

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.379 of 2009

Megh Singh, S/o Late Ram Bharosh, aged about 63 years, R/o Village Pachri, Tahsil Janjgir, District Janjgir-Champa (C.G.)

---- Appellant/
(Plaintiff)

Versus

1. Raimat Bai, D/o Negi & W/o Shri Sakoli, aged about: Unknown,
2. Resham Bai, W/o Late Shri Suklu, aged about: Unknown,
3. Kosam Bai, W/o Khunwa, aged about: Unknown,
4. Tirath Ram, S/o Malechchu, aged about: Unknown,
5. Tirath Bai, D/o Malechchu, aged about: Unknown,

All are R/o Village Sevai, Tahsil Janjgir, District Janjgir-Champa (C.G.)

6. State of Chhattisgarh, Through the Collector, Janjgir, District Janjgir-Champa (C.G.)

---- Respondents/
(Defendants)

For Appellant:	Mr. Pushpendra Kumar Patel, Adv.
For Respondents No.1 to 5:	None present though served.
For State/Respondent No.6:	Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

05/10/2016

1. The second appeal has been admitted for final hearing by order dated 1-9-2009 on the following substantial question of law: -

"Whether, the lower appellate Court was justified in dismissing the appeal on the ground of limitation?"
2. The trial Court dismissed the suit filed by the plaintiff / appellant herein on 26-11-2008 against which first appeal was preferred

which was barred by 129 days. Application for condonation of delay was filed and that too has been dismissed on the ground that sufficient cause has not been shown for delay. Whereas, according to the plaintiff / appellant herein, sufficient cause for delay has been shown, as the plaintiff was not present at the time when the judgment was delivered by the trial Court and the counsel has not informed him about the delivery of judgment by the trial Court. Feeling aggrieved against the order of the first appellate Court, second appeal has been preferred and question of law has been framed.

3. Mr. Pushpendra Kumar Patel, learned counsel appearing for the appellant / plaintiff, would submit that the first appellate Court has committed jurisdictional error in holding that no sufficient cause has been shown whereas, sufficient cause has been shown.
4. None appears on behalf of respondents No.1 to 5 / defendants, though served.
5. I have heard learned counsel for the parties present, perused the order of the first appellate Court as also the judgment and decree of the trial Court and gone through the records of both the Courts below thoroughly.
6. Fact remains that the plaintiff regularly appeared and contested the suit from 7-12-2006 to 26-11-2008 and preferred appeal with a delay of 129 days. Application for condonation of delay was supported by affidavit which remained un-controverted, as the respondents / defendants were neither noticed nor they opposed

the application.

7. It is well settled law that the Courts should adopt 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 the matter of **N. Balakrishnan v. M. Krishnamurthy**¹, it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not deliberate and mala fide.

Relevant portion of the report reads 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

1 (1998) 7 SCC 123

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 West Bengal v. The Administrator, Howrah Municipality [AIR 1972 SC 749].**”

9. Keeping in view the principles laid down in afore-cited cases and considering the fact that the appellant / plaintiff regularly appeared and contested the suit and has shown sufficient cause for condoning the delay which was neither deliberate nor mala fide on the part of the plaintiff / appellant, I consider that sufficient cause has been shown by the plaintiff for delay in filing the appeal. The first appellate Court has committed illegality in rejecting the application for condonation of delay. The substantial question of law formulated for the decision of this appeal is answered in negative.
10. Accordingly, the appeal is allowed. The order impugned is set aside. Delay in filing the first appeal is hereby condoned. The first appeal is restored to the file of the first appellate Court for hearing and disposal in accordance with law. Since the first appeal was filed on 5-5-2009, the first appellate Court is directed to consider and decide the first appeal within 4 months from the date of receipt of certified copy of this order, after noticing the other side. No order as to costs.
11. Decree be drawn accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge