very well aware with regard to the delivery of said *ex parte* judgment and decree and he was having sufficient time to approach the Court for its setting aside, and therefore, the order impugned as passed by the trial Court does not require to be interfered. He has placed his reliance upon ***Vinod Kumar Thawani and Another vs. Firm Ganeshilal Gulab Chand, Partnership Firm, 2008 (1) C.G.L.J. 368.***

6. I have heard learned counsel for the parties and perused the entire record carefully.

7. This is the case where the *ex parte* judgment and decree was delivered on 22.02.2000 and immediately thereafter the defendant has filed an application for its setting aside on 10.07.2000 along with an application for condonation of delay. It is, therefore, clear that the delay is not inordinate in approaching the Court. Once the delay is not inordinate, then the trial Court should have adopted the liberal view while entertaining the application for condonation of delay in filing the application for setting aside the *ex parte* judgment and decree. In the matter of ***Veda Bai Alias Vijayantabai Baburao Patil vs. Shantaram Baburao Patil***, reported in (2001) 9 SCC 106, it has been held by the Supreme Court that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. This is also the case where inordinate delay was not there, and therefore, while entertaining the application for condonation of delay, the trial Court ought to have adopted liberal view.

8. In the case of ***N. Balakrishnan vs. K. Krishna Murthy***, (1998) 7 SCC 123, the Supreme Court has observed at paras 11 & 12 as under:-

“11. Rules of limitation are not meant to destroy the rights 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 lifespan 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 v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366.”

9. Likewise, in the matter of **M.K. Prasad v. P Arumugam** (supra), it has been observed by the Supreme Court at para 10 as under:-

“**10.** In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.”

10. As far as the case law relied upon by learned counsel for the respondent in the matter of **Vinod Kumar Thawani and Another vs. Firm Ganeshilal Gulab Chand, Partnership Firm** (supra) is concerned, the facts of that case is not applicable to the facts of the present case. As this is the case where the defendant had immediately approached the Court for setting aside the *ex parte* judgment and decree. Besides, it cannot be skipped over that the decretal amount while passing the *ex parte* judgment and decree is huge one, i.e., Rs.6,27,280/- with 12% interest per annum and the cost of the suit at Rs.79,082/- was also awarded. Therefore, in such circumstances, the trial Court while entertaining the application for condonation of delay filed under Section 5 of the Indian Limitation Act should have adopted the liberal view.

11. In view of principles laid down in the abovementioned cases, the order impugned is not sustainable and is, therefore, hereby set aside.

12. The delay in filing the application under Order 9 Rule 13 of the Code, 1908 for setting aside the *ex parte* judgment and decree, is hereby condoned and the matter is remitted back to the trial Court for considering the said application filed under Order 9 Rule 13 of the Code, 1908, in accordance with law.

13. Parties are directed to appear before the trial Court on 10th January, 2017. Registry is directed to send back the entire record to the concerned Court below forthwith.

14. The appeal is allowed. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge